

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN DIEGO REGION

In the Matter of the)
Public Hearing)
)
RE: All items on the)
agenda, including, but)
not limited to,)
Poseidon Resources)
Corporation, Proposed)
Desalination Project.)
_____)

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PARTIAL TRANSCRIPT OF PROCEEDINGS

San Diego, California

Wednesday, April 9, 2008

Reported by:

GIDGETTE NIEVES

CSR No. 10142

Job No.:

A8287WQSD(F)

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PARTIAL TRANSCRIPT OF PROCEEDINGS, taken at
9174 Sky Park Court, San Diego, California,
commencing on Wednesday, April 9, 2008, heard before
THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
reported by GIDGETTE NIEVES, CSR No. 10142,
a Certified Shorthand Reporter in and for
the State of California.

APPEARANCES:

CHAIRPERSON: Richard Wright

VICE CHAIRPERSON: David King

BOARD MEMBERS: Susan Ritschel
Eric Anderson
Elizabeth Pearson Schneider
Wayne Weber

EXECUTIVE OFFICER: John Robertus

LEGAL COUNSEL: Catherine George

I N D E X

SPEAKERS:	PAGE
Peter MacLaggan	17, 103
Scott Jenkins	28
David Mayer	29
Christopher Garrett	35, 101
Mayor Bud Lewis	42
Ann Kulchin	45
Julie Nygaard	47
Jerome Kern	50
Mitch Beauchum	52
Gail Newton	54
Rachel Solorzano	56
Cameron Durckel	58
Ken Weinberg	59
Marcela Escobar	
Eric Munoz	61
Dennis Bostad	64
Rua Petty	64
Gary Arant	65
William Rucker	66
Robert Simmons	67

I N D E X (Continued)

SPEAKERS:	PAGE
Douglas Metz	69
Jim Schmidt	70
Chuck Badger	72
Mike Madigan	74
Gary Knight	75
Angelika Villagrana	76
Lani Lutar	77
Gina McBride	78
Kevin Sharrar	80
Savannah Sharrar	81
Evelyn Peterson	82
Gabriel Solmer	84, 93, 122
Joe Geever	87, 96
Livia Borak	90, 98
Ed Kimura	99

1 San Diego, California, Wednesday, April 9, 2008

2 (Partial transcript)

3
4 MR. WRIGHT: I would also say the same thing for
5 the other organized presentations. And I know you'll do
6 everything in organized presentations to keep comments
7 brief and lacking representations. So at this point,
8 let's hear staff presentation. And approximately how much
9 time?

10 MR. KELLEY: Probably 15 minutes.

11 MR. WRIGHT: No more than 15 minutes.

12 MR. KELLEY: Mr. Chairman, members of the board,
13 my name is Brian Kelley. I'm a senior water resource
14 control engineer in charge of the new core regulatory
15 unit. And the purpose of this item is to consider
16 approval of a revised flow entrainment and impingement
17 minimization plan dated March 6, 2008 as required by Order
18 Number R9-2006-0065; MPDS number CA0109223 for the
19 Poseidon Resources Corporation Carlsbad desalination or
20 desal project. Because of the voluminous amount of
21 information regarding this matter, I would first like to
22 provide a brief list of items that are included in your
23 agenda materials.

24 You have in your first agenda packet for this
25 item the executive officer summary report project location

1 quality aspects of the project.

2 The proposed project would need approximately
3 304 million gallons per day for MGD of seawater on the
4 Encina Power Station once through cooling water system
5 affluent. The Encina Power Station intake is located in
6 the southwest corner of the Agua Hedionda Lagoon. Can you
7 see it's right in here. The powerplant is here. This is
8 the opening to the lagoon. And then here's the discharge
9 channel. The Carlsbad desalination facility would produce
10 up to 50 MGD of potable water, up to 57 MGD of combined
11 concentrated saline waste water and filter backwash waste
12 water from the facility of with commingle of at least 200
13 MGD of pass through cooling water from the powerplant, and
14 the combined flow would be discharged to the Pacific Ocean
15 via the current Encina Power Station discharge channel
16 across the beach. So you can see the intake structure
17 here coming back down through the desalination plant. The
18 50 MGD will go into the potable water and the remaining
19 backwash and filter will come up this way and come back
20 into here. Commingle with the remaining discharge through
21 the powerplant and then be discharged to the ocean.

22 As originally proposed, the Encina Power Station
23 seawater intake cooling flows needs would have far
24 exceeded that of the Carlsbad Desal Facility, the 304 MGD.
25 More recently however it appears that the flow needed for

1 power generation has been less than the 304 MGD needed for
2 the desal facility. Last year, based on flow data from
3 the power station, the cooling water intake flow volume
4 dropped below the 304 MGD approximately 40 percent at a
5 time. Regarding regional board regulation of the Carlsbad
6 desal project, on August 16, 2006, the Regional Board
7 adopted order Number R9-2006-0065 for the discharge of
8 waste water from the Poseidon Carlsbad Desal Facility with
9 the effective date of October 1st, 2006 and an expiration
10 date of October 1st, 2011, a five year permit.

11 Section 6C2E of the order required Poseidon to
12 submit for approval by the Regional Board a flow
13 entrainment and impingement minimization plan within 180
14 days of adoption of the order. This plan was required in
15 order to comply with California Water Code Section
16 13142.5, which mandates that new or expanded industrial
17 installations used best available site, design,
18 technology, and mitigation measures feasible to minimize
19 the intake and mortality; in other words, entrainment and
20 impingement of all forms of marine life. Approval of this
21 specific plan, however, is currently not a condition in
22 the permit for commencement of the discharge from the
23 Carlsbad Desal Facility. I would also like to point out
24 that the permit does not provide for the situation when
25 the desal project is operating in absence of the

1 powerplant operations. The current permit would need to
2 be modified or a new permit would need to be issued to
3 incorporate requirements for stand-alone operation of the
4 desal project.

5 For reference, the Encina Power Station intake
6 and discharge are regulated under order number
7 R9-2006-0043, and PDES number CA 0001350, which was
8 adopted on the same day as the Carlsbad desal permit on
9 August 16, 2006. And both permits have the same
10 expiration date of October 1st, 2011. The order contains
11 a flow rate limitation of 864 MGD. Since the powerplant
12 has a thermal discharge, it is subject to the requirements
13 of Section 316B of the Clean Water Act. This requires
14 that the location design, construction, and capacity of
15 cooling water intake structures reflect the best available
16 technology for minimizing adverse environmental impact.

17 Unlike the Water Code Section 13142.5B, the
18 Clean Water Act Section does not include mitigation as a
19 measure to minimize impacts.

20 On February 13, 2007, Poseidon submitted the
21 first version of the flow entrainment and impingement
22 minimization plan. Following regional board and other
23 interested parties comments on the first plan, Poseidon
24 submitted a revised plan dated June 29, 2007. To
25 supplement this plan, Poseidon also submitted a coastal

1 habitat restoration and enhancement plan dated November
2 2007 as required by the California Coastal Commission.

3 The reason the board sent a letter to Poseidon
4 dated February 19, 2008 identifying seven general comments
5 and ten specific comments on the plans submitted up to
6 that date.

7 On March 7, 2008 Poseidon, submitted a revised
8 minimization plan dated March 6, 2008. As I mentioned,
9 this is the plan that's being considered for approval
10 today. Page six, dash, three of the revised plan contains
11 a table showing an implementation approach and schedule.
12 Following regional board approval of the plan the proposed
13 schedule includes elements for contacting the California
14 Department of Fish and Game. Contacts with other resource
15 agencies, convening meetings with all agencies,
16 distribution of mitigation program details, modification
17 and finalization of the mitigation program, and final
18 consideration and approval of the mitigation project or
19 projects by the coastal provision in July 2008.

20 Furthermore, as stated on Page six, dash, 18,
21 the State Land's Commission refers the right to terminate
22 the lease if Poseidon is not using best available design,
23 technology of mitigation measures at all times as
24 determined by the regional board or any other federal,
25 state, or local entity.

1 Based on regional board staff review of the
2 revised plan and as described in the technical report from
3 Kiara Clemente, senior environmental scientist for the
4 central water unit John Robertus dated 2008 resolve
5 concerning the data and calculations used to determine the
6 impacts to marine life. The conclusions derived and the
7 process for agency approval of impact assessment and final
8 litigation alternative or alternatives. Written comments
9 have been received from several interested parties, and
10 copies of these comments are included in your agenda
11 packet as previously mentioned. The comments from the
12 California Assembly Member Martin Garrett, the City of
13 Coronado, and the California State Land's Commission were
14 received after the written comment deadline. And I have
15 copies of those letters, if the board would like to accept
16 them for consideration. Two of the letters are one page
17 in length mostly promoting--urging the board to move
18 forward with this project. The other one is four pages
19 and has some specific issues regarding the revised plan.

20 I can hand those out if you would like to
21 receive them.

22 MR. RAY: I'd like to see them.

23 MR. WRIGHT: If you would. Would you also
24 provide a copy of that table. Is it in here.

25 MR. KELLEY: That is not in here. We prepared

1 that after the materials. And we can provide that to you
2 too.

3 Finally, a copy of tentative resolution
4 R9-2008-0039 has been prepared for your consideration of
5 adoption. And as currently worded, the resolution would
6 approve the revised flow entrainment and impingement
7 minimization plan dated March 6, 2008 with conditions.

8 The first condition is that Poseidon would be
9 required to submit an amendment to the plan subject to the
10 approval of the Regional Board Executive Officer. That
11 includes a specific proposal for mitigation of the impacts
12 on marine organisms resulting from the intake of seawater
13 from Agua Hedionda Lagoon, and resolves the concerns
14 identified by the Regional Board to date.

15 And the second condition would be that the plan
16 and any amendments approved by the executive officer are
17 of limited duration until such time as the Encina Power
18 Station ceases operations, and the Carlsbad Desal Facility
19 becomes a stand-alone project. At that time minimization
20 measures including mitigation need to be re-evaluated for
21 appropriateness.

22 That concludes my formal presentation. If you
23 have any questions regarding the plan, I can refer those
24 to the appropriate regional board staff person, if I can't
25 answer them myself. Otherwise, I'm available to answer

1 any questions the board may have for me at this time.

2 MR. WRIGHT: Board members, do you have any
3 questions of Mr. Kelley at this time? Thank you.

4 Let's move to the presentation first by Poseidon
5 Mr. MacLaggan, Mr. Jenkins, Mr. Mayer, Mr. Nordby, and
6 Mr. Garrett.

7 Before you begin your presentation,
8 Mr. MacLaggan, Mr. King had a couple of questions staff.

9 MR. KING: I had a question, Ms. George, in
10 terms of the condition that's imposed upon us whether or
11 not there would be work done by Mr. Robertus to see
12 whether the subsequent submissions resolve the concerns
13 identified in the February 19th letter. If the subsequent
14 acts by John Robertus are going to be ministerial, and
15 we've got a duty that's defined as resolving concerns, do
16 we need to do that with a little more specificity? And if
17 we need to start working on an amendment so more specific
18 language right now that sets forth exactly what he is
19 going to checklist off rather than leaving something that
20 sounds discretionary and vague, I would rather refine
21 that. And if we need to make an amendment, go ahead and
22 have that language prepared as we're talking through all
23 this.

24 MS. GEORGE: Well, I think that you can allow
25 the executive officer. He has delegated authority from

1 the Regional Board to undertake variety of action. But it
2 would certainly be appropriate to have more specificity in
3 terms of what he would be -- what the criteria would be
4 that he would use to evaluate whether the condition has
5 been met. So we could work on some language to that
6 effect.

7 MR. KING: Is this something we can be working
8 on right now that we can get some language with more
9 specificity, cause that is the concern that I'd rather
10 raise now than raise later in the show.

11 MR. KELLEY: I think we could work on some
12 language, maybe some bullet items, that would be a little
13 bit more specific than the generalities start that.

14 MR. KING: Thank you.

15 MR. WRIGHT: The assumption is we would go along
16 with this language provides by the executive officer may
17 very well be or another alternative would be that we would
18 decide we don't want that to happen. That the board
19 itself would then take on that role--final approval.

20 MR. ROBERTUS: Is that a possibility?

21 MS. GEORGE: Yes. The permit conditions
22 specifies the plan should be submitted for regional board
23 approval so that's what the permit says. The executive
24 officer can carry out that function. If you want to
25 reserve that specifically for the board, that's certainly

1 your prerogative.

2 MR. KING: In order to define this as a
3 ministerial duty as clear -- we want that as an option to
4 be able to leave it in the hands of the executive officer.
5 My preference would be to have more specificity within
6 that particular condition. We can go any number of ways
7 in regarding to making our final decisions on resolution
8 before us here. But in terms of where we're going, I
9 would rather have some language ready to be able to kick
10 that around.

11 MS. SCHNEIDER: I agree with that. But I do
12 think for the sake of being efficient that if we could get
13 the language and we could approve the conditions that he
14 signs off on after our approval that would be more
15 efficient probably. So I agree with your approach.

16 MR. WRIGHT: Mr. Robertus.

17 MR. ROBERTUS: Yes, I would like to point out
18 that what I envision that if you delegate to me the work
19 to continue on the plan after this date, the board will
20 approve the plan. The plan is essentially a process by
21 which the mitigation -- the mitigation determination
22 resulted from that process. And as it's been presented to
23 us by Poseidon, in order to initiate the plan, the board
24 has to take an approval action. It's not clear in the
25 order that the approval of the plan to initiate

1 implementation of the plan enclosed the approval by the
2 board of the actual mitigation. I can oversee that
3 process and do that on your behalf, or I can oversee that
4 process and when the determination is made with the
5 decision on the mitigation bring it to you for the part of
6 the approval along with the other agency.

7 The question there would be to what extent would
8 the approval of the board by your decision today be a
9 condition of the approval of the mitigation itself. I
10 could -- whether you want to delegate that to me or bring
11 that back to you.

12 MR. WRIGHT: Just for sake of efficiency, if you
13 can follow Mr. King's suggestion.

14 All right. Now Mr. MacLaggan.

15 MR. MACLAGGAN: Good afternoon, Mr. Chairman,
16 members of the board. Peter MacLaggan, Poseidon
17 Resources.

18 It's a pleasure to be back before you with
19 respect to the Carlsbad desalination project eight years
20 in the making. It's a critically needed supply element
21 for the region, and this is one project that we all can be
22 proud of.

23 Let me just say right up-front with respect to
24 the discussion you just had, Mr. Chairman, board members,
25 is our understanding with the respect to the proposed

1 tentative resolution that it does require the final plan
2 to come back before you for approval. You're in support
3 of that position. And if there's interest in adding
4 additional specificity as a board member King had
5 suggested to clarify exactly what it is that needs to be
6 done now, and then we also are in favor of that
7 recommendation.

8 And, Mr. Chairman, with respect to your request
9 that we contain our presentation to 15 minutes, I will do
10 everything humanly possible to do so. I'm going to skip
11 over some matters. I've asked some of our speakers on the
12 speaker slips before you also to waive their time. So
13 that stack of cards will diminish as a result.

14 Let me jump right into --

15 MR. WRIGHT: Thank you.

16 MR. MACLAGGAN: There are eight matters that
17 we're going to discuss. And I'm going to skip over Item
18 one project summary in an effort to move this along.
19 We'll discuss why the matter is before the board. What
20 the plan entails. Why it is a conservative approach. Why
21 the plan is responsive to the permit requirements. And
22 the water code requirements. What are the environmental
23 benefits. And the next steps, our recommendation.

24 So I'd like to take you to Page seven of your
25 handout, if you will. And we will start there with the

1 question of why this matter is before the board. And your
2 staff has correctly indicated that the plan is not
3 required as a precondition of Poseidon's ability to
4 commence the discharge. It's absolutely right. However,
5 what's important to us is that the permit does require
6 that the Regional Water Quality Control Board approve the
7 plan as a pre-condition of the signs and building to
8 access seawater when the powerplant is not operating. And
9 in particular as mentioned by staff due to the
10 intermittent operation of the powerplant. Action by the
11 Regional Water Quality Control Board is necessary at this
12 time to specify the conditions under which Poseidon will
13 be able to access seawater under the permit.

14 Additionally, State Land's Commission has
15 delayed its approval of Poseidon's lease for use of the
16 existing intake and outfall until the Regional Water
17 Quality Control Board approves the plan.

18 Both the City of Carlsbad and the Coastal
19 Commission have evaluated the impacts of the project
20 without the operation of the Encina Power Station and
21 approved conditions for this mode of operation. An
22 approval of the plan that's before you, conceptual
23 approval, that it's being considered at this afternoon
24 will facilitate ongoing coordination of uninterested state
25 agencies and ensure that the Regional Water Quality

1 Control Board's requirements are being addressed.

2 Purpose of the plan. An anticipation that the
3 powerplant might not always satisfy the desalination
4 facility source water needs. Regional board required to
5 sign and prepare a flow entrainment and impingement
6 minimization plan to assess the feasibility of site
7 specific plans and procedures, practices, implementations
8 and/or mitigation measures taken together to minimize the
9 impacts to marine organism when the project requirements
10 exceed the volume of water being discharged by the Encina
11 Power Station. This is the question that's before you.
12 The adequacy of this plan and whether or not it meets the
13 objective--the permit requirements. Again, it's a
14 feasibility study of basic investigation of key elements
15 of the water code, site design, technology, and mitigation
16 to minimize the impacts to marine organisms.

17 With respect to development, this plan has been
18 under development now for 13 months. We've been through
19 three drafts and 13 months of public review and comment
20 period. There was initial 45 day of comment period
21 followed by a nine month comment period and the most
22 recent draft has been out for 30 days. The point here is
23 that there's been a lot of activity over the extended
24 period of time, and we think that the plan has addressed
25 the basic requirements of the water code, which is to

1 identify the best available site, design, technology to
2 estimate the unavoidable impacts after taking into
3 consideration those measures confirmed that mitigation is
4 feasible, which we have established a state agency
5 coordinated process for that identification of a preferred
6 mitigation plan. In terms of the best available site
7 requirement, this site has been given extensive scrutiny
8 by both the City of Carlsbad and the Coastal Commission is
9 the one site that has compatible zoning and land use; the
10 least environmental impact; the least disruption to the
11 community. And both the Coastal Commission and the
12 Carlsbad EIR concluded that there are no feasible less
13 environmentally damaging sites available for the proposed
14 project.

15 With respect to design features, there are
16 several that have been included. But the first and
17 foremost is that we will use the discharge of the
18 powerplant as the source water to the extent it is
19 available, which eliminates the impacts altogether. In
20 2007, 61 percent of our water would have come from the
21 powerplant leaving the desalination plant needing to pump
22 the remaining 39 percent. For its purposes under which
23 case we would initiate the efforts to minimize through
24 design features the mortality of marine life related to
25 reduction of flow, temperature of the seawater, slowing

1 down the velocity of that water moving through the plant.
2 All of those minimize the mortality of the marine
3 organisms, who will be eliminated to keep treatment
4 processes associated with the powerplant operations.

5 With respect to technology, we have included a
6 variety of technology measures to provide a broad means of
7 minimizing the impacts. And rather than going to the
8 specific details, let me point out for you the conclusion
9 that the Coastal Commission reached last November on our
10 Coastal Development Permit; wherein they found that
11 Poseidon is using all feasible methods to minimize the
12 reduces impact to marine organisms. With respect to
13 impingement, the Coastal Commission found that the impacts
14 were diminimus and insignificant. And then we considered
15 a number of opportunities to modify the intake to the
16 powerplant and look at alternative intakes such as
17 subsurface wells. We've considered four types of wells.
18 And we looked at these systems from every possible angle.
19 And here again the alternative intake systems were
20 determined by the City of Carlsbad as well as the Coastal
21 Commission not to be the environmentally preferred
22 alternative. And in the interest of brevity here, I'm
23 going to leave it at that point. We have more details to
24 share with you if there's any questions as to how we reach
25 that conclusion. The point here is that these systems

1 will not work for a facility this size or anything close,
2 and they have been given careful scrutiny and that
3 conclusion has been reached by two separate regulatory
4 bodies.

5 In terms of the plant itself, we think it's an
6 extremely conservative look at how to address this
7 problem. In that we have overestimated the entrainment
8 and impingement impact associated with the project and
9 accounting for how much mitigation we would require. And
10 the reason why we did that is we decided it will take all
11 of the use of the powerplant water. Assume it didn't
12 happen. Assume that the technology features and the
13 design features to slow down the water to lessen the
14 impacts are not providing any benefit. And we assume that
15 all of the water needed to be moved by the desalination
16 facility, and that there will be 100 percent mortality to
17 all the organisms in that water. This is a two, three,
18 four-fold overestimate of the actual impacts of the
19 project. And the significance here is for the purposes of
20 establishing the mitigation requirement, we estimated the
21 level of impact is considerably greater than anything that
22 would actually occur. It's very conservative. It piles a
23 worse case, upon worse case, upon worse case.

24 Moving on to the mitigation approach itself, we
25 view this as a two-step process. The first step is to

1 take that conservative estimate of the impact we just
2 described and consider where we might be able to do the
3 mitigation. Both in Agua Hedionda Lagoon and offsite
4 mitigation were considered. This is what I refer to as
5 the feasibility step that is in the plan before you. The
6 purpose of that plan again being to conduct a feasibility
7 assessment. We last August issued a request for proposals
8 for weapons restoration opportunities, and we canvassed
9 the entire San Diego County community of interested folks
10 and organizations and professionals and regulators, city
11 governments, and so on to help us shape this plan. And
12 they came back with eight proposals. We had a stated
13 preference that Agua Hedionda Lagoon was our preferred
14 sites since that's the side of the project where we'd like
15 to do the restoration. Unfortunately, none of the
16 projects that came back related to Agua Hedionda Lagoon.
17 We're looking at (inaudible) high tide line. And our
18 obligation to restore wetlands is to create a marine
19 organisms comparable to those that we impact the operation
20 of the intake. And so we concluded that at this juncture
21 there was no feasible opportunities in Agua Hedionda
22 Lagoon and begin looking offsite.

23 But we are about to embark with your staff and
24 with the Coastal Commission, State Land's Commission
25 staff, Fish and Game, other resource agencies on step two

1 of the process, which will lead to selection of the actual
2 mitigation project and implementation. And here we will
3 convene a coordinated meeting where we'll identify
4 additional opportunities on Agua Hedionda Lagoon and
5 elsewhere to the extent they're available. Jointly we
6 will work through a consensus based process with the state
7 agencies to reach a conclusion on the select preferred
8 mitigation site and finalize the mitigation plan and bring
9 it back per the resolution before you to your board for
10 approval within six months.

11 Agua Hedionda Lagoon is a rather unique water
12 body. In that it is a man-made resource 388 acres of
13 perstene (sic) wetlands. And it has the greatest number
14 of beneficial uses of any lagoon in San Diego County. And
15 it's the only one that's a working lagoon as well as a
16 recreational lagoon as well as a natural resource. It has
17 fish hatcheries, fish farms. It has recreation and
18 boating, that's not allowed in any other lagoons. And it
19 has all the natural attributes of a marine wetland in its
20 entirety exchange. And it's kept that way through
21 dredging by the powerplant. The powerplant shuts down if
22 the desalination plant does not step in as a steward of
23 this lagoon moving forward. The lagoon will revert back
24 to its natural state which is closed off from the ocean
25 and not supporting much of any of those existing

1 beneficial uses that have been there for the last 55
2 years.

3 We are not waiting for the plant to step into
4 our role as a steward. We are already in the process of
5 working with the Agua Hedionda Lagoon Foundation. Created
6 an educational program for the third and fourth graders.
7 It's called the Agua Hedionda Lagoon Foundation and
8 Academy for Environmental Science, and we're educating
9 school kids year round on how to protect a watershed. And
10 absent ongoing stewardship that we committed to after the
11 powerplant shuts down we think that this lagoon will
12 revert back to something far less than it is in its
13 current state. So this is, in our view, part of the
14 overall mitigation plan that's before you. A commitment
15 to preserve this resource regardless of whether or not we
16 do any restoration at this site or whether we do it
17 elsewhere.

18 We firmly believe that the plan is responsive to
19 your permit. I've asked our experts to share with you
20 briefly why that's the case. Address some of the
21 questions in the staff report. We have first Dr. Scott
22 Jenkins from Scripps Institute of Oceanography. Just so
23 you understand his expertise and involvement on this
24 project, Dr. Jenkins has been with Scripps Institute of
25 Oceanography since 1967. Shortly after receiving his Ph.D

1 in 1980, he began conducting studies on Agua Hedionda
2 Lagoon. He's conducted numerous studies since then right
3 up to the present. He's been working with Poseidon on
4 analyzing our project related impacts and management of
5 the resource since 2000.

6 Following Scott will be David Mayer. David
7 Mayer is the foremost expert on the west coast on
8 entrainment and impingement studies. He basically wrote
9 the book on how to conduct these studies. Has been
10 involved in virtually every entrainment and impingement
11 studies that's been conducted up and down the west coast
12 since 1979.

13 David will be followed by Chris Nordby. Chris
14 is environmental wetlands restoration specialist. For
15 many years he was the manager of the Gasteren (sic)
16 Research Lab at San Diego State University. He's been
17 actively involved in the restoration projects down in the
18 Tijuana River Valley and the Biona (sic) wetlands. And
19 he's been brought on board here with us at Poseidon to
20 help us identify our weapons restoration program in how we
21 would implement such a project.

22 I'm going to turn it over to them and then just
23 a few brief closing remarks when they get done, Mr.
24 Chairman.

25 MR. MACLAGGAN: Mr. Jenkins.

1 MR. WRIGHT: He already used up 15 minutes, so
2 next speakers please keep your comments brief.

3 MR. JENKINS: I'm going to address a concern in
4 the staff report regarding the entrainment study, which
5 started in '04 and went to '05. And a large portion of
6 that study was conducted in water year 2005. And the
7 staff report expressly concerns that 2005 was a year of
8 abnormally high rainfall. And the implied worry in that
9 comment was that the high rainfall produced in at a normal
10 lagoon environment that was unsuitable to sustain the salt
11 water organisms the entrainment study was targeting. I
12 want to explain why that's not the case in this particular
13 lagoon. There's two fundamental reasons for it. Number
14 one it's a very small water shed. Number two, the Agua
15 Hedionda Lagoon holds a very large volume of seawater.
16 Now, in the upper portion of this figure, this table three
17 of Page nine of the Tetra (sic) Tech study recently
18 completed on the Agua Hedionda water shed. And the
19 numbers for 2005 appear across the top. I'm going to take
20 the maximum daily discharge measured in 2005 from the Agua
21 Hedionda creek, and I'm going to apply that maximum daily
22 discharge against the delusion capacity of this lagoon and
23 show you that the resulting change of the salinity of the
24 lagoon is very small. So then taking the 144 cubic feet
25 per seconds maximum flow rate of the creek and applying it

1 over a day that would be an influx of 285 acre feet of
2 storm water into the lagoon. Now, it's a very deep
3 lagoon. There's over 1700 acre feet below tide of
4 seawater in this lagoon. In addition, there's an
5 additional 1750 feet of high (inaudibly) exchange. That
6 would be additional water between low tide and high tide.
7 So the total salt water volume of the lagoon is over 3,450
8 acre feet. So even the worse case scenario in 2005 the
9 maximum daily discharge will only result in eight percent
10 of lagoon water being comprised of storm water. That
11 would depress the salinity only down to about 30.75 parts
12 per thousand. That's about a 2.7 part per thousand
13 depression in salinity. Now, the fluctuation of salinity
14 in the ocean reaches those levels many times as well in
15 the coastal ocean around the lagoon.

16 So in conclusion, the lagoon was not transformed
17 into a fresh water lagoon during the 2005 rainy period.
18 It still remained a predominantly seawater body.

19 I'm now going to pass the presentation off to
20 Dr. David Mayer, who's going to explain whether these
21 kinds of salinity depressions during the 2005 peak runoff
22 were significant, and he will also show you how his
23 analysis method of the entrainment losses is independent
24 of the fluctuations of the population of these seawater
25 organisms.

1 MR. MAYER: Thank you, Dr. Jenkins.

2 David Mayer. And board members and Chairman
3 Wright. My background is marine biology and fishery
4 science trained at the University of Washington.

5 Some decade ago I was doing work at the Yellow
6 River and where I was using a model there to help assess
7 entrainment affects of a powerplant that were being
8 proposed. And the model was called Empirical Transport
9 Model. It occurred to me at that time that it might be
10 useful on the Pacific Coast we're looking at entrainment
11 affects from our coastal powerplants, which are ongoing
12 rivers, but the Pacific Ocean being regarded in some
13 places as river flowing past these large intakes. So I
14 imported this model into the Regional Water Quality
15 Control Board and later the CC comprehension mission
16 process of looking at assessing entrainment affects. And
17 that model over these past ten years has been developed by
18 a number of renowned university professors in mathematics
19 and statistics at University of Washington and Santa
20 Barbara. Most currently Dr. Amundi (sic), that I've
21 worked with over there a long period of time at U.C. Santa
22 Cruz, continues to work on this model. There's just some
23 background to the kind of work that ended up to generate a
24 number that will later be discussed by Mr. Nordby on how
25 this mitigation fits together with offsetting the

1 entrainment losses.

2 Scott Jenkins told you our study again in 2004,
3 and continued for a year on a monthly basis. We collected
4 samples that are wide number of locations in both the
5 upper and middle and lower lagoons and the open ocean.
6 When we sample, we sample over 24 hour basis so we're able
7 to capture the kinds of larval fish that we're focusing on
8 a very long-term and very intensive basis.

9 Our findings basically lead us--and you probably
10 heard this before. The nine percent of all the larval
11 fish that are entrained at the existing seawater intake
12 for the powerplant are made up by three species. And the
13 most of one is a very small species of fish called a gobie
14 that lives in various tiny mud burrows. The adult gobie
15 never gets any bigger than about an inch long. It's not
16 surprising to think that the enormous number of mud flats
17 in the upper lagoon that those products of their
18 reproduction are carried down into the lower lagoon where
19 the intakes located. None of the entrained species are a
20 major threatened that we found in none of them. Less than
21 one percent catalase are supported commercial interest
22 from importance. And the project has no impact on the
23 species' ability to maintain populations but the loss of
24 these larvaes going through the powerplant we recognize as
25 something that could be mitigated, and that's what's being

1 proposed, is to create a body or an acreage of wetlands or
2 habitat that the fish in those areas of new production
3 will create larvae to offset the losses through the
4 project and partly. Question.

5 MR. ANDERSON: What were the other two species?

6 MR. MAYER: A blenie, which is again a very
7 small fish. Probably get's no bigger than about two
8 inches long. We believe that 90 percent of its population
9 is found in the aquaculture pet set up in front of the
10 intake where they're growing muscles and oysters. And
11 these are fish that live in those little crevices.

12 And the third one is the garaboley (sic), which
13 is the large fish you see bright yellow on reefs. They
14 apparently have learned to live in large numbers on the
15 rocky reef of the breakwater right in front of the intake.
16 There's a very, very large population there. So those two
17 species are actually there sort of an artificial habitat
18 setting.

19 So we look at the entrainment side what's going
20 through a very small to the powerplant and the proposed
21 desal project. We use the result of those to scale up to
22 the proposed volume of the desal project. We use that in
23 a modeling to come to our conclusions. We also looked at
24 fish and other ordinances that are actually screened out
25 by these existing screens and the screens that we use

1 during the Poseidon operation, and that's known as
2 impingement. We came to very similar conclusions at the
3 Coastal Commission. We are finding that the losses due to
4 this are diminimus and insignificant.

5 In general, we believe our results from this
6 model I described to you, the ETM, its result is used as a
7 portion to find an estimate of how many acres of habitat
8 need to be replaced in order to offset the entrainment
9 losses.

10 As I mentioned earlier, Dr. Amundi, who has
11 worked with us throughout this decade in Santa Cruz .
12 continues to do so. He conceived of an idea of taking our
13 result from this model and using the estimated acreages of
14 habitat--and I'll be heading on as an example where we did
15 this. And we've done this in many other places along the
16 coast now--to come up with a number of acres. And this is
17 referred to a perry (phonetic) production foregone. It's
18 not that habitat is being destroyed out there. Is that if
19 we were to try to create habitat to create enough larval
20 fish that are being entrained that we're assuming 100
21 percent of them are lost. They're not all lost, but we
22 assume that for conservatism. How many acres would we do?
23 So we came up with a result of using this method of 37
24 acres. This would completely offset 100 percent of all
25 the entrained larval fish.

1 What I want to leave this spot with you before I
2 turn it over to Mr. Nordby is that we are focused on
3 larval fish. We assume 100 percent of those are lost
4 going through the intake. Along with every 100 gallons of
5 water going in there's one larval fish for every 100
6 gallons of water. But along with those larval fish there
7 are thousand -- tenths of thousand frankly of zoea
8 planktons, which are crustaceans. And there's nearly
9 millions of phytoplankton that go through essentially
10 untouched because they are a hard body, have very hard
11 shells. Unlike larval fish, they are kind of naked going
12 through. So in that sense all of that goes through
13 unharmed yet this new marsh or restoration acres will
14 produce more zoea plankton and phytoplankton. And I'm not
15 sure what amounts but in very large quantities, so you
16 have kind of a doubling of that affect. We're offsetting
17 something that isn't really being affected. As well as
18 many other animals that will be described that utilize
19 these weapons that aren't even affected by any of the
20 project intakes, seawater intake.

21 Any questions?

22 MR. WRIGHT: I appreciate all the expertise
23 that's coming before us. But I just want to remind all
24 the speakers that a mitigation plan is not before us.
25 That's something that is supposed to be produced at a

1 fits in the framework of why this is in front of you. As
2 we have consistently said to all the agencies that have
3 voted on this project, this board is the agency that the
4 State and the Water Code and the Coastal Act give primary
5 jurisdiction to deal with the issues of entrainment and
6 impingement. It's under Water Code 13142.5B. So we agree
7 with the number of the opposition letters you received.
8 This is the statute that you should look to. And in your
9 consideration today, you should make sure that the plan is
10 being presented responsive to the condition and the permit
11 approval we got in 2006 to develop a feasibility
12 discussion of the plan that would meet Water Code
13 13142.5B.

14 So you have primary jurisdiction. Mr. MacLaggan
15 mentioned a number of other agencies which have taken
16 action on this. But I want to stress it's your board not
17 the Coastal Commission, and not the City of Carlsbad, not
18 State Land's Commission, which has given the authority
19 under state law to implement and enforce 13142.5B under
20 the Coastal Act. The Coastal Commission under 3412B, the
21 Coastal Act is told to defer to the Regional Board and the
22 State board on this issue.

23 The other thing I would say is when you hear
24 from the opponents today, you received a number of
25 letters, they simply disagree with the plan, but they have

1 not presented any evidence of their own or feasible sites,
2 designs, or mitigation measures. And it is within the
3 purview of your board to consider those issues. They have
4 been considered by other agencies as well, and we hope you
5 reach the same conclusion that we have the best available
6 site, design, technology, and mitigation measures provided
7 for in the plan that's in front of you today.

8 The other thing I want to say is that this
9 is -- approval of this plan provides a framework for
10 coordination with other agencies. We agree with the
11 executive officer's recommendation today. It does allow
12 you to coordinate with the other agencies, but it is this
13 board which has the final decision-making authority under
14 this issue under state law, and you will exercise that
15 through the subsequent approval of the final mitigation
16 plan that the executive officer provided for in the
17 tentative offer -- order in front of you.

18 I'm going to skip over. Very briefly I think
19 our speakers today have addressed the issues that were
20 raised by your staff in the central water shed unit
21 technical report. The data that we used is not atypical
22 even though there was a higher rainfall when the data was
23 collected. I think Dr. Jenkins addressed that. We do
24 provide for final recalculation of the ATF, which was
25 another question that your staff had in some of the

1 comments.

2 Another comment from your central water shed
3 unit was what was the agency approval mechanism for final
4 selection of specific mitigation alternative. And I
5 believe it's been answered by your executive officer. The
6 agency approval mechanism will be the approval of the
7 final mitigation plan consistent with the plan you're
8 approving today that will be back in front of you when we
9 submit it within the next six months. We believe the plan
10 that we put in front of you does provide for full
11 evaluation mitigation alternatives.

12 In conclusion, your decision today is not a
13 re-vote on whether the project should receive approval
14 from the Regional Board. We received that in 2006. That
15 decision by the way was appealed by all the number of the
16 opponents in the room today. That appeal was rejected by
17 the State Board. Their lawsuit against the City of
18 Carlsbad for approving the project was also rejected by
19 the courts. They still have pending a lawsuit against the
20 Coastal Commission. But there's nothing in any of that
21 litigation that precludes you from moving forward today.

22 The other thing I want to stress is we agree
23 with the executive officer that the approval of this
24 framework plan today is not a final vote on the mitigation
25 plan. Perhaps in an ideal world it would make sense to

1 try to have a set of ministerial conditions that only the
2 executive officer would need to check off and comply would
3 not have to come back to the board. But I think given all
4 the facts and issues that are in front of you, the
5 comments of your staff, and the primary jurisdiction that
6 the Board has on this issue, we endorse executive
7 officer's tentative order, which would provide for the
8 final plan to come back to this board.

9 MR. KING: Mr. Garrett, I think I misread the
10 condition here in terms of describing in as the subsequent
11 ministerial duty. But do you agree that it would still be
12 helpful in terms of, you know, right now we've got a
13 dispute over a domaining of the San (inaudible)
14 feasibility analysis. Wouldn't it still be more helpful
15 to go through the February 19th letter and identify
16 exactly which concerns we want you to come back and
17 address?

18 MR. GARRETT: It certainly wouldn't hurt. More
19 clarification would be better. But we would say we feel
20 first of all that we're in accordance with the staff
21 recommendation. And secondly, the February 19th letter is
22 fairly specific. And we do feel that we have addressed
23 all those specific items or will be able to where the
24 staff has any lingering questions. For example, this
25 question about the reciprocity of the data 2005 that was

1 one of the specific questions that was raised in their
2 February letter, and we feel we'll be able to address that
3 as we have today.

4 MR. WRIGHT: Thank you.

5 Mr. MacLaggan, somehow you squeezed out your 30
6 minutes and more I might add.

7 MR. MACLAGGAN: I think we have several speakers
8 who will not be addressing this so hopefully we'll make up
9 for lost time.

10 Mr. Chairman, let me just jump to what's going
11 to happen after today.

12 We will be working -- we've decided we will be
13 working with the Regional Board Staff, Coastal Commission
14 Staff, and other resource agencies to meet and reach
15 consensus on the mitigation goals and objectives
16 identifying that may have been overlooked in Agua Hedionda
17 and other opportunities. This will lead to selection of a
18 preferred mitigation site plan finalize project scope
19 locations implementation. Bring all of that back to you
20 in the next six months; set up future meeting date, and
21 we'll also be going back to the Coastal Commission.

22 So with that let me just conclude and state that
23 you asked us to go out and prepare a feasibility state,
24 look at site specific plans procedures, methodologies to
25 be implemented and/or mitigation opportunities the

1 feasibility thereof minimizing (inaudible) organisms. We
2 believe we addressed that requirement per the permit
3 conditions, and we respectfully request that the Board
4 adopt the resolution that's before you. We thank you.

5 MR. WRIGHT: Can you go back to the previous
6 illustration. In Item 1A through E, it seems like what
7 you're saying is very different than what Mr. Garrett says
8 when he indicated that the plan finds for full evaluation
9 of mitigation alternatives. And you have -- here it's not
10 what you're saying. It sounds like there's a lot more
11 that needs to be done before you have a full evaluation of
12 the mitigation alternatives.

13 MR. MACLAGGAN: We are not aware of any other
14 opportunities. But we have heard from your staff; we've
15 heard from the staff of other entities that they want to
16 make sure we take a hard look at Agua Hedionda to ensure
17 we haven't overlooked an opportunity. That's the purpose
18 of the meeting that will be taking place next month with
19 all of the state agencies together in one room. We're
20 actually going to meet at the lagoon there in Agua
21 Hedionda to see if there isn't something that had been
22 overlooked as part of the solution.

23 MR. WRIGHT: Thanks.

24 And in all the alternatives -- and I think it
25 came up before and you told me the answer and I still want

1 to make sure it's still not a possibility that I think in
2 the analysis that they ask you to use reclaim waters as
3 superior alternative to seawater. There's no way to get
4 reclaimed water to your --

5 MR. MACLAGGAN: To our facility?

6 This project -- you might be aware of this being
7 a grower in Carlsbad. Carlsbad is piped throughout with
8 recycled water. Carlsbad is actually the most aggressive
9 user of recycled water in this county. Where 20 percent
10 of their water supply comes from that system. This
11 project is intended to provide potable drinking water as
12 supplement to that program. So it's part of the solution.
13 Conservation, recycling, and the desalination project are
14 intended to ensure that the full compliment of water uses
15 of Carlsbad are commute from reliable locally generated
16 sources.

17 Thank you, Mr. Chairman.

18 MR. WRIGHT: We have a number of elected
19 officials who have been very patient waiting their turn.
20 We'll start out with Mayor Lewis. Mr. Lewis is the mayor
21 of the City of Carlsbad. Welcome.

22 MR. LEWIS: Thank you, Mr. Chairman, I
23 appreciate being here this afternoon. My name is Bud
24 Lewis. I'm a member of the City of Carlsbad. I'm here to
25 speak on behalf of my 100,000 plus residence of our city.

1 As a current vice chair of the City Water Authority and a
2 former member of the Metropolitan Water Board of
3 Directors, I've spent 14 years working on this regional
4 water issue, and tentative has been on desalination.

5 I notice when you gentlemen mentioned that
6 you're concerned about loss of your hair. I've already
7 lost mine. I think my eyebrows might be short as we keep
8 going into this.

9 The water delivery system is unreliable. I'm
10 sure you're all aware of that. I want to supply
11 (inaudible) drought; above all restrictions global climate
12 change, and intense competition for water resources.
13 Seawater desalination offers San Diego County the most
14 viable opportunity to create a local supply of water.
15 This local supply is more dependable than the water we
16 currently receive from the Delta or the Colorado River.
17 And I'm sure you're well aware of what's happened to the
18 Colorado River, and what's happened to the Delta next to
19 the federal judge up there. We intentionally located the
20 desalination project next to the powerplant at Agua
21 Hedionda Lagoon because it is the most available and
22 environmentally preferred location. Carlsbad is the only
23 city in the state that had really good (inaudible) within
24 its boundaries. We recognize that our lagoon is
25 environmentally and recreational treasures and that the

1 long time stageability is crucial to our citizen's quality
2 of life. And Poseidon is also (inaudible) safe as
3 ourselves. This plan that we have before you today is
4 comprehensively addressed to the needs to protect the
5 Pacific Ocean and Agua Hedionda Lagoon and ecological
6 system. And once again, we rely totally upon our staff
7 and the reports they have as far as getting this
8 information to you.

9 I personally take you, too, with the repeated
10 opposition to the project from the staff of the California
11 Coast Commission and certain representatives of the
12 Environmental Community.

13 Three years ago I was at a conference with Peter
14 Douglas in Santa Barbara on desalination. I've known
15 Peter for a long time, and after the presentation, which
16 was very negative, we had a discussion. And his basic
17 thought pattern was this. Number one, we want no more
18 migration in California. Number two, we want no more jobs
19 because jobs create migration. So the real issue is not
20 so much to me what is being discussed here to a degree,
21 but it's more or less a personal attitude that's taken
22 place. And Peter was very open about this. If you ask
23 him about it, he'll tell you. But my family is second,
24 and third, fourth generation Californians, and we need
25 jobs for my children, my grandchildren, and those coming

1 after.

2 So if we bound to all these regulatory agencies
3 without looking at the prospects -- because I've been in
4 government for 38 years as a local official, and I know
5 what -- if a staff takes a very strong position with the
6 few -- the board members one way or the other -- the thing
7 is dead. I've seen it in the city government all the way
8 through. I've seen it on the county level all the way
9 through. So to me you do the best for the most. And this
10 is what this project is all about. Because I, as a policy
11 maker, am partially responsible for bringing new jobs,
12 number one; maintaining the jobs that we have, number two;
13 and number three, being able to rise above these areas to
14 keep our folks here in California. Water is the name of
15 the game. You folks pay a major reason. Some of you are
16 elected officials on City Council. You know the
17 importance of water. And so the idea that a small group
18 can hamper the mast majority, I think that it is something
19 you have to look at very, very closely.

20 MR. WRIGHT: Mr. Lewis, if you can summarize.
21 Thank you very much.

22 MR. LEWIS: Thank you very much.

23 MR. WRIGHT: Councilwoman Ann Kulchin from the
24 City of Carlsbad.

25 MS. KULCHIN: Mr. Chairman and members of the

1 board; hello, my name is Ann Kulchin. I've had the
2 privilege of serving on the Carlsbad City Council for 28
3 years. I'm not as old as the mayor. He refers to me as a
4 kid and I really like it.

5 During my tenure on the city council, I've
6 worked diligently to assure that the Carlsbad desalination
7 project before you today would provide a dependable local
8 source of water to our region while meeting all applicable
9 environmental regulations.

10 For its beginning the 1998 to today the
11 desalination project has had ten years of study and public
12 debate.

13 Today I'm here before you speaking in support of
14 the proposed minimization plan for the Poseidon
15 desalination project. As your staff report says, this has
16 been a controversial project. And that controversy has
17 created an environment where strong emotions rather than
18 good science have often become the center attention. We
19 are all stewards of the Public Trust, Council Members,
20 Regional Board Members, State Land's commissioners, and
21 Coastal Commissioners. We cannot let our feelings or
22 emotions guide the public debate or the decisions that we
23 as representatives of the public must make. We public
24 officials find that emotions is brought into the equation
25 from many sources; including ourselves, our staff, and

1 even our consultants. Sorting through what is fact and
2 what is opinion is a complex and time consuming process;
3 particularly when you are dealing with something as
4 complex as this project. And although this is a complex
5 project, the plan before you was submitted in February of
6 2007.

7 Your staff has done much analysis in providing
8 many comments on the plan. The public has reviewed the
9 plan and provided many comments. And the opponents of the
10 project have reviewed the plan and provided many comments.
11 And the plan has been amended to reflect these comments.

12 After more than a year review and comment, it is
13 time for this board to take action based on the facts.
14 The plan before you comprehensively addresses the
15 feasibility of the best available site, the best design,
16 the best technology, and the necessary mitigation for
17 protection of the Pacific Ocean and the Agua Hedionda
18 Lagoon.

19 It is time for action. I urge you to support
20 the plan. Thank you for hearing me.

21 MR. WRIGHT: Thank you for focusing your
22 comments.

23 Councilwoman Julie Nygaard also from the City of
24 Carlsbad.

25 MS. NYGAARD: Thank you, chairman and members of

1 the board.

2 I'm Julie Nygaard, and I've been a member of the
3 Carlsbad City Council for over 13 years. I've also served
4 as a member of the Water Quality Control Board so it's
5 kind of nice to be home with all of you. And I do
6 understand what you're being asked to do and with regard
7 to this project.

8 My comments to you today are perhaps from a
9 slightly different perspective than most of the speakers
10 that you'll hear.

11 I want to address success that Carlsbad and the
12 powerplant operator have had over the past 60 years in
13 being stewards of the Agua Hedionda Lagoon.

14 Long before the Regional Water Quality Control
15 Board existed, San Diego Gas & Electric built a powerplant
16 on the coast in Carlsbad. Agua Hedionda Lagoon did not
17 exist in its current form. Its natural state is a mud
18 flat that was filled with stinking water, and because of
19 that it's called stinking water Agua Hedionda. Agua
20 Hedionda is manmade, and it's been maintained by a private
21 power company that's part of the operation for almost 60
22 years. The healthy echo system you see in the lagoon
23 today is a result of good stewardship by a private power
24 company and a local government; not the result of mandates
25 by state boards and commissions. Carlsbad has been

1 approved -- has a proven track record as a stewardship
2 with regard to the Agua Hedionda. As an example of this
3 when the Agua Hedionda was threatened with caulerpa
4 taxifolia, it was Carlsbad and the power company that
5 stepped forward to protect the environment and heal the
6 lagoon.

7 The annual dredging of the outer lagoon, which
8 is essential to the health of the whole lagoon system, has
9 been provided by the power company all these years.

10 Two lagoons are proposed to be managed by the
11 state agency--Buena Vista and Batiguitos has suffered from
12 neglect and have received little or no maintenance effort
13 on the part of state agencies responsible for their
14 health. And we see no hope of change in that attitude in
15 the near future.

16 Before you today is a project that can help
17 continue the health and vitality of the Agua Hedionda
18 Lagoon echo system. The once through cooling of Encina
19 Power Station will eventually cease. The need for
20 dredging is part of an operation of the powerplant will
21 cease, and the responsibility for maintenance of the
22 lagoon will fall upon the state. With a less and stella
23 record, state agencies have the stewardship of the lagoon.
24 This prospect is very disturbing to all of us on the
25 council and in our community as well.

1 I understand the importance of the minimization
2 plan. I also understand the eliminating one through
3 cooling and replacing the existing system with reduced
4 impact of the desalination plant will only improve the
5 quality of the lagoon echo system. And the desalination
6 plant will provide the necessary stewardship of the lagoon
7 that has historically been provided by the powerplant
8 operator.

9 You have an opportunity to take a leadership
10 position to protect the long-term health of the Agua
11 Hedionda Lagoon by approving this plan. I urge you to
12 take heart and move forward with it, and thank you for
13 your consideration.

14 MR. WRIGHT: Thank you.

15 Mr. Jerome Kern and council member from the City
16 of Oceanside.

17 MR. KERN: Good afternoon. Thank you for your
18 time. My name is Jerry Kern. I'm council member of the
19 City of Oceanside. As an elected official of the third
20 largest city in San Diego County, I have the obligation to
21 provide water to 175,000 people. And to fulfill this
22 obligation, the City of Oceanside has become the newest
23 partner in the desal partner project.

24 Last month I toured Colorado and witnessed the
25 tremendous stress that Colorado is undergoing. And as you

1 all aware the quantifications limited agreement will limit
2 the water that we get from the Colorado River, and it will
3 cap the amount of water we receive.

4 The state water project is also under enormous
5 strain both environmentally and through regulation.
6 Casting a doubt over how much water we can consistently
7 expect from the Delta. All of these challenges make the
8 Carlsbad desalination project crucial in diversifying our
9 water supply. In fact, it's probably the most important
10 water infrastructure power tech in San Diego in recent
11 (inaudible). The project will produce about 56,000 acre
12 feet of water of reliable high quality water at a cost
13 that is assured. This is enough for 300,000 San Diegians,
14 about ten percent of the current population. The Carlsbad
15 desalination project is a positive step in the right
16 direction in our region for future water supply. Poseidon
17 Resources has demonstrated that their project will be
18 environmentally responsible and proactive in minimizing
19 any potential impacts. The longer this project is delayed
20 the further we go down the road of endangering all our
21 water supply in California. We need this immediately.

22 On behalf of the City of Oceanside, I urge you
23 to approve the resolution before you this afternoon.

24 Thank you.

25 MR. WRIGHT: Thank you for your brevity.

1 Mitch Beauchum chairman of the Sweetwater
2 Authority. And where is your hip helmet?

3 MR. BEAUCHUM: I left it back there. Thank you,
4 members of the board. My name is Mitch Beauchum. I'm the
5 chairman of the Sweetwater Authority Board of Directors.

6 Sweetwater currently provides water service
7 approximately to 180,000 people in National City and the
8 western part of Chula Vista. Sweetwater has recently been
9 named the most reliable waterage in San Diego County
10 because of the diversity of our water supply. While we
11 have instituted many conservation measures with our
12 customer, we believe that seawater desalination is an
13 important part of the solution in the region long-term
14 water reliability need.

15 As a member of the San Diego desal partners,
16 nine of us now in Oceanside, our agreement to purchase
17 water from the Carlsbad project will increase Sweetwater's
18 Authority drought tolerance supply to 36 percent by 2010.
19 You may ask why a water agency 50 miles from this plant is
20 involved. We see benefit to the region that we're
21 participating in that it also benefits us as an agency, so
22 we're stepping forward as the other partners have done so.
23 This new water supply will replace for a one point basis
24 the water we currently import through the San Diego County
25 Water Authority over the hill from catastrophes or from

1 Colorado.

2 Poseidon Resources desalination project can gain
3 enthusiastic support from the water agencies, cities,
4 businesses, residence, and elected officials including our
5 entire, our entire state and federal delegation. Had you
6 been at the Coastal Commission hearing, you couldn't
7 believe it. I couldn't believe that that consensus was
8 there. But the entire organization is behind us.

9 We appreciate the due diligence that regulatory
10 agencies have taken to ensure that this is the most
11 environmentally benign project possible. We believe that
12 it has been thoroughly vented, as you saw from the
13 technicians that presented their story here, and utilizes
14 every possible avenue for reducing impact to the marine
15 environment. Every step of the way some within the
16 regulatory community have attempted to delay the project,
17 that's been mentioned today already. If they had been
18 successful, we would be many years, not months, away from
19 the completion of this project. Thankfully they have been
20 largely unsuccessful because their arguments do not hold
21 water.

22 The Sweetwater Authority Board of Directors ask
23 you to make the right decision -- sorry -- the correct
24 decision and approve the tentative resolution for the flow
25 entrainment and impingement minimization plan for the

1 Carlsbad desal plant. Thank you for your time.

2 MR. WRIGHT: Mr. Beauchum, thanks for your
3 brevity.

4 Again, I'd just like to urge or let the speakers
5 know that all members of this board are very sensitive to
6 the needs for augmenting our local water supplies through
7 reclamation, desalination, conservation, and so on. So we
8 don't need to focus on that as much as you would like to
9 perhaps. But I don't think you need to sell -- I guess
10 what I'm saying is I don't think you need to sell the
11 Regional Board on the importance of increasing our local
12 water supplies.

13 With that I'd like to hear from Gail Newton.

14 MS. NEWTON: Good afternoon, Chairman Wright and
15 board members. I'm Gail Newton. I'm the chief of the
16 division of environmental planning and management for the
17 State Land's Commission. And I came down today to make
18 sure that our letter was in your record, and I heard it
19 just got admitted, so I will be brief. I will not read
20 it. I also want to start off with I'm neither in support
21 of opposition. I filled out a green card. You didn't
22 have a beige neutral card.

23 My commission has not taken the final action on
24 this issue yet. My staff is still reviewing materials
25 provided by Poseidon and others. And more importantly

1 we're still involved in the inter agency cooperation with
2 the commission, your staff, and the resource agencies. So
3 some of the high points in the letter, we're still looking
4 at minimization efforts to make sure that all
5 minimizations efforts have been taken. And that's item
6 number one of our letter.

7 And breezing through this. We're very concerned
8 about the adequacy of mitigation and that it truly
9 mitigate once they get there for the impacts. Those
10 impacts are adequately quantified. We're working with the
11 Coastal Commission Staff, and they have hired an expert to
12 review the calculations and look more deeply into detail
13 of this.

14 We're concerned about the speed with which we've
15 gone to offsite mitigation as opposed to on site within
16 the local lagoon, and adopt the mitigation ratios. So
17 we're concerned that usually typically a two to one is
18 usually used and we're down already to one to one
19 basically.

20 And probably lastly is to reiterate that all the
21 agencies are meeting on May first and second down here in
22 San Diego to go through all the information and to come to
23 a consensus on exactly what should be happening with
24 minimization and with all the litigation on site.

25 So with that also I will make sure that my staff

1 includes the recommendation or action you take today in
2 our staff's report to our commission, and that would be
3 heard fairly soon within the next couple months.

4 Thanks.

5 MR. WRIGHT: Thank you for your letter and your
6 presentation.

7 And I would like to especially thank the State
8 Land's Commission for being engaged in the quality of
9 water down in San Diego. I was trying to figure out what
10 side of the fence you were on. I couldn't figure out from
11 your letter.

12 MS. NEWTON: We are concerned about our public
13 trust responsibilities.

14 MR. WRIGHT: I understand.

15 Just raising the issues many of which have been
16 brought out in other letters as well.

17 Mr. Eric Dietz representing Assemblyman George
18 Plusher.

19 Rachel Solorzano. Field representative for
20 assembly member Mary Salice.

21 MS. SOLORZANO: Good afternoon. Thank you for
22 the opportunity to be here. I'm representing assembly
23 member Mary Salice. And I'll read a very condensed
24 version of the letter of support that she has.

25 MR. WRIGHT: Would you correct your name for me.

1 MS. SOLORZANO: Solorzano.

2 MR. WRIGHT: Solorzano. Thank you.

3 MS. SOLORZANO: This letter is to inform you of
4 my support for the Carlsbad desalination plan, and request
5 that you finalize the discharge permit by approving the
6 key permit conditions that requires the project to
7 minimize marine impacts.

8 I am pleased to support Sweetwater Authority who
9 provides water to thousands of my constituents and their
10 bid to increase their drop tolerance supplies of 36
11 percent by 2010 and be less depended on imported water.

12 In 2006, Sweetwater Authority contracted
13 Poseidon Resources to purchase 2400 acre feet of water
14 annually. It will be produced at the Carlsbad
15 desalination plant. This water will account for
16 approximately ten percent of Sweetwater's annual gain
17 almost by enough water for about 4800 families each year.
18 The water produced will give the highest quality meeting
19 or exceeding all drinking water regulatory standards under
20 the law. It is also guaranteed never to cost more than
21 the rate set by the San Diego County Water Authority.
22 Ensuring that Sweetwater will pass up exceedingly high
23 water rates to their customers. And this is from the
24 vigorous passing of public scrutiny to ensure that the
25 plant will be environmentally friendly and efficiently

1 operated. The project developers made every effort by the
2 state and federal environmental regulations and has long
3 since approved their project will not harm the Agua
4 Hedionda or ocean. In fact, their proposal proposed the
5 mitigation measures or resources of 37 acers of wetlands
6 habitat, and will provide for the annual maintenance of
7 the lagoon.

8 I am proud to support the successful public
9 private partnership between Poseidon Resources with the
10 City of Carlsbad, and I urge you to approve this project.
11 Thank you.

12 MR. WRIGHT: Thank you.

13 Cameron Durckel Director of the San Diego office
14 of the governor.

15 MR. DURCKEL: Good afternoon. It's a pleasure
16 to be here and thank you for your service. My name is
17 Cameron Durckel. I'm with the governor's office here in
18 San Diego. I'll be very brief.

19 The governor supports desal as a critical
20 component of the state's water plan. Specifically the
21 public private partnership in Carlsbad here. And I will
22 stave off my comments on public private partnerships and
23 jobs. But please keep this in context. A very important
24 project to move forward with in an environmentally
25 sensitive manner.

1 federal decision that limits pumping through the Delta.

2 These next several years are going to be
3 extremely precarious for us in terms of supply
4 reliability. And we were counting on this project to be
5 online by 2011 or so. So there is a sense of urgency
6 here. It's going to take years for the state to work
7 through the issues in the Delta and fix the Delta.
8 Through the course of my career, last almost 20 years, the
9 state's been working on that issue.

10 So, yes, we need this for supply reliability,
11 but there is a pressing need, and our board would really
12 urge the Regional Board to continue to support this
13 project and to move it forward through the process. Thank
14 you.

15 MR. WRIGHT: Thanks very much.

16 Marcela Escobar. President of Atlantis Group.

17 MS. ESCOBAR: Thank you, Chairman Wright. And I
18 will keep my comments brief. I also have a letter.

19 I'm here today before you requesting that you
20 support the plan as presented by your staff. As a former
21 planning director for the City of Carlsbad and as a
22 Carlsbad resident, I have over 21 years experience as a
23 regulator enforcing wetland use matters.

24 When I worked for the City of Carlsbad, I
25 experienced firsthand how important this project would be,

1 Foundation. We've been around since 1989, 1990. But in
2 the past couple years we've really expanded our growth
3 about three or four times over, and we've gotten a lot of
4 visibility in the community. We are very supportive of
5 the desalination project, and specifically with what's
6 before you this afternoon, the plan.

7 This plan required for Poseidon to look at
8 feasibility mitigation, and they've done that. This is a
9 milestone. We think this milestone should be approved at
10 this point. While they did look offsite, believe me no
11 one would like the mitigation to occur in our lagoon more
12 than our group. And sometimes on these complexed
13 situations we need to look at things two or three times.
14 Well, by approving this plan, we'll get that second chance
15 because we're going to have a major meeting, as was noted
16 to you earlier, to look again and exhaust any
17 possibilities for mitigation in our lagoon or closer to
18 home, if you will. And this is something that we're all
19 very excited about. We're going to participate very
20 aggressively in this.

21 The last call or solicitation to look at this
22 mitigation plan last August, you know, it had some limited
23 success. But we think with this new round there's going
24 to be some new things that could be uncovered. There's
25 been some opportunities at the regional level with RP's

1 that have just gone out in the last handful of weeks that
2 we add new components and new opportunities for us to
3 mitigate within public urinals and closer to the site of
4 the desalination project.

5 Having said that, I do want to point out for
6 those who have been around the county and the area for
7 more than 15 years or so offsite mitigation is not a total
8 failure. Batiguitos Lagoon would not be restored as it is
9 today if it were not for the impacts at the Port of Los
10 Angeles, and that's 90 miles away. Here we're talking
11 about nine miles away. So I think you have enough to show
12 that they met the feasibility for the mitigation plan and
13 allow us to take a second look and make sure there's
14 nothing closer to home that we can find out as far as the
15 mitigation plan that can then come to you later as well.
16 If you need a progress report before then or something,
17 that might be fine. But we think it's important to take
18 advantage of the balance point right now as other speakers
19 have mentioned, elected officials, times passing, and
20 that's creating issues. The time that has past me allow
21 more mitigation options to surface, and then if not you
22 can go forward with what's been laid out.

23 So we think you're at a balance point and the
24 Lagoon Foundation is very much in support as our council
25 members have spoken were being supportive in a parallel

1 manner and urge you to approve what's before you today so
2 that the mitigations can go from feasibility to a final
3 plan.

4 MR. WRIGHT: Will you identify yourself for the
5 court reporter and spell your last name.

6 MR. MUNOZ: Eric Munoz, M-u-n-o-z. President of
7 the Agua Hedionda Lagoon Foundation.

8 MR. WRIGHT: Thank you.

9 Mr. Michael Barden. While Mr. Barden is coming
10 forward. I don't see him.

11 I know Dennis is here. Dennis Bostad. While
12 Dennis is coming forward, Rua Petty, Gary Arant, and
13 William Rucker if you'd be ready.

14 MR. BOSTAD: Dennis Bostad, general manager of
15 Sweetwater Authority. I have nothing further to add other
16 than to urge you to pass the resolution. Thank you.

17 MR. WRIGHT: Wow, thank you.

18 Hard to follow.

19 MR. PETTY: Rua Petty. I'm president of the
20 rainfall Municipal Water District and also on the board of
21 directors of the San Diego County Water Authority. I'll
22 abbreviate my comments to the fact that my agency is part
23 of the agencies that are under contract with Poseidon.
24 Seventy percent of our water is agricultural. And right
25 now you're looking at an individual that is living the

1 problem of our water supply here in California. If you're
2 not aware of it, the agricultural community has cut back
3 30 percent here in San Diego.

4 And my comment is that time is of the essence.
5 Jobs are five billion dollar industry here in San Diego is
6 at risk, and part of that is because of our lack of water.
7 So I'm here to urge you to support moving forward post
8 taste because providing water here in San Diego is not an
9 easy task. Thank you.

10 MR. WRIGHT: Thank you.

11 Mr. Arant.

12 MR. ARANT: Gary Arant, Valley Center Municipal
13 Water District. I'm the general manager of that agency.
14 I'm also a director from the San Diego County Water
15 Authority Board of Directors. And I'm formerly a member
16 of this body. I served from 1983 to 1997. I don't want
17 to discourage you when I tell you that in the 14 years
18 I've served on this board and the 11 years since then the
19 Tijuana River pollution, the Regional Board restructuring,
20 and under funding the Regional Board programs, and the
21 San Diego Bay cleanup, and how we are going to get the
22 Port Authority involved were issues that we dealt with my
23 entire time on the board. You do have some new things,
24 and I'm kind of jealous. And that is you're not dealing
25 with expandable diapers and bird waste removal from

1 beaches, so that's interesting.

2 But you're also dealing with this desal project,
3 and as a rural points out Valley Center is an agricultural
4 agency. And knowing what I know about water and the sound
5 of the chainsaws moving the avocado trees and citrus
6 trees, we have a serious water problem right now. Not two
7 years from now or three years from now, but we have a
8 water problem right now.

9 As one of the nine agencies under contract with
10 the desal water, I can't emphasize how important this is.
11 You all know that it's been explained that your adoption
12 of this resolution today is not a parallel effort, but
13 it's in the critical path of moving this project forward.

14 So with that I will urge you to adopt resolution
15 R9-2006-0065. Thank you very much.

16 MR. WRIGHT: Thanks very much.

17 William Rucker.

18 MR. RUCKER: Yes, I am William Rucker. The
19 general manager with Vallecitos Water District with about
20 30 years service at Vallecitos. And we serve a little
21 over 81,000 people. We're one of the nine member agencies
22 that have entered into long-term contract to meet 44
23 percent of our demand.

24 We would urge you to adopt this minimization
25 plan and keep this thing moving forward. Thank you.

1 MR. WRIGHT: Thank you.

2 Mr. Robert Simmons.

3 MR. SIMMONS: Mr. Chairman and members of the
4 board, will somebody give me a verbal cue when I'm about
5 30 seconds away from running out of time.

6 MR. WRIGHT: I'll do that, sir.

7 MR. SIMMONS: Thank you very much.

8 My name is Robert Simmons. I'm former chief
9 trial lawyer for the Sierra Club in a number of federal
10 court litigation matters over the years that concerns
11 water supply and the protection of coastal marine recovery
12 agencies on issues that are very similar to those before
13 you now. In addition to that over the last 20 years, I've
14 emphasized environmental and water issues both as
15 professor of law as well as environmental attorney.

16 I feel incompetent to stand here and express my
17 strong support for the Poseidon plan. I think it responds
18 soundly and directly to the request you've made, the
19 conditions that you've expressed after your last hearing.
20 It complies with all applicable laws. It's a good plan,
21 and I urge you to endorse it today.

22 I know that there are a number of opponents.
23 Colleagues of mine or at least former colleagues of mine
24 in the environmental community who will soon come up
25 before you and argue that you shouldn't take action today.

1 You should postpone consideration by some future date. I
2 just want to remind you that these are the same people who
3 have been actively opposing the entire project for the
4 past five years in and out of court every step of the way
5 until today, and they failed each step because they have
6 not had any good sound legal as well as factual arguments.
7 I know that they're not in the mainstream of the
8 environmental community. I know where that community is.
9 I know that the majority of environmentalists in this
10 economy as well as the overwhelming majority of the public
11 in this area agree with me, and that is that reasonable
12 impacts to coastal geniuses is not inconsistent. Doesn't
13 conflict with the production of new water supply to serve
14 this water starving area.

15 I know, Mr. Chairman, you don't want me to talk
16 about water supply, but let me approach it briefly from
17 this perspective.

18 And that is this. The Poseidon plant will
19 produce water that will serve 110,000 families in this
20 region, and we need it as soon as possible.

21 MR. WRIGHT: Mr. Simmons, you have 30 seconds.

22 MR. SIMMONS: Beyond that there's a critical
23 long-term need to divorce ourselves from the near total
24 dependance upon imported water. Water conservation alone
25 nor with water recycling; they won't accomplish this goal.

1 But add desalination to the other two strategies and we
2 can achieve this dream of goal of water self sufficiency.

3 Gentlemen and ladies, maybe not in bylaw tact,
4 but certainly yours in the lifetimes of our children. If
5 we move fast, we need to do that. And I appeal you to
6 endorse this plan today and move that certainty along so
7 that we can rely upon it. Thank you.

8 MR. WRIGHT: Next we have Steve Cedie followed
9 by Douglas Metz, Bill Clavenger, Bill Smith.

10 Is Mr. Cedie here? Mr. Metz.

11 MR. METZ: Thank you, Chairman Wright and
12 members of the board. My name is Douglas Metz, M-e-t-z.

13 I appear in my capacity as a member of the
14 infrastructure committee of the San Diego Regional Chamber
15 of Commerce.

16 I urge that the board without further delay
17 approve Poseidon's proposed flow entrainment and
18 impingement plan. This decision will be amply supported
19 by several findings. I'll summarize only three in my one
20 page as submission.

21 First of all, the project sponsors and local
22 governments have exercised due diligence in undertaking
23 environmental studies evidencing minimal adverse impact.
24 In particular the plan has been under review for 12 months
25 and was extensively revised on two occasions in response

1 to the comments received from the board staff and the
2 public. The plan assures, utilizes rather, best available
3 site design, technology, and mitigation measures.

4 Second, the plan assures maintenance of the
5 water quality of a well functioning lagoon and of the
6 surrounding marine habitat, and is augmented by mitigation
7 measures to be implemented subsequently.

8 Last and very important of equal by preceding
9 speaker, time is of the essence. And I urge that the
10 project after over eight years in the making not be
11 further delayed by being burdened with conditions
12 requiring experimentation with untested water intake and
13 discharge technologies. Thank you very much.

14 MR. METZ: Thank you Mr. Metz. Bill
15 Clavenger.

16 MR. KING: If I can disclose for the record Doug
17 King Law Group. This is completely individual capacity
18 that he is here. We're not representing any individual
19 clients on this matter.

20 MR. WRIGHT: Mr. Schmidt.

21 MR. SCHMIDT: Chairman and members, Jim Schmidt,
22 retired banker attorney. I've served in three positions
23 in the state government, and I now serve on four public
24 boards all without pay by the way.

25 Anyway, an overriding issue I think is that we

1 must have more sources of water you've heard that. The
2 opponents -- one thing about growth, which I know the
3 opponents oppose growth. The reason we're growing is
4 besides foreign immigration people are living too long,
5 that's one of the reasons. There's births over deaths.
6 So are they going to oppose the use of prescription drugs.
7 I'm worried about that. Because my cholesterol is way
8 down 100 points because of prescription drug, if you want
9 to cut down drug.

10 Anyway, we face a water shortage. It's not just
11 Carlsbad; as indicated it's Sweetwater and other areas.

12 In my article I gave you, which I wrote last
13 year before I testified, I talked about the horror stories
14 of Monterey, and Santa Barbara the horror stories. I'll
15 never will forget in Monterey and Carmel--I left there
16 about 30 years--ago every place you went to a men's room
17 and above the urinal it said do not flush. You can't
18 forget things like that.

19 Now the Coastal Commission and the same
20 opponents you'll have today, the same people, but labor
21 business were there, Chamber of Commerce, local government
22 all in favor. The night of three voting included both
23 members of the San Diego City area. Both members of
24 San Diego were in favor. This will be the 11th plant in
25 California. Not the first one, the 11th plant. The

1 governor is pushing it, and again all the assembly
2 members, all the state senators, all the members of
3 congress support this.

4 So I would just urge you very strongly to
5 support this. Make it happen.

6 We have to have water. I want to be able to
7 water my lawn. That is one of the things I saw up in
8 Santa Barbara. My friends told me they couldn't water
9 their lawns. The company that sprays lawns green made a
10 lot of money. That's unfortunate. Thank you very much.

11 MR. WRIGHT: Thank you.

12 Chuck Badger followed by Mike Madigan, Gary
13 Knight and an Angelika Villagrana.

14 MR. BADGER: Good afternoon, Chairman Wright and
15 other board members. My name is Chuck Badger,
16 B-a-d-g-e-r. I'm a third generation citrus farmer from
17 the North County.

18 My grandfather first came here in 1922, and he
19 came here to farm. He soon realized that water was going
20 to be his most important challenge. He also started the
21 Santa Fe irrigation district. He also served on the
22 Metropolitan Water Board.

23 My father continued to farm and be involved in
24 water. In fact, he served on this board a few years ago
25 and the seat is now being occupied by Mr. Anderson.

1 Eric Larson our executive director sent you a
2 letter. In that he details the drought in the Colorado
3 River you already know about. The couple of the
4 regulatory drought at the Delta, and of course the 30
5 percent cut back that you've already heard about.

6 One thing I haven't heard discussed a lot about
7 today is the failure of our state legislators to put any
8 water bonds on ballots this year that will help bring us
9 need of water. But really that's why it's very important
10 for local government agencies and regulatory agencies to
11 help us with water here in San Diego. You know that we
12 need the water.

13 I was making decisions today on which lemon
14 groves not to water and which ones should get water
15 because of the drought. It's been very difficult for a
16 lot of us.

17 All I want to do is conclude by saying if we
18 want agriculture in San Diego to continue to provide
19 abundant local products for San Diegans as well as
20 providing viable open space we need reliable water. My
21 father and grandfather worked hard to secure water for my
22 future, and I'm working hard to secure water for my
23 children's future. So I hope that you can help by
24 approving this resolution. Thank you.

25 MR. WRIGHT: Congratulations on your position as

1 president of the Farm Bureau.

2 MR. ANDERSON: I need to disclose that I'm a
3 member of the Farm Bureau Board.

4 MR. WRIGHT: Mr. Madigan.

5 MR. MADIGAN: Thank you, Mr. Chairman. My name
6 is Mike Madigan. I'm a past chair of the San Diego
7 County Water Authority Board. I'm a past chair of the
8 California Water Commission, and for seven years chairman
9 of the Bay Delta advisory council to the CalFed process.

10 I'm here to do two things. First, I have
11 letters in support from Senator Mark Whiland, Assembly
12 Member Shirley Martin, Assembly Member George Plusher, and
13 Assembly Member Martin Garrett whose staff members were
14 here earlier and not able to stay. I'd like to deliver
15 these to your staff, if that's acceptable. Thank you.

16 Secondly, to urge you to approve this plan in
17 support of which I will offer you the following four
18 reasons. One, obviously you have asked for this plan, and
19 it is now submitted to you as requested, and it identifies
20 that multiple mitigation plans are feasible.

21 Two, your action on this item today will bring
22 you into alignment with the current status of the
23 desalination project of both the Coastal Commission and
24 the City of Carlsbad, and will allow you to both exercise
25 your statutory role on entrainment mitigation and work

1 jointly with those other agencies on the selection for the
2 final mitigation plan.

3 Three, a continuance, a delay will only serve
4 the cause of delay.

5 And four, for all the reasons which you well
6 understand this project is even more important today than
7 it was when it was first brought to you.

8 Thank you for listening.

9 MR. WRIGHT: Thank you.

10 Mr. Gary Knight.

11 MR. KNIGHT: Chairman Wright and all board
12 members, cut my comments about why we need water you know
13 why. The point I want to make this day is there will be
14 no project that we can put forward to you that will have
15 zero impacts. We know desalination projects running and
16 operating throughout the world. I presented Monday to a
17 trade delegation from Sweden. When I told them about
18 these meetings and other meetings occurring on this, they
19 looked at me and asked why can't you get it done. The
20 rest of the world has been able to.

21 So we look at this project as being submitted to
22 you for the impacts. They have minimized it by using best
23 practices, and they provide the mitigation as requested.
24 We would urge you that you approve this resolution and
25 help us get the water that we already know we need. Thank

1 you.

2 MR. WRIGHT: Angelika Villagrana.

3 MS. VILLAGRANA: Thank you, Mr. Chairman and
4 members of the board, Mr. Robertus. My name is Angelica
5 Villagrana representing the San Diego Regional Chamber of
6 Commerce; our 3,000 member companies and their 400,000
7 employees.

8 Water reliability for our region has always been
9 one of our most important goals. And therefore, we're
10 very interested in any alternative that minimizes our
11 dependence of imported water and diversifies our water
12 supply portfolio. We believe desalination is one such
13 alternatives and a good one. In our opinion, Poseidon
14 Resources has designed a project with minimal
15 environmental impacts. We believe by preparing the flow
16 entrainment and impingement minimization plan Poseidon
17 Resources has provided a road map as to how the project
18 can move forward using the best available site, design,
19 technology, and mitigation feasible to minimize impacts on
20 marine life. Reliable new water needed and the
21 development of local supply makes sense.

22 Additional infrastructure for importing more
23 water could cost lots and lots of money with limited
24 assurance of water supply reliability. At the time when
25 the entire state in south were suffering from drought in

1 environmental water supply issues, we have the opportunity
2 to bring online an environmentally responsible source of
3 drinking water right here in our backyard. Let's not
4 waste that opportunity. It is in all of our interest to
5 move this important water supply alternative forward,
6 (inaudible) water supply in your support.

7 And our letter of support is in your agenda
8 package. And if I may, Mr. Chairman, (inaudible) wanted
9 to be here in support, but they are in Sacramento at a
10 legislative meeting. Mr. Joe (inaudible) President and
11 chairman, and he has asked me to supply you with a letter
12 of their support, if that's permissible. And for your
13 information by Derrick 550 life sciences companies here in
14 the San Diego region, I have copies of the letter for you.
15 Thank you very much.

16 MR. WRIGHT: Thank you.

17 Lanie Lutar, Kevin Sharrar, Evelyn Peterson, and Gina
18 McBride.

19 MS. LUTAR: Good afternoon. My name is Lani
20 Lutar. I represent the San Diego County Taxpayer's
21 Association.

22 The Board of the Taxpayer's Association stands
23 strongly in support of the Carlsbad desalination project.
24 What is most appealing to our organization is the fact
25 that this project is being billed as a public/private

1 partnership between the Poseidon and the nine San Diego
2 County Public Water agencies. The private sector's
3 involvement has ensured that the region to taxpayers have
4 been insulated from postulated cost increases and the risk
5 associated with permitting a multifaceted infrastructure
6 project.

7 Additionally, the 30 year contract signed by the
8 public water agencies guaranteed a price of water accounts
9 and will never exceed what the rate pairs with otherwise
10 paid for imported water. This is a significant protection
11 and will guarantee rate pairs are not subject to price
12 fluctuation, and it's very important to the Taxpayer's
13 Association.

14 After ten years in the process, we believe it's
15 time to approve Carlsbad desalination plan and would urge
16 you for your support. Thank you very much.

17 MR. WRIGHT: Ted Owen followed by Kevin
18 Sharrar.

19 MS. MCBRIDE: Good afternoon, Mr. Chairman and
20 members, I'm not Ted Owen. Ted apologizes he had to
21 leave. I am Gina McBride. I am chair elect of the
22 Carlsbad Chamber of Commerce. Ted is the president and
23 CEO.

24 I'm here to speak for our chamber in support of
25 the Carlsbad desalination project. We represent more than

1 75,000 workers in our 1700 member organizations across the
2 area.

3 The plan to minimize environmental impacts that
4 is before you today meets all of the requirements of the
5 permit this board issued nearly two years ago. The
6 chamber believes that developing an environmentally
7 responsible solution to the region's water need is a key
8 component to achieving our goal of water reliability.
9 This is why we support the City of Carlsbad public private
10 partnership with Poseidon Resources to build an operated
11 desalination plant at no risk to the city or its
12 taxpayers.

13 For the City of Carlsbad, the desalination
14 project is a water supply, water storage environment, and
15 enhancement project. The Agua Hedionda Lagoon is a vital
16 resource for our city. Many companies and individuals
17 depend on the Lagoon and nearby beaches including a
18 thriving agricultural farm, help SeaWorld Research
19 Institute, and several water recreational facilities. In
20 fact, the entire business community has a stake in
21 preserving the natural habitat and the coastal environment
22 that make north county a great place to visit or do
23 business.

24 The business community along with the state and
25 congressional delegation, public water agencies,

1 environmental group, and everyday rate payers including
2 according to a public opinion poll 81 percent of the
3 San Diego County registered voters standing united in
4 support of moving forward on the Carlsbad desalination
5 project.

6 Finally, the Chamber recently awarded their
7 first ever Environmental and Spirit Award to Poseidon
8 Resources because of the projects demonstrated commitment
9 to the environment; especially to the Agua Hedionda
10 Lagoon.

11 We need to move forward on this project now, and
12 we urge your approval today. Thank you for your
13 consideration.

14 MR. WRIGHT: Kevin Sharrar.

15 MR. SHARRAR: Thanks for the opportunity to
16 speak to you today. My name is Kevin Sharrar, and this is
17 my eleven year old daughter Savannah.

18 MR. WRIGHT: Welcome Savannah.

19 MR. SHARRAR: Savannah and her brother and
20 mother and I are very fortunate enough to live in which I
21 believe is the greatest community in the country and
22 that's in Carlsbad. We have beaches and lagoons and we
23 can all see today the flower fields, and so many other
24 places to enjoy our national environment. My family
25 really loves it here. My wife and I hope that when

1 Savannah and her brother Braden go off to college and find
2 themselves families that they come home and call Carlsbad
3 their home as well. Quite honestly I worry about
4 San Diego County and some of the challenges we face in the
5 future that holds for my daughter and my son. The
6 devastating wildfires last year reminded all of us that we
7 certainly have our fair share of challenges.

8 I don't believe that enough attention is paid to
9 our water supply. Something too many of us I think take
10 for granted. Our water supply depends on outside sources
11 and that the Colorado River and Northern California. We
12 don't have enough water supply to call our own. To be
13 candid, we just can't continue to keep our heads in the
14 sand collectively. I acknowledge that this board's
15 commitment to that. That being said, we can't just go on
16 hoping everything will be okay. It's up to all of us now
17 to fix these problems so that future generations like
18 Savannah's will be afforded to live in the San Diego that
19 we all come to enjoy. We need a water supply that's
20 dependable and environmentally sensitive. The longer we
21 wait the worse the situation will get.

22 I believe Savannah has something to ask of you
23 today.

24 MS. SAVANNAH SHARRAR. I respectfully ask you to
25 please approve the Carlsbad water project today. Thank

1 you.

2 MR. WRIGHT: Savannah, I thank you for your
3 presentation.

4 Evelyn Peterson.

5 MS. PETERSON: Good afternoon, members of the
6 board. I'm Evelyn Peterson. I'm here representing the
7 Industrial Environmental Association, the IEA, which
8 endorsed the Carlsbad desalination project in 2005.

9 The IEA promotes environmentally responsibility
10 through effective communication and interaction with our
11 members, government regulatory agencies, business, and the
12 community. Our members endeavor to achieve a balanced
13 relationship between environmental protection, public
14 health, and economically sustainable growth. We believe
15 that an affordable and reliable supply of water is
16 imperative to the future of San Diego's industrial
17 community, which provides jobs for thousands of San
18 Diegans.

19 In October 2006, your board issued a discharge
20 permit for this project but required a flow entrainment
21 and impingement minimization plan be submitted to provide
22 additional regulatory safeguard. We believe that the plan
23 before you today prepared by Poseidon clearly meets the
24 requirements under the permit you issued. Approval from
25 your board is necessary to move the project forward to the

1 State Land's Commission and the California Coastal
2 Commission for the final project approval. San Diego
3 water supply conditions continue to worsen and time is not
4 on our side. We cannot afford further delays.

5 The IEA strongly urges you to approve the
6 tentative resolution and allow this project to move
7 forward. Thank you.

8 Gina McBride.

9 MR. WRIGHT: At this time I'd like to take a ten
10 minute break. And we need to give our court reporter some
11 rest. I think all of us need to stretch.

12 (Brief Recess.)

13 MR. WRIGHT: Meeting to order.

14 We have an organized presentation whereby
15 Gabriel Solmer, Joe Geever, and Livia Borak. I don't know
16 if Ed Kimura is a part of that. He's not.

17 But seating time the organized presentation, and
18 I assume Ed Kimura, Lori Porter, Sara Craisha, Bruce
19 Resnick, Connor Revrick, Dan Hortell, Jerod Griswald, Lana
20 McGuire, Jill Hickman, Julie Truhn, Ben McCue, Christin
21 Mendosa, Angelina Callahan, Rachel Dorfman, Ellen Chuhn,
22 and Marty Benson.

23 Okay. Ms. Solmer, we're ready for you. How
24 much time do you need?

25 MS. SOLMER: We just request 15 minutes for the

1 presentation.

2 MR. WRIGHT: Fifteen minutes is fine.

3 MS. SOLMER: Thank you so much. I thank you for
4 your patience today. It's been a long day. Thank you for
5 granting this ordinance presentation. I think is the best
6 way to get information across to you. As you've heard,
7 we've had 20 people exceed their time to this
8 presentation; groups like Wild Coast Desal Response Group,
9 Residence for Responsible Desalination, and all the
10 individuals that you've heard. We've all joined San Diego
11 Coastkeeper and Surfrider today.

12 I will start off this organized presentation,
13 and I'll give it over to Joe Geever from the Surfrider
14 Foundation to tell you a little bit more about our
15 concerns with the plan. We're not going to go into the
16 project today. I think you've had more than enough
17 information on that issue.

18 Then we'll go to Livia Borak to talk about some
19 of the legal ramifications of today's decision, and then
20 I'll come back up to wrap up.

21 So I think in the fever to get to the new
22 sources of water we've gotten ahead of ourselves. And so
23 let's just go through some facts that are before you.

24 You have a mandate of Section 13225 of Port of
25 Cologne to coordinate with other agencies, and we think

1 that that's very important for that reference to be
2 provided in the presentation as well. There's an agency
3 coordination meeting. You've heard this again scheduled
4 for May first and May second where these issues are going
5 to be discussed. That's why it's a little perplexing to
6 us why you are poised to make a decision two weeks -- two
7 and a half weeks before that meeting occurs. You need to
8 coordinate not just because of the mandate of Port of
9 Cologne but to take advantage of the agency resources and
10 expertise on this issue. We certainly don't support the
11 overly restrictive proposal within the plan itself of how
12 you should move forward. We think that how you move
13 forward should be decided in consultation with the other
14 agencies. And again that plan and any proposals within it
15 are not before you. They certainly weren't noticed for
16 this agenda, so we don't need to get into that. And with
17 all due respect, that proposed schedule would only take
18 affect if you approve to the plan sort of closing the barn
19 doors after the cow has already been out.

20 You've heard arguments a lot today about
21 prejudice to citizens, to the applicant if you wait on
22 this issue. Let me make it clear, you don't have a valid
23 plan that has been adequately noticed before you to vote
24 on. Even if, as we all do, we would want to move ahead on
25 a legally noticed plan, that's not before you today. So

1 there's nothing that you can do today to slow or speed up
2 the process in anyway, so those comments really shouldn't
3 come into your decision-making. Again, you're not slowing
4 down the process by not moving through today, no matter how
5 other people would like to spin that.

6 Just on a practical matter, I think most of you
7 have heard that the Coastal Commission has canceled its
8 June meeting where they were to decide some of these
9 issues, so again you have plenty of time to bring this
10 issue back before you, if you did want to legally notice
11 the plan for your approval before we get to the Coastal
12 Commission and before any of this gets held up.

13 And indeed it does make sense to wait to that
14 time since there is a lot of new information. I don't
15 know how many of you have seen the state board scoping
16 document and its policy for intake on powerplants. That
17 certainly goes to the heart of the matter of these intake
18 issues. There's a lot of useful information. Those
19 workshops are taking place this and next month; certainly
20 direct your attention to that process.

21 Again, before turning it over to Joe Geever, I
22 just want to talk a little bit about the public review of
23 this process. This plan, and I think we should all be
24 clear about what we are talking about, the flow
25 impingement and entrainment minimization plan has not been

1 available to you for a year. It's been available to you
2 for just about a month in its revised form.

3 And the technical report that is on the agenda
4 today that is before you, although we certainly agree with
5 its conclusion that says the plan is lacking in a number
6 of areas, it was only written on Friday, five days ago,
7 and wasn't available to the public until after the public
8 comment period had closed.

9 So given the emphasis that you gave on the last
10 issue, if you can remember back to issue six on your
11 agenda, that you wanted to make sure that all responses to
12 comments were before this board before it acted. We're
13 perplexed that you consider an issue where not only do we
14 not have responses from the staff to our comments; we
15 weren't even able to comment on what's before you today.

16 So I'll turn it over to Joe Geever for more
17 detail on our underlying concerns and be back up for a
18 wrap up. Thank you.

19 MR. GEEVER: Chairman Wright and board members,
20 thank you very much. My name is Joe Geever I'm a
21 California policy coordinator for Surfrider Foundation. I
22 hope you've had a chance to read our comment letter of
23 April first that outlined our concerns about the substance
24 of the draft revised plan. I just note that we have not
25 yet received a response to those comments.

1 I think the race to get this item on the agenda
2 has resulted in a confusing set of documents what's
3 conflicting language in the staff's document entitled
4 technical report and the tentative resolution. Language
5 in the agenda didn't help because it said you will be
6 considering only the technical report. The technical
7 report dated April fourth recommends against approving the
8 plan, if the resolution recommends approving the draft
9 plan and delegating final approval for the executive
10 director.

11 As you've heard State Land's Commission Staff,
12 Coastal Commission Staff, and your staff recommend against
13 prematurely approving this draft plan. We are also very
14 concerned about the board prematurely voting to approve
15 this draft plan. By its own admission, the plan as a
16 regard to compensatory restoration project is still a
17 draft proposal not ready for approval. It also seems as
18 if the vote today would approve other aspects of the plan
19 that may be considered final. For example, the plan seems
20 final in its conclusions about technologies to reduce the
21 intake and mortality of marine life. However, the
22 technologies discussed in the plan have not been subject
23 to review and are unproven. More disturbing, this draft
24 plan seems to be final in its conclusion that after the
25 fact restoration is both legally sufficient and the only

1 feasible alternative. We disagree. In fact, the draft
2 plan identified alternative intake systems that eliminate
3 the intake and mortality of marine life. They just refuse
4 to pay for them.

5 Given the staff's conclusion that the plan is
6 insufficient, we're left wondering what it is that you're
7 voting to approve. What is gained by your action today?
8 Again, today is the first we've heard that this is not a
9 vote on the technical report as stated in the agenda.

10 So is this a final vote on the conclusions about
11 the best available design and technology to minimize
12 intake and mortality of marine life. Is it a vote that
13 assumption studies and conclusion in the draft plan are
14 final. We want to remind you that any decision today
15 cannot be possibly be a final decision that after the fact
16 restoration is legal. That would be patently incongruent
17 with Port of Cologne. Set of timeless process of the not.
18 We recommend that you grant Poseidon an extension of the
19 deadline prescribed in the MPDES permit, that seems
20 prudent. We wouldn't oppose an extension of time to
21 complete a coordinated multi agency review in fact we
22 believe an extension will likely result in a quicker
23 process towards final approval of the project by the
24 several agencies.

25 Therefore, once again we employ you to postpone

1 any decision on the revised plan until the several
2 agencies have coordinated their actions. We are only
3 talking about a couple of months delay. Thank you very
4 much.

5 MS. BORAK: Good afternoon. I'm Livia Borak
6 with San Diego Coastkeeper. And to build upon what Joe
7 said there has been a lot of confusion today. To be
8 clear, I'm going to be referencing the plan, the
9 impingement and entrainment flow minimization plan. It's
10 not clear if this plan is an assessment of impact or what
11 it's assessing or what's being approved today. But we
12 should be clear about what the permit, MPS (sic) permit,
13 that's been granted to Poseidon actually says. And that
14 permit requires to assess the feasibility of sites,
15 specific plans, procedures, practices to implement or
16 mitigation members to minimize impact marine organisms.

17 Now, this is different from Port of Cologne.
18 Port of Cologne requires minimization of entrainment and
19 impingement. This is different. We need to be clear
20 about the difference between mitigation and minimization.
21 Port of Cologne requires minimization and mitigation as
22 well as best technology, best design, and best site are
23 all ways to minimize impacts.

24 As you've heard, the State Water Board has
25 acknowledged the difference between 316B and Port of

1 Cologne. And we acknowledge that they are different. And
2 one thing we are all in agreement staff, the state board,
3 and Poseidon is that Port of Cologne applies to this
4 project. And this has to be assessed. The state board --
5 this board has the duty to assess whether or not Poseidon
6 has minimized intake mortality, not minimize impacts, not
7 minimize mitigation. As Poseidon states and as staff
8 states in the letter to Poseidon from Regional Board
9 Staff, it's not clear that this plan has even addressed
10 Port of Cologne and addressed minimization. And it's
11 clear from Poseidon's response that they feel they don't
12 need to do that. That they've addressed best available
13 site, design, technology to minimize project related
14 impacts. That's not the dictate -- that's not what's
15 dictated by Port of Cologne. And just to reiterate,
16 mitigation is not the same as minimization. One is before
17 the fact and one is after the fact. Minimization happens
18 before. Mitigation is supposed to be something that takes
19 care of all the impacts after the fact, after all
20 minimization has been done that is feasible. There is no
21 analysis like this that is contained in this plan. So
22 that's a separate requirement from what Poseidon is
23 telling you. And as far as what analysis is required,
24 it's not supposed to be fragmented and sequential as it is
25 in Poseidon's letter states that they sequentially

1 analyzed the steps that have been taken by Poseidon to
2 address the provision that they feel they need to address.
3 They've fragmented the whole process. Port of Cologne
4 requires a holistic approach to inviting impact. Not
5 putting a horse before the cart or a cart before the
6 horse. The plan basically says this is our site. We need
7 to produce this much water we require 300 for MGD, so this
8 is what we can afford and this is what we're going to do
9 to mitigate not mandate the Port of Cologne. And that
10 basically takes the mandate of Port of Cologne and turns
11 it on its head allowing a project proponent to choose what
12 exactly they want to mitigate and say for us this is not
13 the best, that's not what best available means. Legally
14 defensible plan will not only meet the requirement that
15 you've imposed on Poseidon and the MPS permit for this
16 plan, but also meet the mandate for Port of Cologne, which
17 has not been done. As the Regional Board, you require
18 this information, you deserve all this information, not
19 only because it's required but also you need to analyze
20 impact of the project. You need to analyze what is
21 possible for the project to minimize impact before you can
22 decide what mitigation actually is.

23 One other speaker said we can't put our head in
24 the sand. I think that's true. And what we would like to
25 say is nobody should put their head in the sand about what

1 impacts or what minimization is required by this project.
2 Everything needs to be analyzed before anything can be
3 approved. And I would like to now turn over the rest of
4 the presentation for conclusion by Ms. Gabriel Solmer.
5 Thank you.

6 MS. SOLMER: Thanks so much Livia.

7 Just to wrap up and just to make sure that it's
8 absolutely clear, I think I didn't realize Coastkeeper was
9 a mainstream environmental organization. And certainly
10 that hasn't been my experience. But, you know, I think
11 that the environmental groups have been a little more
12 aligned in this process.

13 We don't have an objection to a legally
14 sufficient plan moving forward. If that was sufficient
15 today, you know you wouldn't hear any objection from us
16 except for maybe on the noticing issue, which we do think
17 is a problem. But let's just be clear. The future and
18 the timetable is in Poseidon's hands. They were directed
19 to give you a legal sufficient plan that hadn't happened
20 yet. When that happens, we have no reservations with you
21 correctly noticing that, giving adequate time to comment
22 on it, and then voting on it. We certainly will stand by
23 those points.

24 Just to wrap up quickly, again the revised plan
25 is still incomplete. I think you've heard that from a

1 number of people. Even in Poseidon's own words it is not
2 right for final approval. They want you to approve this
3 intermediary process. Which they're calling a plan,
4 proponents call it a plan, but it's not the same as this
5 plan called for in your permit.

6 And again, contrary to the argument that this
7 delay today will reduce delays with the final project, we
8 think it's only going to create more delay. It's going to
9 create more confusion on this project.

10 Just again to finally correct some apprehensions
11 made. I won't go through all of them. But an important
12 one is you heard a lot of people say this project has been
13 approved by a number of different agencies. Any time that
14 you've heard the words that the Coastal Commission has
15 found anything. That's not accurate. The Coastal
16 Commission is voting on revised findings next month. So
17 until they do that, unless anyone can see the future, it's
18 not correct to say that the Coastal Commission made those
19 findings.

20 In conclusion, we would urge your very careful
21 and consideration on all these issues. Again, we very
22 specifically did not get into the permits of desal and the
23 project, the underlying project. But please consider how
24 and when to act for the best use of all of us. Thanks.

25 MR. WRIGHT: Questions of Ms. Solmer.

1 MR. ANDERSON: Yes, I do.

2 I was kind of curious about the Riverkeeper
3 case, and I think I understand the context as the focus
4 should be on minimization of impacts. But do you mind
5 providing the board with the actual judgment or ruling so
6 we can kind of analyze it and make sure it's in context.

7 MS. SOLMER: Did you want a summary of it now or
8 actual --

9 MR. ANDERSON: Either one. Maybe executive
10 summary with the rulings.

11 MS. SOLMER: We can certainly give you the
12 ruling. If you'd like the summary, I'll have Livia Borak,
13 who's our president give you a 30 second review if you'd
14 like on how that impacts your decision today. But I can
15 certainly get you the rule itself.

16 MR. ANDERSON: I'll leave the other part to the
17 chair's discretion.

18 MR. WRIGHT: Do you have a question of
19 Ms. Solmer and Ms. Borak?

20 MR. RAYFIELD: In your written comments, I
21 believe you mention Coastkeeper was planning on
22 contracting with an outside expert to review the plan. Is
23 that still the idea or are you still -- is Coastkeeper
24 still going to go ahead and do that?

25 MS. SOLMER: Yeah, that's a joint project

1 between Coastkeeper and Feder (inaudible) Foundation. We
2 have a contract with that contractor in Colorado.

3 MR. RAYFIELD: That was my next question.

4 MS. SOLMER: And Joe Geever can provide you
5 specific information about that contractor. But
6 specifically we were concerned that they didn't have the
7 time to look at the revised plan, the one that was
8 submitted just a month ago.

9 MR. RAYFIELD: Do you have a completion date
10 since you've already contracted with whatever
11 organizations?

12 MS. SOLMER: Yeah, I think we're in the weeks to
13 months range. Not any longer than that. But Joe can give
14 you something more specific.

15 MR. RAYFIELD: I'd appreciate a more definitive
16 time frame. Thank you.

17 MR. WRIGHT: Mr. Geever.

18 MR. GEEVER: Yeah, we've been talking with --
19 I'll try to answer both of your questions, if that's okay.
20 We've been talking with the consulting firm that worked
21 with USCPA on the 316B rule. They are going to be
22 reviewing the documents and the plan and the mitigation
23 proposal. And that's why they haven't gotten engaged in
24 reviewing the mitigation proposal because there is none.
25 There is nothing to review. And so giving a date on when

1 that review would be final is just kind of hard. I think
2 it's almost the same thing as approving this plan right
3 now. There is no plan to approve and there is no plan for
4 us to review. But I can tell you that they're awaiting
5 that. They are going to turn around as quickly as
6 possible. We want that for -- you know, cause these other
7 agencies are going to be coming right behind you so we
8 need that in preparation for everyone's decision. But
9 until we have a mitigation proposal in front of us it's
10 impossible to review.

11 Briefly about the Riverkeeper case. We agree
12 with Poseidon that Riverkeeper applies only to cooling
13 water intakes. And that's because the federal law only
14 deals with cooling water intakes. But the state law deals
15 with cooling, heating, any industrial use of ocean water.
16 But it does include cooling. So the decision in the
17 Riverkeeper case the rule that EPA had promulgated
18 included exclusions from what they call their performance
19 standards, which was to reduce entrainment by 90 percent,
20 reduce these standards that they were using for minimizing
21 entrainment and impingement. A lot of that rule got
22 remanded back to USCPA to rewrite it. But a couple of the
23 provisions in there were strictly prohibited from the
24 remand. So using a cost benefit analysis was thrown out.
25 And they can't put that back in the rule according to

1 Riverkeeper two. And using after the fact restoration was
2 also thrown out. And a lot of what this plan kind of
3 relies on is using after the fact restoration and then
4 using a cost benefit analysis to show that any of the
5 other alternative intakes are infeasible or whatever.

6 Port of Cologne doesn't distinguish between cooling,
7 heating, or any other industrial process. So if you take
8 the ruling from Riverkeeper two, apply it to cooling water
9 in Port of Cologne or anything else, there's no
10 distinction between cooling, heating, and industrial
11 processes for Port of Cologne. So arguably that ruling in
12 Riverkeeper two applies for Port of Cologne as well.
13 Which would prohibit them from using cost benefit analysis
14 or after-the-fact restoration.

15 Does that get it what you're --

16 MR. WRIGHT: Ms. Borak, you have 30 seconds
17 worth of clarity for us.

18 MS. BORAK: Yeah, just to add to what Joe said,
19 I would just add Riverkeeper two though it does apply to
20 Clean Water Act 316B. The facts that they -- Clean Water
21 Act also is a technology enforcing statute of 316B and it
22 requires best available technology. And in the decision
23 the court basically said that EPA was defined a beacon, as
24 you will, of what the technology is. And in doing that
25 costs benefit analysis was not appropriate. And in

1 finding that whatever the best technology is, that is cost
2 effectiveness can be utilized after that in finding out
3 what kind of rages for technology that EPA can have as a
4 substitute for this best technology. The best performing
5 technology is it. So the best available technology is
6 what is the best technology that can be reasonably born by
7 the industry. And that would lend courts for interpreting
8 Port or Cologne kind of an analysis to go by.

9 MR. WRIGHT: Mr. MacLagan, you have three
10 minutes.

11 MS. SOLMER: I'm sorry. I believe you have one
12 more speaker. He'd still like to speak.

13 MR. WRIGHT: I'm sorry, I didn't realized he was
14 here.

15 MR. KIMURA: I raised my hand. My name is Ed
16 Kimura with the Sierra Club San Diego Chapter.

17 Chairman Wright and members of the board, we
18 reviewed the Poseidon Resource flow minimization and
19 pension plan and we find totally inadequate, and I can
20 explain the reason.

21 First as I explained in my letter nor in their
22 fish management Group, as well as the State of California
23 Marine Life Management Act now requires a holistic
24 approach to evaluate the impacts on the marine life. And
25 in order to ensure the protection of the health of the

1 marine resources. The equal systems approach evaluates
2 the many interaction in the like various marine organisms
3 when subjected to stresses human or natural. This
4 holistic approach is the departure from the past, which is
5 directed to the evaluation of stress on individual
6 species. This time it's taken the whole group of impacts.

7 Now, here are some of the objections. First the
8 plan fails to follow this equal system approach. The
9 impingement and entrainment plan not only focuses
10 primarily on the fish and fish larval, it fails to
11 integrate the interactions among all the marine organisms
12 from the bottom of the food chain all the way up to the
13 top. And when they are subjected to losses from
14 impingement and entrainment, the plan concludes that the
15 impingement and losses are, quote, diminimus in deciding
16 that this amounts to 2.1 pounds of fish per day. However,
17 it fails to point out that in the yearly basis there are
18 over 19,000 fishes and over 96 species that were killed by
19 impingement. The plan provides very little information on
20 other important marine organisms besides fish larval and
21 entrain.

22 Second, the plan fails to provide a
23 comprehensive monitoring program that evaluates the
24 current health of the marine equal systems within the
25 impacted area, as well as a reference area not impacted by

1 the seawater intakes.

2 Third, the plant proposes they micro screen to
3 minimize entrainment losses, but it has no plan on how
4 they're going to evaluate this or when they were going to
5 implement it.

6 And fourth, the proposed mitigation plan not
7 only focuses on fish but fails to off set the losses of
8 the rest of the marine organisms. The powerplant diverts
9 seawater from Agua Hedionda which contains both residence
10 species of marine organisms as well as non residence that
11 come in from the coastal areas. The plan provides no
12 information on these marine organisms such as the species
13 and abundance. Without this information, we doubt whether
14 any mitigation plan can succeed. So we ask you not to
15 approve of this plan, and we have some real concerns about
16 the proposed alternative condition requirements
17 resolution. Thank you.

18 MR. WRIGHT: Thank you Mr. Kimura.

19 Mr. McLaggan, do you have some brief comments?

20 MR. GARRETT: Within Mr. McLaggans time, I just
21 want to take 30 seconds to address two points that we just
22 heard. One is the notice question and the second is a
23 river key Port of Cologne what legal standards are you
24 looking at question.

25 On the notice question, I'm looking at the board

1 agenda. I think it's very clear the plan in front of you
2 is the plan that was dated March 6, 2008, that's what the
3 agenda says. Which your staff report said was submitted
4 to the staff on March seventh, that's the plan you are
5 approving, that's what was agendized. It seems like many
6 other people who spoke on the project had no trouble
7 understanding what plan was in front of the board for your
8 approval today. Again, this is a plan that has been
9 available that we revised in response to staff questions,
10 and it has been available for several months if not years.
11 And since the board established the condition which
12 required the plan, I think the opponents have been on
13 notice that this type of plan was going to be in front of
14 the board. And they've had two years since 2006 to hire
15 whatever experts they wanted on whatever alternative plan
16 they wanted to have the board adopt.

17 On the Riverkeeper question, I agree with Joe
18 Geever. I'm not sure Joe Geever agrees with everybody
19 else that presented. Riverkeeper doesn't apply here. One
20 of the issues in 2006 was the whole question about rules
21 for powerplants, the 316B rules, and Riverkeeper, which is
22 a federal court case interpreting federal rules for
23 powerplant intakes. Do those apply to a desalination
24 plan? The answer from your board at that time was no they
25 do not. Instead Port of Cologne Section 13142.5 does

1 apply. Your staff had a very nice chart showing the two
2 different regulatory regiments in pointing out the
3 differences between Riverkeeper and the federal statutes
4 and 316B and the Port of Cologne Act 13142.5. That
5 section of the water code, which again gives you primary
6 jurisdiction over all other agencies to decide issues on
7 impingement and entrainment does provide for balancing.
8 You are to be looking at the framework which is put forth
9 in our plan as to best available technology and a feasible
10 mitigation. Those are the standards that are at Port of
11 Cologne. They're not necessarily in Riverkeeper or 316B.

12 MR. WRIGHT: Mr. MacLaggan, he used part of your
13 time.

14 MR. MACLAGGAN: Very briefly, Mr. Chairman, I
15 thank you for your patient this afternoon.

16 Just by way of rebuttal to the Surfrider
17 Coastkeeper presentation. A few points.

18 First of all, Mr. Geever stated that Poseidon
19 ruled out service intake solely due to cost reason and
20 that's absolutely incorrect. There are three reasons.
21 Cost being one of the three but the other two being more
22 important. First of all, we don't have adequate sediment
23 cover offshore to put sub-service intakes in the area that
24 Carlsbad plant. Consequently, we would have to dig up
25 hundreds of acres of sea floor; basically, kelp bed, hard

1 bottom, habitat land to the sea floor plumbing system that
2 looks like a reverse leech field, cover that with sand and
3 pump water on that and process marine destroying several
4 hundred acres of offshore habitat, valuable habitat, as
5 well as putting pump stations on the beach--several;
6 either ten or 20 pump stations. All of which were
7 concluded at the Coastal Commission as well as the City of
8 Carlsbad. Not to be the most environmentally responsible
9 alternative. The existing intake or use of the existing
10 intake both entities found to be most environmentally
11 responsible preferred alternative.

12 Second point, the comment was made that the
13 Surfrider Coastkeepers only had 30 days to review the
14 draft plan. I will remind you that the second draft plan
15 was not on the Regional Board's website for nine months.
16 We received no comments whatsoever except from your staff.
17 And the third draft was responsive to those comments in
18 the fashion we simply added more information, more
19 details. So the plan itself has not changed for almost a
20 year now. There was ample opportunity for comment, and
21 all we did was boast on what was there. So if it was fine
22 before adding more information, not changing the substance
23 of the recommendation shouldn't change the acceptability
24 of that plan. We see no reason for delay. The plan
25 before you is not contrary to your permit requirements as

1 suggested. We met the feasibility requirement of our
2 charge under the permit. We have an opportunity to
3 prepare now a final mitigation plan that will be back
4 before you in the months ahead. If we wait for a perfect
5 solution, we will never see the benefits of this water
6 supply project. This is precisely why the Port of Cologne
7 Act is referred to as a balancing statute. Your charge as
8 a board is to look at the environmental impacts and the
9 need to support the economy and housing and all the other
10 beneficial uses of water supply and balance those two and
11 come to a reasonable decision that protects both. You
12 need to support human life in the area along with the need
13 to protect environment. We think we struck a balance in
14 that regard if the plan moves in that direction.

15 Consistent with Port of Cologne 13142.5B has a
16 feasibility component, and it provides for mitigation
17 after you've exhausted your feasible technology measures.
18 Our plan has exhausted the feasible technology measures.
19 City of Carlsbad EIR, the Coastal Commission decision
20 agree with that. They said there are no additional
21 feasible measures be taken. We are now all focused on
22 mitigation. So what you do by your action today by
23 approving the draft resolution, you bring your staff to
24 the same point with the other two entities are as we move
25 forward with this joint statewide coordination. You say

1 to your staff by conceptionally approving this plan we're
2 pass the mitigation design components. We're focusing our
3 attention now on how we mitigate, and make sure we have
4 enough mitigation. We've got the right site. The
5 implementation scheduled the planning consistent with --

6 MR. WRIGHT: Will you wrap up, Mr. MacLaggan.

7 MR. MACLAGGAN: Yes, Mr. Chairman, we
8 respectfully request that the board approve resolution.
9 The resolution is before you. Thank you very much.

10 MR. WRIGHT: Mr. King has a question.

11 MR. KING: A question for Mr. Garrett. Did you
12 have a black line comparison to the second and third draft
13 of the plan?

14 MR. GARRETT: No, I don't.

15 MR. MACLAGGAN: Mr. MacLaggan. Just a comment
16 on the black line. Black line will not be helpful because
17 one of the comments we got from your staff was to provide
18 greater clarity as to how we addressed each of the
19 elements on statute. We did a wholesale reorganization on
20 the plan breaking it down into new chapter format. So if
21 I did a black line it would look like it's an entirely
22 different report. It's just we took information and
23 reorganized it in its presentation. Well, there isn't a
24 tremendous amount of new information. I can highlight
25 what's new between the two drafts if that would be

1 helpful. If you did a side by side black line, it would
2 look like we did a wholesale rework of the report. It's
3 just reorganization is what that amounted to.

4 MR. ANDERSON: Just a real quick question.

5 On your analysis you analyzed an awful lot of
6 minimization technologies and some of those are new. As
7 this process moves forward, you may discover some actually
8 more feasible at a later date. I would encourage you to
9 consider using them as they become feasible.

10 My second thing, some analysis of the reclaim
11 water option would make me feel a lot happier, but
12 everything else it generally supports.

13 MR. MACLAGGAN: May I just make one quick point
14 regarding Dr. Anderson's comment about future
15 technologies?

16 MR. WRIGHT: You're pushing limits here.

17 MR. MACLAGGAN: I understand. I just want to
18 make sure the board understands.

19 What your staff is working on is an interim
20 solution on the powerplant continues to operate. We are
21 inherently limited under those conditions. The powerplant
22 ceases altogether all the new technologies are back before
23 you, and your staff has full authority to require of us.

24 MR. WRIGHT: Another question, Mr. MacLaggan.

25 MR. RAYFIELD: Yeah, I'm sorry.

1 That's the way I understood the report. And I
2 learned today that you're Guaranteeing the price or
3 someone is guaranteeing the price of the water produced by
4 the plant to be the same as imported water cost. And I
5 find those two statements that, you know, that we are back
6 to ground zero and technology and the like when the
7 powerplant shuts down, but yet you have a financial cap,
8 if you will, on the cost of the produced water. How do
9 you do that?

10 MR. MACLAGGAN: That's our inherent risk as a
11 developer of this project to make sure we continue to
12 produce water at an affordable price. If the technology
13 is required of us ten years from now is deemed available
14 and feasible, presumably it has a reasonable cost to
15 implement as well and we won't be able to afford to do it.
16 Recognizing again that this statute has feasibility
17 component. Part of that is cost. Part of it is that does
18 the technology work? Is it environmental --

19 MR. RAYFIELD: Sure. Lots of issues there.

20 MR. MACLAGGAN: We think that that's part of the
21 question that will be before you when you require us of
22 that. Is it affordable in a reasonable sense. That
23 doesn't mean our enterprise has to continue to be one that
24 is profitable from your perspective.

25 MR. RAYFIELD: As I understand the conditions.

1 MR. MACLAGGAN: There is an upper limit as to
2 what the cost would be we consider feasible.

3 MR. RAYFIELD: As part of that guarantee, if you
4 will, competitive price for your water versus the imported
5 water? Is there a substantiation in there from your group
6 that helps with that?

7 MR. MACLAGGAN: There is. And just so you
8 understand. What we have committed to do is never charge
9 more for the water. The price of the awarded purchase of
10 imported water plus an increment of \$250 per acre foot
11 that is available to our customers from the Metropolitan
12 Water District to offset a demand on the imported water
13 systems and substantiate to encourage things just like we
14 are trying to do.

15 MR. RAYFIELD: So the matter is substantive into
16 the \$250 per feet.

17 MR. MACLAGGAN: For the first 25 years of
18 operation.

19 MR. RAYFIELD: So when we are talking about caps
20 too, I heard someone say that there is a cap on the
21 mitigation measure costs.

22 MR. MACLAGGAN: No, sir, that was a misinterpretation
23 of our report. We recognize that we have an obligation to
24 mitigate to the extent feasible. We've identified via --

25 MR. RAYFIELD: In that case feasibility being

1 technical and not financial?

2 MR. MACLAGGAN: Feasibility being the
3 information that Mr. Mayer walked you through showed you
4 how we arrived at the 37 acres of restoration required of
5 the project. Now it's our challenge to go find a site
6 where we can do that in a affordable fashion. I don't
7 have any expectation that that number is going to go down.
8 If anything, it's going to go up. We did not set -- we
9 suggested in the State Land's letter we set a \$3 million
10 cap on mitigation. I can assure you we are going to pay a
11 lot more than \$3 million dollars mitigation for we have
12 not set any financial. For limits, we just said our
13 commitment is to provide at least 37 acers to what was
14 restoration. And the location to be determined, we
15 identified feasible sites we think that can occur.

16 MR. RAYFIELD: I understand that. But somewhere
17 during this session today I did hear the statement that
18 there was a cap on mitigation.

19 MR. MACLAGGAN: It was suggested by the State
20 Land's Commission staff, and that was incorrect
21 interpretation of our proposal.

22 MR. RAYFIELD: Thank you.

23 MR. WRIGHT: Mr. Kelley.

24 MR. KELLEY: Just to clarify the agenda notice
25 language, the words "technical report" refer to the March

1 sixth revised flow entrainment/impingement minimization
2 plan. They do not refer to the staff technical report
3 dated April fourth, that's a different document.

4 And I would just refer the staff's
5 recommendation over to Mr. Robertus.

6 MR. RAYFIELD: Are you saying we made an error
7 on the notice and called the document by the wrong name;
8 is that what you're fundamentally saying?

9 MR. KELLEY: I guess we consider it a technical
10 report. You could call it different things.

11 MR. RAYFIELD: Yeah, but there was something
12 called a technical report out there or they came out? I'm
13 just trying to get this --

14 MR. KELLEY: Yeah, later a staff technical
15 report did come out.

16 MR. RAYFIELD: But that's not what it meant by
17 the words --

18 MR. KELLEY: We also refer to the plan as a
19 technical report. Maybe that was a misnomer.

20 MR. RAYFIELD: Okay, one other question. We had
21 a February 19th letter that raised issues in question and
22 so forth. Was every one of those issues addressed to your
23 satisfaction?

24 MR. KELLEY: Not at this time. And I will say
25 one additional comment on that. And that although

1 Poseidon provided all the additional attachments and
2 specific data based on our review over the last 30 days,
3 since that has come in, it has raised a couple of
4 additional questions that we didn't include in that
5 February letter as well. Because really now we can see
6 the actual data, but then it raises questions on how they
7 use that data to come up with the actual number. So
8 that's still a question for us. We'd like clarification
9 for that.

10 MR. RAYFIELD: Thank you. One last question.

11 Are you convinced that what we have in front of
12 us in fact represents the best available technology?

13 MR. KELLEY: I would say for the cooperation where
14 the Poseidon project is in conjunction with the cooling water
15 discharge and the powerplant has its own requirements for the
16 best available technology and they're using the same ones, then
17 I would say yes. But once that ends and ceases, then I would
18 say we'd have to reevaluate it.

19 MR. RAYFIELD: Mayer question mark after that.

20 So you're okay with the best available
21 technology, but there's still outstanding issues that need
22 clarification analysis or whatever?

23 MR. KELLEY: That's my understanding.

24 MR. RAYFIELD: Thank you.

25 MR. WRIGHT: Mr. King.

1 MR. KING: You stated earlier that 40 percent of
2 the time the intake water from the power station is below
3 what would be the 300 million gallons per day. How far
4 below.

5 MR. KELLEY: Gosh, I didn't get a number on the
6 minimum and maximum. I'd have to look that up and see if
7 I could get that. Sometimes with the plant it goes down
8 fairly low, so it could be, you know, maybe 90 percent
9 they would need to makeup, so it does fluctuate throughout
10 the day and depending on the power needs of the regions.
11 Maybe Mr. MacLaggan has some details on here.

12 So there are times when the actual flow goes to
13 almost zero. I think those are times when maybe they have
14 to do some work on the plan or they have to shut it down
15 for heat treatment and things like that, so with those do
16 occur.

17 MR. KING: What it means zero is correlated with
18 40 percent of the time or zero is one day out of the year?

19 MR. KELLEY: It's just a short period of time.

20 MR. KING: Cause 40 percent of the time is quite
21 a bit of a time. And I'm wondering how far below is the
22 typical level when it's below the 300 MGD.

23 MR. KELLEY: It looks like somewhere between 100
24 and 200 MGD would be the majority of the time when a
25 coastal level, as looking at the graphs.

1 MR. WRIGHT: Mr. Geever, did you have a table to
2 share some light on that. Why don't you give it to
3 Mr. Kelley.

4 MR. KING: Couple other questions quickly. This
5 is part of what we were covering today. But is it true
6 that the powerplant shuts down and the desal plant doesn't
7 happen, does the lagoon just lies fallow and turns back
8 into its natural state which is not a lagoon?

9 MR. KELLEY: Most likely if there is no other
10 agency or project that would keep it open then it would
11 just revert back to its natural state or original state.

12 MR. KING: Can we kind of back to the issue of
13 the notice. More the substantive issue of the notice
14 here. The changes between the second and third draft; a
15 lot of restructuring or would you say that degree of
16 substantive changes between those two drafts can --

17 MR. KELLEY: Yeah. I would say as mentioned earlier
18 that the majority of it was providing detailed data to support
19 what was in the first draft and the second draft. So it gives
20 us the data so that we can go look and see if the amount of the
21 mitigation is comparable to what impacts they're actually
22 having. And we're still really evaluating that. It is
23 difficult to do in 30 days.

24 MR. WRIGHT: I think we're ready to turn this
25 over to Catherine.

1 MS. GEORGE: I may want to respond briefly to
2 some of the legal points raised.

3 Would you like that before you hear from
4 Mr. Robertus.

5 MR. WRIGHT: Yes.

6 MS. GEORGE: Just on the legal notice issue
7 raised by Coastkeeper. I do think that there's been
8 adequate legal notice for this proceeding. And I realize
9 that the technical report by staff was not circulated
10 until the fourth. There is certainly an opportunity for
11 oral comments and also late comments. Written comments
12 are routinely received when there's a good reason for
13 that. So I think that's been adequately addressed:

14 I don't think that -- if you go forward and
15 approve the tentative resolution with some changes that
16 you requested earlier today, I don't think that you are
17 precluding the kind of joint agency coordination process
18 referred to in Water Code Section 13225. I think you're
19 allowing that to go forward in meeting that requirement.

20 With regard to the Riverkeeper case, I agree for
21 the most part with Coastkeeper and with a Poseidon
22 representative that the Riverkeeper two case does not
23 apply directly to the desalination facility. I do agree
24 that you're required to comply with Water Code Section
25 13142.5 in making a final approval of the plan that you

1 receive from Poseidon. And you're not making that final
2 approval today.

3 Let's see. I wanted to point out that I
4 disagree with Coastkeeper in the context of Section
5 13142.5 that all mitigation is considered after the fact
6 restoration. That was the subject of the Riverkeeper
7 case. The mitigation can constitute minimization and meet
8 that requirement in Section 13142.5. At least at this
9 point, there was a recent court of appeals -- state court.
10 decision whereas the wetlands that exclusively recognize
11 that. Came after Riverkeeper two. Although that case has
12 been with the Supreme Court. The California Supreme Court
13 has granted petition for review. So we'll see we may have
14 more clarity in the future.

15 And I did want to just remind you that the
16 permit provides that you can direct Poseidon to modify
17 their plan in the future, so you retain that right. And
18 also that there will be a need to comply anew with Section
19 13142.5 at the Point Encina Power Station completely
20 ceases operation.

21 And then lastly, it looks like one of the
22 representatives, I think, Mr. Garrett mentioned that the
23 Regional Board has primary jurisdiction over all issues
24 regarding impingement and entrainment. I can't confirm
25 that that statement is completely accurate. Although I do

1 agree that the Regional Board has the authority to
2 implement and comply with Section 13142.5.

3 If there are any questions, I'd be happy to
4 answer them.

5 MR. ANDERSON: I think you did address, I didn't
6 quite catch it, the feasibility versus whether it's
7 economically feasible. There was some decision about that
8 or just flat out feasible. And your opinion was?

9 MS. GEORGE: I didn't express an opinion on
10 that. I probably don't have one.

11 MR. ANDERSON: Okay.

12 MR. WRIGHT: The economic feasibility is not
13 before us at any rate. I mean, we haven't gone into any
14 kind of discussion on that aspect of it looking at
15 subsidies and so on and so on.

16 Mr. Robertus.

17 MR. ROBERTUS: I recommend action today to
18 approve the plan. And I know that the technical report
19 was misconstrued. I think that the plan may be better
20 expressed as a process. I'm concerned that if the board
21 doesn't take action today it will exacerbate any attempts
22 to get the right parties together and to take action to
23 drive this to a conclusion. There are about 40 months
24 left on the permit that this board has already adopted.
25 There is virtually no action that you take to approve or

1 disapprove this fully opposition study that pertains to
2 the ability to the discharge for the next 40 months. As
3 you've heard, it will make a difference when they start
4 the period subsequent to that when the Poseidon -- when it
5 comes to pass, if it comes to pass, is operating in a
6 stand-alone mode. Then the question of minimization and
7 mitigation will be brought fully to bear on the Poseidon
8 facility. And the other consideration of 316B wants to
9 (inaudible) entrainment that's taking place in the
10 facility at this time. That complicates the issue while
11 they're co-operating an electrical powerplant with one
12 MPDS permit and then the perspective -- and the Poseidon
13 facility operating with another MPDS permit. That's the
14 subject of the flow minimization issue today.

15 So my practical recommendation is to adopt this
16 so that the process will move forward. I am not convinced
17 that the parties will come to the table as highlighted in
18 the schedule that Poseidon had. We have a tentative
19 resolution with an errata sheet.

20 MR. WRIGHT: Do you have a copy of that?

21 MR. ROBERTUS: Yes, I have a copy. I will pass
22 that at this time and request that you review it. My
23 recommendation is you adopt it with the errata.

24 MS. SCHNEIDER: We will be approaching if we go
25 that route.

1 MR. WRIGHT: Members of the board, have you had
2 a chance to digest the errata sheet in the light of
3 extensive testimony we heard today and as well as the
4 reading of the voluminous materials?

5 MR. GARRETT: Mr. Chairman, would there be an
6 opportunity for the applicant to respond to one of the
7 items in errata that we haven't seen before?

8 MR. WRIGHT: Yes. But make it brief please.
9 We'll also hear from Ms. Solmer.

10 MR. GARRETT: My name is Chris Garrett, a lawyer
11 that works for Poseidon. I wanted to just address Item C
12 in the errata. You may vaguely recall my statement that
13 the board has primary jurisdiction on these issues. That
14 both the Water Code and the Coastal Act give the Water
15 Code -- give the Water Board responsibility. And my
16 concern is that this might be misinterpreted as requiring
17 approval from other agencies and/or their staff before the
18 Regional Board could take action.

19 So I would suggest that deletion of Item C or to
20 have that rephrased so that it's considering of the input
21 from participating agencies. Perhaps make it clear with
22 the agencies or their staff as well. But as phrased here,
23 my concern is that this would require before the Regional
24 Board could act that you would have to have the other
25 agencies approve it, and we would not want to get stuck in

1 that loop. Nor do we think it's consistent with the
2 primary jurisdiction of the board.

3 MR. WRIGHT: We need to run it by our
4 attorney.

5 MS. GEORGE: I'm not familiar with the Coastal
6 Act provision that Mr. Garrett -- the specific provision.
7 I can't review it to determine what it says. I think the
8 wording there may be some way to modify it so it addresses
9 his concern and still allows you to achieve the kind of
10 joint coordination that you're looking for. So I'm trying
11 to think while I'm talking about some alternative
12 language. Although, I don't think consensus necessarily
13 implies approval by other agencies.

14 MR. ROBERTUS: Would coordination as required by
15 the supported code and section?

16 MS. GEORGE: That would be terrific, yes.

17 MR. WRIGHT: Consensus has changed to
18 coordination.

19 MR. RAYFIELD: And as required by the Port of
20 Cologne. It's siting that specific section.

21 MS. GEORGE: So C would read: Coordination
22 among participating agencies for the amendment of the plan
23 as required by Section 13225 of the California Water
24 Code.

25 MR. WRIGHT: What's the section again.

1 MS. GEORGE: 13225.

2 Ms. Solmer.

3 MR. GARRETT: You're catching us off guard with
4 these last minutes. I guess the one thing I want a little
5 bit of clarification. The other parts of the revised plan
6 that do seem final, you know, their conclusions, studies
7 all that other stuff. That is a final act?

8 MR. WRIGHT: I don't say it's final at all.
9 This is a process.

10 MR. KING: You still have the extensive range of
11 comments on the February 11th letter. We haven't signed
12 off on any of those.

13 MR. GEEVER: What are we approving. I'm not
14 sure how this advances anything, and why you're approving
15 anything.

16 I guess I'd like to make one comment about --
17 without identifying what the best design of the facility
18 is and what the best available technology to meet that
19 design are prior to, you know, in contemplation of the
20 cooling water intake not being available, you're allowing
21 a design that would preclude the use of the best available
22 technology for -- actually, just eliminating the intake
23 and mortality of marine life. So I mean, I think it
24 requires looking a little bit ahead into the future, and
25 ensuring that the design of the facility, especially a

1 \$300 million facility, is designed in a way that allows
2 the use of the best available technology when that becomes
3 required. And I guess I take a little bit of --

4 MR. KING: Could you limit this to the errata.
5 Look at what's blacked line.

6 MR. GARRETT: Okay.

7 MS. SOLMER: I think we can resolve this. The
8 concern is under the number two of the via resolved the
9 San Diego Board hereby conditionally approves the plan. I
10 think that that's confusing. Because after that you said
11 that you're going to require in six months an amendment to
12 this plan. So, if we can change number two to say that
13 we -- that the board hereby approves this process that's
14 been described. What we don't want what happened today
15 where different people are referring to different
16 documents of the same thing. And, again, you know, please
17 don't insult our intelligence that you provide a document
18 called a technical report and then you say actually this
19 plan that we provided is called a technical report and we
20 didn't mean to submit this. So I think that if we can
21 change that number two to say that we're conditionally
22 approving this process with the errata, that would make
23 sense and, you know, put everyone on the same page and
24 would not delay anything. Then we have the same six month
25 period that we're going to come back and we're certainly

1 okay with the consensus in the errata.

2 MS. GEORGE: What about the San Diego Water
3 Board hereby conditionally approve the plan subject to the
4 following conditions being satisfied.

5 MS. SOLMER: I think the concern there is you're
6 approving a plan that has a lot of information; 300 pages
7 of information. And I don't think that you can condition
8 out all of those different things. I think rather than
9 conditioning out what you don't want to approve, just in
10 plain language just say what you are approving which is
11 this process which I think is otherwise understood by the
12 other resolution, and then you're going to come back with
13 the information that hasn't been provided in that six
14 month period.

15 MR. KING: Just get a last round what we are
16 doing here. Let's look at one errata at a time. We
17 propose specific changes to this particular section here.
18 And we've proposed changes to Section C. Otherwise nobody
19 has commented on there's a change in line one of paragraph
20 three. Shall submit to the Regional Board executive
21 officer for the approval by the Regional Board. And
22 nobody's commented on that change?

23 MS. SCHNEIDER: That's correct.

24 MR. KING: And the additional changes and the
25 following additional concerns that are listed in A through

1 E. And then paragraph four we've stricken through
2 executive officer so that the subsequent changes will come
3 back to the board instead of the executive officer. So if
4 question can hammer out any changes --

5 MS. SCHNEIDER: I don't have any changes on
6 that.

7 MR. KING: We are talking about different things
8 at a time.

9 MR. WRIGHT: If we can zero in on the Errata
10 sheet.

11 MR. RAYFIELD: I do have one concern on the
12 errata sheet. Not the Regional Board part, but the last
13 sentence. In paragraph three that says shall resolve the
14 concerns identified in the Regional Board's February 19
15 letter.

16 And we heard from Brian earlier that there are
17 additional concerns that they've uncovered. And I don't
18 know that there's items listed as A, B, C, D, and E. I
19 think -- are they, Brian?

20 MR. KELLEY: Yes, that was the intent.

21 MR. RAYFIELD: And is that the full set?

22 MR. KELLEY: I believe so.

23 MR. RAYFIELD: I guess that's okay.

24 Also Item D, appropriateness of mitigation
25 sounds really open to interpretation and rather vague to

1 me. I'm not sure what we mean by that. And if we could
2 remember what we meant by that six months from now.

3 Can you elaborate what we're measuring here. I
4 mean, this is kind of -- we're setting a standard or
5 measurement. We're going to measure for appropriateness,
6 but what are we really going to look at.

7 MR. WRIGHT: Mr. King, do you have a --

8 MR. KING: I do. The more legal term of art is
9 adequacy of mitigation. Appropriateness. I agree with
10 the adequacy is it sufficient.

11 MR. RAYFIELD: Is it sufficient. That was the
12 word I was looking at too. So that would work for me.
13 And actually that's to the extent of my --

14 MR. WRIGHT: Sufficiency.

15 MR. RAYFIELD: My comments are sufficiency.

16 MR. KING: No, adequacy.

17 MR. WRIGHT: Is George adequacy?

18 MS. GEORGE: Okay.

19 MR. WRIGHT: Any other comments about the errata
20 sheet?

21 Do we need to -- I guess we need to take some
22 action on -- well, before we do that I really think that
23 we ought to deal with that as part of the larger motion
24 and take a look at the resolved section of the board, the
25 order.

1 I agree with the concern that's been raised
2 about Item two under the resolve section. That's preceded
3 by a statement that says the plan dated da-da-da does not
4 include specific implementation provisions as required in
5 section so on, so on. And does not as yet resolve the
6 concerns noted in the Regional Board's February 19, 2008
7 letter. Poseidon Resources.

8 And then in the next sentence Item two it says
9 the San Diego Water Board hereby conditionally approves
10 the plan. So I have a hard time resolving those two
11 paragraphs, and that's why I think that we're really
12 talking more about a process. And even then I have some
13 questions about the process. But it's a little -- to call
14 it a plan, when it's not a plan. I guess it's a plan to
15 plan a plan.

16 MR. KING: If I could jump. We should read the
17 whole resolution section together and try to read it
18 harmoniously here.

19 If -- it says specifically why in paragraph one
20 that the word "conditional" is in paragraph number two.
21 And in paragraph three and four we say how the conditions
22 were to play out. Three gives exactly what the condition
23 is. And four is not related to the conditional section of
24 it. But there's no such thing right now as a define term
25 of a process. I don't want to throw another word in there

1 as something new, even though we are trying to split the
2 baby here and make everybody happy. But it's adding
3 vagaries into an operative document here. Three
4 paragraphs together say something clear, if you read it
5 together for harmony. There's a reason why we're
6 attaching conditions to an approval. This is what the
7 condition is. And it's a conditional approval and this is
8 what the condition is.

9 MR. WRIGHT: I hear what you're saying. I'm
10 just still uneasy about how we're throwing around the use
11 of the word "plan." Even if I'm reading all of these
12 items I wonder if --

13 MS. SCHNEIDER: But title of the resolution.
14 That means we need to change the title of the resolution
15 if we don't. It says it's conditional -- the title is a
16 tentative resolution in a number of conditional approval
17 of revised flow entrainment and impingement minimization
18 plan. So we would need to change the title if we're not
19 going to approve the plan, the minimization plan.

20 MS. RITSCHER: I'd like to jump in and just
21 agree with Mr. King. I don't think at this point no one
22 knows what the process means and what it's referring to,
23 so you can't just say we approved the process. We haven't
24 defined what that is. I think if there is going to be an
25 approval, it is appropriate to approve what has been put

1 before us. The latest version of the document -- approve
2 this plan except for this, this, and this. Or subject to
3 this condition and this condition. And that's I believe
4 what is before us. Is it written the best possible way?
5 I mean, maybe there could be some slight words missing. I
6 think Ms. George suggested slight words were missing from
7 Item number two.

8 I agree with Mr. King you can not simply approve
9 something that we have no definition of.

10 MR. KING: On that note, I'd like to make a
11 motion to adopt the errata sheet as written with the
12 exceptions that the word "consensus" in Paragraph three
13 Subsection C change to coordination.

14 MS. RITSCHER: Coordination among.

15 MR. KING: The word "consensus" is stricken
16 through and substitution the word "coordination" is
17 written. Inserted at the word plan as required under
18 Section --

19 MS. SCHNEIDER: 13225.

20 MR. KING: Is it 1322.5?

21 MS. GEORGE: No, 13225.

22 MR. KING: 13225 of the California Water Code.
23 The word appropriateness stricken from Subsection D and
24 change to adequacy, and otherwise adopted as written.

25 MS. RITSCHER: Second.

1 MS. GEORGE: Third. You're voting on the
2 errata?

3 MR. KING: The errata.

4 MS. GEORGE: That would be incorporated into a
5 motion eventually?

6 MR. KING: Correct.

7 MS. SCHNEIDER: I second to that.

8 MR. WRIGHT: Is there a motion made by Mr. King
9 in the section -- made by Elizabeth Schneider.

10 I'm getting groggy here.

11 Is there a discussion to the motion? All those
12 in favor of the motion All say aye.

13 MR. ANDERSON: Aye.

14 MR. KING: Aye.

15 MR. WEBER: Aye.

16 MR. RAYFIELD: Aye.

17 MS. RITSCHER: Aye.

18 MS. SCHNEIDER: Aye.

19 MR. WRIGHT: The motion is approved
20 unanimously.

21 Now, we're ready for vote on the tentative
22 resolution as modified with the errata sheet. So is there
23 a motion to approve the tentative resolution number
24 R9-2008-0039?

25 MS. SCHNEIDER: I move to conditionally approve

1 the Resolution Number R9-2008-0039 as amended.

2 MR. RAYFIELD: Second.

3 MS. GEORGE: Can I make a clarification. I
4 believe you said conditionally approve the resolution.

5 And it should be that you approve resolution --

6 MR. KING: Adopt.

7 MS. GEORGE: Adopt the resolution.

8 MS. SCHNEIDER: Accepted.

9 MR. ANDERSON: Second.

10 MR. WRIGHT: Are you speaking to the motion?

11 MR. RAYFIELD: Well, I'm speaking to the motion,
12 yeah. Actually, I share your concern about approves the
13 plan. And a concern that was mentioned by some of our
14 comments. What we're really doing is accepting this plan
15 to forward it on to a joint agency meeting and so forth.
16 And I'm wondering if the person that made the motion
17 would -- if we could change approve, because we're really
18 not we are expecting some additional stuff, to accept the
19 plan. A little different twist. And I don't mean to --

20 MS. SCHNEIDER: Do you need approval on the
21 resolution, John? That was my motion to approve the
22 resolution.

23 MR. RAYFIELD: I was just talking about a
24 wording change in the resolution that we're approving.

25 MR. KING: Is there a vote on this motion?

1 MR. WRIGHT: That is the motion.

2 MS. SCHNEIDER: No, it's discussion. I'm asking
3 a question before I --

4 John, did you ask us to approve the resolution
5 today?

6 MR. ROBERTUS: Yeah, the word -- operative word
7 I believe is "approve." That's in the language of the MPS
8 permit. The word "approve."

9 MR. WRIGHT: And you're simply offering an
10 editorial change.

11 MR. RAYFIELD: Well, actually I think it's more
12 than an editorial.

13 MS. SCHNEIDER: We either approve or deny the
14 resolution. So I motion to approve, and he second it.

15 MR. KING: A motion to call the question.

16 MR. WRIGHT: The question has been called for.
17 My inclination is not to support the resolution. I am
18 continued to be concerned about the word "plan." And I'm
19 also concerned that it may appear that we are approving
20 the plan that presumably is going to be considered by a
21 number of other agencies, and it makes us look as though
22 we're very supportive of the plan, and I don't think
23 that's the case at least. At least I don't feel the plan
24 is ripe enough, let's put it that way, to receive our
25 approval.

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Any other comments?

MR. KING: I call the question.

MR. WRIGHT: The question has been called for all those in favor say aye.

MR. ANDERSON: Aye.

MR. KING: Aye.

MS. RITSCHER: Aye.

MR. WEBER: Aye.

MS. SCHNEIDER: Aye.

MR. WRIGHT: Those against say no.

MR. RAYFIELD: No.

MR. WRIGHT: Motion carries five to two.

MS. RITSCHER: And there were no extensions?

MR. WRIGHT: No extensions, no.

Well, there being no other matters motion to adjourn. We have a motion to adjourn. We are adjourned.

(End of partial transcript)

REPORTER'S CERTIFICATE

I, GIDGETTE NIEVES, CSR NO. 10142, A CERTIFIED SHORTHAND REPORTER FOR THE STATE OF CALIFORNIA, DO HEREBY CERTIFY:

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Gidgette Nieves
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FOR THE STATE OF CALIFORNIA

A				
abbreviate 64:22	103:25 104:4	37:19,23 39:22	77:19 78:19 82:5	128:8
ability 19:3 31:23	110:4	41:2 44:4 91:9,10	90:5 103:15	agreement 51:1
118:2	act 10:13,18 36:4	91:12 106:18	after-the-fact	52:16 91:2
able 16:4,9 19:13	36:20,21 94:24	111:22 115:13	98:14	agrees 102:18
24:2 31:6 39:23	98:20,21 99:23	addresses 47:14	agencies 11:15,15	agricultural 64:24
40:2 45:13 61:2,8	103:4 105:7	120:8	19:25 24:25 25:7	65:2 66:3 79:18
72:6 74:14 75:20	119:14,24 120:6	addressing 40:8	36:2,15 37:4,10	agriculture 73:18
87:15 108:15	121:7	59:1	37:12 40:14	Agua 8:6 13:13
abnormally 28:8	acted 87:12	adequacy 20:12	41:19 45:2 49:13	24:3,13,16,21
absence 9:25	action 15:1 16:24	55:8 125:9,10,16	49:23 53:3,10	25:4,11 26:5,7
absent 26:10	19:10 36:16	125:17 128:24	55:2,21 64:23	27:1 28:14,18,20
absolutely 19:4	47:13,19 54:23	adequate 93:21	66:9,21 67:12	35:8 40:16 41:16
93:8 103:20	56:1 67:25 74:21	103:22 115:8	73:10,10 75:1	41:20 43:20 44:5
abundance 101:13	89:7 105:22	adequately 55:10	78:2,8 79:25	47:17 48:13,16
abundant 73:19	117:17,21,22,25	85:23 115:13	82:11 84:25	48:19,19 49:2,3
Academy 26:8	119:18 125:22	adjourn 132:16,16	85:14 89:24 90:2	49:17 50:10 58:3
accept 12:15	actions 90:2	adjourned 132:16	94:13 97:7 103:6	61:18,25 64:7
130:18	actively 27:17 68:3	admission 88:15	119:17,21,22,25	79:15 80:9 101:9
acceptability	activity 20:23	admitted 54:19	120:13,22 131:21	ahead 14:21 61:21
104:23	acts 14:14	adopt 41:4 55:16	agency 12:7 17:6	61:22 84:22
acceptable 74:15	actual 17:2 23:18	66:14,24 102:16	21:4 36:3 38:3,6	85:24 95:24
Accepted 130:8	25:1 95:5,8 112:6	118:15,23 128:11	49:11 52:19,21	105:4 121:24
accepting 130:14	112:7 113:12	130:6,7	55:1 64:22 65:13	aligned 93:12
access 19:8,13	add 40:6 63:2	adopted 9:7 10:8	66:4 85:2,9 89:21	alignment 74:22
accomplish 68:25	64:15 69:1 98:18	117:24 128:24	114:10 115:17	allow 14:24 37:11
account 57:15	98:19	adoption 7:8 9:14	130:15	63:13,20 74:24
accounting 23:9	added 104:18	13:5 66:11	agenda 1:6 2:6	83:6
accounts 78:8	adding 18:3	adult 31:14	6:23,24 7:10,12	allowed 25:18
accurate 94:15	104:22 127:2	advances 121:14	7:17,21 12:10	allowing 61:23
116:25	addition 29:4	advantage 63:18	77:7 85:16 87:3	92:11 115:19
acers 58:5 110:13	67:13	adverse 10:16	87:11 88:1,5 89:9	121:20
achieve 69:2 82:12	additional 7:16	69:23	102:1,3 110:24	allows 120:9 122:1
120:9	18:4 25:4 29:5,6	advisory 74:9	agendized 102:5	alternative 12:8
achieving 79:8	76:22 82:22	affect 34:16 85:18	aggressive 42:8	15:17 22:16,19
acknowledge	105:20 111:25	affluent 8:5	aggressively 59:24	22:22 38:4 42:3
81:14 91:1	112:1,4 123:24	afford 83:4 92:8	62:20	76:10 77:5 89:1,2
acknowledged	123:25 124:17	108:15	ago 30:5 44:13	98:5 101:16
90:25	130:18	affordable 82:15	71:16 72:24 79:5	102:15 104:9,11
acre 29:1,3,8 51:11	Additionally 19:14	108:12,22 110:6	87:6 96:8	120:11
57:13 109:10	78:7	afforded 81:18	agree 16:11,15	alternatives 12:8
acreage 32:1	address 23:6 26:20	afternoon 17:15	36:6 37:10 38:22	35:9 38:11 41:9
acreages 33:13	28:3 39:17 40:2	19:23 42:23	39:11 68:11 87:4	41:12,24 61:3
acres 25:12 33:7	48:11 92:2,2	50:17 51:23	97:11 102:17	76:13
33:16,22,24	101:21 117:5	54:14 56:21	105:20 115:20,23	altogether 21:19
34:13 35:14	119:11	58:15 62:6 72:14	117:1 125:9	107:22
	addressed 20:1,24		126:1 127:21	amended 47:11

130:1	102:24 117:4	16:25 17:1,6,8,9	57:16	23:14 33:22 34:3
amendment 13:9	answered 38:5	18:2 19:15,22,23	April 1:16 2:16 6:1	83:18
14:17,21 120:22	anticipation 20:2	25:10 36:11 37:9	7:12,15,19 87:23	assuming 33:20
122:11	anyway 70:25	37:15 38:3,6,6,13	88:7 111:3	assumption 15:15
amendments 13:16	71:10 86:2	38:23 80:12	aquaculture 32:9	89:13
amount 6:20 51:3	apologizes 78:20	82:24 83:2 86:11	Arant 4:21 64:12	assurance 76:24
106:24 114:20	apparently 32:14	88:9,17 89:23	65:11,12,12	assure 46:6 110:10
amounted 107:3	appeal 38:16 69:5	94:2 102:8	area 63:6 68:11,14	assured 51:13
amounts 34:15	appealed 38:15	115:25 116:2	71:23 79:2	assures 70:2,4
100:16	appealing 77:24	119:17 120:13	100:25,25 103:23	ATF 37:24
ample 104:20	appeals 116:9	123:21 127:6,7	105:12	Atlantis 60:16
amply 69:18	appear 28:19	127:16,25 130:20	areas 32:2 45:13	attaching 127:6
Amundi 30:20	69:13 131:19	131:25	71:11 87:6	attachments 7:7
33:10	APPEARANCES	approve 13:6	101:11	112:1
analysis 29:23	3:1	16:13,20 19:6	arguably 98:11	attempted 53:16
39:14 42:2 47:7	appears 8:25	51:23 53:24	argue 67:25	attempts 35:17
91:21,23 97:24	applicable 46:8	58:10 64:1 69:17	argument 94:6	117:21
98:4,13,25 99:8	67:20	74:16 75:24	arguments 53:20	attention 46:18
107:5,10 112:22	applicant 85:21	78:15 81:25 83:5	68:6 85:20	81:8 86:20 106:3
analyze 92:19,20	119:6	85:18 88:14,18	arrived 110:4	attitude 44:21
95:6	applies 91:3 97:12	89:7 94:2 97:3	art 125:8	49:14
analyzed 92:1 93:2	98:12	101:15 106:8	article 71:12	attorney 67:15
107:5	apply 28:21 98:8	115:15 117:18,25	artificial 32:17	70:22 120:4
analyzing 27:4	98:19 102:19,23	119:25 123:3,9	asked 18:11 26:19	attributes 25:19
Anderson 3:4 32:5	103:1 115:23	127:19,25 128:1	40:23 48:6 74:18	atypical 37:21
61:12 72:25 74:2	applying 28:25	128:8 129:23,25	75:19 77:11	augmented 70:6
95:1,9,16 107:4	appreciate 34:22	130:4,5,17,21	asking 131:2	augmenting 54:6
117:5,11 129:13	42:23 53:9 96:15	131:4,7,8,13,14	aspect 117:14	August 9:6 10:9
130:9 132:5	apprehensions	approved 13:16	aspects 8:1 88:18	24:7 62:22
Anderson's 107:14	94:10	19:21 49:1 58:3	assembly 12:12	authority 14:25
and/or 20:8 40:25	approach 11:11	61:8 62:9 90:11	56:20,22 72:1	36:18 37:13 43:1
119:17	16:15 18:20	93:3 94:13	74:11,12,13	52:2,5,18,25
anew 116:18	23:24 68:16 92:4	127:23 129:19	Assemblyman	53:22 57:8,12,21
Angeles 63:10	99:24 100:1,4,8	approves 19:17	56:17	59:14 64:15,21
Angelica 76:4	approaching	122:9,13 126:9	assess 20:6 30:6	65:15,22 74:7
Angelika 5:8 72:13	118:24	130:12	90:14 91:5	107:23 117:1
76:2	appropriate 13:24	approving 38:8,18	assessed 91:4	available 9:17
Angelina 83:21	15:2 98:25	50:11 57:5 62:14	assessing 30:16	10:15 11:22
angle 22:18	127:25	73:24 88:7,8,13	90:11	13:25 21:1,6,13
animals 34:18	appropriateness	97:2 102:5	assessment 12:7	21:19 25:5 37:5
Ann 4:9 45:23 46:1	13:21 124:24	105:23 106:1	24:7 90:10	43:21 47:15 70:2
annual 49:7 57:16	125:5,9 128:23	121:13,14 122:22	associated 22:4	76:18 87:1,1,7
58:6	approval 6:16 9:12	123:6,10 130:24	23:8 78:5	89:11 91:12
annually 57:14	9:20 11:9,12,18	131:19	Association 77:21	92:13 98:22 99:5
answer 13:25,25	12:7 13:10 15:19	approximately 6:8	77:22 78:13 82:7	102:9,10 103:9
41:25 96:19	15:23 16:14,24	8:2 9:4 52:7	assume 23:11,12	108:13 109:11

112:12,16,20
 121:18,20,21
 122:2
 avenue 53:14
 avocado 66:5
 awaiting 97:4
 Award 80:7
 awarded 80:6
 109:9
 aware 41:13 42:6
 43:10,17 51:1
 65:2
 awful 107:5
 aye 129:12,13,14
 129:15,16,17,18
 132:4,5,6,7,8,9
 A8287WQSD(P)
 1:24

B

B 124:18
 baby 127:2
 back 8:17,19 17:11
 17:18 18:2 24:12
 24:16 25:9,23
 26:12 35:16 38:8
 39:3,8,16 40:19
 40:21 41:5 52:3
 65:2 73:5 84:20
 86:10 87:10,17
 97:22,25 105:3
 107:22 108:5
 114:7,11,12
 122:25 123:12
 124:3
 background 7:25
 30:3,23
 backwash 8:11,19
 backyard 77:3
 Badger 5:5 72:12
 72:14,15
 balance 63:18,23
 105:10,13
 balanced 82:12
 balancing 103:7
 105:7

ballots 73:8
 banker 70:22
 Barbara 30:20
 44:14 71:14 72:8
 Barden 64:9,9
 barn 85:18
 based 9:2 12:1
 25:6 47:13 112:2
 basic 20:14,25
 44:16
 basically 27:8 31:9
 55:19 92:6,10
 98:23 103:25
 basis 31:3,6,8
 52:23 100:17
 Batiguitos 49:11
 63:8
 Bay 65:21 74:9
 beach 8:16 104:5
 beaches 66:1 79:17
 80:22
 beacon 98:23
 bear 118:7
 Beauchum 4:12
 52:1,3,4 54:2
 bed 103:25
 began 27:1
 beginning 46:10
 behalf 17:3 42:25
 51:22
 beige 54:22
 believe 26:18 32:8
 33:5 38:5,9 41:2
 52:12 53:7,7,11
 62:10 76:12,15
 78:14 80:21 81:8
 81:22 82:14,22
 89:22 95:21
 99:11 124:22
 128:3 130:4
 131:7
 believes 79:6
 Ben 83:20
 beneficial 25:14
 26:1 105:10
 benefit 23:14

52:20 97:24 98:4
 98:13,25
 benefits 18:23 35:4
 52:21 105:5
 benign 53:11
 Benson 83:22
 best 9:17 10:15
 11:22 21:1,6 37:5
 45:9 47:15,15,16
 70:2 75:22 76:18
 84:5 89:11 90:22
 90:22,22 91:12
 92:13,13 94:24
 98:22 99:1,4,4,5
 99:6 103:9
 112:12,16,20
 121:17,18,21
 122:2 128:4
 better 39:19 59:11
 117:19
 Beyond 68:22
 bid 57:10
 bigger 31:15 32:7
 Bill 69:9,9 70:14
 billed 77:25
 billion 65:5
 biology 30:3
 Biona 27:18
 bird 65:25
 births 71:5
 bit 15:13 84:14
 86:22 113:21
 121:5,24 122:3
 black 106:12,16,16
 106:21 107:1
 blacked 122:5
 blenie 32:6
 board 1:1 2:1,17
 3:4 6:12 7:2,11
 7:15 9:5,6,12
 10:22 11:3,12,24
 12:1,15,17 13:10
 13:14,24 14:1,2
 15:1,18,22,25
 16:19,23 17:2,8
 17:16,24 18:4,19

19:1,6,11,17 20:4
 25:9 27:19 30:2
 30:15 36:3,16,21
 36:22 37:3,13
 38:14,17 39:3,6,8
 40:13 41:3 43:2
 45:6 46:1,20
 47:13 48:1,4,15
 52:4,5 53:22 54:5
 54:11,15 59:20
 60:11,12 64:20
 65:15,18,19,20
 65:23 67:4 69:12
 69:16 70:1 72:15
 72:22,24 74:3,7
 75:11 76:4 77:22
 79:5 82:6,19,25
 86:15 87:12,19
 88:14 90:24 91:2
 91:4,5,8 92:17
 95:5 99:17
 101:25 102:7,11
 102:14,16,24
 105:8 106:8
 107:18 116:23
 117:1,20,24
 119:1,13,15,18
 119:24 120:2
 122:9,13 123:3
 123:20,21 124:3
 124:12 125:24
 126:9
 boards 48:25
 70:24
 board's 7:25 20:1
 81:14 104:15
 124:14 126:6
 boast 104:21
 boating 25:18
 bodies 23:4
 body 25:12 29:18
 32:1 34:10 65:16
 bonds 73:8
 book 27:9
 Borak 5:17 83:15
 84:18 90:5,5

95:12,19 98:16
 98:18
 born 99:6
 Bostad 4:19 64:11
 64:14,14
 bottom 100:12
 104:1
 bound 45:2
 boundaries 43:24
 Braden 81:1
 break 83:10
 breaking 106:20
 breakwater 32:15
 breezing 55:7
 brevity 22:22
 51:25 54:3
 Brian 6:13 124:16
 124:19
 brief 6:7,22 7:23
 27:23 28:2 54:19
 58:18 59:12
 60:18 61:11
 83:12 101:19
 119:8
 briefly 26:20 37:18
 68:16 97:11
 103:14 115:1
 bright 32:13
 bring 17:5,10 25:8
 35:16 40:19 73:8
 74:21 77:2 86:9
 105:23
 bringing 45:11
 broad 22:6
 brother 80:19 81:1
 brought 27:19
 46:24 56:16 75:7
 118:7
 Bruce 83:18
 Bud 4:8 42:23
 Buena 49:11
 build 79:10 90:6
 building 19:7
 built 48:15
 bullet 15:12
 burdened 70:11

Bureau 7:20 74:1,3
 burrows 31:14
 business 7:18
 71:21 79:20,23
 79:24 82:11
 businesses 53:4
 bylaw 69:3
 B-a-d-g-e-r 72:16

C

C 119:11,19
 120:21 123:18
 124:18 128:13
 CA 10:7
 calculations 12:5
 55:12
 CalFed 74:9
 California 1:1,15
 2:1,15,17,20 6:1
 9:15 11:2,13
 12:12,13 35:12
 35:21 44:10,18
 45:14 51:21 65:1
 71:25 74:8 81:11
 83:1 87:21 99:22
 116:12 120:23
 128:22
 Californians 44:24
 call 62:21 81:2,12
 94:4 97:18
 111:10 126:13
 131:15 132:2
 Callahan 83:21
 called 26:7 30:8
 31:13 48:19 94:5
 111:7,12 122:18
 122:19 131:16
 132:3
 calling 94:3
 Cameron 4:15
 58:13,17
 canceled 86:7
 candid 81:13
 canvassed 24:8
 cap 51:3 108:7
 109:20 110:10,18

capacity 10:14
 28:22 69:13
 70:17
 caps 109:19
 capture 31:7
 card 54:21,22
 cards 18:13
 care 91:19
 career 60:8
 careful 23:2 94:20
 Carlsbad 6:19
 7:24 8:9,24 9:5,8
 9:23 10:8 13:18
 17:19 19:18 21:8
 21:12 22:20
 36:17 38:18 42:7
 42:7,8,15,21,24
 43:22 45:24 46:2
 46:6 47:24 48:3
 48:11,16,25 49:4
 51:8,14 52:17
 54:1 57:4,14
 58:10,21 60:21
 60:22,24 71:11
 74:24 77:23
 78:15,22,25 79:9
 79:13 80:4,22
 81:2,25 82:8
 103:24 104:8
 105:19
 Carmel 71:15
 carried 31:18
 carries 132:12
 carry 15:24
 cart 92:5,5
 case 21:23 23:23
 23:23,23 26:20
 28:12 29:8 95:3
 97:11,17 102:22
 109:25 115:20,22
 116:7,11 131:23
 Casting 51:6
 catalase 31:21
 catastrophes 52:25
 catch 117:6
 catching 121:3

Catherine 3:7
 114:25
 caulerpa 49:3
 cause 15:9 75:4
 97:6 113:20
 CA0109223 6:18
 CC 30:15
 cease 49:19,21
 ceases 13:18
 107:22 112:17
 116:20
 Cedic 69:8,10
 center 46:18 65:12
 66:3
 central 12:4 37:20
 38:2
 CEO 78:23
 certain 44:11
 certainly 15:2,25
 39:18 69:4 81:7
 85:10,15 86:17
 86:19 87:4 93:9
 93:22 95:11,15
 115:10 122:25
 certainty 69:6
 Certified 2:19
 chain 100:12
 chainsaws 66:5
 chair 43:1 74:6,7
 78:21
 chairman 6:12
 17:15,24 18:8
 27:24 30:2 40:10
 42:17,22 45:25
 47:25 52:1,5
 54:14 59:12,16
 60:17 67:3 68:15
 69:11 70:21
 72:14 74:5,8
 75:11 76:3 77:8
 77:11 78:19
 87:19 99:17
 103:14 106:7
 119:5
 CHAIRPERSON
 3:2,3

chair's 95:17
 challenge 72:20
 110:5
 challenges 51:7
 81:4,7
 chamber 69:14
 71:21 76:5 78:22
 78:24 79:6 80:6
 chance 62:14
 87:22 119:2
 Chaney 59:7
 change 28:23
 43:12 49:14
 104:23 122:12,21
 123:19,22 127:14
 127:18 128:13,24
 130:17,24 131:10
 changed 104:19
 120:17
 changes 114:14,16
 115:15 123:17,18
 123:24 124:2,4,5
 changing 104:22
 channel 8:9,15
 chapter 99:16
 106:20
 charge 6:14 105:2
 105:7 109:8
 chart 103:1
 check 39:2
 checklist 14:19
 chief 54:15 67:8
 children 44:25
 69:4
 children's 73:23
 cholesterol 71:7
 choose 92:11
 Chris 27:13,13
 35:2,23 119:10
 Christin 83:20
 Christopher 4:6
 Chuck 5:5 72:12
 72:15
 Chuhn 83:21
 Chula 52:8
 circulated 115:9

cities 53:3
 citizens 85:21
 citizen's 44:1
 citrus 66:5 72:16
 city 12:12 19:18
 21:8 22:20 24:10
 36:17 38:17
 42:21,24,25 43:1
 43:23 45:7,16,24
 46:2,5 47:23 48:3
 50:15,19,20,22
 51:22 52:7 58:10
 60:21,24 61:1
 71:23 74:24 79:9
 79:11,13,16
 104:7 105:19
 clarification 39:19
 112:8,22 121:5
 130:3
 clarify 18:5 110:24
 clarity 98:17
 106:18 116:14
 Clavenger 69:9
 70:15
 Clean 10:13,18
 98:20,20
 cleanup 65:21
 clear 16:3,24 85:22
 86:24 90:8,10,12
 90:19 91:9,11
 93:8,17 102:1
 119:21 127:4
 clearly 82:23
 Clemente 12:3
 clients 70:19
 climate 43:11
 close 7:18 23:1
 closed 25:24 87:8
 closely 45:19 61:3
 closer 62:17 63:3
 63:14
 closing 27:23
 85:18
 Club 67:9 99:16
 coast 27:7,11 30:10
 33:16 44:11

48:16 84:8	50:24,25 51:2	125:15,19 130:14	compatible 21:9	concerned 43:6
coastal 10:25 11:2	53:1 73:2 81:11	132:1	compensatory	55:7,14,17 56:12
11:19 19:18 21:8	96:2	Commerce 69:15	88:16	88:14 96:6
21:11 22:9,10,13	combined 8:10,14	71:21 76:6 78:22	competition 43:12	117:20 131:18,19
22:20 24:24	come 8:19,19 18:2	commercial 31:21	competitive 109:4	concerning 12:5
29:15 30:11 33:3	21:20 32:23	commingle 8:12,20	complete 89:21	concerns 13:13
36:4,17,20,20,21	33:16 35:7,9 39:3	commission 11:2	completed 28:18	14:12,15 28:7
38:20 40:13,21	39:8,16 55:22	11:21 12:13	completely 33:24	39:16 67:10
46:21 53:6 55:11	63:15 67:24 81:2	19:14,19 21:8,11	70:17 116:19,25	84:15 87:17,23
67:11 68:12	81:19 84:20 86:3	22:9,13,21 24:24	completion 53:19	101:15 123:25
71:19 74:23	101:11 105:11	24:24 33:3 36:17	96:9	124:14,17 126:6
79:21 83:1 86:7	111:15 112:3,7	36:18,20 38:20	complex 47:2,4,4	conclude 40:22
86:11 88:12	118:17 122:25	40:13,21 44:11	complexed 62:12	73:17
94:14,15,18	123:12 124:2	53:6 54:17,23	complicates	concluded 21:12
101:11 104:7	comes 42:10 118:5	55:2,11 56:2,8	118:10	24:20 104:7
105:19 113:25	118:5	71:19 74:8,23	complies 67:20	concludes 13:22
119:14 120:5	comfortable 61:6	83:1,2 86:7,12	compliment 35:10	100:14
Coastkeeper 84:11	coming 8:17 34:23	88:11,12 94:14	42:14	conclusion 22:8,25
90:6 93:8 95:21	44:25 64:9,12	94:16,18 104:7	complimentary	23:3 25:7 29:16
95:23 96:1	97:7	105:19 110:20	35:20	37:5 38:12 87:5
103:17 115:7,21	commence 19:4	commissioners	comply 9:15 39:2	88:24 89:5,13
116:4	commencement	46:20,21	115:24 116:18	93:4 94:20
Coastkeepers	9:22	commissions 48:25	117:2	117:23
104:13	commencing 2:16	commitment 26:14	component 58:20	conclusions 12:6
code 9:15 10:17	comment 7:2,9	80:8 81:15	79:8 105:16	32:23 33:2 88:20
18:22 20:15,25	12:14 20:19,20	110:13	108:17	89:10 121:6
36:4,6,12 103:5	20:21 28:9 38:2	committed 26:10	components 63:2	condensed 56:23
115:18,24 119:14	47:12 65:4 87:8	109:8	106:2	condition 9:21
119:15 120:15,24	87:15,22 93:21	committee 69:14	comprehension	13:8,15 14:10
128:22	104:12,20 106:15	communication	30:15	15:4 16:6 17:9
colleagues 67:23	107:14 111:25	82:10	comprehensive	36:10 39:10
67:23	121:16	community 21:11	100:23	101:16 102:11
collected 31:3	commented 123:19	24:9 44:12 49:25	comprehensively	123:7 126:22
37:23	123:22	53:16 62:4 65:2	44:4 47:14	127:7,8 128:3,3
collectively 81:14	comments 6:6 7:16	67:24 68:8,8	comprised 29:10	conditional 126:20
college 81:1	7:18 10:23 11:4,5	79:20,24 80:21	conceived 33:12	126:23 127:7,15
Cologne 84:25	12:8,10,11 28:2	82:12,17	concentrated 8:11	127:16
85:9 89:17 90:17	38:1 39:5 47:8,9	commute 42:15	conceptionally	conditionally
90:18,21 91:1,3	47:10,11,22 48:8	companies 76:6	106:1	122:9,21 123:3
91:10,15 92:3,9	58:22 60:18	77:13 79:16	conceptual 19:22	126:9 129:25
92:10,16 98:6,9	61:10 64:22 70:1	company 48:21,24	35:15,18,19	130:4
98:11,12 99:8	75:12 86:2 87:12	49:4,9 72:9	concern 15:9 28:3	conditioning 123:9
101:23 102:25	87:14,25 95:20	comparable 24:19	119:16,23 120:9	conditions 13:7
103:4,11 105:6	101:19 104:16,17	114:21	122:8 123:5	15:21 16:13
105:15 120:20	106:17 115:11,11	comparison	124:11 126:1	19:12,21 39:1
Colorado 43:16,18	115:11 121:11	106:12	130:12,13	41:3 57:6 61:7

67:19 70:11 83:3 107:21 108:25 123:4 126:21 127:6 conduct 24:6 27:9 conducted 27:2,11 28:6 conducting 27:1 conference 44:13 confirm 116:24 confirmed 21:3 conflict 68:13 conflicting 88:3 confusing 88:2 122:10 confusion 90:7 94:9 Congratulations 73:25 congress 72:3 congressional 79:25 conjunction 112:14 Connor 83:19 consensus 25:6 40:15 53:7 55:23 120:12,17 123:1 128:12,15 Consequently 103:24 conservation 42:13 52:11 54:7 59:18 68:24 conservatism 33:22 conservative 18:20 23:6,22 24:1 consider 6:15 24:2 37:3 87:13 94:23 107:9 109:2 111:9 considerably 23:21 consideration 11:18 12:16 13:4 21:3 36:9 50:13	68:1 80:13 94:21 118:8 considered 11:9 19:23 22:14,17 24:4 37:4 88:19 116:5 131:20 considering 7:8 88:6 119:20 consistent 38:7 61:8 105:15 106:5 120:1 consistently 36:2 51:6 constituents 57:9 constitute 116:7 constructed 35:12 construction 10:14 consultants 47:1 consultation 85:13 consulting 96:20 consuming 47:2 contacting 11:13 Contacts 11:14 contain 18:9 contained 91:21 contains 10:10 11:10 101:9 contemplation 121:19 context 58:23 95:3 95:6 116:4 continuance 75:3 continue 16:19 49:17 60:12 73:18 81:13 83:3 108:11,23 continued 5:1 31:3 72:23 131:18 continues 30:22 33:12 107:20 contract 64:23 66:9,22 78:7 96:2 contracted 57:12 96:10 contracting 95:22 contractor 96:2,5	contrary 94:6 104:25 control 1:1 2:1,17 6:14 19:6,11,17 20:1 30:15 48:4 48:14 controversial 46:16 controversy 46:16 convene 25:3 convening 11:15 convinced 112:11 118:16 cooling 8:4,13,23 9:3 10:15 49:18 50:3 97:12,14,15 97:16 98:6,8,10 112:14 121:20 cooperation 55:1 112:13 coordinate 37:12 84:25 85:8 coordinated 21:5 25:3 89:21 90:2 coordination 19:24 37:10 85:3 105:25 115:17 120:10,14,18,21 128:13,14,16 coordinator 87:21 copies 7:8,16,21 12:10,15 77:14 copy 7:1,2,4 12:24 13:3 118:20,21 core 6:14 corner 8:6 Coronado 12:13 Corporation 1:7 2:7 6:19 correct 53:23 56:25 94:10,18 123:23 129:6 correctly 19:2 93:21 correlated 113:17 cost 51:12 57:20	76:23 78:4 97:24 98:4,13 99:1 103:19,21 108:4 108:8,14,17 109:2 costs 98:25 109:21 council 45:16 46:2 46:5,19 48:3 49:25 50:15,18 63:24 74:9 Councilwoman 45:23 47:23 COUNSEL 3:7 counting 60:4 country 80:21 county 7:19 24:9 25:14 42:9 43:13 45:8 50:20 52:9 52:24 57:21 59:14 63:6 64:21 65:14 72:17 74:7 77:20 78:2 79:22 80:3 81:4 couple 14:8 56:3 62:2 73:3 90:3 97:22 112:3 114:4 course 60:8 73:4 court 2:15 64:5 67:10 68:4 83:10 98:23 102:22 116:9,9,12,12 courts 38:19 99:7 cover 103:23 104:2 covering 114:5 cow 85:19 co-operating 118:11 Craisha 83:18 create 24:18 32:1,3 33:19,19 43:14 44:19 94:8,9 created 26:5 46:17 creating 35:13 63:20 creek 28:21,25	crevices 32:11 criteria 15:3 critical 58:19 66:13 68:22 critically 17:20 crucial 44:1 51:8 crustaceans 34:8 Cruz 30:22 33:11 CSR 1:21 2:18 cubic 28:24 cue 67:4 curious 95:2 current 8:15 10:1 26:13 43:1 48:17 51:14 74:22 100:24 currently 9:21 13:5 30:20 35:11 43:16 52:6,24 customer 52:12 customers 57:23 109:11 cut 65:2 71:9 73:5 75:12
				D
				D 4:1 5:1 124:18 124:24 128:23 daily 28:20,21 29:9 61:2 damaging 21:13 Dan 83:19 dash 11:10,20 data 9:2 12:5 37:21 37:22 39:25 112:2,6,7 114:18 114:20 date 7:16 9:9,10 10:10 11:6 13:14 16:19 40:20 68:1 96:9,25 107:8 dated 6:17 7:3,6,15 10:24 11:1,4,8 12:4 13:7 88:7 102:2 111:3 126:3

daughter 80:17 81:5	define 16:2 126:24 defined 14:15 98:23 127:24	depressions 29:21 derived 12:6	detailed 114:18 details 11:16 22:8 22:23 73:2 104:19 113:11	Dietz 56:17 difference 90:20 90:25 118:3
David 3:3 4:5 27:6 27:6,13 29:20 30:2	definition 128:9 definitive 96:15	Derrick 77:13 desal 6:20 8:24 9:2 9:6,8,23,25 10:4 10:8 13:18 32:21 32:22 50:23 52:15 54:1 58:19 66:2,10 84:8 94:22 114:6	determination 16:21 17:4 determine 12:5 120:7 determined 11:24 22:20 110:14	differences 103:3 different 41:7 48:9 90:17,19 91:1 94:13 103:2 106:22 111:3,10 122:15,15 123:8 124:7 130:19
day 8:3 10:8 20:20 29:1 75:13 84:4 100:16 113:3,10 113:18	degree 44:20 114:15 delay 53:16 69:16 75:3,4 90:3 94:7 94:8 104:24 122:24	desalination 1:8 2:8 6:19 7:24 8:9 8:17 17:19 20:3 21:21 23:15 25:22 42:13 43:4 43:13,20 44:14 46:6,11,15 50:4,5 51:8,15 52:12 53:2 54:7 57:4,15 59:19 62:5 63:4 69:1 74:23 75:15 76:12 77:23 78:15,25 79:11 79:13 80:4 82:8 84:9 102:23 115:23	devastating 81:6 develop 36:11 developed 30:17 developer 108:11 developers 58:1 developing 79:6 development 20:17 20:18 22:10 35:22 59:18,21 76:21	difficult 73:15 114:23 dig 103:24 digest 119:2 diligence 53:9 69:22 diligently 46:6 diminimus 22:14 33:4 100:15 diminish 18:13
days 9:14 20:22 87:6 104:13 112:2 114:23	delayed 19:15 51:19 70:11 delays 83:4 94:7 delegate 16:18 17:10 delegated 14:25 delegating 88:9 delegation 53:5 75:17 79:25	described 12:2 24:2 33:6 34:18 122:14 describing 39:10 description 7:23 deserve 92:18 design 9:17 10:14 11:22 20:15 21:1 21:15,24 23:13 37:6 47:15 70:3 76:18 89:11 90:22 91:13 106:2 121:17,19 121:21,25	diapers 65:25 Dick 59:7 dictate 91:14 dictated 91:15 Diegans 73:19 82:18 Diegians 51:13 Diego 1:2,15 2:2 2:15 6:1 7:19 24:9 25:14 27:16 43:13 48:15 50:20 51:10 52:9 52:15,24 55:22 56:9 57:21 58:13 58:18 59:14 64:21 65:3,5,8,14 65:21 69:14 71:23,24 73:11 73:18 74:6 76:5 77:14,20 78:1 80:3 81:4,18 83:2 84:10 90:6 99:16 122:9 123:2 126:9	different 73:15 114:23 dig 103:24 digest 119:2 diligence 53:9 69:22 diligently 46:6 diminimus 22:14 33:4 100:15 diminish 18:13 direct 86:20 116:16 directed 93:18 100:5 direction 51:16 105:14 directly 67:18 115:23 director 58:13 59:13 60:21 65:14 73:1 88:10 directors 43:3 52:5 53:22 64:21 65:15 disagree 36:25 89:1 116:4 disapprove 118:1 discharge 8:8,15 8:20 9:7,22 10:6 10:12 19:4 21:17 28:20,22 29:9 57:5 70:13 82:19 112:15 118:2 discharged 8:14,21 20:10 disclose 70:16 74:2
da-da-da 126:3 dead 45:7 deadline 7:17 12:14 89:19 deal 36:5 125:23 dealing 47:3 65:24 66:2 deals 97:14,14 dealt 65:22 deaths 71:5 debate 46:12,22 decade 30:5 33:11 decide 15:18 86:8 92:22 103:6 decided 23:10 40:12 85:13 deciding 100:15 decision 17:5,8 38:12,15 53:23 53:24 60:1 69:18 84:19 85:6 89:14 89:15 90:1 95:14 97:8,16 98:22 105:11,19 116:10 117:7 decisions 16:7 46:22 73:13 decision-making 37:13 86:3 deemed 108:13 deep 29:2 deeply 55:12 defensible 92:14 defer 36:21	Delta 43:16,18 51:7 60:1,7,7 73:4 74:9 delusion 28:22 demand 66:23 109:12 demonstrated 51:17 80:8 Dennis 4:19 64:11 64:11,12,14 deny 131:13 Department 11:14 departure 100:4 depend 79:17 dependable 43:15 46:7 81:20 dependance 68:24 depended 57:11 dependence 76:11 depending 113:10 depends 81:10 depress 29:11 depression 29:13	described 12:2 24:2 33:6 34:18 122:14 describing 39:10 description 7:23 deserve 92:18 design 9:17 10:14 11:22 20:15 21:1 21:15,24 23:13 37:6 47:15 70:3 76:18 89:11 90:22 91:13 106:2 121:17,19 121:21,25 designed 76:14 122:1 designs 37:2 destroyed 33:18 destroying 104:3 detail 55:12 87:17	Diego's 82:16 Dieguito 35:11	

discourage 65:17	doubling 34:16	echo 48:22 49:18	129:9	entire 24:9 53:5,5
discover 107:7	doubt 51:6 101:13	50:5	Ellen 83:21	53:8 65:23 68:3
discretion 95:17	Doug 70:16	ecological 44:5	embark 24:23	76:25 79:20
discretionary	Douglas 5:3 44:14	economic 117:12	emotions 46:17,22	entirely 106:21
14:20	69:9,12	economically	46:24	entirety 25:20
discuss 18:17,19	Dr 26:21,24 29:20	82:14 117:7	emphasis 87:9	entities 41:15
35:24	30:1,20 33:10	economy 68:10	emphasize 66:10	104:10 105:24
discussed 30:24	37:23 107:14	105:9	emphasized 67:14	entitled 88:3
44:20 73:6 85:5	draft 20:22 87:24	Ed 5:19 83:16,18	Empirical 30:8	entity 11:25
88:22	88:8,13,15,17,23	99:15	employ 89:25	entrain 100:21
discussion 17:24	89:1,13 104:14	Edison 35:12,21	employees 76:7	entrained 31:11,19
36:12 44:16	104:14,17 105:23	editorial 131:10,12	Encina 8:4,5,15,22	33:20,25
117:14 129:11	106:12 114:14,19	educating 26:8	10:5 13:17 19:20	entrainment 6:16
131:2	114:19	educational 26:6	20:10 49:18	7:4,5 9:13,19
dispute 39:13	drafts 20:19	effect 15:6	116:19	10:21 13:6 20:5
disruption 21:10	106:25 114:16	effective 9:9 82:10	enclosed 17:1	23:7 27:8,10 28:4
distinction 98:10	dream 69:2	effectiveness 99:2	encourage 107:8	28:11 29:23 30:7
distinguish 98:6	dredging 25:21	efficiency 17:12	109:13	30:10,16 31:1
distribution 11:16	49:7,20	efficient 16:12,15	endangering 51:20	32:19 33:8 36:5
district 7:20 59:6	drinking 42:11	efficiently 57:25	endeavor 82:12	53:25 69:17
64:20 65:13	57:19 77:3	effort 18:18 49:12	ended 30:23	74:25 76:16
66:19 72:21	drive 117:23	58:1 66:12	endorse 35:16 39:6	82:20 86:25 90:9
109:12	drop 57:10	efforts 21:23 55:4	67:21 69:6	90:18 97:19,21
districts 61:16	dropped 9:4	55:5	endorsed 82:8	100:9,14 101:3
disturbing 49:24	drought 43:11	eight 17:19 18:16	ends 112:17	103:7 116:24
88:23	52:18 73:2,4,15	24:12 29:9 70:10	enforce 36:19	118:9 127:17
diversifies 76:11	76:25	EIR 21:12 105:19	enforcing 60:23	entrainment/im...
diversifying 51:8	drug 71:8,9	either 95:9 104:6	98:21	111:1
diversity 52:10	drugs 71:6	131:13	engaged 56:8	environment 28:10
diverts 101:8	due 19:9 33:3 53:9	elaborate 125:3	96:23	46:17 49:5 53:15
division 54:16	69:22 85:17	elect 78:21	engineer 6:14	79:14,21 80:9,24
divorce 68:23	103:19	elected 42:18	enhancement 11:1	105:13
document 86:16	duration 13:17	45:16 50:19 53:4	79:15	environmental
88:3 111:3,7	Durckel 4:15	61:17 63:19	enjoy 80:24 81:19	10:16 12:3 18:22
122:17 127:3	58:13,15,17	Electric 48:15	enormous 31:16	21:10 26:8 27:14
128:1	duty 14:15 16:3	electrical 118:11	51:4	35:4 44:12 46:9
documents 88:2	39:11 91:5	element 17:20	ensure 19:25 41:16	54:16 58:2 67:14
96:22 122:16		elements 11:13	42:14 53:10	67:15,24 68:8
doing 30:5 59:23	<hr/>	20:14 106:19	57:24 99:25	69:23 76:15 77:1
59:23 98:24	E 4:1 5:1 41:6	eleven 80:17	ensured 78:3	79:3 80:1,7 82:7
123:16 130:14	124:1,18	eliminate 89:2	ensuring 57:22	82:13 93:9,11
dollar 65:5	earlier 33:10 62:16	eliminated 22:3	121:25	105:8 108:18
dollars 110:11	74:14 113:1	eliminates 21:19	entails 18:20	environmentalists
domaining 39:13	114:17 115:16	eliminating 50:2	entered 66:22	68:9
doors 85:19	124:16	121:22	enterprise 108:23	environmentally
Dorfman 83:21	easy 65:9	Elizabeth 3:5	enthusiastic 53:3	21:13 22:21

filter 8:11,19	32:13,24 33:20	food 100:12	92:3	garaboley 32:12
final 11:17 12:7	33:25 34:3,5,6,11	foot 109:10	frame 96:16	Garrett 4:6 12:12
15:19 16:7 18:1	99:22 100:10,10	foregone 33:17	framework 36:1	14:6 35:3,23 39:9
37:13,15,24 38:3	100:16,20 101:7	foreign 71:4	37:9 38:24 103:8	39:18 41:7 74:13
38:7,24 39:8	fishery 30:3	foremost 21:17	frankly 34:7	101:20 106:11,14
54:23 64:2 75:2	fishes 100:18	27:7	fresh 29:17	116:22 119:5,10
83:2 88:9,19,20	fits 30:25 36:1	forget 71:15,18	Friday 87:6	119:10 120:6
88:24 89:10,14	five 9:10 65:5 68:4	form 48:17 87:2	friendly 57:25	121:3 122:6
89:15,23 94:2,7	87:6 132:12	format 13:22	friends 72:8	Gary 4:21 5:7
97:1 105:3	fix 60:7 81:17	former 106:20	front 32:9,15 36:1	64:12 65:12
115:25 116:1	flat 48:18 117:8	67:8,23	37:7,17 38:8,10	72:12 75:10
121:6,7,8	flats 31:16	formerly 65:15	39:4 97:9 102:1,7	Gas 48:15
finalization 11:17	floor 103:25 104:1	forms 9:20	102:13 112:11	Gasteren 27:15
finalize 25:8 40:18	flow 6:16 7:1,3,5	forth 14:18 103:8	fulfill 50:21	Geever 5:16 83:15
57:5	8:14,25 9:2,3,12	111:22 130:15	full 38:10 41:8,11	84:13 86:21
finally 13:3 80:6	10:11,21 13:6	fortunate 80:20	42:14 107:23	87:16,19,20 96:4
94:10	20:5 21:25 28:25	forward 12:18	124:21	96:17,18 102:18
financial 108:7	53:24 69:17	25:23 35:17	fully 118:1,7	102:18 103:18
110:1,12	76:15 82:20	38:21 49:5 50:12	function 15:24	114:1 121:13
find 33:7 46:24	86:24 90:9 99:18	52:22 58:24	functioning 70:5	general 11:4 33:5
63:14 81:1 99:19	111:1 113:12	60:13 63:22	fundamental 28:13	64:14 65:13
108:5 110:5	118:14 127:17	64:10,12 65:7	fundamentally	66:19
finding 33:3 99:1,2	flower 80:23	66:13,25 75:14	111:8	generalities 15:13
findings 31:9	flowing 30:13	76:18 77:5 80:4	funding 65:20	generally 107:12
69:19 94:16,19	flows 8:23	80:11 82:25 83:7	further 35:22	generate 30:23
finds 41:8	fluctuate 113:9	85:12,13 93:14	51:20 64:15	generated 42:15
fine 63:17 84:2	fluctuation 29:13	105:25 107:7	69:16 70:11 83:4	generation 9:1
104:21	78:12	115:14,19 118:16	Furthermore	44:24 72:16
firm 96:20	fluctuations 29:24	130:15	11:20	generations 81:17
firmly 26:18	flush 71:17	found 22:10,13	future 40:20 49:15	geniuses 68:12
first 6:21,24 7:10	focus 54:8 95:3	31:20 32:9 94:15	51:16 68:1 73:22	gentlemen 43:5
7:17 10:21,23	focused 34:2	104:10	73:23 81:5,17	69:3
13:8 14:4 21:16	105:21	Foundation 26:5,7	82:16 93:17	George 3:7 14:9,24
23:25 26:21	focuses 100:9	61:19 62:1 63:24	94:17 107:14	15:21 56:17
39:20 55:21	101:7	64:7 84:14 87:21	116:14,17 121:24	74:12 115:1,6
59:16 69:21	focusing 31:7	96:1		117:9 120:5,16
71:25 72:18	47:21 106:2	four 7:9,13 12:18	G	120:21 121:1
74:10 75:7 80:7	folks 24:9 45:14,15	22:17 62:3 70:23	Gabriel 5:14 83:15	123:2 125:17,18
85:4 87:23 89:8	follow 17:13 64:18	74:17 75:5 124:1	93:4	128:6,21 129:1,4
99:21 100:7	100:8	126:21,23	Gail 4:13 54:13,15	130:3,7
103:18,22 109:17	followed 20:21	fourth 26:6 44:24	gain 53:2 57:16	getting 44:7
114:19	27:13 69:8 72:12	88:7 101:6 111:3	gained 89:7	129:10
firsthand 60:25	78:17	115:10	gallons 8:3 34:4,6	get's 32:7
fish 11:14 24:25	following 10:22	four-fold 23:18	113:3	GIDGETTE 1:20
25:17,17 31:7,11	11:12 27:6 74:17	fragmented 91:24	game 11:14 24:25	2:18
31:13 32:2,7,11	123:4,25		45:15	Gina 5:10 77:17

78:21 83:8
give 36:4 57:18
 67:4 83:10 84:13
 93:19 95:11,13
 96:13 114:2
 119:14,15
given 21:7 23:2
 36:18 39:3 87:9
 89:5
gives 103:5 114:19
 126:22
giving 93:21 96:25
global 43:11
go 8:18 14:21
 15:15 16:6 34:9
 35:25 39:15
 40:23 41:5 51:20
 55:22 61:20,22
 63:22 64:2 81:1
 81:15 84:15,18
 84:23 94:11
 95:24 99:8 110:5
 110:7,8 114:20
 115:14,19 118:24
goal 68:25 69:2
 79:8
goals 40:15 76:9
gobie 31:13,14
goes 34:12 86:17
 113:7,12
going 14:14,19
 16:8 18:10,17,17
 22:7,23 27:22
 28:3,19,21 29:19
 29:20 31:24
 32:19 34:4,5,11
 37:18 40:10,21
 41:20 43:8 59:15
 60:2,6 62:15,19
 62:23 65:21 71:6
 72:19 84:15 85:4
 90:8 92:8 94:8,8
 95:24 96:21 97:5
 97:7 101:4,4
 102:13 110:7,8
 110:10 122:11,25

123:12 125:5,6
 127:19,24 131:20
good 17:15 43:23
 46:18 48:23
 50:17 54:14
 56:21 58:15
 67:20 68:6 72:14
 76:13 77:19
 78:19 82:5 90:5
 115:12
Gosh 113:5
gotten 62:3 84:22
 96:23
government 45:4,7
 48:24 70:23
 71:21 73:10
 82:11
governments
 24:11 69:22
governor 58:14,19
 59:4 72:1
governor's 58:17
graders 26:6
grandchildren
 44:25
grandfather 72:18
 73:21
grant 89:18
granted 81:10
 90:13 116:13
granting 84:5
graphs 113:25
great 79:22
greater 23:21
 106:18
greatest 25:13
 80:21
green 54:21 72:9
Griswald 83:19
groggy 129:10
ground 108:6
group 45:17 60:16
 62:12 70:17 80:1
 84:8 99:22 100:6
 109:5
groups 61:21 84:8

93:11
groves 73:14
grower 42:7
growing 32:10
 71:3
growth 62:2 71:2,3
 82:14
guarantee 78:11
 109:3
guaranteed 57:20
 78:8
guaranteeing
 108:2,3
guard 121:3
guess 54:9 111:9
 121:4,16 122:3
 124:23 125:21
 126:14
guide 46:22

H

habitat 11:1 32:2
 32:17 33:7,14,18
 33:19 58:6 70:6
 79:21 104:1,4,4
hair 43:6
half 61:24 85:7
hammer 124:4
hamper 45:18
hand 12:20 99:15
handed 7:22
handful 63:1
handout 18:25
hands 16:4 93:18
happen 15:18
 23:12 40:11 72:5
 114:7
happened 43:17,18
 93:19 122:14
happening 55:23
happens 91:17
 93:20
happier 107:11
happy 117:3 127:2
hard 34:10,10
 41:16 64:18

73:21,22 97:1
 103:25 126:10
Hardy 59:5,5
harm 58:3
harmoniously
 126:18
harmony 127:5
hatcheries 25:17
head 92:11,23,25
heading 33:14
heads 81:13
heal 49:5
health 49:8,14,17
 50:10 82:14
 99:25 100:24
healthy 48:22
hear 6:8 36:23
 48:10 54:13
 93:15 110:17
 115:3 119:9
 127:9
heard 2:16 31:10
 41:14,15 54:18
 56:3 61:16 71:1
 73:5,6 84:6,10
 85:3,20 86:7
 88:11 89:8 90:24
 93:25 94:12,14
 101:22 109:20
 118:3 119:3
 124:16
hearing 1:4 2:4
 47:20 53:6 67:19
heart 50:12 86:17
heat 113:15
heating 97:15 98:7
 98:10
Hedionda 8:6
 13:13 24:3,13,16
 24:21 25:4,11
 26:5,7 27:1 28:15
 28:18,21 35:8
 40:16 41:16,21
 43:21 44:5 47:17
 48:13,16,19,20
 49:2,3,17 50:11

58:4 61:18,25
 64:7 79:15 80:9
 101:9
held 86:12
hello 46:1
helmet 52:2
help 24:11 27:20
 30:6 49:16 73:8
 73:11,23 75:25
 79:18 88:5
helpful 39:12,14
 106:16 107:1
helps 109:6
he'll 44:23
Hickman 83:20
high 24:17 28:8,9
 29:5,6 51:12 55:3
 57:22
higher 37:22
highest 57:18
highlight 106:24
highlighted 118:17
hill 52:25
hip 52:2
hire 102:14
hired 55:11
historically 50:7
hit 59:16
hold 53:20 61:19
holds 28:15 81:5
holistic 92:4 99:23
 100:4
home 48:5 62:18
 63:14 81:2,3
honestly 81:3
hope 35:21 37:4
 49:14 73:23
 80:25 87:22
hopefully 40:8
hoping 81:16
horror 71:13,14
horse 92:5,6
Hortell 83:19
hour 31:6
housing 105:9
human 100:3

105:12
 humanly 18:10
 hundred 104:4
 hundreds 103:25
 hurt 39:18
 hydraulically
 35:19

I

idea 33:12 45:17
 95:23
 ideal 38:25
 identification 21:5
 identified 13:14
 14:13 35:13 89:2
 109:24 110:15
 124:14
 identifies 74:19
 identify 21:1 25:3
 27:20 39:15
 61:12 64:4
 identifying 11:4
 40:16 121:17
 IEA 82:7,9 83:5
 illustration 41:6
 immediately 51:21
 immigration 71:4
 impact 10:16 12:7
 21:10 22:12 23:8
 23:21 24:1,19
 31:22 50:4 53:14
 69:23 90:10,16
 92:4,20,21
 impacted 100:25
 100:25
 impacts 10:19 12:6
 13:11 19:19 20:9
 20:16 21:2,19
 22:7,13 23:14,18
 27:4 51:19 55:9
 55:10 57:7 63:9
 68:12 75:15,22
 76:15,19 79:3
 90:23 91:6,14,19
 93:1 95:4,14
 99:24 100:6

105:8 114:21
 imperative 82:16
 impingement 6:16
 7:4,5 9:13,20
 10:21 13:6 20:5
 22:13 23:8 27:8
 27:10 33:2 36:6
 53:25 69:18
 76:16 82:21
 86:25 90:9,19
 97:21 100:9,14
 100:15,19 103:7
 116:24 127:17
 implement 27:21
 36:19 90:15
 101:5 108:15
 117:2
 implementation
 11:11 17:1 25:2
 40:19 106:5
 126:4
 implementations
 20:7
 implemented
 40:25 70:7
 implications 35:24
 implied 28:8
 implies 120:13
 import 52:24
 importance 31:22
 45:17 50:1 54:11
 important 19:5
 51:9 52:13 58:23
 59:21 60:25
 63:17 66:10 70:8
 72:20 73:9 75:6
 76:9 77:5 78:12
 85:1 94:11
 100:20 103:22
 importantly 54:25
 imported 30:14
 57:11 68:24
 76:11 78:10
 108:4 109:4,10
 109:12
 importing 76:22

imposed 14:10
 92:15
 impossible 97:10
 improve 50:4
 inadequate 99:19
 inadvertently 7:21
 inaudible 24:17
 39:13 41:1 43:11
 43:23 44:2 51:11
 77:6,8,10 96:1
 118:9
 inaudibly 29:5
 inch 31:15
 inches 32:8
 inclination 131:17
 include 10:18
 97:16 112:4
 126:4
 included 6:22
 12:10 21:16 22:5
 71:22 97:18
 includes 11:13
 13:11 56:1
 including 1:6 2:6
 7:6 13:20 46:25
 53:4 79:17 80:1
 incompetent 67:16
 incomplete 93:25
 incongruent 89:16
 inconsistent 68:12
 incorporate 10:3
 incorporated
 129:4
 incorrect 103:20
 110:20
 increase 52:17
 57:10
 increases 78:4
 increasing 54:11
 increment 109:10
 independent 29:23
 indicated 19:2
 41:8 71:11
 individual 64:25
 70:17,18 100:5
 individuals 79:16

84:10
 industrial 9:16
 82:7,16 97:15
 98:7,10
 industry 65:5 99:7
 infeasible 98:5
 influx 29:1
 inform 57:3
 information 6:21
 44:8 55:22 77:13
 84:6,17 86:14,18
 92:18,18 96:5
 100:19 101:12,13
 104:18,22 106:22
 106:24 110:3
 123:6,7,13
 infrastructure
 51:10 69:14
 76:22 78:5
 inherent 108:10
 inherently 107:21
 initial 20:20
 initiate 16:23,25
 21:23
 input 119:20
 Inserted 128:17
 insignificant 22:14
 33:4
 installations 9:17
 Institute 26:22,24
 79:19
 instituted 52:11
 insufficient 89:6
 insulated 78:4
 insult 122:17
 intake 8:5,16,23
 9:3,19 10:5,15
 13:12 19:16
 22:15,19 24:20
 31:11 32:10,15
 34:4,20 70:12
 86:16,17 88:21
 89:2,3,12 91:6
 103:19 104:9,10
 113:2 121:20,22
 intakes 22:16

30:13 31:19
 34:20 97:13,14
 98:5 101:1
 102:23 103:23
 integrate 100:11
 intelligence 122:17
 intended 42:11,14
 intense 43:12
 intensive 31:8
 intent 124:20
 intentionally 43:19
 inter 55:1
 interaction 82:10
 100:2
 interactions
 100:11
 interest 18:3 22:22
 31:21 77:4
 interested 10:23
 12:9 24:9 76:10
 interesting 66:1
 interim 107:19
 intermediary 94:3
 intermittent 19:10
 interpretation
 110:21 124:25
 interpreting 99:7
 102:22
 investigation 20:14
 inviting 92:4
 involved 27:10,17
 52:20 55:1 65:22
 72:23
 involvement 26:23
 78:3
 irrigation 7:20
 72:21
 issue 36:22 37:14
 39:6 43:4 44:19
 54:24 60:9 70:25
 84:17 85:10,22
 86:10 87:10,10
 87:13 93:16
 114:12,13 115:6
 118:10,14
 issued 10:2 24:7

79:5 82:19,24
 issues 12:19 36:5
 37:3,19 39:4
 56:15 59:15 60:7
 63:20 65:22
 67:12,14 77:1
 85:4 86:9,18
 94:21 102:20
 103:6 108:19
 111:21,22 112:21
 116:23 119:13
 item 6:15,25 18:17
 41:6 55:5 74:21
 88:1 119:11,19
 124:24 126:2,8
 128:7
 items 1:5 2:5 6:22
 15:12 39:23
 119:7 124:18
 127:12

J

jealous 65:24
 Jenkins 4:4 14:5
 26:22,24 27:25
 28:3 30:1 31:2
 37:23
 Jarod 83:19
 Jerome 4:11 50:15
 Jerry 50:18
 Jill 83:20
 Jim 5:4 70:21
 job 1:23 59:11
 jobs 44:18,19,25
 45:11,12 58:23
 65:5 82:17
 Joe 5:16 77:10
 83:15 84:13
 86:21 87:16,20
 90:6 96:4,13
 98:18 102:17,18
 John 3:6 12:4
 14:14 130:21
 131:4
 joined 84:10
 joint 95:25 105:25

115:17 120:10
 130:15
 jointly 25:5 75:1
 Jonathan 59:5
 judge 43:19
 judgment 95:5
 Julie 4:10 47:23
 48:2 83:20
 July 11:19
 jump 18:14 40:10
 61:24 126:16
 127:20
 juncture 24:20
 June 10:24 86:8
 jurisdiction 36:5
 36:14 39:5 103:6
 116:23 119:13
 120:2

K

keep 6:6 22:3 28:2
 43:7 45:14 58:23
 60:18 61:11
 66:25 81:13
 114:10
 Kelley 6:10,12,13
 12:25 14:3 15:11
 110:23,24 111:9
 111:14,18,24
 112:13,23 113:5
 113:19,23 114:3
 114:9,17 124:20
 124:22
 kelp 103:25
 Ken 4:16 59:8,13
 kept 25:20
 Kern 4:11 50:15
 50:17,18
 Kevin 5:11 77:17
 78:17 80:14,16
 key 20:14 57:6
 79:7 101:23
 Kiara 12:3
 kick 16:9
 kid 46:4
 kids 26:9 59:10

killed 100:18
 Kimura 5:19 83:16
 83:18 99:15,16
 101:18
 kind 30:23 34:11
 34:16 48:5 65:24
 95:2,6 97:1 98:2
 99:3,8 114:12
 115:17 117:14
 120:9 125:4
 kinds 29:21 31:7
 King 3:3 14:8,9
 15:7,14 16:2 18:4
 39:9 70:16,17
 106:10,11 112:25
 113:1,17,20
 114:4,12 121:10
 122:4 123:15,24
 124:7 125:7,8,16
 126:16 127:21
 128:8,10,15,20
 128:22 129:3,6,8
 129:14 130:6,25
 131:15 132:2,6
 King's 17:13
 Knight 5:7 72:13
 75:10,11
 know 6:5 39:12
 45:4,16 54:5
 62:22 64:11 66:4
 66:11 67:22 68:7
 68:8,9,15 71:2
 73:3,11 75:12,15
 75:25 83:15
 86:15 93:10,15
 97:6 108:5 113:8
 117:18 121:6,19
 122:16,23 124:18
 knowing 66:4
 known 33:1 44:14
 knows 127:22
 Kulchin 4:9 45:23
 45:25 46:1

L

Lab 27:16

labor 71:20
 lack 65:6
 lacking 6:7 87:5
 ladies 69:3
 lagoon 8:6,8 13:13
 24:3,13,16,22
 25:4,11,14,15,16
 25:23,23 26:5,7
 26:11 27:2 28:10
 28:13,15,22,24
 29:2,3,4,7,10,15
 29:16,17 31:17
 31:18 35:11
 41:20 43:21,24
 44:5 47:18 48:13
 48:16,22 49:6,7,8
 49:18,22,23 50:5
 50:6,11 55:16
 58:7 61:18,25
 62:11,17 63:8,24
 64:7 70:5 79:15
 79:17 80:10
 114:7,8
 lagoons 25:18 31:5
 49:10 80:22
 laid 63:22
 Lana 83:19
 land 21:9 104:1
 Land's 11:21
 12:13 19:14
 24:24 36:18
 46:20 54:17 56:8
 83:1 88:11 110:9
 110:20
 language 14:18,22
 15:5,8,12,16 16:9
 16:13 88:3,4
 110:25 120:12
 123:10 131:7
 Lani 5:9 77:19
 Lanie 77:17
 large 28:5,15 30:13
 32:13,14,16
 34:15
 largely 53:20
 larger 125:23

largest 50:20
 Larson 73:1
 larvae 31:24 32:3
 larval 31:7,10
 33:19,25 34:3,5,6
 34:11 100:10,20
 lastly 55:20 116:21
 late 115:11
 latest 128:1
 law 36:19 37:14
 57:20 67:15
 70:17 97:13,14
 lawn 72:7
 lawns 72:9,9
 laws 67:20
 lawsuit 38:17,19
 lawyer 67:9 119:10
 lead 25:1 31:9
 40:17
 leadership 50:9
 learned 32:14
 108:2
 lease 11:22 19:15
 leave 16:4 22:23
 34:1 78:21 95:16
 leaving 14:19
 21:21
 leech 104:2
 left 7:21 52:3 71:15
 89:6 117:24
 legal 3:7 35:24
 68:6 84:19 89:16
 93:19 101:23
 115:2,6,8 125:8
 legally 85:25 86:10
 88:25 92:13
 93:13
 legislative 77:10
 legislators 73:7
 lemon 73:13
 lend 99:7
 length 12:17
 lessen 23:13
 letter 7:2 11:3
 14:13 39:15,21
 40:2 54:18 55:3,6

56:5,11,24 57:3
 59:7 60:18 61:10
 73:2 77:7,11,14
 87:22 91:8,25
 99:21 110:9
 111:21 112:5
 121:11 124:15
 126:7
letters 7:9,19 12:15
 12:16 36:7,25
 56:16 74:11
let's 6:8 14:4 77:3
 84:23 93:17
 116:3 123:16
 131:24
level 23:21 35:15
 45:8 62:25
 113:22,25
levels 29:14
Lewis 4:8 42:20,20
 42:22,24 45:20
 45:22
lies 114:7
life 9:20 12:6 21:24
 44:2 76:20 77:13
 88:21 89:3,12
 99:23,24 105:12
 121:23
lifetimes 69:4
light 114:2 119:2
limit 51:1 109:1
 122:4
limitation 10:11
limited 1:6 2:6
 13:17 51:1 62:22
 76:23 107:21
limits 60:1 107:16
 110:12
line 24:17 35:14
 106:12,16,16,21
 107:1 122:5
 123:19
lingering 39:24
list 6:22 59:17
listed 123:25
 124:18

listening 75:8
litigation 12:8
 38:21 55:24
 67:10
little 14:16 15:12
 32:11 49:12
 66:20 84:14 85:5
 86:22 93:11
 100:19 121:4,24
 122:3 126:13
 130:19
live 32:11,14 80:20
 81:18
lives 31:14
Livia 5:17 83:15
 84:18 90:5 93:6
 95:12
living 64:25 71:4
local 11:25 43:14
 43:15 45:4 46:7
 48:24 54:6,11
 55:16 59:17,21
 69:21 71:21
 73:10,19 76:21
locally 42:15
located 8:5 31:19
 43:19
location 6:25 10:14
 43:22 110:14
locations 31:4
 40:19
long 30:21 31:15
 32:8 44:1,15
 48:14 58:2 71:4
 84:4
longer 51:19 81:20
 96:13
long-term 31:8
 50:10 52:13
 66:22 68:23
look 22:16 23:6
 32:19 35:7 36:8
 40:24 41:16
 45:19 55:12 62:7
 62:10,13,16,21
 63:13 75:21 96:7

105:8 106:21
 107:2 113:6
 114:20 122:5
 123:16 125:6,24
 131:21
looked 22:18 32:23
 75:19
looking 24:17,22
 30:10,16 35:10
 45:3 55:3 64:25
 101:24,25 103:8
 113:25 117:14
 120:10 121:24
 125:12
looks 104:2 113:23
 116:21
loop 120:1
Lori 83:18
Los 63:9
loss 31:23 43:6
losses 29:23 31:1
 32:3 33:3,9
 100:13,15 101:3
 101:7
lost 33:21,21 34:3
 40:9 43:7
lot 20:23 41:10
 62:3 72:10 73:6
 73:16 85:20
 86:14,18 90:7
 94:12 97:21 98:2
 107:5,11 110:11
 114:15 123:6
lots 76:23,23
 108:19
loves 80:25
low 29:6 113:8
lower 31:5,18
lump 61:21
Lutar 5:9 77:17,19
 77:20

M

MacLagan 99:9
MacLaggan 4:3
 14:5,8 17:14,15

17:16 18:16
 27:25 36:14 40:5
 40:7 41:13 42:5
 103:12,14 106:6
 106:7,15,15
 107:13,17,24
 108:10,20 109:1
 109:7,17,22
 110:2,19 113:11
Madigan 5:6 72:12
 74:4,5,6
magenta 35:14
mail 7:10
mailing 7:12,17
mailings 7:21
mainstream 68:7
 93:9
maintain 31:23
maintained 48:20
maintaining 45:12
maintenance 49:12
 49:21 58:6 70:4
major 31:20 45:15
 62:15
majority 45:18
 68:9,10 113:24
 114:18
maker 45:11
makeup 113:9
making 16:7 17:20
 70:10 73:13
 115:25 116:1
managed 49:10
management 27:4
 54:16 99:22,23
manager 27:15
 64:14 65:13
 66:19
mandate 84:24
 85:8 92:9,10,16
mandates 9:16
 48:24
manmade 48:20
manner 58:25 64:1
man-made 25:12
map 7:1 76:17

Marcela 4:17
 60:16 61:14
March 6:17 7:6,9
 11:7,8 13:7 102:2
 102:4 110:25
marine 9:20 12:6
 13:12 20:9,16
 21:24 22:2,12
 24:18 25:19 30:3
 53:14 57:7 67:11
 70:6 76:20 88:21
 89:3,12 90:16
 99:23,24 100:1,2
 100:11,20,24
 101:8,10,12
 104:3 121:23
mark 74:11 112:19
marsh 34:13
Martin 12:12
 74:12,13
Marty 83:22
Mary 56:20,23
mast 45:18
material 7:10
materials 6:23
 13:1 54:24 119:4
mathematics 30:18
matter 1:4 2:4 6:21
 18:19 19:1 59:2
 70:19 86:4,6,17
 109:15
matters 18:11,16
 60:23 67:10
 132:15
maximum 28:20
 28:21,25 29:9
 113:6
Mayer 4:5 14:5
 27:6,7 29:20 30:1
 30:2 32:6 110:3
 112:19
mayor 4:8 42:20
 42:20 46:3
McBride 5:10
 77:18 78:19,21
 83:8

McCue 83:20	members 3:4 6:12	million 8:3 110:9	misinterpretation	modification 11:16
McGuire 83:20	14:2 17:16,24	110:11 113:3	109:22	modified 10:2
McLaggan 101:19	30:2 45:6,25	122:1	misinterpreted	129:22
McLaggans	46:19,20 47:25	millions 34:9	119:16	modify 22:15
101:20	52:4 54:5,15	mind 95:4	misnomer 111:19	116:16 120:8
mean 59:25 108:23	63:25 67:3 69:12	mine 43:7 67:23,23	misread 39:9	Monday 75:16
117:13 121:23	70:21 71:23,23	minimal 69:23	missing 128:5,6	money 72:10 76:23
122:20 125:1,4	72:2,2,15 74:13	76:14	mission 30:15	monitoring 100:23
128:5 130:19	75:12 76:4 78:20	minimization 6:17	Mitch 4:12 52:1,4	Monterey 71:14,15
means 22:6 92:13	82:5,11,12 87:19	7:4,6 9:13 10:22	mitigate 55:9 63:3	month 20:21 41:18
113:17 127:14,22	90:16 99:17	11:8 13:7,19 20:6	92:9,12 106:3	50:24 86:19 87:2
meant 111:16	119:1	46:14 50:1 53:25	109:24	94:16 96:8
125:2	Mendoza 83:21	55:4,24 66:24	mitigated 31:25	122:24 123:14
measure 10:19	mention 95:21	76:16 82:21	mitigation 9:18	monthly 31:3
109:21 125:5	mentioned 11:8	86:25 90:9,18,20	10:18 11:16,17	months 20:18,19
measured 28:20	12:11 19:9 33:10	90:21 91:10,16	11:18,23 13:11	25:10 38:9 40:20
measurement	36:15 43:5 53:17	91:17,20 93:1	13:20 16:21,21	53:18 56:3 69:24
125:5	63:19 114:17	95:4 99:18 107:6	17:2,5,9 20:8,15	90:3 96:13
measures 9:18	116:22 130:13	111:1 116:7	21:3,6 23:9,20,24	102:10 104:15
11:23 13:20 20:8	men's 71:16	118:6,14 127:17	24:3,4 25:2,8,8	105:4 117:23
21:3 22:6 37:2,6	met 15:5 63:12	127:19	26:14 30:25	118:2 122:11
52:11 58:5 70:3,7	105:1	minimizations	34:24 35:16 37:2	125:2
105:17,18,21	method 29:23	55:5	37:6,15 38:4,7,11	mortality 9:19
measuring 125:3	33:23	minimize 9:18	38:24 40:15,18	21:24 22:2 23:16
mechanism 38:3,6	methodologies	10:19 20:8,16	40:25 41:9,12	88:21 89:3,12
meet 36:12 40:14	40:24	21:23 22:2,11	47:16 55:8,15,16	91:6 121:23
41:20 61:2,5	methods 22:11	57:7 76:19 79:3	58:5 62:8,11,17	mother 80:20
66:22 92:14,16	Metropolitan 43:2	89:11 90:16,23	62:22 63:7,12,15	motion 125:23
116:7 121:18	72:22 109:11	91:6,7,13 92:21	63:21 70:3,6	128:11 129:5,8
meeting 25:3 40:20	Metz 5:3 69:9,10	101:3	74:20,25 75:2,23	129:11,12,19,23
41:18 46:8 55:21	69:11,12 70:14	minimized 75:22	76:19 90:16,20	130:10,11,16,21
57:18 62:15	70:14	91:6	90:21 91:7,16,18	130:25 131:1,14
77:10 83:13 85:3	MGD 8:3,10,10,13	minimizes 76:10	92:22 96:22,24	131:15 132:12,15
85:7 86:8 115:19	8:18,24 9:1,4	minimizing 10:16	97:9 101:6,14	132:16
130:15	10:11 92:7	22:7 41:1 51:18	103:10 105:3,16	move 12:17 14:4
meetings 11:15	113:22,24	97:20	105:22 106:2,4	18:18 50:12
75:18,18	Michael 64:9	minimum 113:6	109:21 110:10,11	58:24 60:13 69:5
meets 20:12 79:4	micro 101:2	ministerial 14:14	110:18 114:21	69:6 76:18 77:5
82:23	middle 31:5	16:3 39:1,11	116:5,7 118:7	80:11 82:25 83:6
member 12:12	migration 44:18	minute 83:10	124:24 125:9	85:12,12,24
18:4 42:24 43:2	44:19	minutes 6:10,11	mitigations 64:2	105:24 118:16
48:2,4 50:15,18	Mike 5:6 72:12	18:9 28:1 40:6	mode 19:21 118:6	129:25
52:15 56:20,23	74:6	83:25 84:2 99:10	model 30:6,8,9,14	moved 23:15
65:15 66:21	miles 52:19 63:10	121:4	30:17,22 33:6,13	moves 105:14
69:13 74:3,12,12	63:11	misconstrude	modeled 35:19	107:7
74:13 76:6 79:1	milestone 62:9,9	117:19	modeling 32:23	moving 22:1 23:24

25:23 38:21 65:7
 66:5,13,25 80:4
 86:4 93:14
MPDES 89:19
MPDS 6:18 118:12
 118:13
MPS 90:12 92:15
 131:7
mud 31:14,16
 48:17
multi 89:21
multiple 74:20
Municipal 64:20
 65:12
Munoz 4:18 61:18
 61:23 64:6,6
muscles 32:10
mutifaceted 78:5
M-e-t-z 69:12
M-u-n-o-z 64:6

N

N 4:1 5:1
naked 34:11
name 6:13 42:23
 45:14 46:1 50:18
 52:4 56:25 58:16
 64:5 67:8 69:12
 72:15 74:5 76:4
 77:19 80:16
 87:20 99:15
 111:7 119:10
named 52:9
national 52:7
 80:24
natural 25:16,19
 25:24 48:17
 79:21 100:3
 114:8,11
near 49:15 68:23
nearby 79:17
nearly 34:8 79:5
necessarily 103:11
 120:12
necessary 19:11
 47:16 50:6 82:25

need 8:2 10:1,2
 13:20 14:16,17
 14:21 33:8 39:2
 44:24 49:19
 51:21 52:14 54:8
 54:9,10 60:10,11
 62:13 63:16
 68:20,23 69:5
 73:9,12,20 74:2
 75:12,25 79:7
 80:11 81:19
 83:10,11,24 85:7
 85:16 90:19
 91:12 92:2,6,19
 92:20 97:8 105:9
 105:12,12 112:21
 113:9 116:18
 120:3 125:21,21
 127:14,18 130:20
needed 8:25 9:1
 17:20 23:15
 76:20
needing 21:21
needs 8:23 18:5
 20:4 41:11 44:4
 54:6 61:5 93:2
 113:10
negative 44:16
neglect 49:12
neither 54:20
neutral 54:22
never 31:15 57:20
 71:15 78:9 105:5
 109:8
new 6:14 9:16 10:2
 32:2 34:13 45:11
 52:23 62:23,24
 63:2,2 65:23
 68:13 76:20
 84:21 86:14
 106:20,24,25
 107:6,22 127:1
newest 50:22
Newton 4:13 54:13
 54:14,15 56:12
nice 48:5 103:1

NIEVES 1:20 2:18
night 71:22
nine 20:21 28:17
 31:10 52:16
 63:11 66:9,21
 78:1 104:15
nobody's 123:22
non 101:10
Nordby 14:5 27:13
 30:24 34:2
normal 28:9
north 72:17 79:22
Northern 81:11
note 87:24 128:10
noted 62:15 126:6
notice 43:5 86:10
 101:22,25 102:13
 110:24 111:7
 114:13,13 115:6
 115:8
noticed 85:15,23
 85:25
noticing 93:16,21
November 11:1
 22:9
number 6:18,18
 7:1,14 9:7 10:6,7
 16:6 22:15 25:13
 28:13,14 30:18
 30:24 31:4,16
 33:16 36:7,15,24
 38:15 42:18
 44:17,18 45:12
 45:12,13 55:6
 61:15,17 67:9,22
 87:5 94:1,13
 110:7 112:7
 113:5 122:8,12
 122:21 126:20
 127:16 128:7
 129:23 130:1
 131:21
numbers 28:19
 32:14
numerous 27:2
Nygaard 4:10

47:23,25 48:2

O
objection 93:13,15
objections 100:7
objective 20:13
objectives 40:15
obligation 24:18
 50:20,22 109:23
obviously 74:18
occasions 69:25
occupied 72:25
occur 23:22 62:11
 110:15 113:16
occurred 30:9
occurring 75:18
occurs 85:7
ocean 8:14,21
 25:24 29:14,15
 30:12 31:5 44:5
 47:17 58:4 97:15
Oceanography
 26:22,25
Oceanside 50:16
 50:19,22 51:22
 52:16
October 9:9,10
 10:10 82:19
offer 37:17 74:17
offering 131:9
offers 43:13
office 58:13,17
 59:6
officer 3:6 6:25
 7:13 13:10,16
 14:25 15:16,24
 16:4 37:16 38:5
 38:23 39:2
 123:21 124:2,3
officer's 37:11
 39:7
official 45:4 50:19
officials 42:19
 45:16 46:24 53:4
 61:17 63:19
offset 32:3 33:8,24

109:12
offsetting 30:25
 34:16
offshore 103:23
 104:4
offsite 24:3,22
 35:10 55:15
 62:10 63:7
Oh 59:10 61:20
okay 81:16 83:23
 96:19 111:20
 112:20 117:11
 122:6 123:1
 124:23 125:18
old 46:3 80:17
once 8:4 44:6
 49:18 55:9 89:25
 112:17
ones 73:14 112:16
ongoing 19:24
 26:10 30:11
 35:11
online 60:5 77:2
open 31:5 44:22
 73:20 114:10
 124:25
opening 8:8
operate 107:20
operated 58:1
 79:10
operating 9:25
 19:8 75:16 118:5
 118:13
operation 10:3
 19:10,20,21
 24:19 33:1 48:21
 49:20 109:18
 116:20
operations 10:1
 13:18 22:4
operative 127:3
 131:6
operator 48:12
 50:8
opinion 47:2 76:13
 80:2 117:8,9

opponents 36:24 38:16 47:9 67:22 71:2,3,20 102:12	original 7:3 114:11 originally 8:22 ought 125:23 outer 49:7 outfall 19:16 outlined 87:23 outside 81:10 95:22	42:12 48:21 49:13,20 52:8,13 64:22 65:6 83:16 95:16 103:12 108:17,17,20 109:3 114:5 115:21 124:12 125:23	pension 99:19 people 50:21 52:7 66:21 68:2 71:4 71:20 84:7 86:5 94:1,12 102:6 122:15	perspective 48:9 68:17 108:24 118:12
opportunities 22:15 24:8,21 25:4 40:17,25 41:14 62:25 63:2	outstanding 112:21	partial 1:14 2:14 6:2 132:17	percent 9:4 21:20 21:22 23:16 29:9 31:10,21 32:8 33:21,24 34:3 42:9 51:14 52:18 57:11,16 64:24 65:3 66:23 73:5 80:2 97:19 113:1 113:8,18,20	perstene 25:13 pertains 118:1 pet 32:9 Peter 4:3 17:16 35:7 44:13,15,22
opportunity 35:10 41:17 43:14 50:9 56:22 61:24 77:1 77:4 80:15 104:20 105:2 115:10 119:6	overall 26:14	partially 45:11	performing 99:4	Peterson 5:13 77:17 82:4,5,6
oppose 71:3,6 89:20	overestimate 23:18	participate 62:19	performance 97:18	petition 116:13 Petty 4:20 64:12 64:19,19
opposed 55:15	overlooked 40:16 41:17,22	participating 52:21 119:21 120:22	perfect 105:4	phonetic 33:17 phrased 119:22
opposing 68:3	overly 85:11	particular 16:6 19:9 28:12 69:24 123:17	period 20:20,20,21 20:24 29:17 30:21 87:8 113:19 118:4 122:25 123:14	phytoplankton 34:9,14
opposition 36:7 44:10 54:21 118:1	overriding 70:25	particularly 47:3	permissible 77:12	Ph.D 26:25
option 16:3 107:11	oversee 17:2,3	parties 10:23 12:9 117:22 118:17	permit 9:10,22,24 10:1,2,8 15:21,23 18:21 19:5,13 20:13 22:10 26:19 36:10 41:2 57:5,6 79:5 82:20 82:24 89:19 90:12,12,14 92:15 94:5 104:25 105:2 116:16 117:24 118:12,13 131:8	piles 23:22 piped 42:7 place 41:18 44:22 71:16 79:22 86:19 118:9
options 63:21	overwhelming 68:10	partly 32:4	permits 10:9 94:22	places 30:13 33:15 35:13 80:24
oral 115:11	Owen 78:17,20	partner 50:23,23	perplexed 87:13	plain 123:10
order 6:17 7:1 9:7 9:11,14,15 10:6 10:10 16:2,23,25 33:8 37:17 39:7 61:1 83:13 99:25 125:25	oysters 32:10	partners 52:15,22	perplexing 85:5	plan 6:17 7:4,6,7 9:13,14,21 10:22 10:23,24,25 11:1 11:8,9,10,12 12:2 12:19 13:7,9,15 13:23 15:22 16:19,20,20,23 16:25 17:1 18:1 18:20,21 19:2,7 19:17,22 20:2,6 20:12,17,24 21:6 24:5,6,11 25:8 26:14,18 34:24 35:4 36:9,12,25 37:7,9,16 38:7,7 38:9,24,25 39:8 40:18 41:8 44:3 46:14 47:5,8,9,10 47:11,14,20 50:2 50:11 53:25 57:4
ordinance 84:5		partnership 58:9 58:21 78:1 79:10	person 13:24 130:16	
ordinances 32:24	P	partnerships 58:22	personal 44:21	
organism 20:9	Pacific 8:14 30:10 30:12 44:5 47:17	parts 29:11 121:5	personally 44:9	
organisms 13:12 20:16 22:3,12 23:17 24:19 28:11 29:25 41:1 90:16 100:2,11 100:20 101:8,10 101:12	package 77:8	pass 8:13 29:19 57:22 64:16 106:2 118:5,5,21		
organization 53:8 77:24 93:9	packet 6:24 12:11	passing 57:24 63:19		
organizations 24:10 79:1 96:11	page 4:2 5:2 11:10 11:20 12:16 18:24 28:17 69:20 122:23	patently 89:16		
organized 6:5,6 61:22 83:14,17 84:12	pages 12:18 123:6	path 66:13		
	paid 78:10 81:8	patience 84:4		
	pairs 78:9,11	patient 42:19 103:15		
	paragraph 123:19 124:1,13 126:19 126:20,21 128:12	pattern 44:17		
	paragraphs 126:11 127:4	pay 45:15 70:24 89:4 110:10		
	parallel 63:25 66:12	payers 80:1		
	Park 2:15	PDES 10:7		
	part 17:5 26:13 29:12 41:22	Pearson 3:5		
		peek 29:21		
		pending 38:19		

58:20 60:20 61:6	90:15	90:17,18,21,25	128:4	preference 16:5
62:6,7,14,22	plant 8:17 21:21	91:3,10,15 92:3,9	possibly 89:15	24:13
63:12,15 64:3	22:1 23:5 25:22	92:10,16 98:6,9	post 65:7	preferred 21:5
66:25 67:17,20	26:3 50:4,6 52:19	98:11,12 99:8	postpone 68:1	22:21 24:13 25:7
69:6,18,24 70:2,4	54:1 57:15,25	101:23 102:25	89:25	40:18 43:22
74:16,18 75:2	68:18 71:24,25	103:4,10 105:6	postulated 78:4	104:11
76:16 78:15 79:3	79:11 100:14	105:15 120:19	potable 8:10,18	prejudice 85:21
82:21,22 84:15	101:2 103:24	Porter 83:18	42:11	prematurely 88:13
85:11,14,18,23	108:4 113:7	portfolio 76:12	potential 35:8	88:14
85:25 86:11,23	114:6	portion 28:5,16	51:19	preparation 97:8
86:25 87:5,24	play 126:22	33:7	potentially 35:13	prepare 20:5 40:23
88:8,9,13,15,15	please 28:2 58:23	Poseidon 1:7 2:7	pounds 100:16	105:3
88:18,19,22,24	81:25 94:23	6:19 9:8,11 10:20	power 8:4,5,15,22	prepared 12:25
89:2,5,13 90:1,8	119:8 122:16	10:23,25 11:3,7	9:1,3 10:5 13:17	13:4 14:22 82:23
90:9,10 91:9,21	pleased 57:8	11:22 13:8 14:4	19:20 20:11	preparing 76:15
92:6,14,16 93:14	pleasure 17:18	16:23 17:16	48:21,23 49:4,9	prerogative 16:1
93:19,24 94:3,4,5	58:15	19:12 22:11 27:3	49:19 51:10	prescribed 89:19
95:22 96:7,22	plenty 86:9	27:19 33:1 35:7	113:2,10 116:19	prescription 71:6
97:2,3,3 98:2	plumbing 104:1	44:2 46:14 51:16	powerplant 8:7,13	71:8
99:19 100:8,9,19	plus 42:25 109:10	53:2 54:25 57:13	8:21 10:1,11 19:8	present 27:3
100:22 101:3,6	Plusher 56:18	58:9 62:7 64:23	19:10 20:3 21:18	presentation 6:8
101:11,14,15	74:12	67:17 68:18	21:21 22:4,16	13:22 14:4,7 18:9
102:1,2,4,7,8,12	point 6:7 9:23	76:13,16 78:1	23:11 25:21,21	29:19 44:15 56:6
102:13,15,24	16:17 20:22 22:8	79:10 80:7 82:23	26:11 30:7 31:12	82:3 83:14,17
103:9 104:14,14	22:23,25 52:23	89:18 90:13 91:3	31:24 32:20	84:1,5,8,12 85:2
104:19,24,24	62:10 63:5,18,23	91:5,7,8,22 92:1	43:20 48:12,15	93:4 103:17
105:3,14,18	75:13 100:17	92:15 97:12	49:20 50:7 101:8	106:23
106:1,13,20	104:12 105:24	99:18 103:18	102:23 107:20,21	presentations 6:5
111:2,18 113:14	107:13 116:3,9	112:1,14 115:21	108:7 112:15	6:6
115:25 116:17	116:19 127:21	116:1,16 118:4,7	114:6 118:11	presented 16:22
117:18,19 120:22	pointing 103:2	118:12,18 119:11	powerplants 30:11	36:10 37:1 53:13
121:5 122:9,12	points 55:3 66:3	126:7	86:16 102:21	60:20 75:16
122:19 123:3,6	71:8 93:23	Poseidon's 7:5	practical 86:6	102:19
126:3,10,14,14	101:21 103:17	19:3,15 69:17	118:15	preserve 26:15
126:14,15,15	115:2	91:11,25 93:18	practices 20:7	preserving 79:21
127:11,18,19,19	poised 85:6	94:1	75:23 90:15	president 60:16
128:2,17 130:13	policy 45:10 86:16	position 18:3 45:5	precarious 60:3	61:25 64:6,19
130:14,19 131:18	87:21	50:10 73:25	preceded 126:2	74:1 77:10 78:22
131:20,22,23	poll 80:2	positions 70:22	preceding 70:8	95:13
plankton 34:14	pollution 65:19	positive 51:15	precisely 105:6	pressing 60:11
planktons 34:8	poor 59:10	possibilities 62:17	preclude 121:21	presumably
planning 54:16	population 29:24	possibility 15:20	precludes 38:21	108:14 131:20
60:21 95:21	32:8,16 51:14	42:1	precluding 115:17	previous 41:5
106:5	populations 31:23	possible 18:10	precondition 19:3	59:25
plans 11:5 20:7	Port 63:9 65:22	22:18 53:11,14	predominantly	previously 12:11
40:24 74:20	84:24 85:8 89:17	68:20 92:21 97:6	29:18	pre-condition 19:7

R				
race 88:1	127:11	43:24 109:23	refuse 89:3	82:11,22 103:2
achel 4:14 56:19	ready 16:9 64:13	116:10	regard 48:6 49:2	reiterate 55:20
83:21	83:23 88:17	Recognizing	88:16 105:14	91:15
rages 99:3	114:24 129:21	108:16	115:20	rejected 38:16,18
rainfall 28:8,9	real 44:19 101:15	recommend 88:12	regarded 30:12	related 21:24
37:22 64:20	107:4	89:18 117:17	regarding 6:21 7:3	24:16 27:4 91:13
rainy 29:17	realize 93:8 115:8	recommendation	9:5 12:19 13:23	126:23
raise 15:10,10	realized 72:19	18:7,23 37:11	16:7 28:4 107:14	relationship 82:13
raised 37:20 40:1	99:13	39:21 56:1	116:24	reliability 52:14
99:15 111:21	really 34:17 43:23	104:23 111:5	regardless 26:15	60:4,10 76:8,24
112:3 115:2,7	46:4 59:16,17	118:15,23	regiments 103:2	79:8
126:1	60:11 62:2 73:9	recommended	region 1:2 2:2	reliable 42:15
raises 112:6	80:25 86:2 112:5	61:7	17:21 46:8 51:16	51:12 52:9 73:20
raising 56:15	114:22 124:25	recommends 88:7	52:13,20 59:22	76:20 82:15
ramifications	125:6,22 126:11	88:8	61:1,5 68:20 76:8	relies 98:3
84:19	130:14,17	record 49:1,23	77:14 78:3	rely 44:6 69:7
range 96:13	reason 11:3 23:10	54:18 70:16	regional 1:1 2:1,17	remained 29:18
121:10	45:15 71:3 99:20	recovery 67:11	7:2,11,15,25 9:5	remaining 8:18,20
rate 10:11 28:25	103:19 104:24	recreation 25:17	9:6,12 10:22	21:22
57:21 78:9,11	115:12 127:5	recreational 25:16	11:12,24 12:1	remand 97:24
80:1 117:13	reasonable 68:11	43:25 79:19	13:10,14,24 15:1	remanded 97:22
rates 57:23	105:11 108:14,22	recycled 42:8,9	15:22 19:6,11,16	remark 59:15
ratios 55:16	reasonably 99:6	recycling 42:13	19:25 20:4 30:14	remarks 27:23
RAY 12:22	reasons 28:13 71:5	59:18 68:25	36:21 38:14	remember 87:10
RAYFIELD 95:20	74:18 75:5	reduce 88:20 94:7	40:13 43:3 46:20	125:2
96:3,9,15 107:25	103:20	97:19,20	48:14 54:11	remind 34:23 68:2
108:19,25 109:3	rebuttal 103:16	reduced 50:3	60:12 62:25	89:14 104:14
109:15,19,25	recalculation	reduces 22:12	65:19,20 69:14	116:15
110:16,22 111:6	37:24	reducing 53:14	76:5 91:8 92:17	reminded 81:6
111:11,16,20	recall 119:12	reduction 21:25	104:15 116:23	removal 65:25
112:10,19,24	receive 12:21	reef 32:15	117:1 119:18,23	renowned 30:18
120:19 124:11,21	38:13 43:16 51:3	reefs 32:13	123:20,21 124:12	reorganization
124:23 125:11,15	116:1 131:24	reevaluate 112:18	124:14 126:6	106:19 107:3
129:16 130:2,11	received 7:9,16	refer 13:23 24:4	regions 113:10	reorganized
130:23 131:11	12:9,14 36:7,24	110:25 111:2,4	region's 79:7	106:23
132:11	38:14 49:12 70:1	111:18	registered 80:3	repeated 44:9
reach 22:24 25:7	87:25 104:16	reference 10:5	regulated 10:6	rephrased 119:20
37:5 40:14	115:12	85:1 100:25	regulation 7:25 9:5	replace 52:23
reached 22:9 23:3	receiving 26:25	referencing 90:8	51:5	replaced 33:8
reaches 29:14	Recess 83:12	referred 33:17	regulations 46:9	replacing 50:3
read 54:19 56:23	reciprocity 39:25	105:7 115:18	58:2 61:9	report 6:25 7:14
59:8 87:22	reclaim 42:2	referring 122:15	regulator 60:23	7:15 12:2 26:21
120:21 126:16,17	107:10	127:22	regulators 24:10	28:4,7 37:21
127:4	reclaimed 42:4	refers 11:21 46:3	regulatory 6:14	46:15 56:2 63:16
reading 119:4	reclamation 54:7	refine 14:20	23:3 45:2 53:9,16	87:3 88:4,6,7
	recognize 31:24	reflect 10:15 47:11	57:19 73:4,10	89:9 102:3

106:22 107:2	128:17	126:10	110:4,14 116:6	14:18 15:8 17:14
108:1 109:23	requirement 21:7	resource 6:13	restore 24:18	17:23 18:14 19:4
110:25 111:2,10	23:20 41:2 91:22	11:14 24:25	restored 63:8	27:2 32:15 35:5
111:12,15,19	92:14 105:1	25:12,16 26:15	restrictions 43:11	39:12 51:15
115:9 117:18	115:19 116:8	27:5 40:14 55:2	restrictive 85:11	53:23 63:18
122:18,19	requirements 10:3	79:16 99:18	restructuring	64:24 66:6,8 77:3
reported 1:19 2:18	10:12 18:21,22	resources 1:7 2:7	65:19 114:15	94:2 97:2,7 106:4
reporter 2:19 64:5	20:1,9,13,25 79:4	6:19 17:17 43:12	result 18:13 29:9	116:17 117:22
83:10	82:24 101:16	51:17 53:2 57:13	32:21 33:6,13,23	126:24
reports 44:7	104:25 112:15	58:5,9 59:14	48:23,24 89:22	ripe 131:24
represent 77:20	requires 10:13	76:14,17 79:10	resulted 16:22	rise 45:13
78:25	57:6 90:14,18,21	80:8 85:9 100:1	88:2	risk 65:6 78:4
representations	92:4 98:22 99:23	126:7	resulting 13:12	79:11 108:10
6:7	121:24	respect 17:19,23	28:23	Ritschel 3:4
representative	requiring 70:12	17:25 18:8 20:17	results 33:5	127:20 128:14,25
56:19 59:6	119:16	21:15 22:5,12	retain 116:17	129:17 132:7,13
115:22	Research 27:16	85:17	retired 70:22	river 27:18 30:6,13
representatives	79:18	respectfully 41:3	reverse 104:2	43:16,18 51:2
44:11 46:23	reservations 93:20	81:24 106:8	revert 25:23 26:12	65:19 73:3 81:11
116:22	reserve 15:25	respond 115:1	114:11	101:23
representing 56:17	residence 42:25	119:6	review 12:1 20:19	Riverkeeper 95:2
56:22 61:16	53:4 84:9 101:9	responds 67:17	47:12 55:12	97:11,12,17 98:1
70:18 76:5 82:6	101:10	response 69:25	69:24 86:22	98:8,12,19
represents 112:12	resident 60:22	84:8 87:25 91:11	88:23 89:21	102:17,19,21
reproduction	Resnick 83:19	102:9	95:13,22 96:25	103:3,11 115:20
31:18	resolution 7:14	responses 87:11,14	97:1,4,10 104:13	115:22 116:6,11
request 18:8 24:7	13:3,5 16:7 18:1	responsibilities	112:2 116:13	rivers 30:12
41:3 57:4 67:18	25:9 41:4 51:23	56:13	118:22 120:7	road 51:20 76:17
83:25 106:8	53:24 64:16	responsibility	reviewed 47:8,10	Robert 4:23 67:2,8
118:22	66:12,14 73:24	49:21 82:9	99:18	Robertus 3:6 12:4
requested 74:19	75:24 83:6 88:4,8	119:15	reviewing 54:24	14:11,14 15:20
75:23 115:16	101:17 105:23	responsible 45:11	96:22,24	16:16,17 76:4
requesting 60:19	106:8,9 115:15	49:13 51:18 61:4	revised 6:16 7:5	111:5 115:4
require 18:1 19:5	118:19 123:12	77:2 79:7 84:9	10:24 11:7,10	117:16,17 118:21
23:9 92:7,17	126:17 127:13,14	104:8,11	12:2,19 13:6	120:14 131:6
107:23 108:21	127:16 129:22,23	responsive 18:21	69:25 87:2,24	rocky 32:15
119:23 122:11	130:1,4,5,7,21,22	26:18 36:10	90:1 93:24 94:16	role 15:19 26:4
required 6:17 9:11	130:24 131:4,14	104:17	96:7 102:9 111:1	74:25
9:14 11:2 13:9	131:17	rest 75:20 83:11	121:5 127:17	room 38:16 41:19
19:3 20:4 62:7	resolve 12:4 14:12	93:3 101:8	Revrick 83:19	71:16
82:20 91:23	122:7 124:13	restoration 11:1	rework 107:2	round 26:9 62:23
92:19 93:1	126:2,5	24:8,15 26:16	rewrite 97:22	123:15
102:12 108:13	resolved 122:8	27:14,17,20	re-evaluated 13:20	route 118:25
110:4 115:24	125:24	34:13 35:4,8,11	re-vote 38:13	routinely 115:12
120:14,19,23	resolves 13:13	35:18 88:16,25	Richard 3:2	RP's 62:25
122:3 126:4	resolving 14:15	89:16 98:1,3,14	right 8:7 11:21	Rua 4:20 64:12,19

Rucker 4:22 64:13 66:17,18,18 ale 95:15 96:21 97:17,21,25 ruled 103:19 rules 102:20,21,22 ruling 95:5,12 98:8 98:11 rulings 95:10 run 120:3 running 67:5 75:15 runoff 29:21 rural 66:3 R9-2006-0043 10:7 R9-2006-0065 6:18 7:2 9:7 66:15 R9-2008-0039 7:14 13:4 129:24 130:1	76:5 77:14,20 78:1 80:3 81:4,18 82:16,17 83:2 84:10 90:6 99:16 122:9 123:2 126:9 sand 81:14 92:24 92:25 104:2 Santa 7:20 30:19 30:21 33:11 44:14 71:14 72:8 72:21 Sara 83:18 satisfaction 111:23 satisfied 123:4 satisfy 20:3 Savannah 5:12 80:17,18,19 81:1 81:22,24 82:2 Savannah's 81:18 saw 35:10 53:12 72:7 saying 41:7,10 54:10 73:17 111:6,8 127:9 says 15:23 41:7 46:15 87:5 90:13 92:6 102:3 120:7 124:13 126:3,8 126:19 127:15 scale 32:21 scenario 29:8 schedule 11:11,13 85:17 118:18 scheduled 85:3 106:5 schematic 7:1 Schmidt 5:4 70:20 70:21,21 Schneider 3:5 16:11 118:24 123:23 124:5 127:13 128:19 129:7,9,18,25 130:8,20 131:2 131:13 132:9	school 26:9 science 26:8 30:4 46:18 sciences 77:13 scientist 12:3 scope 40:18 scoping 86:15 Scott 4:4 26:21 27:6 31:2 screen 101:2 screened 32:24 screens 32:25,25 Scripps 26:22,24 scrutiny 21:7 23:2 57:24 sea 103:25 104:1 seat 72:25 seating 83:17 seawater 8:3,23 13:12 19:8,13 21:25 28:15 29:4 29:18,24 31:11 34:20 42:3 43:13 52:12 59:18 101:1,9 SeaWorld 79:18 second 7:12 13:15 44:23 55:21 62:14 63:13 70:4 85:4 95:13 100:22 101:22 104:12,14 106:12 107:10 114:14,19 128:25 129:7 130:2,9 131:14 secondly 39:21 74:16 seconds 28:25 67:5 68:21 98:16 101:21 section 9:11,15 10:13,17,18 84:24 102:25 103:5 115:18,24 116:4,8,18 117:2 120:15,20,23,25	123:17,18 125:24 126:2,5,17,23 128:18 129:9 sector's 78:2 secure 73:21,22 sediment 103:22 see 8:7,16 12:22 14:11 32:13 35:14 41:21 48:22 49:14 52:20 64:10 80:23 94:17 104:24 105:5 112:5 113:6 114:20 116:3,13 seen 45:7,8 86:15 119:7 select 25:7 selection 25:1 38:4 40:17 75:1 self 69:2 sell 54:9,10 senator 59:7,7 74:11 senators 72:2 senior 6:13 12:3 sense 34:12 38:25 59:24 60:5 76:21 86:13 108:22 122:23 sensitive 54:5 58:25 81:20 sent 7:12 11:3 73:1 sentence 124:13 126:8 separate 23:3 91:22 sequential 91:24 sequentially 91:25 serious 66:6 serve 66:20 68:13 68:19 70:23 75:3 served 48:3 65:16 65:18 70:22 72:21,24 service 52:6 58:16	66:20 103:19 serving 46:2 session 110:17 set 32:9 39:1 40:20 57:21 88:2 89:17 101:7 110:8,9,12 124:21 sets 14:18 setting 32:18 125:4 seven 11:4 18:24 74:8 seventh 102:4 Seventy 64:24 shape 24:11 share 22:24 26:19 81:7 114:2 130:12 Sharrar 5:11,12 77:17 78:18 80:14,15,16,19 81:24 shed 28:14,18 37:20 38:2 sheet 118:19 119:2 124:10,12 125:20 128:11 129:22 shells 34:11 Shirley 74:12 short 43:7 113:19 shortage 71:10 Shorthand 2:19 Shortly 26:25 show 15:10 28:23 29:22 63:11 98:4 showed 110:3 showing 11:11 103:1 shown 35:20 shut 113:14 shuts 25:21 26:11 108:7 114:6 sic 25:13 27:15,18 28:17 30:20 32:12 90:12 side 24:14 32:19 56:10 83:4 107:1
S				
Sacramento 77:9 safe 44:2 safeguard 82:22 sake 16:12 17:12 Salice 56:20,23 saline 8:11 salinity 28:23 29:11,13,13,21 salt 28:10 29:7 sample 31:6,6 samples 31:4 San 1:2,15 2:2,15 6:1 7:19 24:9 25:14 27:16 35:11 39:13 43:13 48:15 50:20 51:10,13 52:9,15,24 55:22 56:9 57:21 58:13 58:18 59:14 64:21 65:3,5,8,14 65:21 69:14 71:23,24 73:11 73:18,19 74:6				

107:1	31:13 32:7,20	37:19 40:7 48:9	54:24 55:2,11,25	110:9,19 114:8
Sierra 67:9 99:16	45:17	54:4 59:25 61:15	60:20 61:7 70:1	114:11,11 116:9
sign 20:5	Smith 69:9	63:18	74:13,15 87:14	stated 11:20 24:12
signed 78:7 121:11	solely 103:19	speaking 46:13	88:11,12,12 91:2	89:9 103:18
significance 23:19	solicitation 62:21	130:10,11	91:7,9 102:3,4,9	113:1
significant 29:22	Solmer 5:14 83:15	specialist 27:14	103:1 104:16	statement 110:17
78:10	83:23,25 84:3	species 31:12,13,19	105:23 106:1,17	116:25 119:12
signs 16:14 19:7	93:4,6 94:25 95:7	31:23 32:5,17	107:19,23 110:20	126:3
similar 33:2 67:12	95:11,19,25 96:4	100:6,18 101:10	111:2,14 115:9	statements 108:5
Simmons 4:23	96:12 99:11	101:12	119:17,22	states 91:7,8,25
67:2,3,7,8 68:21	119:9 121:2	specific 9:21 11:5	staff's 56:2 88:3	statewide 105:25
68:22	122:7 123:5	12:19 13:11	89:5 111:4	state's 58:20 60:9
simply 36:25	Solorzano 4:14	14:17 15:13 20:7	stageability 44:1	station 8:4,5,15,22
104:18 128:8	56:19,21 57:1,1,2	22:8 38:4 39:22	stake 79:20	9:3 10:5 13:18
131:9	57:3	39:23 40:1,2,4	stand 67:16 93:22	19:20 20:11
sir 67:6 109:22	solution 41:22	90:15 96:5,14	standard 125:4	49:19 113:2
site 9:17 20:6,15	42:12 52:13 61:5	112:2 120:6,20	standards 57:19	116:19
21:1,6,7,9 25:8	79:7 105:5	123:17 126:4	97:19,20 101:23	stations 104:5,6
26:16 37:6 40:18	107:20	specifically 15:25	103:10	statistics 30:19
40:24 47:15	somebody 67:4	58:20 62:5 94:22	standing 80:3	statue 98:21
55:15,24 63:3	son 81:5	96:6 126:19	stands 77:22	status 74:22
70:3 76:18 90:22	soon 56:3 67:24	specificity 14:16	stand-alone 10:3	statute 36:8 105:7
91:13 92:6 106:4	68:20 72:19	15:2,9 16:5 18:4	13:19 118:6	106:19 108:16
110:5	sorry 53:23 61:20	specifies 15:22	start 14:17 15:13	statutes 103:3
sites 21:13 24:14	99:11,13 107:25	specify 19:12	18:25 42:20	statutory 74:25
37:1 90:14	sort 32:17 85:18	speed 55:14 86:1	54:20 84:12	stave 58:22
110:15	Sorting 47:1	spell 64:5	118:3	stay 74:14
siting 120:20	sound 66:4 68:6	spent 43:3	started 28:5 72:20	stella 49:22
situation 9:24	soundly 67:18	spin 86:5	starving 68:14	step 23:25 24:5,25
81:21	sounds 14:20	Spirit 80:7	state 2:20 11:21,25	25:22 26:3 51:15
situations 62:13	41:10 124:25	split 127:1	12:13 19:14,24	53:15 68:4,5
six 11:10,20 25:10	source 20:4 21:18	spoke 59:25 102:6	21:4 24:24 25:6	stepped 49:5
38:9 40:20 87:10	46:8 77:2	spoken 63:25	25:24 26:13	stepping 52:22
122:11,24 123:13	sources 42:16	sponsors 69:21	27:16 36:4,18,19	steps 18:23 92:1
125:2	46:25 71:1 81:10	spot 34:1	36:22 37:14	Steve 69:8
sixth 111:1	84:22	sprays 72:9	38:17 40:22,23	stewards 46:19
size 23:1	south 76:25	squeezed 40:5	41:19 43:23	48:13
skip 18:10,17 35:5	Southern 35:12,20	stack 18:13	46:20 48:17,25	stewardship 26:10
37:18	southwest 8:6	staff 6:8 12:1	49:11,13,22,23	48:23 49:1,23
Sky 2:15	space 73:20	13:24 14:8 19:2,9	51:4 53:5 54:17	50:6
slight 128:5,6	speak 42:25 78:24	24:23,25 26:21	56:7 58:2 60:6	stewart 25:22 26:4
slightly 48:9	80:16 99:12	28:4,7 37:20,25	70:23 72:2 73:7	stinking 48:18,19
slips 18:12	speaker 18:12 70:9	39:5,20,24 40:13	76:25 79:24 83:1	storage 79:14
slow 23:13 86:1	92:23 99:12	40:14 41:14,15	86:15 88:11	stories 71:13,14
slowing 21:25 86:3	speakers 4:2 5:2	44:6,10 45:5	90:24 91:2,4	storm 29:2,10
small 28:14,24	18:11 28:2 34:24	46:15,25 47:7	97:14 99:22	story 53:13

strain 51:5
 strategies 69:1
 'ress 35:15,18
 36:16 38:22
 50:25 59:22
 100:5
 stresses 100:3
 stretch 83:11
 stricken 124:1
 128:15,23
 strictly 97:23
 strong 45:5 46:17
 67:17
 strongly 72:4
 77:23 83:5
 struck 105:13
 structure 8:16
 structures 10:15
 stuck 119:25
 studies 27:1,2,8,9
 27:11 69:23
 89:13 121:6
 study 20:14 28:4,6
 28:11,17 31:2
 46:11 118:1
 'tuff 121:7 130:18
 subject 10:12 13:9
 78:11 88:22
 116:6 118:14
 123:3 128:2
 subjected 100:3,13
 submission 69:20
 submissions 14:12
 submit 9:12 13:9
 38:9 122:20
 123:20
 submitted 10:20
 10:24,25 11:5,7
 15:22 47:5 74:19
 75:21 82:21 96:8
 102:3
 Subsection 128:13
 128:23
 subsequent 14:12
 14:13 37:15
 39:10 118:4

124:2
 subsequently 70:7
 subsidies 117:15
 substance 87:23
 104:22
 substantiate
 109:13
 substantiation
 109:5
 substantive 109:15
 114:13,16
 substitute 99:4
 substitution
 128:16
 subsurface 22:17
 sub-service 103:23
 succeed 101:14
 success 48:11
 62:23
 successful 53:18
 58:8
 suffered 49:11
 suffering 76:25
 sufficiency 69:2
 125:14,15
 sufficient 88:25
 93:14,14,19
 125:10,11
 suggest 119:19
 suggested 18:5
 105:1 110:9,19
 128:6
 suggestion 17:13
 summarize 45:20
 69:19
 summary 6:25
 7:13 18:18 95:7
 95:10,12
 superior 42:3
 supplement 10:25
 42:12
 supplemental 7:13
 supplies 54:6,12
 57:10 61:2
 supply 17:20 42:10
 43:10,14,15 51:9

51:16,21 52:10
 52:18,23 59:15
 59:18,21 60:3,10
 65:1 67:11 68:13
 68:16 76:12,21
 76:24 77:1,5,6,11
 79:14 81:9,10,12
 81:19 82:15 83:3
 105:6,10
 support 18:2 35:21
 46:13 47:19 53:3
 54:20 56:24 57:4
 57:8 58:8 59:21
 60:12,20 63:24
 65:7 67:17 72:3,5
 74:11,17 77:6,7,9
 77:12,23 78:16
 78:24 79:9 80:4
 85:10 105:9,12
 114:18 131:17
 supported 31:21
 69:18 120:15
 supporting 25:25
 supportive 62:4
 63:25 131:22
 supports 58:19
 107:12
 supposed 34:25
 35:5 91:18,24
 Supreme 116:12
 116:12
 sure 34:15 36:9
 41:16 42:1 43:10
 43:17 54:18 55:4
 55:25 61:18
 63:13 87:11 93:7
 95:6 102:18
 106:3 107:18
 108:11,19 121:14
 125:1
 surface 63:21
 Surfrider 84:11,13
 87:21 103:16
 104:13
 surprising 31:16
 surrounding 70:6

Susan 3:4
 sustain 28:10
 sustainable 82:14
 Sweden 75:17
 Sweetwater 52:1,5
 52:6,8 53:22 57:8
 57:12,22 64:15
 71:11
 Sweetwater's
 52:17 57:16
 system 8:4 42:10
 43:9 44:6 48:22
 49:8,18 50:3,5
 100:8 104:1
 systems 22:18,19
 22:25 89:2 100:1
 100:24 109:13

T

table 11:11 12:24
 28:16 114:1
 118:17
 tact 69:3
 take 15:19 16:24
 18:24 23:10 24:1
 28:19 35:17
 41:16 44:9 47:13
 50:9,12 56:1 60:6
 63:13,17 67:25
 81:9 83:9 85:9,17
 98:7 101:21
 117:21,22,25
 119:18 122:3
 125:21,24
 taken 2:14 20:8
 36:15 44:21
 53:10 54:23 55:5
 92:1 100:6
 105:21
 takes 45:5 91:18
 92:10
 talk 35:3 68:15
 84:18 86:22
 talked 71:13
 talking 14:22
 63:10 86:24 90:3

96:18,20 109:19
 120:11 124:7
 126:12 130:23
 targeting 28:11
 task 65:9
 taste 65:8
 taxifolia 49:4
 taxpayers 78:3
 79:12
 Taxpayer's 77:20
 77:22 78:12
 tech 28:17 51:10
 technical 7:15 12:2
 37:21 87:3 88:4,6
 88:6 89:9 110:1
 110:25 111:2,9
 111:12,14,19
 115:9 117:18
 122:18,19
 technicians 53:13
 technologies 70:13
 88:20,22 107:6
 107:15,22
 technology 9:18
 10:16 11:23
 20:15 21:1 22:5,6
 23:12 37:6 47:16
 70:3 76:19 89:11
 90:22 91:13
 98:21,22,24 99:1
 99:3,4,5,5,6
 103:9 105:17,18
 108:6,12,18
 112:12,16,21
 121:18,22 122:2
 Ted 78:17,20,20,22
 tell 44:23 61:17
 65:17 84:14 97:4
 telling 91:23
 temperature 21:25
 ten 11:5 30:17
 46:11 51:14
 57:16 78:14 83:9
 104:6 108:13
 tentative 7:14 13:3
 18:1 37:17 39:7

43:4 53:24 83:6 88:4 115:15 118:18 127:16 129:21,23 tenths 34:7 tenure 46:5 term 125:8 126:24 terminate 11:21 terms 14:10 15:3 16:8 21:6 23:5 39:10,12 60:3 terrific 120:16 testified 71:13 testimony 119:3 Tetra 28:17 thank 14:3 15:14 18:15 30:1 40:4 41:4 42:17,22 45:21,22 47:20 47:21,25 50:12 50:14,17 51:24 51:25 52:3 54:1 56:5,7,21 57:2 58:11,12,16 59:1 59:3,3,12,20 60:13,17 61:11 61:23 64:8,16,17 65:9,10 66:15,25 67:1,7 69:7,11 70:13,14 72:10 72:11 73:24 74:5 74:15 75:8,9,25 76:3 77:15,16 78:16 80:12 81:25 82:2 83:7 84:3,3,4 87:18,20 90:3 93:5 96:16 101:17,18 103:15 106:9 110:22 112:10,24 Thankfully 53:19 thanks 41:23 54:2 56:4 60:15 66:16 80:15 93:6 94:24 thereof 41:1 thermal 10:12	thing 6:4 36:23 37:8 38:22 45:6 66:25 71:2 73:6 91:2 97:2 107:10 121:4 122:16 126:24 things 59:17,23 62:13,24 65:23 71:18 72:7 74:10 109:13 111:10 113:15 123:8 124:7 think 14:24 15:11 16:12 20:24 23:5 26:11 31:16 35:25 37:18,23 39:3,9 40:7 41:24 42:1 43:7 45:18 54:9,10 59:22 62:9,23 63:11,17 63:23 67:17 70:25 81:9 83:11 84:5,16,21,25 85:12 86:6,23 88:1 92:24 93:8 93:10,16,25 94:8 95:3 96:12 97:1 102:1,12 105:13 108:20 110:15 113:13 114:24 115:7,13,14,16 115:18 116:22 117:5,19 120:1,7 120:11,12 121:23 122:7,10,20 123:5,7,8,11 124:19 125:22 126:11 127:21,24 128:6 131:11,22 third 26:6 32:12 44:24 50:19 72:16 101:2 104:17 106:12 114:14 129:1 thoroughly 53:12 thought 44:17	thousand 29:12,12 34:7,7 thousands 57:9 82:17 threatened 31:20 49:3 three 11:10 20:19 23:17 28:16 31:12 44:13 45:13 59:16,23 62:3,13 66:7 69:19 70:22 71:22 75:3 99:9 103:20,21 123:20 124:13 126:21,22 127:3 128:12 thriving 79:18 throw 126:25 throwing 127:10 thrown 97:24 98:2 tide 24:17 29:3,6,6 Tijuana 27:18 65:19 time 6:9 9:5 13:17 13:19 14:1,3 18:12 19:12 20:24 30:9,21 35:1 40:9 44:1,15 47:2,13,19 50:18 54:1 59:1,3 63:20 65:4,23 67:5 70:9 76:24 78:15 83:3 83:9,17,24 84:7 86:9,14 89:20 93:21 94:13 96:7 96:16 100:6 101:20 102:24 103:13 111:24 113:2,18,19,20 113:21,24 118:10 118:22 123:16 124:8 126:10 timeless 89:17 times 11:23 29:14 62:3,13 63:19 113:12,13	timetable 93:18 tiny 31:14 title 127:13,14,15 127:18 today 7:8,22 11:10 17:8 35:6 36:9,24 37:7,11,19 38:8 38:12,16,21,24 40:3,11 44:3 46:7 46:10,13 48:8,23 49:16 53:17 54:17 56:1 60:19 63:9 64:1 66:12 67:21,25 68:5 69:6 71:20 73:7 73:13 74:21 75:6 79:4 80:12,16,23 81:23,25 82:23 84:4,11,16 85:20 85:25 86:1,4 87:4 87:15 88:18 89:7 89:8,14 90:7,11 93:15 94:7 95:14 102:8 105:22 108:2 110:17 114:5 115:16 116:2 117:17,21 118:14 119:3 122:14 131:5 today's 84:19 told 31:2 36:21 41:25 72:8 75:17 tolerance 52:18 57:10 top 28:19 59:17 100:13 total 29:7 63:7 68:23 totally 44:6 99:19 toured 50:24 track 49:1 trade 75:17 trained 30:4 transcript 1:14 2:14 6:2 132:17 transformed 29:16	Transport 30:8 treasures 43:25 treatment 22:3 113:15 trees 66:5,6 tremendous 50:25 106:24 trial 67:9 trouble 102:6 true 92:24 114:5 Truhn 83:20 truly 55:8 trust 46:19 56:13 try 33:19 39:1 61:11 96:19 126:17 trying 56:9 61:21 109:14 111:13 120:10 127:1 turn 27:22 34:2 35:23 42:19 87:16 93:3 97:5 114:24 turning 86:21 turns 92:10 114:7 twist 130:19 two 7:19 12:16 23:3,17 24:25 28:13,14 32:5,7 32:16 44:18 45:12 49:10 55:17 62:13 66:6 69:1,25 74:10,21 79:5 85:6,6 98:1 98:8,12,19 101:21 102:14 103:1,21 105:10 105:24 106:25 108:5 114:16 115:22 116:11 122:8,12,21 126:2,8,10,20 128:7 132:12 two-step 23:25 type 102:13 types 22:17
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

typical 113:22
typically 55:17

U

unable 35:9
unanimously 129:20
unavoidable 21:2
uncovered 62:24
124:17
undergoing 50:25
underlying 87:17
94:23
understand 26:23
48:6 50:1,2 56:14
75:6 95:3 107:17
108:25 109:8
110:16
understanding 17:25 102:7
112:23
understands 107:18
understood 108:1
123:11
undertake 15:1
undertaking 69:22
uneasy 127:10
unfortunate 72:10
Unfortunately 24:15
unharming 34:13
uninterested 19:24
unique 25:11
unit 6:15 12:4
37:20 38:3
united 80:3
university 27:16
30:4,18,19
unproven 88:23
unreliable 43:9
unsuccessful 53:20
unsuitable 28:10
untested 70:12
untouched 34:10
upper 28:16 31:5

31:17 109:1
up-front 17:23
urge 47:19 50:11
51:22 54:4 58:10
60:12 64:1,16
65:7 66:14,24
67:21 69:16 70:9
72:4 74:16 75:24
78:15 80:12
94:20
urgency 59:24
60:5
urges 83:5
urging 12:17
urinal 71:17
urinals 63:3
USCPA 96:21
97:22
use 15:4 19:15 21:9
21:17 23:11
32:21,22,25 42:2
60:23 71:6 94:24
97:15 104:9
112:7 121:21
122:2 127:10
useful 30:10 86:18
user 42:9
uses 25:14 26:1
42:14 105:10
usually 55:17,18
utilize 34:18
utilized 99:2
utilizes 53:13 70:2
U.C 30:21

V

vagaries 127:3
vague 14:20
124:25
vaguely 119:12
valid 85:22
Vallecitos 66:19,20
Valley 27:18 65:12
66:3
valuable 104:4
variety 15:1 22:6

various 31:14
100:2
velocity 22:1
vented 53:12
verbal 67:4
version 10:21
56:24 128:1
versus 109:4 117:6
viable 35:9 43:14
73:20
vice 3:3 43:1
view 23:25 26:13
vigorous 57:24
Villagrana 5:8
72:13 76:2,3,5
virtually 27:10
117:25
visibility 62:4
visit 79:22
Vista 49:11 52:8
vital 79:15
vitality 49:17
volume 9:3 20:10
28:15 29:7 32:22
voluminous 6:20
119:4
vote 38:24 85:23
88:18 89:9,10,12
129:21 130:25
voted 36:3
voters 80:3
voting 71:22 88:14
89:7 93:22 94:16
129:1

W

wait 81:21 85:21
86:13 105:4
waiting 26:3 42:19
waive 18:12
walked 110:3
want 15:18,24 16:3
17:10 28:12 34:1
34:23 35:15,18
35:25 36:16 37:8
38:22 39:16

41:15,25 43:10
44:17,18 48:11
54:20 63:5 65:16
68:2,15 71:8 72:6
73:17,18 75:13
85:24 86:10,22
89:14 94:2 95:7
97:6 101:21
107:17 115:1
116:15 119:25
121:4 122:14
123:9 126:25
wanted 61:11 77:8
87:11 102:15,16
116:3 119:11
wants 118:8
Washington 30:4
30:19
wasn't 87:7
waste 8:11,11 9:8
65:25 77:4
water 1:1 2:1,17
6:13 7:25 8:4,10
8:11,12,13,18 9:3
9:8,15 10:13,15
10:17,18 12:4
18:22 19:6,11,16
19:25 20:4,10,15
20:25 21:18,20
22:1 23:11,13,15
23:17 25:11 28:6
28:11,14,18 29:2
29:6,7,10,10,17
30:14 34:5,6 36:4
36:6,12 37:20
38:2 42:4,8,9,10
42:11,14 43:1,2,4
43:9,12,14,15
45:14,17 46:8
48:4,14,18,19
50:21 51:2,3,4,6
51:9,10,12,12,16
51:21 52:6,10,14
52:17,19,23,24
52:25 53:3,21
54:6,12 56:9 57:9

57:11,13,15,17
57:18,19,21,23
58:20 59:13,14
61:2,16 64:20,21
64:24 65:1,6,8,13
65:14 66:4,6,8,10
66:19 67:11,14
68:13,14,16,19
68:24,24,25 69:2
70:5,12 71:1,10
72:6,7,8,19,22,24
73:8,9,11,12,14
73:14,20,21,22
74:7,8 75:12,25
76:8,11,11,20,23
76:24 77:1,3,5,6
78:2,8,8,10 79:7
79:8,14,14,19,25
81:9,10,12,19,25
82:15 83:3 84:22
90:24 92:7 97:13
97:14,15 98:8,20
98:20 103:5
104:3 105:5,10
107:11 108:3,4,8
108:12 109:4,5,9
109:10,12,12
112:14 113:2
115:18,24 119:14
119:14,15 120:23
121:20 123:2
126:9 128:22
waterage 52:9
waters 42:2
watershed 26:9
way 8:19 25:20
38:15 42:3 45:6,7
45:8 53:15 68:4
70:24 71:7 84:6
100:12 103:16
108:1 120:8
122:1 128:4
131:24
Wayne 3:5
ways 16:6 90:23
weapons 24:8

27:20 34:19 35:14 Weber 3:5 129:15 132:8 website 104:15 Wednesday 1:16 2:16 6:1 7:18 weeks 63:1 85:6,7 96:12 Weinberg 4:16 59:8,10,13 Welcome 42:21 80:18 wells 22:17,17 went 28:5 71:16 weren't 85:15 87:15 west 27:7,11 western 52:8 wetland 25:19 60:23 wetlands 24:18 25:13 27:14,18 32:1 58:5 116:10 we'll 18:19 25:3 35:16 40:2,8,21 42:20 62:14 84:18 116:13 119:9 we're 14:22 16:8 18:17 24:17 26:8 30:10 31:6,7 33:20 34:16 35:9 39:20 41:19 52:20,22 55:1,3,7 55:10,14,17,18 62:15,18,19 63:10 66:21 70:18 71:3 76:9 83:23 84:15 87:12 89:6 92:8 96:12 106:1,2 114:22,24 122:21 122:25,25 125:3 125:4,5 126:11 127:5,10,18	129:21 130:14,17 130:24 131:22 we've 14:15 20:18 22:17 33:15 35:13 39:12 40:12 41:14 55:14 61:16 62:1 62:2,3 84:7,10,22 89:8 96:18,20 106:4 109:24 123:18 124:1 whatsoever 104:16 Whiland 74:11 wholesale 106:19 107:2 wide 31:4 wife 80:25 Wild 84:8 wildfires 81:6 William 4:22 64:13 66:17,18 Wiseberg 59:8 witnessed 50:24 wonder 127:12 wondering 89:6 113:21 130:16 word 125:12 126:20,25 127:11 128:12,15,16,17 128:23 131:6,6,8 131:18 worded 13:5 wording 120:8 130:24 words 9:19 94:1,14 110:25 111:17 128:5,6 work 14:11 15:5 15:11 16:18 23:1 25:6 30:5,22,23 60:6 74:25 108:18 113:14 125:12 worked 30:21 33:11 46:6 60:24 73:21 96:20	workers 79:1 working 14:17 15:7 25:15 26:5 27:3 40:12,13 43:3 55:10 60:9 73:22 107:19 works 119:11 workshops 86:19 world 38:25 75:16 75:20 worried 71:7 worry 28:8 81:3 worse 23:23,23,23 29:8 81:21 worsen 83:3 worth 98:17 wouldn't 39:14,18 89:20 93:15 Wow 64:17 wrap 84:20 87:18 93:7,24 106:6 Wright 3:2 6:4,11 12:23 14:2 15:15 16:16 17:12 18:15 28:1 30:3 34:22 40:4 41:5 41:23 42:18 45:20,23 47:21 50:14 51:25 54:2 54:14 56:5,14,25 57:2 58:12 59:3 59:12,16 60:15 60:17 61:15 64:4 64:8,17 65:10 66:16 67:1,6 68:21 69:8,11 70:20 72:11,14 73:25 74:4 75:9 75:11 76:2 77:16 78:17 80:14,18 82:2 83:9,13 84:2 87:19 94:25 95:18 96:17 98:16 99:9,13,17 101:18 103:12 106:6,10 107:16	107:24 110:23 112:25 114:1,24 115:5 117:12 118:20 119:1,8 120:3,17,25 121:8 124:9 125:7,14,17,19 127:9 129:8,19 130:10 131:1,9 131:16 132:3,10 132:12,14 writing 59:9 written 7:17 12:8 12:14 87:6 95:20 115:11 128:4,11 128:17,24 wrong 111:7 wrote 27:8 71:12 <hr/> X X 4:1 5:1 <hr/> Y yeah 95:25 96:12 96:18 98:18 107:25 111:11,14 114:17 130:12 131:6 year 9:2,10 26:9 28:6,7 31:3 47:12 57:17 71:13 73:8 78:7 80:17 81:6 87:1 104:20 113:18 yearly 100:17 years 17:19 26:2 27:15 30:17 43:3 44:13 45:4 46:3 46:11 48:3,12,22 49:9 53:18 60:2,6 60:8,22 62:2 63:7 65:17,18 66:7,7 66:20 67:10,13 68:4 70:10 71:16 72:24 74:8 78:14 79:5 102:10,14	108:13 109:17 yellow 30:5 32:13 <hr/> Z zero 75:15 108:6 113:13,17,18 124:9 zoea 34:7,14 zoning 21:9 <hr/> \$ \$250 109:10,16 \$3 110:9,11 \$300 122:1 <hr/> 0 0001350 10:7 04 28:5 05 28:5 <hr/> 1 1A 41:6 1st 9:9,10 10:10 100 23:16 33:20,24 34:3,4,5 71:8 113:23 100,000 42:25 101 4:7 10142 1:21 2:18 103 4:3 11 65:18 11th 71:24,25 121:11 110,000 68:19 12 69:24 122 5:15 13 10:20 20:18,19 48:3 13142.5 9:16 102:25 103:4 115:25 116:5,8 116:19 117:2 13142.5B 10:17 36:6,13,19 105:15 1322.5 128:20 13225 84:24
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

115:18 120:23	2007 10:20,24 11:2	40 9:4 113:1,18,20	81 5:12 80:2
121:1 128:19,21	21:20 47:6	117:23 118:2	81,000 66:21
128:22	2008 1:16 2:16 6:1	400,000 76:6	82 5:13
4 43:3 65:17	6:17 7:3,6,15,19	42 4:8	84 5:14
144 28:24	11:4,7,8,19 12:4	44 66:22	864 10:11
15 6:10,11 18:9	13:7 102:2 126:6	45 4:9 20:20	87 5:16
28:1 63:7 83:25	2010 52:18 57:11	47 4:10	
169:6 10:9	2011 9:10 10:10	4800 57:17	
174:3	60:5		<u>9</u>
1700 29:3 79:1	21 60:22		9 1:16 2:16 6:1
175,000 50:21	24 31:6	<u>5</u>	90 5:17 32:8 63:10
1750 29:5	2400 57:13	50 4:11 8:10,18	97:19 113:8
18 11:20	25 109:17	52:19	9174 2:15
180 9:13	28 4:4 7:9 46:2	52 4:12	93 5:14
180,000 52:7	285 29:1	54 4:13	96 5:16 100:18
197:3 11:4 124:14	29 4:5 10:24	55 26:1	98 5:18
126:6		550 77:13	99 5:19
19th 14:13 39:15	<u>3</u>	56 4:14	
39:21 111:21	3,000 76:6	56,000 51:11	
19,000 100:18	3,450 29:7	57 8:10	
1922 72:18	30 20:22 40:5 65:3	58 4:15	
1967 26:25	66:20 67:5 68:21	59 4:16	
1979 27:12	71:16 73:4 78:7		<u>6</u>
1980 27:1	95:13 98:16	66:17 7:6 11:8	
1983 65:16	101:21 104:13	13:7 102:2	
1989 62:1	112:2 114:23	6C2E 9:11	
1990 62:1	30,75 29:11	60 48:12,21	
1997 65:16	300 92:7 113:3,22	61 4:18 21:20	
1998 46:10	123:6	64 4:19,20	
	300,000 51:13	65 4:21	
<u>2</u>	304 8:3,24 9:1,4	66 4:22	
27:19	316B 10:13 90:25	67 4:23	
2.1 100:16	96:21 98:20,21	69 5:3	
2.7 29:12	102:21 103:4,11		<u>7</u>
20 42:9 60:8 67:13	118:8	7 11:7	
84:7 104:6	3412B 36:20	70 5:4	
200 8:12 113:24	35 4:6	72 5:5	
2000 27:5	36 52:18 57:10	74 5:6	
2004 31:2	37 33:23 35:13	75 5:7	
2005 28:6,7,19,20	58:5 110:4,13	75,000 79:1	
29:8,17,21 39:25	38 35:14 45:4	76 5:8	
82:8	388 25:12	77 5:9	
2006 9:6,9 10:9	39 21:22	78 5:10	
36:11 38:14			<u>8</u>
57:12 82:19	<u>4</u>		
102:14,20	47:15	80 5:11	