

**Item W16b
Exhibit 1**

**Poseidon's August 2, 2008
Proposed Energy
Minimization
and
Greenhouse Gas Reduction
Plan**



POSEIDON RESOURCES

August 2, 2008

**Agenda Item
W 5a**

VIA OVERNIGHT DELIVERY

Chairman Kruer and Honorable Commissioners
California Coastal Commission
North Central Coast District
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

RECEIVED

AUG 04 2008

CALIFORNIA
COASTAL COMMISSION

Re: Carlsbad Desalination Project CDP Application No. E-06-013
Energy Minimization and Greenhouse Gas Reduction Plan

Dear Chairman Kruer and Honorable Commissioners:

On behalf of Poseidon Resources (Channelside) LLC ("Poseidon"), this letter responds to the Coastal Commission Staff Report dated July 24, 2008 regarding Poseidon's proposed Energy Minimization and Greenhouse Gas Reduction Plan dated July 3, 2008 ("GHG Plan" or "Plan") submitted pursuant to Special Condition 10 of the above-referenced Coastal Development Permit ("Permit") for the Carlsbad Seawater Desalination Facility (the "Project"). The GHG Plan is scheduled to be considered by the Commission at its August 6, 2008 Meeting.

Poseidon's GHG Plan represents an unprecedented voluntary commitment to account for and bring to zero net indirect GHG emissions from the Project. While Poseidon supports Staff's recommendation that the Commission approve the Plan, Poseidon does not support Staff's recommended modifications to the Plan, which Poseidon believes exceed its voluntary commitment to offset its "net" indirect carbon impact, are contrary to California law and State climate change policy, unnecessary to ensure consistency with the Coastal Act, and would place an excessive economic burden on the Project. Staff's recommendations are premised on a fundamental misapplication of The Global Warming Solutions Act of 2006 ("AB 32") to the Project (which does not place any "requirement" on the Project), which would not allow emission credit from substantial Project benefits, such as avoided GHG emissions from displacing 56,000 acre-feet per year ("AFY") of imported water, and the wetland restoration project Poseidon will undertake and fund. Adoption of Staff's recommendation would double the cost of implementing Poseidon's GHG Plan from approximately \$61 million to approximately \$121 million or more.

Poseidon therefore requests that the Commission not adopt Staff's recommended modifications to the Plan and instead adopt Poseidon's Plan, as modified by Exhibit A attached

These materials have been provided to Coastal Commission Staff

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hereto, for the reasons summarized below and described more fully in its "Response to Staff Report," attached hereto at Exhibit B.

I. UNPRECEDENTED VOLUNTARY COMMITMENT THAT EXCEEDS COASTAL ACT REQUIREMENTS

In October 2007, Poseidon made public its voluntary commitment to account for and reduce to zero the Project's net indirect GHG emissions and put forth a draft of the Plan to assure that this objective will be achieved over the 30-year life of the Project. Poseidon's voluntary commitment was memorialized in connection with the Commission's approval of the Permit in November 2007,¹ and is made enforceable through Special Condition 10, which requires that the Commission approve a revised Plan prior to the issuance of the Permit.

Poseidon's GHG Plan has been developed in consultation with, and incorporates input from, a multitude of State, regional and local agencies, including the Coastal Commission, State Lands Commission, California Energy Commission, California Air Resources Board, California Department of Forestry, California Department of Park and Recreation, the San Diego Air Pollution Control District, the South Coast Air Quality Management District, and various agencies in the San Diego region. The Plan has also been reviewed by the California Center for Sustainable Energy, an independent third party responsible for implementing elements of the Plan.

On July 3, 2008, Poseidon submitted its proposed GHG plan in satisfaction of Special Condition 10. Since that time, Poseidon has worked closely with Commission Staff to address a number of Staff's concerns with the Plan. As a result of those productive discussions, Poseidon and Staff have agreed to a number of modifications to the Plan, which are set forth at Exhibit A. Nevertheless, four key differences remain between Poseidon's Plan and Staff's recommendation, which are discussed in Section III below and more fully at Exhibit B. Poseidon requests that the Commission approve its Energy Minimization and Greenhouse Gas Reduction Plan as revised and modified pursuant to Exhibit A attached hereto.

II. POSEIDON'S PLAN ENSURES THE PROJECT'S NET GHG EMISSIONS WILL BE COMPLETELY OFFSET

The Project does not emit any GHG emissions and therefore, AB 32 does not impose, and is not anticipated to impose in the near future, any "requirement" on the Project. AB 32 instead regulates direct emitters such as SDG&E, the source of the Project's electricity. Nevertheless, Poseidon has committed not only to implement energy efficiency measures to ensure Coastal Act consistency but goes significantly beyond Coastal Act requirements to offset all of the Project's net indirect carbon emissions and to ensure that those offsets are consistent with AB 32 principles for voluntary offsets. The Plan includes the following robust and enforceable measures to ensure that the Project's net GHG emissions reductions will be certain, verified and reduced to zero:

¹ See Poseidon Resources, November 9, 2007 Response to Staff Report, Exhibit D.

- **State of the art on-site energy minimization measures** costing approximately \$55 million.
- **On-site solar power generation** (if expected to provide a return on capital investment over the life of the Project).
- **\$1 million toward reforestation** of areas in San Diego County impacted by the 2007 wildfires.
- Application of **CCAR/CARB methodology** to determine GHG emissions.
- Purchase of offsets/RECs sufficient to **zero out the Project's net indirect GHG emissions**.
- **Offsets required to be consistent with AB 32 principles for voluntary offsets** and purchased through independent third party providers who will verify that the offsets are real and meet Plan requirements.
- **Annual Reports to the Commission**, which demonstrate that the Project meets its offset requirements.

III. KEY DIFFERENCES BETWEEN POSEIDON'S PROPOSAL AND STAFF'S RECOMMENDATION

While Poseidon has worked hard to resolve several of Staff's issues with Poseidon's GHG Plan, four key differences remain. These issues, which are summarized below, include recommendations by Staff that would: (1) incorrectly apply AB 32 criteria to all of the Project's benefits (including GHG emissions that are already included in its "baseline"), resulting in a requirement that Project offset its "gross", rather than "net", GHG emissions; (2) severely limit the availability of offsets to projects verified by CCAR and/or CARB and registered in the Climate Action Reserve ("CAR"), which amount to less than 1% of the domestic carbon offset market; (3) eliminate necessary and appropriate contingency plans to ensure that emissions reductions are being addressed during market dysfunction; and (4) prohibit Poseidon from opting into new government carbon offset programs as they become available.

A. Staff's Recommendation Would Require the Project to Offset its "Gross" Rather than "Net" GHG Emissions

Staff's recommendation would require the Project to offset its "gross" indirect GHG emissions from its electrical usage, without any credit for emissions reductions resulting from Project features and Project-related benefits, including, most notably, emissions reductions resulting from the Project's replacement of 56,000 AFY of water that would otherwise be imported from the State Water Project to the Project's customers in the San Diego region. As discussed below, requiring "gross" offsets would increase the cost of the Plan's carbon offset requirement from \$6 million to \$27 million.

- **Imposing an Offset Requirement that Exceeds Poseidon's Voluntary Commitment Would Violate the Coastal Act.** The Coastal Act authorizes the

These materials have been provided to Coastal Commission Staff

Commission to require that the Project “minimize energy consumption and vehicle miles traveled,” and ensure consistency with “requirements imposed by an air pollution control district or [CARB] as to each particular development”, but it may not “establish any ambient air quality standard or emissions standard, [or an] air pollution control program or facility . . .” Coastal Act §§ 30253(4), 30253(3), 30414(a). The Project is consistent with Coastal Act §30253(4) requiring it to minimize energy consumption through its \$55 million of on-site state-of-the-art energy minimization features. However, imposing an offset requirement beyond Poseidon’s voluntary commitment to offset its net emissions violates § 30253(3) because, as discussed further below, AB 32 established that regulation of GHG emissions constitutes an air pollution control program and gave exclusive authority over adoption and enforcement of that program to CARB, and neither CARB nor SDAPCD have adopted such a program that applies to the Project. Moreover, imposing such a requirement would also violate §30414(a) by attempting to establish an air pollution control program.

- **Imposing an Offset Requirement that Exceeds Poseidon’s Voluntary Commitment Would Violate AB 32, the Health and Safety Code and the Administrative Procedures Act.** AB 32 establishes that the regulation of GHG emissions is an air pollution control program and gives CARB exclusive rulemaking authority over the implementation and enforcement of that program. Contrary to the Staff Report, CARB has not yet promulgated any requirements applicable to indirect emitters, such as the Project, nor has it adopted the anticipated programs governing voluntary offsets. Further CARB’s June 2008 Discussion Draft of its “Climate Change Draft Scoping Plan” does not anticipate that regulations applicable indirect emitters will be adopted in the near future, but instead focuses on regulations of direct emitters (which the Project is not) and incentives for voluntary reductions by indirect emitters. CARB’s rule-making process will require public review and comment of the proposed regulations and require CARB to adopt certain findings that, among other things, the regulations are “cost-effective,” “feasible” and “equitable.” Health & Safety Code §38562; Government Code § 11340-11365. Therefore, adopting Staff’s recommendation and subjecting Project features and related benefits, such as displacing imported water and the wetlands restoration, to AB 32’s principles for voluntary offsets, misapplies principles to Poseidon that are applicable to CARB’s regulatory authority, usurps CARB’s rulemaking authority, deprives Poseidon the protections afforded by the rulemaking process, and imposes an emissions requirement that CARB has not adopted or determined satisfies the findings required under the Health & Safety Code.
- **Requiring “Gross” Offsets is Inconsistent with CEQA Principles and State Climate Change Policy.** Under CEQA principles and State climate change policy, the Project’s impacts must be analyzed by determining the net change in GHG emissions relative to existing conditions, or the “baseline”, factoring in both increases and decreases in emissions caused by the Project, including Project features that result in the reduction of another entity’s energy use, or Project features that result in the sequestration of carbon. It is therefore appropriate for the GHG Plan to subtract

from the Project's indirect GHG emissions the Project features and Project-related benefits, such as the wetlands restoration provided by the Project and displacing imported water.

Importantly, the Project will produce 56,000 AFY of desalinated water that will directly replace, on a one-for-one basis, water that would have been imported to the Project's customers from the State Water Project. The MWD has agreed to subsidize the purchase of Project water at \$250 per acre foot (\$14 million per year). **To receive the subsidy, MWD requires the water agencies receiving the water to "demonstrate that the water offsets an equivalent amount of water imported from [MWD]."** See letter from the General Manager of MWD, dated July 29, 2008, attached hereto at Exhibit D. Because the Project replaces water for existing uses in San Diego County, energy used to supply water to those uses today is part of the "baseline." Therefore, when assessing the Project's GHG impacts, energy that would have been used to import water replaced by the Project therefore must be subtracted from the energy used by the Project, and it is appropriate to net out the Project's avoidance of GHG emissions associated with replaced water.

- **Requiring "Gross" Offsets Is Inconsistent with Constitutional "Nexus" Requirements.** Public agencies may not constitutionally impose conditions on development unless there is a "nexus" between the condition and the project's environmental impact. In this case, there is no nexus for requiring Poseidon to offset GHG emissions that may result at some uncertain point in the future should the water that Poseidon is displacing be imported for new or expanded uses that are unrelated to the Project.
- **A Gross Offset Requirement Would Result in "Double-Mitigation".** If any of the 56,000 AFY of water replaced by the Project is ultimately imported to the region for hypothetical new or expanded uses unrelated to the Project, CEQA and State climate change policy would address those associated impacts. Under Staff's logic, for example, a project proposing water conservation measures, such as low-flow toilets or on-site water recycling, would be required to mitigate impacts that would result from another hypothetical project consuming that foregone water. Requiring Poseidon *and* the new water users to mitigate such impacts would substantially increase the costs of desalination, reduce its viability and constitute poor public policy.

B. Staff's Recommendation Would Dramatically and Artificially Restrict Access to the Carbon Offset Market

Staff's recommendation would limit Poseidon to acquiring GHG emissions offsets from only a handful of projects verified by CCAR or CARB and registered in the Climate Action Reserve. As of now, CCAR has only three protocols – livestock/dairy, landfill, and reforestation – and only three other protocols in progress, which take years to develop and approve. Staff's recommendation would therefore severely and artificially constrain the availability of carbon offsets by limiting Poseidon to just 0.16% of the domestic market, provide no flexibility to

respond to an emerging and maturing marketplace, and could result in an unavailability of offsets sufficient to achieve the goals of the GHG Plan.

Poseidon is committed to acquiring the necessary offsets from CCAR and/or CARB exclusively to the extent these entities have offsets that are both available and affordable. Poseidon has demonstrated this commitment by having recently become a member of the CCAR. However, at present, the available offset projects verified by CCAR and/or CARB and registered in the CAR are limited and the future availability and affordability of offsets offered by these entities is uncertain. This uncertainty raises questions regarding the workability of staff's recommendation.

In response to Staff's recommendation, Poseidon has proposed that, in addition to acquiring offsets from/through CARB and CCAR, it be permitted to acquire offsets from/through additional respected third party providers that are members of the Offset Quality Initiative, which today include The Climate Trust, Environmental Resources Trust and The Climate Group/Voluntary Standard. Poseidon has also proposed that additional third party providers could be added later, subject to Executive Director approval, provided that they are independent and non-affiliated entities that adhere to substantially similar principles and evaluation criteria for high quality offsets as these other providers. We believe that this modification provides the necessary assurances that Poseidon's offsets will be certain, verifiable and consistent with AB 32 principles for voluntary offsets.

C. Staff Recommends Elimination of a Contingency for Market Dysfunction

Staff's recommendation would eliminate a contingency plan proposed by Poseidon to address potential dysfunction in the carbon offset market. The offset market is new and unpredictable. If offsets are not reasonably available, and if no contingency plan is provided, Poseidon could be in violation of Condition 10 through no fault of its own. Poseidon has therefore proposed that in the event of market dysfunction, as defined in the GHG Plan, and after Executive Director approval, Poseidon may pay into an escrow fund, in lieu of acquiring offsets, in amount equal to \$10 per metric ton (plus inflation) for each ton not previously offset. Monies paid into the escrow fund would be spent on offsets as they became available.

In response to Staff's concerns that Poseidon would be permitted to unilaterally forego mitigation when it deems market conditions to be unfavorable and that the Plan does not identify how the escrow funds would be used or who would decide their use, Poseidon has proposed further revisions to its Plan, as set forth in Exhibit A, which require: (i) an Executive Director determination concurring that a market dysfunction exists, as well as approval of the escrow account, before Poseidon may utilize the contingency plan; (ii) and that Poseidon submit a plan for Executive Director review and approval within 180 days of the determination that sets forth how the escrow funds will be spent on offset projects.

D. Staff's Recommendation Prohibits Opting into New Government GHG Offset Programs that May Become Available

Staff's recommendation also would not permit the flexibility for Poseidon to satisfy the requirements of the GHG Plan by opting into a GHG offset or other mitigation program, which

may in the future be developed by SDAPCD, SCAQMD, CARB, SDG&E or any other similar government agency, in lieu of purchasing carbon offsets. Poseidon has proposed that this flexibility be provided to ensure that, all times, the most efficient means for offsetting the Project's net GHG emissions are being undertaken.

E. Staff's Recommendations Would Impose an Excessive Economic Burden on the Project

Staff's recommendations that require Poseidon to offset its gross emissions and to artificially constrain its purchase of offsets would impose an excessive economic burden on the Project, which would be compounded by Staff's prohibition on any contingency plan in the event of market dysfunction or flexibility to participate in new government offset programs. These recommendations would be wholly inconsistent with AB 32, which as discussed above requires that regulations promulgated thereunder regulate GHG emissions in a manner that is "cost-effective", "feasible" and "equitable".

The Project is estimated to cost approximately \$300 before mitigation costs. Current mitigation costs arising from Coastal Commission review are estimated at \$90 million, including \$55 million for state of the art energy minimization features, \$6 million for "net" carbon offsets, and \$29 million for the Marine Life Mitigation Plan. These costs are in addition to significant mitigation costs already imposed on the Project by the City of Carlsbad during its review of the Project. By requiring "gross" offsets, Staff's proposal would increase the cost of the Plan's carbon offset requirement from \$6 million to \$27 million. Additionally, Staff's proposal to restrict the carbon offset market to CCAR-verified credits would severely limit the availability of offsets, and could increase carbon offset costs by 2.5 times or more, increasing the cost of the gross offset requirement to \$66 million or more. Combined, these two components of Staff's recommendation would increase the costs of the GHG Plan from approximately \$61 million to \$121 million, or more, raising the Commission-imposed mitigation costs for the Project from approximately \$90 million to \$150 million. These costs would represent an unprecedented mitigation requirement, far in excess of Poseidon's voluntary commitment to offset its net indirect emissions.

IV. PUBLIC AGENCIES WITH PRIMARY JURISDICTION OVER ENERGY AND WATER SUPPLY SUPPORT POSEIDON'S PROPOSALS

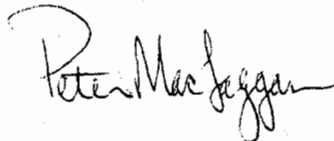
The California Energy Commission and MWD have each publicly supported elements of Poseidon's GHG Plan, as evidenced by the letters from these agencies to the Commission attached hereto at Exhibits C and D, respectively.

- **California Energy Commission** supports Poseidon's plan to mitigate its net carbon emissions, i.e., to *"mitigate the carbon emissions from the increases in electricity required to deliver the project's water to customers, as compared with the 'baseline' of current electricity required to serve those customers with State Water Project water,"* which is *"consistent with how the Energy Commission, itself, analyzes the significance of impacts under CEQA . . ."*

- **Metropolitan Water District** confirms that *“water agencies receiving desalinated supplies from the Project must demonstrate that the water offsets an equivalent amount of water imported from Metropolitan,”* and that it is therefore *“appropriate for the Project’s GHG Plan to be based on offsetting net carbon emissions because San Diego County will use 56,000 acre-feet per year less imported water upon Project start up.”*

We appreciate the Commission’s consideration of these important issues and respectfully request that the Commission approve Poseidon’s proposed Energy Minimization and Greenhouse Gas Reduction Plan at its August 6, 2008 meeting.

Sincerely,



Peter MacLaggan
Poseidon Resources

Attachments

cc: Tom Luster;
Rick Zbur, Esq.

POSEIDON RESOURCES

**Agenda Item
W 5a**

**EXHIBITS TO POSEIDON'S
AUGUST 2, 2008
RESPONSE TO STAFF REPORT
REGARDING THE
ENERGY MINIMIZATION AND
GREENHOUSE GAS REDUCTION
PLAN**

Exhibit A Energy Minimization and Greenhouse Gas
Reduction Plan

Exhibit B Response to Staff Report

Exhibit C Letter from California Energy Commission

Exhibit D Letter from Metropolitan Water District

These materials have been provided to California Coastal Commission Staff

EXHIBIT A

Poseidon's Revisions to Energy Minimization and Greenhouse Gas Reduction Plan

Attached hereto is an updated version of Poseidon's Energy Minimization and Greenhouse Reduction Plan (the "Plan"), which is marked to reflect modifications made to its July 3, 2008 version in response to issues raised in the Commission Staff's July 24, 2008 Staff Report. Annotations are provided in the margin of the document both to indicate the nature of the modifications and areas of remaining disagreement between Poseidon and Staff, which require resolution by the Commission. The annotations are broken down into the following three categories:

Category 1. This category indicates changes agreed to by Poseidon and Staff prior to the issuance of the Staff Report, which are either specifically reflected in Staff's Memo to File dated July 24, 2008 attached to the Staff Report ("Memo to File") or are consistent with the concepts agreed to in that Memo to File. Category 1 also includes certain minor typographical and syntax related edits.

Category 2. This category indicates changes that Poseidon had understood were agreed with Staff prior to the issuance of the Staff Report through correspondence that preceded issuance of the Memo to File, which are neither included in the Memo to File nor reflected in the Staff Report. This category primarily includes changes relating to the accounting of Poseidon's emissions balances, most notably permitting Poseidon to maintain its zero net balance over a 5 year rolling average following its first five years of operation (and five year period thereafter). By allowing Poseidon to carry excess credits forward into future years, Poseidon would be incentivized to acquire excess credits early, resulting in a greater likelihood of over-mitigation.

Category 3. This category indicates changes made to address issues raised in the Staff Report, as well as areas in which open issues remain between Poseidon and Staff. The Category 3 changes include 4 sub-categories:

- **A: Gross v. Net Offsets.** The Plan continues to reflect Poseidon's voluntary commitment to offset its "net" indirect GHG emissions. This is reflected in Part II of the Plan (On-Site and Project-Related Reduction of GHG Emissions), which has not been modified to incorporate Staff's recommendation that these project features be subject to AB 32 principles for voluntary offsets.
- **B: Third Party Acquisition and Verification.** This sub-category incorporates Staff's recommendation that the Plan be revised from its initial formulation in which a committee was selected to review and verify offset acquisition, to a structure where offsets are acquired from/through CCAR or CARB. In addition to incorporating Staff's recommendation, sub-category B also includes Poseidon's proposed modification to that structure, which would expand the scope of available offsets to include those provided by a select group of third party providers that are members of the Offset Quality Initiative.
- **C: Contingency Plan.** This sub-category includes modifications to Poseidon's proposed contingency program in the event of offset market dysfunction in response to concerns raised in the Staff Report.
- **D: Opt-in to new government offset programs.** This sub-category includes Poseidon's proposal that it be permitted the flexibility to opt-in to new government GHG offset programs as they become available.

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- Appendix C – Draft CCC Greenhouse Gas Template & Comments and Responses
- Appendix D – Energy Recovery in Caribbean Seawater Reverse Osmosis
- Appendix E – Poseidon Resources' / Water Agencies' Letters to SLC Re: Project's Impact on Imported Water Use, November 8, 2007
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CARLSBAD SEAWATER DESALINATION PROJECT

ENERGY MINIMIZATION AND GREENHOUSE GAS REDUCTION PLAN **JULY 3, 30, 2008**

INTRODUCTION

In October 2007, Poseidon Resources (Poseidon) made public its voluntary commitment to account for and bring to zero the net indirect Greenhouse Gas (GHG) emissions from the Carlsbad Desalination Project (Project). Poseidon followed its unprecedented commitment with the development of a Climate Action Plan (CAP), Poseidon's roadmap to achieving its commitment over the 30-year life of the Project. Based on protocols adopted by the California Climate Action Registry (CCAR), the CAP was reviewed by the California Coastal Commission (CCC), the California State Lands Commission (CSLC), the California Air Resources Board (CARB) and, at the request of a Coastal Commissioner, the South Coast Air Quality Management District (SCAQMD).

On November 15, 2007, the CCC approved the Project subject to the condition, among others, that the CCC approve the CAP at a subsequent hearing. Specifically, Special Condition 10 states that "prior to issuance of the permit, the Permittee shall submit to the Commission a Revised Energy Minimization and Greenhouse Gas Reduction Plan that addresses comments submitted by the staffs of the Coastal Commission, State Lands Commission and the California Air Resources Board. The permit shall not be issued until the Commission has approved a Revised Energy Minimization and Greenhouse Gas Reduction Plan after a public hearing." Since the Special Condition was adopted, Poseidon has reviewed comments from the November 15 hearing as well as CCC staff's draft findings, and continued to work with the CCC, CSLC and CARB to refine the CAP and ensure a complete understanding of the process it sets forth to meet Poseidon's commitments. Poseidon's November 20, 2007 draft of the CAP reflected changes made in response to helpful comments from these agencies and is attached to this document as Appendix A. Poseidon's written responses to numerous questions and comments from the CCC and CSLC about the CAP are attached as Appendix B. More recently, CCC staff issued to Poseidon additional comments and a draft "Greenhouse Gas Emissions Template" (the Draft CCC Template), and instructed Poseidon to revise its CAP in accordance with the template. CCC staff also requested that Poseidon rename the CAP with a new title, the Project's Energy Minimization and Greenhouse Reduction Plan (the Plan). The Draft CCC Template and the most recent comments and Poseidon responses are attached as Appendix C.

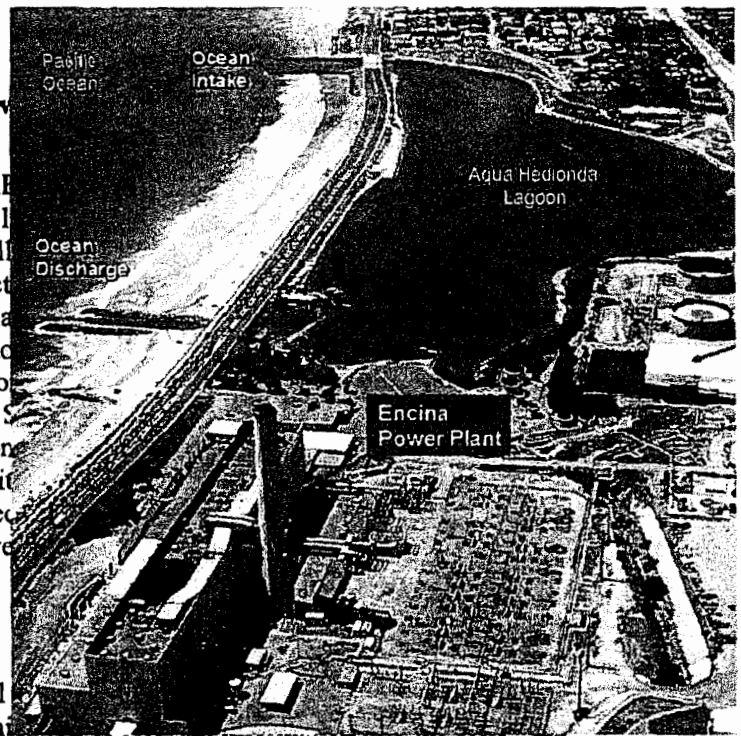
On May 2, 2008, Poseidon met with representatives of the CCC, CSLC and various agencies in the San Diego region to further discuss details of the Plan and its implementation. The purpose of this document is to present Poseidon's revised Plan in response to the additional comments received, the May 2 meeting, and the draft CCC Template.

1. Project Overview.

The 50 million gallon per day (MGD) Project (Figure 1) is co-located with the Encina generation station, which currently uses seawater for once-through cooling. The Project is developed as a public-private partnership between Poseidon and nine local utilities and municipalities.

Figure 1 - Carlsbad Seawater Desalination Project

In 2006, California legislation introduced the AB 32¹ to reduce the GHG emissions of the state to 1990 levels by 2020. AB 32 or its implementing regulations will require entities that emit significant GHGs indirectly through electricity use to reduce their emissions. AB 32 and is committed to helping California achieve its goals of Climate Change. As a result, Poseidon's GHG emissions associated with the Project's operation will be incorporated into the Project's permit through the San Diego Coastal Commission and agreed to by Poseidon. Under staff direction, Poseidon is required to submit a plan showing how the Project will minimize its electricity use over its life resulting from net increases in electricity use over the life of the Project.



2. CCC Draft Emissions Template.

The draft CCC Template establishes "a protocol for the GHG emissions of applicants," and calls for the organization to submit three sections:

1. Identification of the amount of GHGs emitted from the Project,
2. On-Site and Project related measures planned to reduce emissions, and
3. Off-site mitigation options to offset remaining emissions.

¹ AB 32's implementing regulations are currently being drafted and will subsequently be released for public comment. AB 32's regulations, when promulgated, will likely target direct emitters of GHGs, including SDG&E (the source of the Project's electricity), rather than indirect emitters such as the Project. In any case, Poseidon will modify its Plan to conform with these regulations to the extent that they are applicable to the Project.

After a brief explanation of Poseidon's overall strategy for eliminating the Project's net indirect GHG emissions, this document then organizes the Plan into the CCC's three general categories.

3. Overview of the Project's GHG Reduction Strategy.

Since offsetting net indirect GHG emissions is an ongoing process dependent on dynamic information, Poseidon's plan for the assessment, reduction and mitigation of GHG emissions establishes a protocol for identifying, securing, monitoring and updating measures to eliminate the Project's net carbon footprint. Once the Project is operational and all measures to reduce energy use at the site have been taken, the protocol involves the following steps, completed each year:

1. Determine the energy consumed by the Project for the previous year using substation(s) electric meter(s) readings from San Diego Gas & Electric's (SDG&E) or any other entity from which the Project obtains all or part of its electricity at any time in the future.
2. Determine SDG&E emission factor for delivered electricity from its most recently published CCAR Annual Emissions Report. Reports are issued annually and are accessible on the CCAR's website. Emission factors will be obtained from CARB if and when SDG&E's certified emission factor for delivered electricity is publicly available through CARB's anticipated GHG Inventory program. If at any time in the future the Project obtains all or part of its electricity from an entity other than SDG&E, the appropriate CCAR emission factor for that entity shall be used. While current emissions reports only report CO₂, future reports are expected to include the five additional GHGs (methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride). To the extent that these additional GHGs are included in future reports, they will be converted to carbon equivalence for the Project and offset under the Plan.
3. Calculate the Project's gross indirect GHG emissions resulting from Project operations by multiplying its electricity use by the emission factor.
4. Calculate the Project's net indirect GHG emissions by subtracting emissions avoided as a result of the Project (Avoided Emissions) and any existing offset projects and/or Renewable Energy Credits (RECs).
5. If necessary, purchase carbon offsets or RECs to zero-out the Project's net indirect GHG emissions; provided, however, that if through the process set forth in Part III of this Plan, it is determined that (i) such offsets or RECs are not reasonably available; (ii) the "market price" for such offsets is not reasonably discernable; (iii) the market for offsets/RECs is suffering from significant market disruptions or instability; or (iv) the market price has escalated to a level that renders the purchase of offsets/RECs economically infeasible to the Project, Poseidon shall pay a fee into an escrow fund, ~~with prior notice to the CCC and third party oversight,~~ for the purpose of funding GHG offset projects as they become available.

- ③ c

Energy efficiency measures and on-site use of renewable resources will be given the highest priority. In addition, through its annual program to offset net carbon emissions for that year, Poseidon will commit the first \$1 million spent on this program to fund the revegetation of areas in the San Diego region impacted by wildfires that occurred in the fall of 2007, as discussed in detail in Part III below.²

The following are elements of the Plan organized in accordance with the draft CCC template.

PART I. IDENTIFICATION OF THE AMOUNT OF GHG EMITTED

The Project will produce fresh drinking water using reverse osmosis membrane separation. The treatment processes used at the Plant do not generate GHGs. The desalination process does not involve heating and vaporization of the source seawater and thus does not create emissions of water vapor, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), or sulfur hexafluoride (SF₆). Reverse osmosis membranes do not reject the carbon dioxide, which is naturally dissolved in the source seawater, and this carbon dioxide is retained in dissolved form in the fresh drinking water created by desalination.

The modest number of fleet vehicles used by plant personnel will create a small amount of GHG emissions, but since these emissions make up less than 5% of the Project's carbon footprint, these emissions are considered *de minimis* and are not required to be reported (CCAR General Reporting Protocol of March 2007 (Chapter 5)). The Project will not store or use fossil fuels on site, and will not self-generate electricity that emits GHGs. As a result, Project operations will not create significant direct sources of GHG emissions. There are no direct fugitive emissions from the plant.

The Project's sole significant source of GHG emissions will be indirect emissions resulting from purchased electricity. All of the electricity supply for the desalination plant operations will be provided by SDG&E. Therefore, the complete accounting of significant GHG emissions for the Project will consist entirely of indirect emissions resulting from electricity purchased from SDG&E.³

Currently, about 65% of the electricity supplied by SDG&E is generated from fossil fuels⁴. As a result, until SDG&E switches to 100% "green" power supply sources, the Project operations will be indirectly linked to the generation of GHGs.

The total net indirect GHG emissions of the Project from the stationary combustion of fossil fuels to generate electricity is dependent on three key factors: (1) how much electricity is used by the Project; (2) sources of energy (fossil fuels, wind, sunlight, etc.) used to generate the electricity supplied to the plant, and (3) the Avoided Emissions, i.e., the amount of energy saved

² The California Coastal Commission conditioned the Project's Coastal Development Permit on Poseidon committing the first \$1 million spent on this program to the revegetation of areas impacted by wildfires in the San Diego region.

³ Typically, GHG emissions from construction of a project are not included in the on-going reporting of GHGs from operations. In fact, GHGs from construction are not typically accounted for in a GHG inventory at all.

⁴ SDG&E Power Content Label, September 2007

or emissions avoided as a direct result of the Project's operations. These factors will vary over time.

A. Electricity Use by the Project.

The Project will operate continuously, 24 hours a day for 365 days per year, to produce an average annual drinking water flow of 50 million gallons per day (MGD). The total baseline power use for this plant is projected to be 31.3 average megawatts (aMW), or 4.9 MWh per acre-foot (AF) of drinking water. The power use incorporates both production of fresh drinking water, as well as conveyance and delivery of the water to the distribution systems of the public water agencies that have contracted to purchase water from the Project. The total annual electricity consumption for the Project Baseline Design is 274,400 MWh/yr.

B. SDG&E's Emission Factor.

The Project will purchase all of its electricity from SDG&E.⁵ Accordingly, the appropriate emission factor to use for the Project's indirect GHG emissions from its electricity use is SDG&E's independently verified and published emission factor for the electricity purchased and consumed during the previous year. The certified emission factor for delivered electricity in 2006 is set forth in the utility's Annual Emissions Report published by CCAR in April 2008. In the published Emissions Report, the current certified emission factor for SDG&E's 2006 delivered electricity is 780.79 lbs of CO₂ per delivered MWh of electricity.

Circumstances will change over the life of the Project. SDG&E's emission factors are updated annually and the amount of energy consumed by the Project may change.⁶ As a result, it will be necessary to recalculate the net indirect GHG emissions of the Project on an annual basis using the actual SDG&E emission factor reported to the CCAR (or CARB). Until the mandatory reporting of emission factors under AB 32 is available, the emission factors for SDG&E registered with CCAR are the best available for purposes of planning and permitting this Project.

Statewide initiatives to expand the use of renewable sources of electricity are expected to decrease the emission factors of all California power suppliers in the future. For example, approximately 6% of SDG&E's retail electricity is currently generated from renewable resources (solar, wind, geothermal, and biomass).⁷ In their most-recent Long-term Energy Resource Plan, SDG&E has committed to increase energy from renewable sources by 1% each year, reaching 20% by year 2017. These and other reductions are expected to further reduce the Project's net indirect GHG emissions over time.

Table 1 summarizes the Project's estimated gross indirect CO₂ emissions from purchased electricity for Project operations, based on the most current information.

⁵ If at any time in the future the Project obtains all or part of its electricity from an entity other than SDG&E, the appropriate CCAR emission factor for that entity shall be used.

⁶ SDG&E Annual Emissions Reports to CCAR have changed each year. For years 2004, 2005 and 2006 the emissions factors have been 614, 546 and 781 lbs of CO₂/MWh, respectively.

⁷ SDG&E Power Content Label, September 2007.

Table 1 - Identification of Gross Indirect CO₂ Emissions from Purchased Electricity for Project Operations

Source	Total Annual Power Use (MWh/ year)	Total Annual Emissions (metric tons CO ₂ / year)
Project Baseline Design	274,400	97,165

PART II: ON-SITE AND PROJECT-RELATED REDUCTION OF GHG EMISSIONS]

③ A

To determine the Project's indirect GHG emissions, on-site and project-related reductions in emissions must also be considered. These are carbon emission reductions that result from measures that reduce energy requirements (increased energy efficiency, potential onsite solar, recovery of CO₂ and green building design), as well as Project-related emissions that will be avoided (Avoided Emissions) as a direct result of the Project and its various components (coastal wetlands restoration, reduced energy use from water reclamation, and replacing Customers' SWP water with water from the Project).

A. Increased Energy Efficiency.

] ③ A

Poseidon has committed to implement certain measures to reduce the Project's energy requirements and GHG emissions, and will continuously explore new technologies and processes to further reduce and offset the carbon footprint of the Project, such as the use of carbon dioxide from the ambient air for water treatment. These measures are set forth below.

The Project's high-energy efficiency design incorporates state-of-the-art features minimizing plant energy consumption. One such feature is the use of a state-of-the-art pressure exchanger-based energy recovery system that allows recovery and reuse of 33.9% of the energy associated with the reverse osmosis (RO) process. A significant portion of the energy applied in the RO process is retained in the concentrated stream. This energy bearing stream (shown with red arrows on Figure 2) is applied to the back side of pistons of cylindrical isobaric chambers, also known as "pressure exchangers" (shown as yellow cylinders on Figure 2). These energy exchangers recover and reuse approximately 45% of the energy used by the RO process.⁸

⁸ The "45 % percent energy recovery and reuse" refers to the gross energy recovery potential, while the "33.9 % energy recovery and reuse" refers to the actual energy savings associated with the energy recovery system. The difference between gross and actual energy savings is due to mechanical inefficiencies of the recovery system and associated friction losses. Thus, for purposes of calculating the overall energy savings, Table 2 correctly reflects 33.9% savings associated with the pressure exchanger.

Figure 2 - Energy Recovery System for the Carlsbad Seawater Desalination Plant

Currently there are no full-scale seawater desalination plants in the US using the proposed state-of-the art pressure exchanger energy recovery technology included in the "High Efficiency Design" (Table 2). All existing seawater desalination projects in the US, including the 25 MGD Tampa Bay seawater desalination plant, which began commercial operation on January 25, 2008, are using standard energy recovery equipment – i.e., Pelton wheels (see Figure 2). Therefore, the Pelton wheel energy recovery system is included in the "Baseline Design" in Table 2.

The pressure exchanger technology that Poseidon proposes to use for the Project is a national technology. The manufacturer of the pressure exchangers referenced in Table 2 of the Project Power Budget is Energy Recovery, Inc., a US company located in San Leandro, California (www.energyrecovery.com).

A pilot-scale seawater desalination plant using the pressure exchanger technology proposed by Poseidon and supplied by Energy Recovery, Inc. has been in operation at the US Navy's Seawater Desalination Testing Facility in Port Hueneme, California since 2005. The overall capacity of this desalination plant is 50,000 to 80,000 gallons per day. The pilot testing work at this facility has been conducted by the Affordable Desalination Collaboration (ADC), which is a California non-profit organization composed of a group of leading companies and agencies in the desalination industry (www.affordabledesal.com). A portion of the funding for the operation of this facility is provided by the California Department of Water Resources (DWR) through the state's Proposition 50 Program. The DWR provides independent oversight of this project and reviews project results. In addition, representatives of the California Energy Commission and the California Department of Public Health are on the Board of Directors of the ADC.

The proposed pressure exchanger technology (i.e., the same pressure exchanger employed at the ADC seawater desalination plant) was independently tested at Poseidon's Carlsbad seawater desalination demonstration plant. More than one year of testing has confirmed the validity of the conclusions of the ADC for the site-specific conditions of the Project. The test results from the Carlsbad seawater desalination demonstration plant were used to calculate the energy efficiency of the pressure exchangers included in Table 2. Poseidon's technology evaluation work at the Carlsbad seawater desalination demonstration plant was independently reviewed and recognized by the American Academy of Environmental Engineers and by the International Water Association, who awarded Poseidon their 2006 Grand Prize in the field of Applied Research.

**Table 2 - Comparison of Baseline and High-Efficiency Power Budget for
50 MGD Water Production Capacity**

CARLSBAD DESALINATION PROJECT
COMPARISON OF BASELINE AND HIGH-EFFICIENCY POWER BUDGET
FOR 50 MGD WATER PRODUCTION CAPACITY

Unit	Baseline Design - Power Use			High Efficiency Design - Power Use			Additional Costs for High Efficiency Equipment (US\$2008)
	(Hp)	Equipment Efficiency	Equipment Type	(Hp)	Equipment Efficiency	Equipment Type	
Key Treatment Process Pumps							
Power Plant Intake Pumps (Stand-Alone Operation)	3,750	70%	Standard Motors - No VFDs	3,750	70%	Standard Motors - No VFDs	None
Seawater Intake Pumps	2,100	70%	Standard Motors - No VFDs	1,838	80%	High Eff. Motors - VFDs	US\$0.7 MM
Reverse Osmosis Pumps	30,100	82%	High Eff. Motors - No VFDs	30,100	82%	High Eff. Motors - No VFDs	None
Energy Recovery System - Power Reduction	(7,550)	-25.1%	Pelton Wheels	(10,200)	-33.9%	Pressure Exchangers	US\$5.0 MM
Product Water Transfer Pumps	10,680	70%	Standard Motors - No VFDs	9,350	80%	High Eff. Motors & VFDs	US\$3.4 MM
Pretreatment Filter Service Equipment							
Microscreen Pumps	150	65%	Standard Motors - No VFDs	150	65%	Standard Motors - No VFDs	None
Ultrafiltration Vacuum Pumps	780	70%	Standard Motors - No VFDs	680	80%	High Eff. Motors - with VFDs	US\$0.3 MM
Filter Backwash Blowers	400	70%	Standard Motors - No VFDs	400	70%	Standard Motors - No VFDs	None
Backwash Pumps	160	70%	Standard Motors - No VFDs	160	70%	Standard Motors - No VFDs	None
Backwash Equalization Basin Blowers	80	70%	Standard Motors - No VFDs	80	70%	Standard Motors - No VFDs	None
UF and RO Membrane Cleaning Systems							
Membrane Cleaning Pumps	30	70%	Standard Motors - No VFDs	30	70%	Standard Motors - No VFDs	None
Scavenger Tank Mixing System	50	70%	Standard Motors - No VFDs	50	70%	Standard Motors - No VFDs	None
Flush Pumps	150	70%	Standard Motors - No VFDs	150	70%	Standard Motors - No VFDs	None
Cleaning Chemicals System	15	70%	Standard Motors - No VFDs	15	70%	Standard Motors - No VFDs	None
Sewer System Transfer Pumps	15	65%	Standard Motors - No VFDs	15	65%	Standard Motors - No VFDs	None
Chemical Feed Equipment							
Polymer Feed System	15	65%	Standard Motors - No VFDs	15	65%	Standard Motors - No VFDs	None
Ammonia Feed System	30	65%	Standard Motors - No VFDs	30	65%	Standard Motors - No VFDs	None
Lime Feed System	200	65%	Standard Motors - No VFDs	200	65%	Standard Motors - No VFDs	None
Carbon Dioxide Feed System	30	65%	Standard Motors - No VFDs	30	65%	Standard Motors - No VFDs	None
Sodium Hypochlorite Feed System	40	65%	Standard Motors - No VFDs	40	65%	Standard Motors - No VFDs	None
Other Chemical Feed Systems	10	65%	Standard Motors - No VFDs	10	65%	Standard Motors - No VFDs	None
Service Facilities							
HVAC	250	NA	Standard Equipment	250	NA	Standard Equipment	None
Lighting	120	NA	Standard Equipment	120	NA	Standard Equipment	None
Controls and Automation	40	NA	Standard Equipment	40	NA	Standard Equipment	None
Air Compressors	100	NA	Standard Equipment	100	NA	Standard Equipment	None
Other Miscellaneous Power Uses	250	NA	Standard Equipment	250	NA	Standard Equipment	None
TOTAL DESALINATION PLANT POWER USE	41,996			37,663			
	31.32 MW			28.08 MW			

Figure 3 - Tampa Bay Desalination Plant Pelton Wheel Energy Recovery System

Table 2 presents a detailed breakdown of the projected power use of the Project under a Baseline Design and High-Energy Efficiency Design. As indicated in this table, the Baseline Design includes high efficiency motors for all pumps, except the largest reverse osmosis feed pumps, and a Pelton wheel energy recovery system which is the most widely used "standard" energy recovery system today. The total desalination power use under the Baseline Design is 31.3 aMW, which corresponds to a unit power use of 15.02 kWh/kgal⁹ (4,898 kWh/AF)¹⁰.

In addition to the state of the art-pressure exchanger system described above, the High-Energy Efficiency Design incorporates premium efficiency motors and variable frequency drives (VFDs) on desalination plant pumps that have motors of 500 horsepower or more. The total desalination plant energy use under the High-Energy Efficiency Design is 28.1 MW, which corresponds to unit power use of 13.488 kWh/kgal¹¹ (4,397 kWh/AF)¹².

The main energy savings result from the use of pressure exchangers instead of Pelton wheels for energy recovery. The pressure exchangers are projected to yield 2,650 hp (2.0 aMW)¹³ of power savings, which is 6.3 % reduction of the total power use of 31.3 aMW. Converted into unit power savings, the energy reduction of 2.0 aMW corresponds to 0.95 kWh/kgal¹⁴ (310 kWh/AF)¹⁵. The installation of premium-efficiency motors and VFDs on large pumps would result in additional 1.2 aMW (4%) of power savings.

The power savings of 0.95 kWh/kgal associated with the use of pressure exchangers instead of Pelton wheels for energy recovery are substantiated by information from several full-scale desalination plants which have recently replaced their existing Pelton wheel energy recovery systems with pressure exchangers in order to take advantage of the energy savings offered by this technology (see Appendix D). Appendix D contains energy data for a seawater desalination plant in Mazarron, Spain where a Pelton wheel system was replaced with PX pressure exchangers. As indicated on Table 2 of Attachment 1, the replacement resulted in energy reduction from 3.05 kWh/m³ to 2.37 kWh/m³ (i.e., 0.68 kWh/m³ or 2.57 kWh/kgal). The total actual energy reduction ~~that would result~~ resulting from the use of state-of-the-art desalination and energy recovery technologies and design will be verified by direct readings of the total ~~electric energy/electricity~~ consumed by the desalination plant at the Project's substation(s) electric meter(s) and documented as soon as the Project is fully operational. - ①

⁹ 31.3 MWh x 1,000 kW/MW/Average Fresh Water Production Rate of 2083 kg/h.

¹⁰ 15.02 kWh/kgal x 326 kgal/AF.

¹¹ 28.1 MWh x 1,000 kW/MW/2083 kgal/h.

¹² 13.488 kWh/kgal x 326 kgal/AF.

¹³ 2650 HP x 0.746 kw/HP

¹⁴ 2.0 x 1000 kw/MW/2083kgal/HR

¹⁵ 0.95 kWh/kgal x 326 kgal/AF

B. GHG Emission Reduction by Green Building Design.

] ③ A

The Project will be located on a site currently occupied by an oil storage tank no longer used by the power plant. This tank and its content will be removed and the site will be reused to construct the Project. Because the facility is an industrial facility, LEED-level certification will not be feasible; but to the extent reasonably practicable, building design will follow the principles of the Leadership in Energy and Environmental Design (LEED) program. LEED is a program of the United States Green Building Council, developed to promote construction of sustainable buildings that reduce the overall impact of building construction and functions on the environment by: (1) sustainable site selection and development, including re-use of existing industrial infrastructure locations; (2) energy efficiency; (3) materials selection; (4) indoor environmental quality, and (5) water savings.

The potential energy savings associated with the implementation of the green building design as compared to that for a standard building design are in a range of 300 MWh/yr to 500 MWh/yr. The potential carbon footprint reduction associated with this design is between 106 and 177 tons of CO₂ per year. The energy savings associated with incorporating green building design features into the desalination plant structures (i.e., natural lighting, high performance fluorescent lamps, high-efficiency HVAC and compressors, etc.) are based on the assumption that such features will reduce the total energy consumption of the plant service facilities by 6 to 10 %. As indicated in Table 2, the plant service facilities (HVAC, lighting, controls and automation, air compressors and other miscellaneous power uses) are projected to have power use of 760 hp (250 hp + 120 hp + 40 hp + 100 hp + 250 hp = 760 hp) when standard equipment is used. The total annual energy demand for these facilities is calculated as follows; 760 hp x 0.746 kW/hp x 0.001 kW/MW x 24 hrs x 365 days = 4,967 MWh/yr. If use of green building design features result in 6 % of energy savings, the total annual power use reduction of the service facilities is calculated at 0.06 x 4,967 MWh/yr = 298.02 MWh/yr (rounded to 300 MWh/yr). Similarly, energy savings of 10 % due to green building type equipment would yield 0.1 x 4,967 MWh/yr = 496.7 MWh/yr (rounded to 500 MWh/yr) of savings. The actual savings will be determined during the final building design process. total actual energy reduction resulting from the use of the green building design will be verified by direct readings of the total electricity consumed by the desalination plant at the Project's substation(s) electric meter(s) and documented as soon as the Project is fully operational.

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C. On-Site Solar Power Generation.

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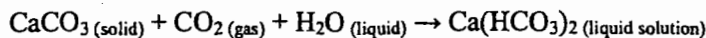
Poseidon is exploring the installation of rooftop photovoltaic (PV) system for solar power generation as one element of its green building design. Brummitt Energy Associates of San Diego completed a feasibility study in March 2007 of a photovoltaic system at the Carlsbad Desalination Plant. (The solar feasibility study is attached as Appendix H) If the solar installation described by Brummitt is implemented, the main desalination plant building would accommodate solar panels on a roof surface of approximately 50,000 square feet, with the potential to generate approximately 777 MWh/yr of electricity. If installed, the electricity produced by the onsite PV system would be used by the Project and therefore would reduce the Project's electrical demand on SDG&E. The corresponding reduction of the Project's indirect emissions would be 275 tons of CO₂ per year. Poseidon is exploring other solar proposals and

will update this information as it becomes available. Ultimately, the electricity and corresponding GHG savings of any on-site solar installation will be documented in the Project's annual electricity usage information. Poseidon will use commercially reasonable efforts to implement an on-site solar power project if it is reasonably expected to provide a return on the capital investment over the life of the Project.

If Poseidon proceeds with an onsite PV system, the total actual energy reductions resulting from the use of on-site solar power generation will be verified by direct readings of the total electric energy produced electricity consumed by the solar desalination plant at the system Project's substation(s) electric meter(s) and documented once the system is fully operational.

D. Recovery of CO₂

Approximately 2,100 tons of CO₂ per year are planned to be used at the Project for post-treatment of the product water (permeate) produced by the reverse osmosis (RO) system. Carbon dioxide in a gaseous form will be added to the RO permeate in combination with calcium hydroxide or calcium carbonate in order to form soluble calcium bicarbonate which adds hardness and alkalinity to the drinking water for distribution system corrosion protection. In this post-treatment process of RO permeate stabilization, gaseous carbon dioxide is sequestered in soluble form as calcium bicarbonate. Because the pH of the drinking water distributed for potable use is in a range (8.3 to 8.5) at which CO₂ is in a soluble bicarbonate form, the carbon dioxide introduced in the RO permeate would remain permanently sequestered. During the treatment process the calcium carbonate (calcite - CaCO₃) reacts with the carbon dioxide injected in the water and forms completely soluble calcium bicarbonate as follows:



At the typical pH range of drinking water (pH of 8.3 to 8.5) the carbon dioxide will remain in the drinking water in soluble form (see Figure 4) and the entire amount (100 %) of the injected carbon dioxide will be completely dissolved.

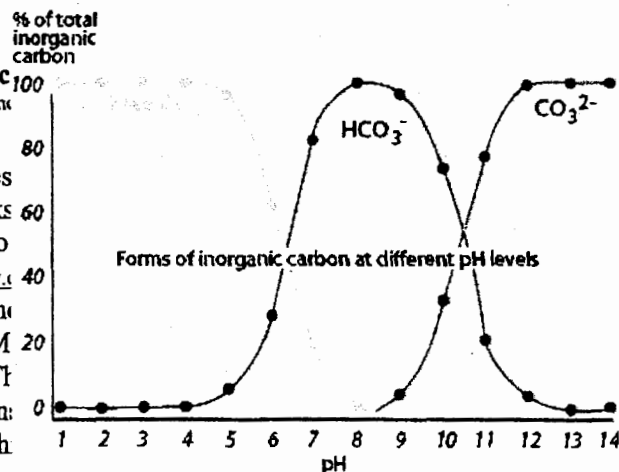
Figure 4 – Relationship between free c

(Source: <http://www.cotf.edu/ete/mx>)

¹⁶ This chemical reaction and information pres chemistry of water. See American Water Works Supply Practices, M46, Reverse Osmo <http://www.chem1.com/CO/hardwater.html>; <http://www.1> the desalinated drinking water is delivered to in water will be ingested directly or with food. M purposes – personal hygiene, irrigation, etc. Th be dissociated into calcium and bicarbonate ion: human body th

(<http://www.chemistry.wustl.edu/~courses/genchem/Tutorials/Buffers/CalculatingpH.htm>)

sequestered into the bicarbonate ion, human consumption of the desalinated water will not result



A small quantity of carbon dioxide used in the desalination plant post-treatment process is sequestered directly from the air when the pH of the source seawater is adjusted by addition of sulfuric acid in order to prevent RO membrane scaling. A larger amount of CO₂ would be delivered to the Project site by commercial supplier for addition to the permeate. Depending on the supplier, carbon dioxide is of one of two origins: (1) a CO₂ Generating Plant or (2) a CO₂ Recovery Plant. CO₂ generating plants use various fossil fuels (natural gas, kerosene, diesel oil, etc.) to produce this gas by fuel combustion. CO₂ recovery plants produce carbon dioxide by recovering it from the waste streams of other industrial production facilities which emit CO₂-rich gasses: breweries, commercial alcohol (i.e., ethanol) plants, hydrogen and ammonia plants, etc. Typically, if these gases are not collected via CO₂ recovery plant and used in other facilities, such as the desalination plant, they are emitted to the atmosphere and therefore, constitute a GHG release.

To the extent that it is reasonably available, Poseidon intends to acquire the carbon dioxide from a recovery operation. Use of recovered CO₂ at the Project would sequester 2,100 tons of CO₂ per year in the Project product water. The total annual use of carbon dioxide (i.e., 2,100 tons/CO₂ per year) in the water treatment process was determined based on the daily carbon dioxide consumption presented in Table 4.6-2 of Section 4.6 "Hazards and Hazardous Materials" of the certified Carlsbad desalination project Environmental Impact Report (EIR). The daily consumption of CO₂ in this table is 12,540 lbs of CO₂/day. The annual consumption is calculated as 12,540 lbs/day x 365 days /2,200 lbs/ton = 2,080.5 lbs of CO₂/yr (which was rounded to 2,100 lbs/yr). The daily amount of carbon dioxide in Table 4.6-2 of the EIR was calculated based on the dosage needed to provide adequate hardness (concentration of calcium bicarbonate) in the seawater to protect the water distribution system from corrosion. This amount was determined based on pilot testing of distribution system piping and household plumbing at the Carlsbad seawater desalination demonstration project. The testing was completed using the same type of calcium carbonate chips as those planned to be used in the full-scale operations. Every load of carbon dioxide delivered to the desalination plant site will be accompanied by a certificate that states the quantity, quality and origin of the carbon dioxide and indicates that this carbon dioxide was recovered as a site product from an industrial application of known type of production (i.e., brewery, ethanol plant, etc.), and that it was purified to meet

in release of CO₂. The bicarbonate in the urine will be conveyed along with the other sanitary sewerage to the wastewater treatment plant. Since the bicarbonate is dissolved, it will not be significantly impacted by the wastewater treatment process and ultimately will be discharged to the ocean with the wastewater treatment plant effluent. The ocean water pH is in a range of 7.8 to 8.3, which would be adequate to maintain the originally sequestered CO₂ in a soluble form – see Figure 4 above. Other household uses of drinking water, such as personal hygiene, do not involve change in drinking water pH as demonstrated by the fact that pH of domestic wastewater does not differ significantly from that of the drinking water. A portion of the household drinking water would likely be used for irrigation. A significant amount of the calcium bicarbonate in the irrigation water would be absorbed and sequestered in the plant roots (<http://www.pubmedcentral.nih.gov/pagerender.fcgi?artid=540973&pageindex=1>). The remaining portion of calcium bicarbonate would be adsorbed in the soils and/or would enter the underlying groundwater aquifer.

the requirements associated with its use in drinking water applications (i.e., the chemical is NSF approved). The plant operations manager will receive and archive the certificates for verification purposes. At the end of the year, the operations manager will provide copies of all certificates of delivered carbon dioxide to the independent third party reviewer responsible for verification facility compliance with the Energy Minimization and Greenhouse Gas Reduction Plan.

As noted, verification would be provided through certificates of origin received from suppliers of CO₂ delivered to the Project site indicating the actual amount of CO₂ delivered to the site, date of delivery, origin of the CO₂, and the purity of this gas. Poseidon will place conditions in its purchase agreements with CO₂ vendors that require transfer of CO₂ credits to Poseidon and otherwise ensure that the CO₂ is not accounted for through any other carbon reduction program so as to avoid "double counting" of associated carbon credits.

E. Avoided Emissions from Reducing Energy Needs for Water Reclamation.

1 ③A

The Project will result in Avoided Emissions because it will cause a change in operations by the Carlsbad Municipal Water District (CMWD), which owns and operates a water reclamation facility that includes micro-filtration (MF) and RO treatment for 25% of its water supply. The purpose of the MF/RO system is to reduce the salinity of the recycled water to below 1,000 mg/L so it will be suitable for irrigation. The elevated salinity of the recycled water is due in part to the salinity of the City's drinking water supply.

The Project will effectively eliminate this problem by lowering the salinity in the source water of the communities upstream of the water recycling facility, thereby eliminating the need for operation of the MF/RO portion of the water recycling process. Implementation of the Project will significantly reduce or possibly eliminate the need to operate the MF/RO system, leading to Avoided Emissions from the lower electricity use by CMWD. This will reduce the carbon footprint of the Carlsbad Water Reclamation Facility as follows: 1,950 MWh/yr x 780.79 lbs of CO₂/MWh = 1,522,541 lbs of CO₂/yr (690 tons of CO₂/yr).

The total actual energy reduction that would result from the higher quality water use upstream of the water recycling facility will be verified annually by CMWD, using actual billing and performance data. This will be accomplished through a comparison of the pre-Project energy use attributable to the RO/MF portion of the water recycling process to the post-Project energy use.

F. Avoided Emissions from Displaced Imported Water.

1 ③A

Another source of Avoided Emissions will result from the Project's introduction of a new, local source of water into the San Diego area; water that will displace imported water now delivered to Customers from the State Water Project (SWP) – a system with its own significant energy load and related carbon emissions.

One of the primary reasons for the development of the Project is to replace imported water with a locally produced alternative drought-proof source of water supply. Currently, San Diego County imports approximately 90% of its water from two sources – the SWP and the Colorado River.

These imported water delivery systems consist of a complex system of intakes, dams, reservoirs, aqueducts and pump stations, and water treatment facilities.

The proposed Project will supply 56,000 acre-feet of water per year to the San Diego region. The Project will provide direct, one-to-one replacement of imported water to meet the requirements of the participating water agencies, thus eliminating the need to pump 56,000 acre feet of water into the region.¹⁷

The 2003 multi-state Colorado River quantitative settlement agreement forced Metropolitan Water District of Southern California (MWD) to reduce its pumping from the Colorado River by 53% -- from 1.20 MAFY to 0.56 MAFY. As a result, MWD now operates its imported water delivery system to base load its Colorado River allotment and draw from the SWP only as needed to serve demand that cannot be met by the lower cost water available from the Colorado River Aqueduct. Consequently, the proposed Project will reduce the Customers demand on the SWP.

The total amount of electricity needed to provide treated water to Poseidon's public agency partners via the SWP facilities is shown in Table 1. The net power requirement to pump an acre-foot of water through the East Branch of the SWP is 3,248 KWh (source: DWR). Approximately 2% of the SWP water pumped to Southern California is lost to evaporation from Department of Water Resources' reservoirs located south of the Tehachapi Mountains (source: DWR). The evaporation loss results in a net increase of 68.3 KWh per acre-foot of SWP water actually delivered to Southern California homes and businesses. Finally, prior to use, the SWP water must be treated to meet Safe Drinking Water Act requirements. The San Diego County Water Authority (SDCWA) entered into a service contract with CH2M Hill Constructors, Inc., to operate its Twin Oaks Water Treatment Plant with a guaranteed electricity consumption of 100 KWh/AF of water treated (source: SDCWA). The electricity required to deliver an acre foot of treated water to the SDCWA is shown in Table 3.

Table 3 - State Water Project Supply Energy Use

Energy Demand	KWh/AF	Source
Pumping Through East Branch	3248	DWR
Evaporation Loss	68	DWR
Twin Oaks Water Treatment Plant	100	SDCWA
Total	3416	

The reduction of demand for imported water is critical to Southern California's water supply reliability, so much so that MWD not only supports the Project, but has also committed \$14 million annually to reduce the cost to Poseidon's customers. Under MWD's program, \$250 will

¹⁷ See Poseidon Resources Corporation Letter to Paul Thayer Re: Desalination Project's Impact on Imported Water Use, November 8, 2007, including attachments from nine water agencies (Attached as Appendix E).

be paid to water agencies for every acre-foot of desalinated water purchased from the Carlsbad facility, *so long as the desalinated water offsets an equivalent amount of imported water*. MWD has established "Seawater Desalination Policy Principles and Administrative Guidelines" that require recordkeeping, annual data submittals, and MWD audit rights to ensure that MWD water is offset.¹⁸

The benefits of a reduction in demand on MWD's system are reflected in, among other things, the energy savings resulting from the pumping of water that – but for the Project – would have to continue. For every acre-foot of SWP water that is replaced by water from the proposed Project, 3.4 MWh of electricity use to deliver water to Customers is avoided, along with associated carbon emissions. And since the Project requires 4.4 MWh of electricity to produce one acre-foot of water, the net electricity required to deliver water from the Project to Customers is 1.0 MWh/AF.

Because the Project will avoid the use of 56,000 AFY of imported water to Customers, once in operation, the Project will also avoid 190,641 MWh/yr of electricity consumption otherwise required to deliver that water to Customers, as well as the GHG emissions associated with pumping, treatment and distribution of this imported water. At 780.79 lbs CO₂ per MWh,¹⁹ the total Avoided Emissions as a result of the Project is 67,506 metric tons CO₂/yr.

G. Avoided Emissions through Coastal Wetlands.

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The Project also includes the restoration and enhancement of marine wetlands. The restoration project will be in the proximity of the Project. These wetlands will be set-aside and preserved for the life of the Project. Once the wetlands are restored they will act as a carbon "sink" or carbon sequestration project trapping CO₂.

Tidal wetlands are very productive habitats that remove significant amounts of carbon from the atmosphere, a large portion of which is stored in the wetland soils. While freshwater wetlands also sequester CO₂, they are often a measurable source of methane emissions. Coastal wetlands and salt marshes, however, release negligible amounts of greenhouse gases and therefore, their carbon sequestration capacity is not measurably reduced by methane production.

Based on a detailed study completed in a coastal lagoon in Southern California, the average annual rate of carbon sequestration in coastal wetland soils is estimated at 0.033 kg of C/m².yr (a 5,000 year average, Brevick E.C. and Homburg J.A., 2004).²⁰ In tidal ecosystems, sediment accumulation rates (via suspended sediment supply, tidal water flooding, etc.) exert a major control on carbon sequestration rates. Soil carbon sequestration rates determined recently in the Tijuana Estuary on the Mexico/USA border were determined to be 0.343 kg of C/m².yr (Cahoon

¹⁸ MWD's program is documented in a June 22, 2007 letter from its General Manager to Peter Douglas, Executive Director of the California Coastal Commission, as well as various contracts with relevant water agencies.

¹⁹ Since the SWP does not have a published Annual Emissions Report with the CCAR, Poseidon used the certified emission factor for SDG&E system. Poseidon believes this a conservative estimate and will update its calculations when more accurate data is available.

²⁰ www.slc.ca.gov/Reports/Carlsbad_Desalinization_Plant_Response/Attachment_4.pdf

et. al 1996).²¹ (4 = Cahoon, D.R., J.C. Lynch, and A. Powell, Marsh vertical accretion rates in a Southern California estuary, U.S.A., Estuar. Coast. Shelf Sci., 43, 19-32, 1996).

Given that the total area of the proposed wetland project is 37 acres, the carbon sequestration potential of the wetlands is between 4.9 and 51 tons of C/m².yr. These numbers are calculated as follows: Sequestration Rate (.033 kg of C/m².yr and 0.343 kg of C/m².yr) x Area (37 acres = 149,732.5 m²) x Weight conversion (1000 kg C = 1 metric ton of C) = tons of C sequestered/m².yr (as given above). To get from this unit the standard greenhouse gas unit of tons of CO₂ (not C) of sequestered per year, the conversion factor is 3.664. Therefore, the emissions avoided from the wetlands are estimated to be between 18 and 188 tons of CO₂ per year.

In order to verify the actual soil carbon sequestration rate of the proposed wetland ecosystem, site-specific measurements will need to be made. Protocols for wetlands are being currently being developed for inclusion within the Clean Development Mechanism of the Kyoto Protocol, and we will use these protocols until CCAR makes its own wetland protocol available. We anticipate full inclusion wetland protocols to become available within the lifetime of this project. But for the Project, the wetlands mitigation would not occur, and therefore it satisfies the Regulatory Surplus additionality test. (See, Carbon Offset Projects – Definition (Page 16 herein) for a more detailed discussion of the Regulatory Surplus additionality test.)

Table 4 summarizes the on-site and project-related reductions of GHG Emissions.

Table 4 - On-site and Project-Related Reduction of GHG Emissions

Source	Total Annual Reductions in Power Use (MWh/ year saved)	Total Annual Emissions Avoided (metric tons CO ₂ / year avoided)
Reduction due to High-Efficiency Design	(28,244)	(10,001)
Green Building Design	(300 to 500)	(106 to 177)
On-site Solar Power Generation	(0-777)	(0-275)
Recovery of CO ₂	(NA)	(2,100)
Reducing Energy Needs for Water Recycling	(1,950)	(690)
Reduced Water Importation	(190,641)	(67,506)
Sequestration in Coastal Wetlands	(NA)	(18 to 304 188)

²¹ www.sfbayjv.org/tools/climate/CarbonWtlandsSummary_07_Trulio.pdf

Subtotal On-site Reduction Measures	(NA)	(80,421 to 81,05380,937)
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PART III: IDENTIFICATION OF MITIGATION OPTIONS TO OFFSET ANY REMAINING GHG EMISSIONS

Offsite reductions of GHG emissions that are not inherently part of the Project include actions taken by Poseidon to participate in local, regional, state, national or international offset projects that result in the cost-effective reduction of GHG emissions equal to the indirect Project emissions Poseidon is not able to reduce through other measures. One such offset project – the expenditure of one million dollars to reforest areas burned out by fires in the San Diego region in the fall of 2007 – has been identified by the CCC as the first priority among these measures. As set forth in more detail below, other carbon offset projects will be identified through a selection process beginning about fifteen months before operations commence, starting with the issuance of a Request for Proposal (RFP) for carbon offset projects and renewable energy credits (RECs). The RFP will require compliance with comprehensive standards for carbon offset projects such as those set forth in AB 32.²² purchased by Poseidon through/from CCAR or CARB approved projects or other approved Third Party Providers of offsets set forth in Section III.C below. Projects available from these Third Party Providers will be consistent with AB 32 principles.²² Working with an experienced, qualified carbon offset broker – together with the California Center for Sustainable Energy (CCSE) and a representative with expertise with greenhouse gas mitigation and energy or air regulatory policy jointly selected with CCC staff, Poseidon will select the most cost-effective mix that meets the criteria described herein, and then contract for the acquisition or development of the projects selected. The exact nature and cost of the offset projects and RECs will not be known until they RFP process is complete are acquired by Poseidon. Offsets or RECs will also be used as the swing mitigation option to “true-up” changes over time to the Project’s net indirect GHG emissions, as discussed below.

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A. Annual “True-Up” Process

Since the quantity of offsets required will vary from year-to-year, the goal of the annual “True-Up” process is to enable Poseidon to meet the subject year’s need for metric tons of offsets by purchasing or banking offsets in the short-term, while allowing Poseidon to make long-term purchases and bank offsets to decrease market exposure and administrative costs. To complete the True-Up process, CCSE the California Center for Sustainable Energy (CCSE) will obtain the latest SDG&E emission factor from the annual web-based CARB or CCAR Emissions Report within 60 days of the end of each calendar year, or the date of publication of the CARB

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²² Part 4, Section 38562(d)(1)&(2) states that CARB regulations covering GHG emission reductions from regulated “sources” must ensure that such reductions are “real, permanent, quantifiable, verifiable, . . . enforceable [and additional]”. While the Project is not a “source” under AB 32 and the criteria are not currently defined under implementing regulations, Poseidon Third Party Providers will evaluate potential offset projects against the equivalent criteria using the best available their own protocols that employ the same criteria.

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or CCAR Emissions Report on the relevant CARB or CCAR web site, whichever is later. Within 120 days of the end of the prior calendar year or publication of the emission factor (whichever is later), CCSE, with assistance from Poseidon as needed, will gather electricity usage data, relevant data regarding Avoided Emissions, and then calculate the necessary metric tons of offsets required for the subject year. The subject year's emissions will be calculated using actual billing data and the emissions factor for the relevant annual period. The subject year's calculated metric tons of ~~offsets~~net emissions will be compared to the amount of metric tons of offsets previously acquired by Poseidon to determine if Poseidon is surplus or deficit~~has~~ a positive or negative balance of net GHG emissions for the subject year, and all of this information will be included in the Annual GHG Report to be ~~reviewed by the San Diego Air Pollution Control District ("SDAPCD") for consistency with the requirements of this Plan submitted to the Commission each year~~ as discussed below. If there is a deficit of offsets~~positive balance of net GHG emissions~~, Poseidon will purchase offsets to eliminate the deficit within 6 months of the date the deficit is concurred with by SDAPCD after its review of positive balance, and provide the Commission with documentation substantiating that purchase, within 120 days of the date the positive balance is identified in the Annual GHG Report. If there is a surplus of offsets~~negative balance of net GHG emissions~~, the surplus ~~offsets~~ may be carried forward into subsequent years or sold by Poseidon on the open market.

- (2)

- (3)

- (2)

Prior to the commencement of Project operations, Poseidon will be required to purchase offsets sufficient to cover estimated net (indirect) GHG emissions for at least the first year of operation (as determined by CCSE and subject to SDAPCD~~Commission staff~~ concurrence), or to cover a longer period of time at Poseidon's option, based on the most recently published SDG&E emission factor from CARB or CCAR and estimated electricity usage data for the first year of the Project period for which offsets are initially purchased. Poseidon will have the option to purchase offsets for any longer period of time up to and including the entire 30 year life of the Project, subject to Poseidon's above-stated obligation to address any deficit in credits~~positive balance in net GHG emissions~~ that may subsequently arise. Beginning with the Sixth Annual Report, Poseidon can maintain a negative balance of net GHG emissions over a rolling five-year period. Poseidon will purchase enough GHG reductions measures that conform to the Plan such that it will not incur a positive net GHG emissions balance over any rolling five-year period.

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B. Carbon Offset Projects – Definition.²³

An offset is created when a specific action is taken that reduces, avoids or sequesters greenhouse gas (GHG) emissions in exchange for a payment from an entity mitigating its GHG emissions. Examples of offset projects include, but are not limited to: increasing energy efficiency in buildings or industries, reducing transportation emissions, generating electricity from renewable resources such as solar or wind, modifying industrial processes so that they emit fewer GHGs, installing cogeneration, and reforestation or preserving forests.

²³ The following two sections are based on information provided by the Climate Trust (<http://www.climatetrust.org/>)

One type of offset project is Renewable Energy Credits (RECs), also known as Green Tags, Renewable Energy Certificates or Tradable Renewable Certificates. Each REC represents proof that 1 MW of electricity was generated from renewable energy (wind, solar, or geothermal). For GHG offsetting purposes, purchasing ~~an~~ REC is the equivalent of purchasing 1 MW of electricity from a renewable energy source, effectively offsetting the GHGs otherwise associated with the production of that electricity. RECs may be sold separately from the electricity.

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Poseidon is committed to acquiring cost-effective offsets that meet rigorous standards, as detailed in this Plan. By requiring adherence to the principles, practices and performance standards described here, the Plan is designed to assure that selected offset projects will mitigate GHG emissions as effectively as on-site or direct GHG reductions. Adherence will ensure that the offset projects acquired by Poseidon are real, permanent, quantifiable, verifiable, enforceable, and additional- consistent with the principles of AB 32.

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Additionality. The concept of "additionality" was introduced in Article 12.5 of the Kyoto Protocol, which states that "emission reductions resulting from each project activity shall be ... reductions in emissions that are additional to any that would occur in the absence of the certified project activity". ~~Poseidon~~ The Third Party Providers will assess the additionality of each project proposal on a case-by-case basis. Offset project proposers —i.e., those who respond to an RFP— will be required by the Third Party Providers to demonstrate the additionality of their project. Specifically, ~~Poseidon, working with a third party such as CCSE and subject to concurrence by the greenhouse gas mitigation and energy or air regulatory policy expert,~~ the Third Party Providers will perform an initial screening of all proposed offset projects against the following additionality tests before evaluating any other aspects of the proposed project.

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Along with applicable AB 32 criteria, if any, the carbon offset acquisition process will utilize three widely used tests to determine a project's additionality: 1) Regulatory Surplus Test, 2) Barriers Tests, and 3) Common Practice Test. These tests are based on the Kyoto Protocol's Clean Development Mechanism methodology, as well as the World Resource Institute's GHG Protocol for Project Accounting; and are the emerging norms and best practices in the burgeoning offset market in the United States and internationally.

Test 1: Regulatory Surplus. The Regulatory Surplus Test ensures that the project that is proposed is not mandated by any existing law, policy, statute, regulation, or other legal obligations. Otherwise, it is assumed that the project is being developed to comply with the law or regulation and thus cannot be considered additional to the business as usual scenario.

Test 2: Implementation Barriers. The implementation barriers tests are at the heart of the additionality determination process. There are three main implementation barriers tests: 1) Financial, 2) Technological, and 3) Institutional. A project must meet at least one of the following barriers tests in order to be considered additional.

Test 2(a): Financial Barriers. The Financial Barriers Test addresses how offset funding impacts the project in question. Financial barriers tests are generally considered to be one of the more rigorous and stringent tests of additionality. There are two main types of financial barriers a project can face: capital constraint and internal rate of return. The Capital Constraint Test addresses whether a project would have been undertaken without offset funding. Internal rate of return indicates whether or not a project would have met established targets for

internal rates of return without offset funding. These are not the only acceptable tests of financial barriers, but are the most commonly used.

Positive economic returns do not necessarily make a project non-additional. There are instances where projects with high rates of return remain unimplemented – the energy efficiency sector is the most well known of these examples. To demonstrate additionality for projects that generate rates of return, it can be useful to describe the barriers faced by the project by including a clear explanation of the project's return rate with a pro forma financial analysis showing both the with and without project case. For example, Company Y typically does not pursue project activities unless they provide a 15% rate of return. An energy efficiency upgrade at the facility will generate a 5% rate of return. The additionality case is that offset funding can be used to increase the return of the efficiency measures to a level that is acceptable to management.

Test 2(b): Technological Barriers. There are several categories of assessment that could fall under this test. If the primary reason for implementing a technology is its GHG reduction benefits, that project is generally considered to be additional. For example, if a more energy efficient, though more expensive to manufacture, model of a hot water heater is available and the additional cost is barring its entry into the market, offset funding can help bridge that gap and bring a technology to market that otherwise would not have been. In this case, the GHG reductions resulting from the deployment of the new technology are clearly above and beyond business as usual.

Test 2(c): Institutional Barriers. Institutional barriers can be organizational, social or cultural. If a GHG reduction project falls outside of the normal purview of a company or organization and there is reluctance to implement a project that is not within that purview or to capitalize a project with uncertain returns, offset funding can often assist in overcoming that barrier.

1. **Test 3: Common Practice.** This test is intended to determine whether or not a project is truly above and beyond "business as usual". If a practice is widely employed in a field, it is not considered additional.

C. Initial Carbon Offset Acquisition Process and Timeline.

~~There are three phases to the initial offset acquisition process. It is expected to take up to 12 months from the time of the release of the initial RFP until Emission Reduction Project Agreements (ERPAs) are completed. The development of the RFP should take an additional 3 months. The RFP will be released prior to the commencement of Project operations, and, as stated above, Poseidon will be required to demonstrate the acquisition of offsets for the first year of the Project before it may begin to operate (as determined by CCSE and subject to SDAPCD concurrence).~~

- ~~— **Phase I: Submission of Project Information Document.** Offset project proponents will be required to complete an application giving sufficient information about the proposed project. The official requirements for submission will be set forth in the RFP. Two examples of a short and long Project Information Document are included in Appendix F.~~
- ~~— **Phase II: Detailed Project Information Document.** A selected short list of proposals will be invited to submit a more detailed project information document.~~

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- ~~Phase III: Contract Finalization.~~ Selected proposals will be invited to finalize an ERPA. The amount of the funding, tons of GHG offsets, and other terms will be set forth in the final ERPA.
- D. Project Requirements.
- C. Third-Party Acquisition and Verification.

Poseidon will detail in the RFP, which will be subject to review and approval by the Committee (defined in Section F. below), the requirements project proposers must adhere to in order to qualify for consideration. The project requirements will include, at minimum, the following:

- ~~Minimum project size~~ (e.g., the project reduces or avoids at least 25,000 metric tons of CO₂ emissions over the contract term).
- ~~Minimum term for the sale of their emissions reductions~~ (i.e., terms of 1-5 years, at least 5 years, up to the life of the project, or beyond for sequestration projects).
- ~~Geographic boundaries~~ for acceptable projects. Poseidon will establish a hierarchy of geographic preference, beginning with local and regional projects, then in-state, national, and international projects.
- ~~Contract terms and conditions~~ based on a standard Emission Reduction Purchase Agreement (ERPA).
- ~~Price Target~~ for each metric ton of carbon offset.
- ~~Timeline and milestone dates~~
- ~~Demonstrate through Evaluation Criteria~~ set forth in Part III.E below that the project is real, permanent, quantifiable, verifiable, enforceable, and additional.
- ~~A \$1 million investment in reforestation~~ of areas in the San Diego region impacted by the wildfires that occurred during the fall of 2007.

Poseidon may elect to acquire offsets from/through the CCAR or CARB approved projects, as well as offset projects certified or offered by any existing member of the Offset Quality Initiative, which includes, CCAR, The Climate Trust, Environmental Resources Trust and The Climate Group/Voluntary Carbon Standard (the "Third Party Providers").
Consistent with Staff's recommendation, acquisition of RECs are not limited to purchase from/through CCAR, CARB, or any other Third Party Provider.

E. Evaluation Criteria.

Poseidon may submit a written request to the Executive Director of the CCC requesting that an additional offset provider be designated as a Third Party Provider.²⁴ In deciding whether or not to approve Poseidon's request, the Executive Director shall consider whether or not the proposed Third Party Provider is an independent and non-affiliated entity that adheres to substantially similar principles and evaluation criteria for high quality offsets as the Third Party Providers listed above. The Executive Director shall determine whether or not to approve Poseidon's request to designate a Third Party Provider within 60 days. Any dispute between Poseidon and Commission Staff regarding the approval or denial of the requested entity may be brought by Poseidon to the CCC for hearing and resolution at the next available hearing date.

²⁴ The fee charged to Poseidon by the Commission for any request to approve additional offset providers pursuant to Section III.C., or to otherwise make the Plan workable by facilitating Poseidon's purchase of offsets/RECs to zero out the Project's net indirect GHG emissions, shall not exceed \$5,000.00.

The RFP will clearly set forth the criteria to evaluate and select the final projects for contracting. Each project will be evaluated by the Committee to determine whether or not it meets the initial requirements, including whether the project meets the additionality test and is an otherwise eligible project type. Only those that pass these tests will be considered further. Among other factors, proposed offset project applicants will be required to complete an extensive application to allow the Committee to fully evaluate the project. Poseidon will make the final decision on which Committee approved offset projects to fund. Selection criteria will include at least the following:

1. **Cost Effectiveness.** The measure of cost effectiveness will be defined as U.S. dollars per metric ton. Cost effectiveness will be determined using comparative evaluation criteria, provided that no measure will be deemed cost effective if it exceeds 110% of the going market price (to the extent a market price for carbon offsets is reasonably discernable) for offsets in the United States. This provision shall not apply to Poseidon's commitment to contribute \$1 million towards reforestation of areas in the San Diego region impacted by the 2007 wildfires.
2. **Additional.** The Committee will assess whether the proposed project passes any of the three additionality tests described above.
3. **Reliability of Proposing Entity.** The Committee will consider the qualifications of the proposing entity, the proposing entities past experience with similar projects, if any, and the qualifications of any organizations cooperating with the project. Proposing entities should be required to demonstrate their financial and institutional capability to deliver the GHG emission reductions that they propose. This criterion assesses whether the project is real, permanent and enforceable.
4. **Reliability of Project Concept.** In evaluating the reliability of offsets delivery, the Committee will consider the quality of the project concept and design, and the performance of similar projects. This criterion assesses whether the project is real, permanent and quantifiable.
5. **Monitoring and Verification Plan.** The Committee will require high quality Monitoring and Verification (M&V) Plans to be implemented for all projects. Although final M&V Plans are not expected to be developed until later in the process, a detailed M&V concept is encouraged. This criterion assesses whether the project is permanent, quantifiable, verifiable and enforceable.
6. **Mitigating Financial Risk of Initiative Participants.** The Committee will give preference to projects that reduce the risk that their investment may not yield the anticipated amount of tons of GHG offsets. The Committee will evaluate all the risk mitigation options that applicants propose. This criterion assesses whether the project is real and enforceable.
7. **Willingness to Accept ERPA Terms and Conditions.** This criterion assesses whether the project is enforceable.

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8. ~~Location.~~ This criterion assesses whether the project will be a local, regional, in-state, national, or international project, with preference given to local, regional and in-state projects.

F. Third Party GHG Accounting, and Validation:

CCSE shall include in its Annual GHG Report, discussed in Section IIID below, an accounting summary and documentation from CCAR, CARB and Third Party Providers, as applicable, which verifies that offsets obtained by Poseidon have been verified by CCAR, CARB or a Third Party Provider.

Throughout the offset selection and implementation process, Poseidon will work with experienced third party brokers that specialize in the evaluation and selection of offset projects. Poseidon will also work with CCSE, an independent third party that will be charged with implementing the offset program and ensuring Poseidon's GHG accounting and RFP process is accurate and conforms to the requirements of this Plan and relevant protocol. An Offset Evaluation and Monitoring Committee (the Committee) shall be formed and will consist of one representative each from CCSE and Poseidon, with a third member from academia to be selected jointly by CCSE and Poseidon, subject to CCC Staff approval. The academician shall have a background in energy or air regulatory policy and greenhouse gas mitigation. The Committee will have primary responsibility for overseeing the carbon offset purchasing and implementation process. Although Poseidon will have representation on the Committee, CCSE will retain responsibility for ensuring that implementation of the offset program conforms to the Plan and other applicable requirements, including that all offsets available for selection by Poseidon meet the requirements of Part III.C above.

D. Annual Report

Subject to further review and approval by its governing board, SDAPCD²⁴ will oversee on an annual basis the work done by Poseidon, CCSE and the Committee, and will manage a publicly accessible database for the Plan. CCSE will prepare and submit to SDAPCD a draft annual report (the Annual GHG Report) that CCSE will prepare an Annual GHG Report that will describe and account for Poseidon's annual and cumulative balance of verified net GHG emissions reductions. The Annual GHG Report will analyze and validate (1) the annual GHG emission calculations for the Project, (2) the creditpositive or deficitnegative balance in Poseidon's net GHG offset bank, (3) the validity of offset projects against the criteria set forth in Part III.C aboveemissions, (3) the acquisition of offsets and/or RECs in accordance with this Plan, and (4) any other information related to Poseidon's efforts to mitigate GHG emissions resulting from the Project's electricity usage. Each year, CCSE will obtain the new emission factor from CCAR or CARB and prepare and submit Poseidon's Annual GHG Report within 180 days of the date of publication of CCAR/CARB emissions reports. The Annual GHG Report shall be submitted by CCSE to SDAPCD within 120 days of the end of the prior calendar year or publication of the SDG&E emission factor in the annual CCAR or CARB Emissions Report, whichever is later, as detailed above. SDAPCD will review the Annual GHG Report for consistency with the requirements of this Plan, and send the final report to the CCC and the CSLC, with copies to Poseidon and CCSE. After reviewing the Annual GHG Report,

²⁴ Poseidon has initiated discussions with SDAPCD and will provide further details regarding its specific role as they become available.

~~SDAPCD will indicate whether or not Poseidon's activities conform to the Plan~~ copy to Poseidon. In the event that SDAPCD, after reviewing the Annual GHG Report, ~~concurs~~ indicates that Poseidon has a deficit in its GHG offset bank positive balance of net GHG emissions for a particular year, Poseidon shall purchase offsets sufficient to make up the deficit within six months, and provide the Commission with documentation substantiating that purchase, within 120 days of the submission of an Annual GHG Report to the Commission. If an approved Annual GHG Report demonstrates that Poseidon possesses a surplus of offset credits negative balance of net GHG emissions, Poseidon will be free to carry those credits surplus offsets forward into subsequent years or sell them on the open market. Beginning with the Sixth Annual Report, Poseidon can maintain a negative balance of net GHG emissions over any rolling five-year period. Poseidon will purchase enough GHG reductions measures that conform to the Plan such that it will not incur a positive net GHG emissions balance over any rolling five-year period.

G. Subsequent RFP Process:

If, after circulating the initial RFP and purchasing offsets sufficient to cover at least the first year of Project operations, Poseidon is at any time required to purchase additional offsets, it will have the option to: (1) purchase offsets on the open market to the extent they are available, that meet the criteria of the Plan and are reviewed and approved by the Committee as consistent with the provisions of Parts III(b) and (e) of the Plan, or (2) issue a subsequent RFP(s) soliciting additional offset projects consistent with the provisions of Parts III(b) and (e) of the Plan. Any subsequent RFP shall be issued from time to time in advance of the time when the actual purchase of additional offsets is expected to be required. The criteria for subsequent RFPs shall be the same as for the initial RFP as outlined in the Plan.

Before commencing Project operations, Poseidon shall submit its first Annual GHG Report for Commission staff review and approval, which will evidence sufficient offsets to zero out the Project's estimated net indirect GHG emissions for the first year. All subsequent reports will cover one calendar year.

HE. Contingency if No GHG Reduction Projects are Reasonably Available

If, after completing the initial RFP process, or any time thereafter, it is determined by the Committee At any time during implementation of this Plan, Poseidon may seek a determination from the Executive Director that (i) offset projects in an amount necessary to mitigate the Project's net indirect GHG emissions are not reasonably available; (ii) the "market price" for carbon offsets or RECs is not reasonably discernable; (iii) the market for offsets/RECs is suffering from significant market disruptions or instability; or (iv) the market price has escalated to a level that renders the purchase of offsets/RECs economically infeasible to the Project, Poseidon will, Any request submitted by Poseidon shall be considered and a determination made by the Executive Director within 60 days. A denial of any such request may be appealed by Poseidon to the Commission for hearing and resolution at the next available meeting date. If Poseidon's request for such a determination is approved by the Executive Director, Poseidon may, in lieu of funding offset projects or additional offset projects, deposit money into an escrow account (to be approved by the Executive Director) to be used to fund GHG offset programs as they become available, with Poseidon to pay into the fund in an amount equal to \$10.00 per metric ton for each ton Poseidon has not previously offset,

adjusted for inflation from 2008.²⁵ Prior to establishing the escrow account, the Committee will provide notice to the Executive Director of the CCC of the Committee's determination that funds should be deposited into an escrow account in lieu of purchasing offsets/RECs, pursuant the provisions of this section of the Plan, along with a written summary providing the basis for that decision. The escrow account may be established within thirty (30) Within 180 days of the Executive Director's receipt of the notice, unless the Executive Director disputes the Committee's determination, in which case the matter shall be referred to the CCC for hearing and resolution determination pursuant to this Section. Poseidon will be required to submit a plan for Executive Director approval that identifies one or more entities who will utilize monies deposited into the escrow account to implement carbon offset projects.

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IF. Contingency if New GHG Reduction Regulatory Program is Created.

If, at any time during the life of the Project any of the SDAPCD, South Coast Air Quality Management District (SCAQMD), the California Air Resources Board (CARB), SDG&E or other relevant entity initiates a carbon tax or carbon offset program that would allow Poseidon to purchase carbon offsets or payment of fees to compensate for GHG emissions, Poseidon may, at its option, elect to pay into such a program in order to fulfill all or part of its obligations under the Plan to offset net indirect GHG emissions caused by the Project. By receiving certification from the relevant receiving entity that Poseidon has satisfied its obligations under the applicable regulatory program, Poseidon will be deemed to have satisfied its obligation under the Plan to offset net indirect GHG emissions for the part of the offset obligations under the Plan for which such certification is made. Subject to the approval of the relevant receiving entity, Poseidon may carry over any surplus offsets acquired pursuant to the Plan for credit in the new SDAPCD regulatory program.

(3) D

JG. Examples of Offset Projects.

Offset projects typically fall within the seven major strategies for mitigating carbon emissions set forth below. A similar range and type of offset projects should be expected from a solicitation or purchase by Poseidon, although it is difficult to anticipate the outcome of Poseidon's offset RFP process acquisitions at present.

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1. **Energy Efficiency** (Project sizes range from: 191,000 metric tons to 392,000 metric tons; life of projects range from: 5 years to 15 years)
 - Steam Plant Energy Efficiency Upgrade
 - Paper Manufacturer Efficiency Upgrade
 - Building Energy Efficiency Upgrades
2. **Renewable Energy** (Project sizes range from: 24,000 metric tons to 135,000 metric tons; life of projects range from: 10 years to 15 years)
 - Small Scale Rural Wind Development
 - Innovative Wind Financing

²⁵ \$10.00 per metric ton is a conservative figure, as offset credits were trading at \$4.90 per metric ton on the Chicago Climate Exchange as of market close on July 2, 2008.

- Other renewable resource projects could come from Solar PV, landfill gas, digester gas, wind, small hydro, and geothermal projects
- 3. **Fuel Replacement** (Project size is: 59,000 metric tons; life of project is: 15 years)
 - Fuels for Schools Boiler Conversion Program
- 4. **Cogeneration** (Project size is: 339,000 metric tons; life of project is: 20 years)
 - University Combined Heat & Power
- 5. **Material Substitution** (Project size is: 250,000 metric tons; life of project is: 5 years)
 - Cool Climate Concrete
- 6. **Transportation Efficiency** (Project sizes range from: 90,000 metric tons to 172,000 metric tons; life of projects range from: 5 years to 15 years)
 - Truck Stop Electrification
 - Traffic Signals Optimization
- 7. **Sequestration** (Project sizes range from: 59,000 metric tons to 263,000 metric tons; life of projects range from: 50 years to 100 years)
 - Deschutes Riparian Reforestation
 - Ecuadorian Rainforest Restoration
 - Preservation of a Native Northwest Forest

Further details on these projects are set forth in Appendix G.

KH. Potential Offset Projects Funded by Poseidon.

Participants at the May 2, 2008 CCC Workshop proposed several potential projects that were suggested to be wholly or partially funded by Poseidon ~~through the RFP process~~. Proposers were not prepared at that time to provide details for these projects other than generally describing the project concept. As a result, it is not yet possible to evaluate them for consistency with the applicable criteria for valid GHG reduction projects. The projects include the following:

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- Reforestation Projects in the San Diego area ravaged by the 2007 fires
- Urban Forestry projects
- Estuary sequestration project
- Wetlands projects
- Fleet Fuel Efficiency Increase & Replacement project
- Accelerated Fleet Hybrid Deployment
- Large-Scale Solar PV project on a covered reservoir
- Mini-Hydro from installing pressure reducing Pelton wheels
- Solar Water Heating for a new city recreation swimming pool
- Lawn Mower Exchange Program (gas exchanged for electric mowers)
- Truck Fleet Conversion (especially older trucks from Mexico)
- School Bus Conversions
- White Tag projects or Energy Efficiency projects

These and other potential offset projects must still be evaluated through the RFP process acquired through one of the Third Party Providers listed in, or approved pursuant to, Section III.C above, although one project – the San Diego fire reforestation project identified by the CCC and discussed in more detail below – can be identified at this time and Poseidon has already agreed to commit \$1 million towards this program. Poseidon is also exploring off-site renewable energy initiatives with some of its water agency partners as described below.

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LI. Sequestration through Reforestation.

The CCC identified as a carbon offset project the reforestation of areas in the San Diego Region impacted by the wildfires that occurred during the fall of 2007. Specifically, at the CCC's request, Poseidon has agreed to invest the initial \$1.0 million it spends on offset projects in reforestation activities in the San Diego Region. Any Additionality Requirement should therefore be met, since the CCC directed that a reforestation project take place in the San Diego Region impacted by the 2007 fires. ~~In order to fulfill its reforestation commitment, Poseidon will, prior to commencement of Project operations, enter into a Memorandum of Understanding ("MOU") with a qualified organization or state or local agency, such as, by way of example, CCSE or California State Parks, which MOU will memorialize Poseidon's \$1.0 million commitment to reforestation, made fully payable over five years (i.e., \$200,000 per year). A fully executed MOU will be submitted to the CCC before Project operations begin. The qualified entity that administers the reforestation program will be responsible for calculating its carbon sequestration offsets available to credit against Poseidon's offset obligation under the Plan, and will do so based to the extent applicable on the urban forestry protocols currently being developed for CCAR.~~ Poseidon will commit to using either the CARB/CCAR Forest Project Protocols or the upcoming CARB/CCAR Urban Forest Project Protocol depending on the type of project Poseidon selects.

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According to CCSE, the average cost for planting a 15 gallon suitable, drought tolerant shade tree in San Diego neighborhoods affected by the 2007 wildfires is \$100 per tree, including staff time and marketing. There is no annual watering and maintenance cost required for the trees after installation, since property owners would cover these expenses. Expected survival rate would be 90%. Poseidon's \$1.0 million investment in urban reforestation with shade trees is expected to yield 9,000 mature trees within 10-15 years of planting. At an annual tree sequestration rate of 60 lbs of CO₂ per tree, the annual carbon footprint reduction associated with the trees would be approximately 245 tons of CO₂ per year (the number could be up to 25% higher if energy demand reductions from trees shading homes were also included in the calculations). ~~As stated earlier, the best available urban forestry protocols will be followed by the qualified entity administering the program, and then verified in accordance with the provisions set forth herein.~~

MJ. Renewable Energy Partnerships.

Poseidon is exploring the possibility of participating in renewable energy projects with its water agency partners. Table 5 presents a summary of some of the project opportunities and associated GHG offsets that are under consideration.

Table 5 - Potential Renewable Energy Partnerships

Desalination Project Public Partner/ Location	Green Power Project Description	Annual Capacity of Green Energy Projected to be Generated by the Project (MWh/yr)
City of Encinitas	95 KW Solar Panel System Installed on City Hall Roof	160
Valley Center Municipal Water District	1,000 KW Solar Panel System	1,680
Rainbow Municipal Water District	250 KW Solar Panel System	420
Olivenhain Municipal Water District / Carlsbad Municipal Water District / City of Oceanside	Various solar and hydro- electric generation opportunities	To Be Determined
Santa Fe Irrigation District	Hydropower generation facility At R.E. Badger Filtration Plant	To Be Determined
	Total Renewable Power Generation Capacity (MWh/yr)	2,260

The contract terms for each of these potential projects will be specific to the particular project. Typically, the amount paid for each project would be the market price for offsets and not necessarily the full price of the project. The offset projects will be verified through the above criteria to ensure they are real, permanent, quantifiable, verifiable, enforceable, and additional.

The total currently quantifiable electricity reduction for the proposed projects described in Table 5 is 2,260 MWh/yr, and the net indirect GHG emissions offset for the Project is projected at 800 tons of CO₂/year. Should Poseidon decide to proceed with one or more of the potential

renewable energy partnerships, the total actual energy reduction that would result would be verified by direct readings of the total electric energy produced by the Project at the partner's electric meter.

NK. Implementation Schedule.

An illustrative schedule setting forth timing for implementation of Poseidon's Plan elements, assuming regulatory approval is achieved in August 2008, is set forth in the following Implementation Schedule.

Table 6 - Implementation Schedule for the Plan

Measure	Process	Timing
Regulatory Approval		August 2008
Evaluation Committee Established <u>Submit First Annual GHG Report</u>	Poseidon/CCSE appoint their respective representatives and jointly select academic representative (subject to CCC Staff <u>First Annual Report*</u> , <u>submitted to Commission staff for review and approval</u>), <u>shall include enough detailed emissions reductions measures to achieve a projected zero net GHG emissions balance.</u>	Approximately 18 months before <u>Before</u> operations commence
RFP Developed and Issued	Prepared by Committee consistent with Plan criteria	RFP development to begin approximately 15 months before operations commence; RFP to be issued approximately 12 months before operations commence
Offset and REC Purchases	Committee will select offset projects that meet Plan criteria; Poseidon will choose which eligible projects to fund	Estimated to take up to 12 months from issuance of RFP to completion of agreements for offset projects
Offsets/RECs purchased sufficient <u>Offset and REC Purchases Sufficient to Zero Out Estimated net indirect GHG emissions</u> for at least first year of operations	Based on the most recently published SDG&E emission factor from CARB/CCAR and estimated electricity usage data for the first year of <u>Purchased through CCAR/CARB or a Third Party Provider, or, in the case of RECs, directly from the Project</u> period for which offsets are purchased, as determined by CCSE subject to SDAPCD concurrence <u>provider</u>	Prior to commencement of <u>Before</u> operations <u>commence</u>
Annual True-Up Process <u>and all Subsequent Annual GHG Reports</u>	Obtain new emissions factor from the annual web-based CCAR/CARB emissions report; calculate subject year's emissions using actual billing data and new emissions factor for the subject year; calculate credit or deficit; <u>concur with by</u>	Each year, CCSE will (1) review CCAR/CARB emissions reports within 60 days of the end of the subject calendar year, or the date of publication of the emissions reports on the internet, whichever is later, and (2) calculate Poseidon's credit or deficit of

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	<p><u>SDAPCD; Poseidon will submit its Annual GHG Report to Commission staff for review and approval. Once approved, Poseidon will purchase additional offsets as necessary, or carry forward to maintain a zero net GHG emissions balance, or bank or sell surplus offsets, Poseidon can demonstrate compliance over a rolling 5-year period in the Sixth Annual Report</u></p>	<p><u>offsets obtain the new emission factor from CARB or CCAR, and prepare and submit Poseidon's Annual GHG Report within 120 days of the end of the subject calendar year or the date of publication of CCAR/CARB emissions reports, whichever is later. If the report shows a positive net GHG emissions balance, Poseidon is required to purchase offsets necessary to cure any deficit within 180, and submit proof of such purchase to Commission Staff, within 120 days from the date an identified deficit is concurred with by the SDAPCD. Annual GHG Report</u></p>
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*First Annual GHG Report will use projected electricity consumption. All subsequent Annual GHG Reports will use the previous year's electricity consumption data.

OL. The Project's Annual Net-Zero Carbon Emission Balance.

Table 7 presents a summary of the assessment, reduction and mitigation of GHG emission for the proposed Project. As shown in the table, up to 83% of the GHG emissions associated with the proposed Project could be reduced by on-site reduction measures, and the remainder would be mitigated by off-site mitigation projects and purchase of offsets or RECs. It should be noted that on-site GHG reduction activities are expected to increase over the useful life (i.e., in the next 30 years) of the Project because of the following key reasons:

- SDG&E is planning to increase significantly the percentage of green power sources in its electricity supply portfolio, which in turn will reduce its emission factor and the Project's net indirect GHG emissions.
- Advances in seawater desalination technology are expected to yield further energy savings and net indirect GHG emission reductions. Over the last 20 years, there has been a 50% reduction in the energy required for seawater desalination.

Table 7 - Assessment, Reduction and Mitigation of GHG Emissions

Part 1: Identification of GHG Amount Emitted		
Source	Total Annual Power Use (MWh/ year)	Total Annual Emissions (metric tons CO₂/ year)
Project Baseline Design	274,400	97,165
Part 2: On-site and Project-Related Reduction of GHG Emissions		
Reduction due to High-Efficiency Design	(28,244)	(10,001)
Green Building Design	(300 to 500)	(106 to 177)
On-site Solar Power Generation	(0-777)	(0-275)
Recovery of CO₂	(NA)	(2,100)
Reducing Energy Needs for Water Recycling	(1,950)	(690)
Reduced Water Importation	(190,641)	(67,506)
Sequestration in Coastal Wetlands	(NA)	(18-304 188)
Subtotal On-site Reduction Measures	(NA)	(80,421 to 81,053 80,937)
Net GHG Emissions		16,422 to 16,11216,228
Part 3: Additional Off-Site Reductions of GHG Emissions		
Sequestration Through Reforestation	(NA)	(245)
Potential Renewable Energy Partnerships	(0 - 2,260)	(0 - 800)
Subtotal Off-site Measures	(NA)	(245-1,045)
Offset and REC Purchases	(NA)	(16,499 to 15,067)
Net GHG Emissions		0

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EXHIBIT B

RESPONSE TO STAFF REPORT

I. INTRODUCTION AND GHG PLAN BACKGROUND

In October 2007, Poseidon made public its voluntary commitment to account for and bring to zero the net indirect greenhouse gas ("GHG") emissions from the Project. This unprecedented commitment was followed with the development of a Climate Action Plan ("CAP") to assure that this objective will be achieved over the 30-year life of the Project. Special Condition 10 of Coastal Development Permit E-06-013 (the "Permit") requires approval of a revised Energy Minimization and Greenhouse Gas Reduction Plan (the "Plan") prior to issuance of the Permit. Specifically, Special Condition 10 states:

Prior to issuance of the permit, the Permittee shall submit to the Commission a Revised Energy Minimization and Greenhouse Gas Reduction Plan that addresses comments submitted by the staffs of the Coastal Commission, State Lands Commission, and California Air Resources Board. The Permit shall not be issued until the Commission has approved a Revised Energy Minimization and Greenhouse Gas Reduction Plan after a public hearing.

Consistent with Special Condition 10, the CAP was reviewed by the Coastal Commission, State Lands Commission ("CSLC"), California Air Resources Board ("CARB"), the San Diego Air Pollution Control District ("SDAPCD") and, at the request of one Coastal Commissioner, the South Coast Air Quality Management District ("SCAQMD"). Poseidon also adhered to Commission Staff's draft "Greenhouse Gas Emissions Template", and revised the Plan in accordance with the template as requested by Staff. Further, on May 2, 2008, Poseidon met with representatives of the Commission, CSLC, California Energy Commission, California Department of Forestry, California Department of Park and Recreation and various agencies in the San Diego region to further discuss details regarding the Plan and its implementation, and fully complies with the requirement of Special Condition 10 that the Plan address comments from the above-referenced public agencies. A November 20, 2007 revised draft of the CAP, prepared in advance of a meeting with the CSLC, reflects changes made in response to comments from the above agencies and was attached as an exhibit to the Plan, along with Poseidon's written responses to numerous questions and comments about the CAP raised by the Coastal Commission and CSLC. The Plan has also been reviewed by the California Center for Sustainable Energy ("CCSE"), an independent third party which will be responsible for implementing elements of the Plan. The Plan was revised to incorporate and/or respond to these comments before it was submitted to the Commission for review on July 3, 2008.

After submission of the Plan on July 3, 2008, Poseidon worked with Commission Staff to reach agreement on a number of issues raised by Staff during its review of the Plan. On July 24, 2008, Commission Staff released a Staff Report recommending approval of the Plan subject to certain modifications proposed by Commission Staff. Although the Staff Report reflects certain modifications agreed between Poseidon and Staff, there are several important outstanding issues raised in the Staff Report that are addressed in detail below. As set forth below, the Plan ensures

that all net indirect GHG emissions from the Project will be offset and memorializes Poseidon's commitment to minimize energy consumption at the desalination facility. Section II highlights the Plan's performance criteria that ensure Coastal Act consistency and complete mitigation of the Project's net GHG emissions. Section III addresses certain key legal issues addressed in the Staff Report, and provides support for the adoption of Poseidon's proposed Plan.

II. THE PLAN IMPOSES ROBUST PERFORMANCE CRITERIA TO ENSURE COASTAL ACT CONSISTENCY AND COMPLETE MITIGATION OF THE PROJECT'S NET INDIRECT GHG EMISSIONS

The Plan represents a precedent-setting voluntary commitment by Poseidon to not only reduce GHG emissions and implement energy efficiency measures, but to offset all of the Project's net indirect carbon emissions to ensure net carbon neutrality. The Plan will achieve this commitment by requiring Poseidon to purchase carbon offsets and/or Renewable Energy Credits ("RECs") sufficient to zero-out any and all net indirect emissions. The Plan includes concrete and enforceable measures to ensure that net emissions are fully offset. Under the Plan, Project operations may not commence until Poseidon has purchased offsets sufficient to zero-out the estimated net indirect GHG emissions for at least the first year of the Project. The Plan also establishes preparation of an Annual GHG Report, for submission to the Commission, which will quantify the net indirect GHG emissions caused by the Project each year and determine whether or not Poseidon has a positive or negative balance of net GHG emissions for the subject year. The Plan requires Poseidon to make up any verified negative balance and submit proof of same to the Commission, within 120 days of the date the positive balance is identified in the Annual GHG Report.

We believe the Plan addresses all issues that have been raised with regard to Poseidon's voluntary commitment to offset the Project's net indirect GHG emissions. Some of the key points are discussed below.

A. The Plan Requires \$55 Million Worth of State of the Art Energy Minimization Features

The Plan reflects numerous Project components designed to ensure that the Project will utilize only the minimum energy necessary, in compliance with Coastal Act Section 30253(4), which requires that new development "minimize energy consumption and vehicle miles traveled." These include increased energy efficiency measures, such as the state of the art "pressure exchanger" energy recovery technology that allows recovery and reuse of 33.9% of the energy associated with desalination's reverse osmosis process, as well as high efficiency and premium efficiency motors and variable frequency drives on the intake water pumps to improve their efficiency. The Project will implement as many Leadership in Energy and Environmental Design building design features as are reasonably practicable, and will install on-site solar power generation as one element of its green building design program if doing so meets a specific return on investment measure in the Plan. The Project will also implement carbon dioxide recovery designed to sequester carbon dioxide from Project product water to the extent it is reasonably available.

B. On-Site Solar Power Generation

Poseidon is exploring the installation of rooftop photovoltaic (PV) system for solar power generation as one element of its green building design. Brummitt Energy Associates of San Diego completed a feasibility study in March 2007 of a PV system at the Carlsbad Desalination Plant. If the solar installation is implemented, the main desalination plant building would accommodate solar panels on a roof surface of approximately 50,000 square feet, with the potential to generate approximately 777 MWh/yr of electricity. If installed, the electricity would be used by the Project and therefore would reduce the Projects electrical demand on SDG&E. The corresponding reduction of the Project's indirect emissions would be 275 tons of CO₂ per year. Poseidon is exploring other solar proposals as well, and ultimately, the electricity and corresponding GHG savings of any on-site solar installation will be documented in the Project's annual electricity usage information. Poseidon will use commercially reasonable efforts to implement an on-site solar power project if reasonably expected to provide a return on the capital investment over the life of the Project.

C. \$1 Million Commitment Toward Reforestation of Areas in San Diego County Impacted by the 2007 Wildfires

Offsite reductions of GHG emissions that are not inherently part of the Project include actions taken by Poseidon to participate in offset projects that result in the cost-effective reduction of GHG emissions equal to the indirect Project emissions Poseidon is not able to reduce through other measures. At the request of the Commission, Poseidon has committed to invest the first \$1 million expended on offset projects to reforest areas burned out by fires in the San Diego region in the fall of 2007, and this commitment is memorialized in the Plan. Poseidon has modified its Plan to reflect its commitment to use either the CARB/CCAR Forest Project Protocols, or the upcoming CARB/CCAR Forest Project Protocols, depending on the type of forestation project Poseidon selects.

D. All Third Party Offsets/RECs Will be Consistent with AB 32 Voluntary Offset Principles and Purchased Through Independent Third Party Providers

Under Poseidon's proposed Plan, Poseidon may elect to acquire offsets from/through the CCAR or CARB approved projects, as well as offset projects certified or offered by any existing member of the Offset Quality Initiative, which includes, CCAR, The Climate Trust, Environmental Resources Trust and The Climate Group/Voluntary Carbon Standard (the "Third Party Providers"). Consistent with Staff's recommendation, acquisition of RECs would not be limited to purchase from/through CCAR, CARB, or any other Third Party Provider.

Projects available from these Third Party Providers will be consistent with AB 32 principles. Part 4, Section 38562(d)(1)&(2) of AB 32 states that CARB regulations covering GHG emission reductions from regulated "sources" must ensure that such reductions are "real, permanent, quantifiable, verifiable, . . . enforceable [and] in addition to any greenhouse gas emission reduction otherwise required by law or regulation." While the Project is not a "source" under AB 32 and the criteria are not currently defined under implementing regulations, Third Party Providers will evaluate potential offset projects using protocols that employ the same criteria.

E. Annual Reports Will Be Submitted to Commission Staff

The California Center for Sustainable Energy ("CCSE") will prepare an Annual GHG Report that will describe and account for Poseidon's annual and cumulative balance of verified net GHG emissions reductions. The Annual GHG Report will analyze and validate (1) the annual GHG emission calculations for the Project, (2) the positive or negative balance in Poseidon's net GHG emissions, (3) the acquisition of offsets and/or RECs in accordance with this Plan, and (4) any other information related to Poseidon's efforts to mitigate GHG emissions resulting from the Project's electricity usage. Each year, CCSE will obtain the new emission factor from CCAR or CARB and prepare and submit Poseidon's Annual GHG Report within 180 days of the date of publication of CCAR/CARB emissions reports. The ultimate carbon emissions will therefore be determined based on CCAR/CARB methodology, and the Annual GHG Report will allow Commission Staff to monitor Poseidon's indirect emissions.

III. DISCUSSION OF STAFF RECOMMENDATION

After submission of the Plan on July 3, 2008, Poseidon worked with Commission Staff to reach agreement on a number of issues raised by Staff during its review of the GHG Plan. Agreed modifications to the Plan, reached before the Staff Report was released on July 24, 2008, cover the following issues:

- Procedural Framework Governing Plan's Annual Review Process.
- Procedure for verifying energy reduction resulting from energy minimization features.
- Procedure for verifying energy reduction resulting from Project's green building design features.
- Procedure for verifying energy reduction resulting from on-site solar generation, if implemented.
- Reducing the Plan's estimated annual offsets for Coastal Wetlands Sequestration from "18 to 304 metric tons CO₂ per year" to "18 to 188 metric tons CO₂ per year."
- Poseidon's commitment to use the CARB/CCAR Forest Project Protocols or the upcoming CARB/CCAR Urban Forest Project Protocol depending on the type of forestation project selected by Poseidon.
- Poseidon's agreement to use a conversion rate of 2204.6 pounds/metric ton, rather than the 2205 pounds per metric ton conversion rate used in the initial version of the GHG Plan.

These agreed modifications, together with additional changes to the Plan proposed by Poseidon to implement Staff's recommendations and/or in response to issues identified by Staff

are reflected in a redline comparison of the revised Plan against the original submitted to the Commission on July 3, 2008 (Exhibit A).

There are four key areas of disagreement between Poseidon's position and the modifications to the GHG Plan included in Staff's recommendation. First, Staff's recommendation that AB 32 principles for voluntary offsets, which apply to third party purchases of carbon offsets, should also apply to Project features such as wetlands mitigation and Project benefits such as emissions that will be avoided because the Project will displace its customers' demand, would effectively require the Project to offset its "gross" emissions, rather than "net" emissions. Poseidon believes a "gross" offset requirement is contrary to law and would result in poor public policy for a variety of reasons, as set forth below. Second, Staff's recommendation that carbon offsets available under the Plan be limited to projects verified by CCAR and/or CARB would severely constrain the carbon offset market, driving up costs and potentially rendering offsets unavailable under the Plan. Third, Staff's recommendation would eliminate a contingency needed in the event of a dysfunctional offset market. Fourth, Staff's recommendation would not permit Poseidon the flexibility to opt-in to new government carbon offset programs that may be developed, in lieu of purchasing carbon offsets, in order to fulfill its commitment under the Plan.

A. Staff's Recommendation Would Require the Project to Offset its "Gross" Rather than "Net" GHG Emissions

Commission Staff's recommendation that the Project's features and related benefits that reduce GHG emissions, such as displacement of imported water and wetlands restoration, be subject to AB 32's principles for voluntary offsets, results in a requirement that Poseidon offset its "gross" rather than "net" emissions. Poseidon believes that adoption of Staff's recommendation would (1) exceed the Commission's authority and violate the Coastal Act, (2) be inconsistent with CEQA methodology and State climate change policy, (3) violate constitutional "nexus" requirements, (4) result in "double-mitigation" of impacts, and (5) place an excessive economic burden on the Project.

1. The Commission Lacks Authority to Impose Gross Offset Requirement

a. Imposing an Offset Requirement that Exceeds Poseidon's Voluntary Commitment Would Violate the Coastal Act.

The Coastal Act authorizes the Commission to require the Project to "minimize energy consumption and vehicle miles traveled." Coastal Act § 30253(4). This requirement has been satisfied by the Plan's inclusion of \$55 million in state of the art energy minimization features on site. But the Commission's authority to impose GHG emissions standards or mitigation is limited to assuring that "new development shall be consistent with requirements imposed by an air pollution control district or the State Air Resources Board as to each particular development." Coastal Act § 30253(3). The Coastal Act specifically limits the Coastal Commission's Authority:

The State Air Resources Board and air pollution control districts... are the principal public agencies responsible for the establishment of ambient air quality and emission standards and air pollution control programs. **The provisions of [the Coastal Act] do not authorize the commission . . . to establish any ambient air quality standard or emission standard, air pollution control program or facility, or to modify any ambient air quality standard, emission standard, or air pollution control program or facility which has been established by the state board or by an air pollution control district.**

Coastal Act § 30414(a). (Emphasis Added).

Imposing an offset requirement beyond Poseidon's voluntary commitment to offset its net emissions violates § 30253(3) because, as discussed further below, AB 32 established that regulation of GHG emissions constitutes an air pollution control program and gave exclusive authority over adoption and enforcement of that program to CARB, and neither CARB nor SDAPCD have adopted such a program that applies to the Project. Moreover, imposing such a requirement would also violate §30414(a) by attempting to establish an air pollution control program.

b. Imposing an Offset Requirement that Exceeds Poseidon's Voluntary Commitment Would Violate AB 32, the Health and Safety Code and the Administrative Procedures Act

AB 32 establishes that the regulation of GHG emissions is an air pollution control program and gives CARB exclusive rulemaking authority over the implementation and enforcement of that program. *See* Health & Safety Code § 38510. Contrary to the Staff Report, CARB has not yet promulgated any requirements applicable to indirect emitters, such as the project, nor has it adopted the anticipated programs governing voluntary offsets. *See* Climate Change Draft Scoping Plan, p. 45 ("The Board would need to adopt regulations to verify and enforce voluntary reductions achieved under [any approved quantification methodologies] before they could be used for compliance purposes."). The Staff Report does not cite to a single applicable requirement. Even the voluntary "requirements" referenced in the Staff Report have not been developed and must undergo CARB rulemaking. Indeed, CARB's June 2008 Discussion Draft of its "Climate Change Draft Scoping Plan" does not anticipate that regulations applicable indirect emitters will be adopted in the near future, but instead focuses on regulations of direct emitters (which the Project is not) and incentives for voluntary reductions by indirect emitters.

Moreover, CARB's rule-making process will require public review and comment of the proposed regulations and require CARB to adopt certain findings that, among other things, the regulations are "cost-effective", "feasible" and "equitable". Health & Safety Code §38562; California Government Code § 11340-11365. When CARB adopts rules and regulations pertaining to GHG emissions and air quality, it may only "adopt these measures if they are necessary, technologically feasible, and cost-effective." Health & Safety Code Section 39602.5(a). Furthermore, the text of AB 32 also requires similar standards:

It is the intent of the Legislature that the State Air Resources Board design emissions reduction measures to meet the statewide emissions limits for greenhouse gases established pursuant to this division in a **manner that minimizes costs and maximizes benefits** for California's economy. Section 38501. (Emphasis Added)

The state board shall adopt rules and regulations in an open public process to **achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions** from sources or categories of sources, subject to the criteria and schedules set forth in this part. Section 38560. (Emphasis Added)

The regulations adopted by the state board pursuant to this section shall **achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions...** Section 38560.5(c). (Emphasis Added)

Therefore, adopting Staff's recommendation and subjecting Project features and Project-related benefits, such as displacing imported water and the wetlands restoration to be funded and undertaken by Poseidon, to AB 32's principles for voluntary offsets misapplies principles to Poseidon that are applicable to CARB's regulatory authority; usurps CARB's rulemaking authority; deprives Poseidon the protections afforded by the rulemaking process; and imposes an emissions requirement that CARB has not adopted or determined satisfies the findings required under the Health & Safety Code.

2. Requiring "Gross" Offsets is Inconsistent with CEQA Principles and State Climate Change Policy

Under CEQA principles, the appropriate method for assessing the Project's impacts is to determine the net change in GHG emissions relative to existing conditions, factoring in both increases and decreases in emissions caused by the Project. Because the Project replaces water for existing uses in San Diego County, energy used to supply water to those uses today is part of the "baseline." When assessing the Project's GHG impacts, energy that would have been used to import water replaced by the Project therefore must be subtracted from the energy used by the Project, and it is appropriate to net out the Project's avoidance of GHG emissions associated with replaced water.

The Commission may properly consider netting out the Project's avoidance of GHG emissions associated with replaced water when determining the Project's impact on GHG emissions. CEQA provides that an Environmental Impact Report ("EIR") must identify and focus on the "significant environmental effects" of a proposed project. Pub. Res. Code § 21100(b)(1). Significant impacts are defined as substantial or potentially substantial adverse changes in the environment. Pub. Res. Code §§ 21068, 21100(d); 14 Cal. Code Regs. § 15382. The "environment" for the purposes of CEQA analysis refers to the "the physical environmental conditions in the vicinity of the project" – normally "as they exist when the notice of preparation [for the EIR] is published" – and is referred to as the "baseline" against which the potential

impacts of a proposed project are measured. 14 Cal. Code Regs. § 15125(a) (“This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant.”).

Contrary to Staff’s position, CEQA does not require a project proponent to guarantee that a project’s preservation of a nonrenewable resource will not be undone by the consumption of that resource by another project. Nor is any such “guarantee” required under CEQA when a lead agency makes significance conclusions regarding environmental impacts. “A public agency can make reasonable assumptions based on substantial evidence about future conditions without guaranteeing that those assumptions will remain true.” *Environmental Council*, 142 Cal. App. 4th at 1036. “CEQA only requires that an EIR discuss ‘the significant environmental effects of the proposed project’ including in the analysis consideration of the environmental benefits that will be achieved from key project components. *Village of Laguna of Laguna Beach, Inc. v. Board of Supervisors*, 134 Cal. App. 3d 1022, 1030 (1982) (original emphasis) (citing Pub. Res. Code § 21100(a)). In *Village of Laguna*, the court upheld an EIR’s environmental impact analysis that was predicated on reasonable assumptions regarding benefits from “integral portions of the proposed project” such as a transportation corridor, preservation of a Greenbelt, and 25% affordable housing commitments. *Id.* at 1029-30. The court drew a parallel between its holding that an EIR is not required to evaluate the environmental consequences that would occur if a project’s key assumptions prove to be erroneous, and other opinions in the cumulative impacts context holding that lead agencies are not required to evaluate related project actions unless they are imminent. *Id.* at 1030-31; see also *Banker’s Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego*, 139 Cal. App. 4th 249, 275 (2006) (city properly considered project design features in determining that a project would not have a significant traffic safety impact). Based on the foregoing precedent, the Commission may rely on the Project’s avoidance of GHG emissions associated with replaced water when assessing the Project’s impact on GHG emissions.

Nor does CEQA require the Project to assess and account for impacts that would result if the 56,000 AFY of water replaced by the Project is ultimately imported to the region for another hypothetical use. Instead, the end user of that water will be required by CEQA and other applicable laws to address any emissions (or other) associated impacts. This fundamental proposition was affirmed in *Environmental Council of Sacramento v. City of Sacramento*, 142 Cal. App. 4th 1018 (2006), where the court rejected plaintiffs’ claims that a Conservation Plan’s baseline assumption that 15,000 acres would remain agricultural was “unfunded, voluntary and unenforceable” in violation of CEQA, and held that even if a variety of prerequisite steps were ultimately taken to develop the agricultural land, the project proponents “would remain subject to another CEQA review and be required to evaluate the effects of the proposed additional development on the effectiveness of the Conservation Plan.” *Environmental Council*, 142 Cal. App. 4th at 1036. The court further ruled that the baseline assumptions regarding the environmental benefits of the project were properly considered in the environmental analysis because they were supported by substantial evidence, and that the lead agency appropriately did not speculate about the impacts that could result from the project should those reasonable assumptions not be realized. *Id.* at 1035-37.

When the Project is built, it will result in an increase in energy use due to the electricity that will be purchased from SDG&E to operate the desalination facility, and a decrease in energy

use because the Project's water will replace water that would otherwise have been imported to the Project's customers. Under CEQA principles, the Project's impact should be assessed by considering the net contribution of GHG emissions relative to the existing baseline, factoring in both the increases and decreases in energy use that the Project will cause. *See* CEQA Guidelines § 15126.2(a) ("In assessing the impact of a proposed project on the environment, the Lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is issued . . .").¹

The Project will produce 56,000 acre-feet per year of desalinated water that will directly replace, on a one-for-one basis, water that would have been imported to the Project's customers from the State Water Project. Indeed, the Project is part of the Metropolitan Water District's (MWD) Seawater Desalination Project, which requires that "Project production for any beneficial use must replace an existing demand or prevent a new demand on Metropolitan's imported supplies." The MWD has agreed to subsidize the purchase of Project water at \$250 per acre foot (\$14 million per year) so long as the water "reduces demand for imported supplies", and MWD will have audit rights to confirm this replacement and certify Project water production and deliveries.

The California Energy Commission and MWD have each publicly supported elements of Poseidon's GHG Plan, as evidenced by the letters from these agencies to the Commission. Specifically, the California Energy Commission supports Poseidon's plan to mitigate its net carbon emissions, i.e., to "mitigate the carbon emissions from the increases in electricity required to deliver the project's water to customers, as compared with the 'baseline' of current electricity required to serve those customers with State Water Project water," which is "consistent with how the Energy Commission, itself, analyzes the significance of impacts under CEQA . . ." Exhibit C, California Energy Commission Letter, July 29, 2008, p. 2. Also, the Metropolitan Water District confirms that "water agencies receiving desalinated supplies from the Project must demonstrate that the water offsets an equivalent amount of water imported from Metropolitan," and that it is therefore "appropriate for the Project's GHG Plan to be based on offsetting net carbon emissions because San Diego County will use 56,000 acre-feet per year less imported water upon Project start up." Exhibit D, MWD Letter, July 29, 2008, p. 1.

A requirement that Poseidon mitigate impacts of any additional water imported to the San Diego region for separate uses, in addition to mitigation that the end user of that water would be required to undertake, would result in "double mitigation" of impacts. This would substantially increase the costs of desalination, reduce its viability as an alternative water source, and may significantly undercut MWD's \$250 per-acre foot subsidy and potentially render the Project uneconomic, as discussed further below.

¹ The State Office of Planning and Research's ("OPR") June 19, 2008 Technical Advisory on CEQA and Climate Change recommends that "[w]hen assessing a project's GHG emissions, lead agencies must describe the existing environmental conditions or setting, without the project, which normally constitutes the baseline physical conditions for determining whether a project's impacts are significant." OPR is in the process of preparing specific guidance for use in determining thresholds of significance for GHG emissions impacts, in consultation with CARB, and new CEQA Guidelines regarding the analysis and mitigation of GHG emissions in CEQA documents are to be adopted on or before January 1, 2010.

3. There is No Constitutional “Nexus” Justifying a Requirement That Poseidon Offset Carbon For New or Expanded Uses of Imported Water Unrelated to the Project

Under two landmark opinions issued by the United States Supreme Court – *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard* – public agencies may not constitutionally impose conditions on development unless there is a “nexus” between the condition and the project’s environmental impact and the condition is “roughly proportional” to the impact being addressed. These constitutional requirements are explicitly recognized in CEQA’s implementing regulations.² In this case, there is no nexus for requiring Poseidon to offset GHG emissions that may result at some uncertain point in the future should the water that Poseidon is displacing be imported for some unrelated use. Requiring Poseidon to address impacts from water importation unrelated to its Project plainly does not satisfy the nexus test, and would thus violate constitutional norms and exceed the Commission’s authority.

4. A Gross Offset Requirement Would Result in “Double-Mitigation”

CEQA principles would not require the Project to assess and account for impacts that would result if the 56,000 AFY of water replaced by the Project is ultimately imported to the region for another hypothetical use unrelated to the Project. Instead, any new end user of the replaced water will be required by CEQA and State climate change policy to address the associated impacts from any water that continues to be imported to San Diego for new or expanded uses, in the event such imports occur. Two recent cases that were initiated by the California Attorney General illustrate that the Office of the Attorney General has already begun to enforce State climate change policy by ensuring that carbon emissions are enforced within CEQA.³ Moreover, on August 24, 2007, the California Senate passed Senate Bill 97 into law, which requires the Office of Planning and Research (“OPR”) to prepare guidelines for the mitigation of GHG emissions as required by CEQA. OPR has publicly stated that these guidelines will be available by January 2009. The implementation of these measures by OPR and their enforcement by the California Attorney General ensure that any end users of the replaced water will be required to address its carbon emissions impacts under CEQA. Requiring Poseidon *and* the new water users to mitigate such impacts would result in double-mitigation that would substantially increase the costs of desalination, reduce its viability and constitute poor public policy.

² CEQA Guidelines § 15126.4(a)(4)(A), (B) (“There must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate government interest. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); and the mitigation measure must be ‘roughly proportional’ to the impacts of the project. *Dolan v. City of Tigard*, 512 U.S. 374 (1994)”).

³ See *People of the State of California ex. Rel. Attorney General Edmund G. Brown v. County of San Bernardino*, Case No. CIVSS 700329 (San Bernardino County Superior Court, April 12, 2007); Attorney General Edmund G. Brown’s appeal to the Contra Costa County Board of Supervisors of the Planning Commission’s approval of the Clean Fuels Expansion Project of ConocoPhillips Company (filed May 18, 2007).

Staff's position, if accepted, would be contrary to constitutional precepts and CEQA principles and would result in bad policy results. For example, under Staff's view, a water supply analysis in an EIR could not rely on a project's commitment to employ water conservation features, such as low flush toilets, to reach a conclusion that the project would have a less than significant impact on GHG emissions. Instead, Staff would require the EIR to demonstrate that the foregone water resulting from these conservation measures would not be used by some other hypothetical project. Similarly, Staff's view would prevent a utility company that replaced 50% of its existing power purchased from coal-fired power plants with power from a large solar PV project from taking credit for this substantial investment in solar power (which reduced its carbon footprint by 50%), just because the coal-fired power could subsequently be sold to another customer. It would not be reasonable or fair in this situation to continue to hold the first company responsible for the coal-fired emissions after they were being used by a different company. Staff's position is untenable and would frustrate resource conservation efforts and CEQA's scheme of project-specific environmental review and mitigation of impacts.

5. A Gross Emissions Offset Requirement Would Place an Excessive Economic Burden on the San Diego Region's Water Supply

Poseidon's proposed GHG Plan is estimated to cost approximately \$61 million, including \$55 million for on-site energy minimization features and \$6 million for "net" carbon offsets. By requiring "gross" offsets, Staff's proposal would increase the cost of the Plan's carbon offset requirement from \$6 million to \$27 million. Additionally, Staff's proposal to restrict the carbon offset market to CCAR-verified credits would severely limit the availability of offsets, and could increase carbon offset costs by 2.5 times or more, increasing the cost of the gross offset requirement to \$66 million or more. Combined, these two components of Staff's proposal would increase the costs of the GHG Plan from approximately \$61 million to \$121 million, or more.

The Project is already subject to significant mitigation costs from the Commission. The Plan currently includes \$90 million worth of mitigation costs, including \$55 million for state of the art energy minimization features, \$6 million for "net" carbon offsets, and \$29 million for the Marine Life Mitigation Plan. Staff's proposal could raise the Commission-imposed mitigation costs from approximately \$90 million to \$150 million. These costs are in addition to significant mitigation costs already imposed on the Project by the City of Carlsbad during its review of the Project.

If the gross emissions offset requirement is misapplied as the Staff recommends, the additional economic burden on Poseidon and the San Diego Region's water users could prove to be prohibitive with respect to the Carlsbad Desalination Plant.

B. Staff's Proposal Would Dramatically Restrict Poseidon's Access to the Carbon Offset Market

Commission Staff recommended a revised offset acquisition process limiting the availability of offsets to projects verified by CCAR and/or CARB and registered in the Climate Action Reserve (CAR). This would severely constrain the availability of carbon offsets by limiting Poseidon to just 0.16% of the domestic market (which, as noted, could increase costs by

2.5 times or more), and could result in an unavailability of offsets sufficient to achieve the goals of the GHG Plan.

The voluntary market of offsets is 1/200th of the global market (\$330 million out of \$66.4 billion traded in 2007) and CCAR verified projects is only a part of the voluntary market, and only a small fraction of the larger global market. CCAR represents only a narrow slice of the offset project world in terms of types of projects and volume. The U.S. trading market is in its infancy and it is maturing and evolving, with new organizations and tools constantly emerging.

As of now, CCAR has only three protocols: livestock/dairy, landfill, and reforestation. CARB has only one protocol: forestry. CCAR and CAR have only two projects listed in registry and they are both fully subscribed. The extent to which offsets will be available through CCAR and CAR at costs that are equal to domestic and international prices for offsets is uncertain. The limited choices and uncertainty of these agencies could translate to unavailability of offset projects and high costs of such projects, which unless modified as proposed by Poseidon, threatens Poseidon's ability to meet its obligation under the Plan.

Poseidon is absolutely committed to acquiring the necessary offsets from CCAR and/or CARB exclusively to the extent these entities have offsets that are both available and affordable. Poseidon has demonstrated this commitment by having recently become a member of the CCAR. However, as discussed above, the presently available offset projects verified by CCAR and/or CARB and registered in the CAR are limited and the future availability and affordability offsets offered by these entities is uncertain. This uncertainty raises questions regarding the workability of staff's proposed revision of the Plan.

Accordingly, Poseidon proposes in its revised Plan to allow offsets to be purchased from/through and verified by three additional respected third party providers that are members of the Offset Quality Initiative: The Climate Trust, Environmental Resources Trust and The Climate Group/Voluntary Standard. Poseidon proposes a mechanism allowing it to seek Commission approval for additional Third Party Providers to be added to this list, with payment of a \$5,000.00 fee for the submission of such a request. Criteria for the Commission's approval of an entity as an additional Third Party Provider is that it be an independent and non-affiliated entity that adheres to substantially similar principles and evaluation criteria for high quality offsets as the three Third Party Providers listed above.

C. Staff Recommends Elimination of a Contingency for Market Dysfunction

Staff recommended eliminating a contingency proposed by Poseidon to address potential dysfunction in the carbon offset market. The contingency provides that Poseidon may pay into an escrow fund, in lieu of acquiring offsets, in amount equal to \$10 per metric ton (plus inflation) for each ton not previously offset, if: (i) offset projects in an amount necessary to mitigate the Project's net indirect GHG emissions are not reasonably available; (ii) the "market price" for carbon offsets or RECs is not reasonably discernable; (iii) the market for offsets/RECs is suffering from significant market disruptions or instability; or (iv) the market price has escalated to a level that renders the purchase of offsets/RECs economically infeasible to the Project. Monies paid into the escrow fund would be spent on offsets as they became available.

Staff has expressed concern that Poseidon would be permitted to unilaterally “forego mitigation when it deems market conditions to be unfavorable.” Staff Report, page 13. Poseidon has resolved this concern by modifying its Plan so that Poseidon must apply to the Executive Director for a determination that any of the above contingencies exist, and only after approval of such a request by the Executive Director (or the Commission upon challenge of Executive Director denial) would Poseidon be permitted to deposit monies into the escrow fund.

Given the scarcity of available offset projects and the uncertainty of the agencies providing such projects, a contingency plan is a crucial element in ensuring that Poseidon can remain carbon neutral when faced with a dysfunctional carbon offset market.

D. Staff Opposes Flexibility for Poseidon to Use New Government Carbon Offset Mitigation Programs that May Become Available

Staff is also opposed to a provision in Poseidon’s Plan which would allow Poseidon to opt into a carbon offset, fee or other mitigation program developed by SDAPCD, SCAQMD, CARB, SDG&E or any other relevant government agency. Such a provision is important to provide Poseidon with flexibility to implement its commitment to zero out the Project’s net indirect GHG emissions. Poseidon has proposed that this flexibility be provided to ensure that, all times, the most efficient means for offsetting the Project’s net GHG emissions are being undertaken.

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov



July 29, 2008

Patrick Kruer, Chairman
California Coastal Commission
North Central Coast District
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

John Chiang, Chairman
California State Lands Commission
100 Howe Ave Suite 100 South
Sacramento, CA 95825-8202

Re: Carlsbad Seawater Desalination Project CDP Application No. E-06-013
Energy Minimization and Greenhouse Gas Reduction Plan

Dear Chairman Kruer and Chairman Chiang:

After sending you both my July 18, 2008 letter regarding Poseidon's Carlsbad Desalination Project's *Energy Minimization and Greenhouse Gas Reduction Plan* (Plan), as revised July 3, 2008, I had an opportunity to meet with representatives of Poseidon Resources. The meeting, which occurred on July 23, 2008, was informative and left me with clarifications and a better understanding of the Plan. Consequently, by this letter, I wish to retract the comments in my July 18, 2008 letter.

First, it is notable that the Poseidon Project demonstrates that desalination of ocean and brackish water is becoming an important component of the state's strategy to meet its water needs. Indeed, the Energy Commission has long studied ocean and brackish water desalination and invested in research to improve technologies and address issues associated with desalination. The Poseidon Project is consistent with our efforts to improve the efficiency and environmental effects of desalination and lower its costs to customers. Towards those ends, the project and the plan for mitigation are laudable.

At the July 23, 2008 meeting, representatives of Poseidon Resources and I discussed the desalination project, the City of Carlsbad's environmental impacts report (EIR), and the comments in my July 18, 2008 letter. Subsequently, Poseidon Resources sent me additional information and a letter on July 25, 2008, further amplifying what we had discussed. Based on clarifying information and further consideration of the environmental review done on the project, I am persuaded that Poseidon's commitment

Chairman Patrick Kruer
Chairman John Chiang
July 29, 2008
Page 2

to offset 100 percent of its "net" or incremental increase in greenhouse gas emissions above baseline conditions is reasonable under the California Environmental Quality Act (CEQA). Indeed, the approach is consistent with how the Energy Commission, itself, analyzes the significance of impacts under CEQA, for example, in its power plant licensing cases.

More specifically, I understand the "baseline" under CEQA is typically the existing conditions as of the start of environmental analysis of the project. Accordingly, Poseidon's Plan to mitigate the carbon emissions from the increase in electricity required to deliver the project's water to customers, as compared with the "baseline" of current electricity required to serve those customers with State Water Project water, is supportable by the Energy Commission. Any implication in the Energy Commission's comments that Poseidon should further mitigate impacts yet to be ascertained from the diversion of State Water Project water for use elsewhere is not intended. Poseidon's Plan to mitigate the project's indirect impacts, as discussed, appropriately focuses on what is reasonably foreseeable, which is what I understand CEQA requires in an environmental analysis.

Finally, Poseidon's point about both the City's and the Coastal Commission's environmental analyses concluding the project would not cause growth inducing impacts is salient. In deference to the City's EIR and the Coastal Commission's substantiated conclusions, I accept the point. Please consider the comments in my July 18, 2008 letter regarding the project's growth-inducing impacts as having been withdrawn. Understandably, such comments fuel unnecessary speculation of impacts, which departs from the reasonably foreseeable impacts that Poseidon proposes to mitigate. Moreover, the Plan for mitigation represents an approach acceptable to the permitting agencies. The Energy Commission, with no evidence to contradict the Plan, takes no issue with it.

The representatives I met with also informed me that Poseidon has applied to become a member of the Climate Action Registry and is committed to following the accounting protocols for reporting emissions and reductions. Compliance with the accounting protocols enhances the credibility of Poseidon's Plan. I see Poseidon's membership with the Registry as an important step, not only in implementing the Plan, but also in supporting the role of the Registry in furthering the accountability of emissions reductions used to meet the state's goals under AB'32.

Chairman Patrick Kruer
Chairman John Chiang
July 29, 2008
Page 3

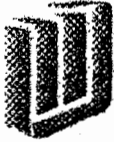
We appreciate the efforts of Poseidon Resources to address our concerns and those of your staff to consider the points we have raised regarding this important project. If you have any questions, please contact me at (916) 654-4996.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melissa Jones', with a large, stylized loop at the end.

MELISSA JONES
Executive Director

cc: Paul D. Thayer, Executive Officer, SLO
Peter M. Douglas, Executive Director, CCC
Mike Chrisman, Secretary for Resources
Jackalyne Pfannenstiel, Chairman, California Energy Commission
Pat Perez, Assistant Director, California Energy Commission
Lorraine White, Senior Water-Energy Lead, California Energy Commission
Cynthia Bryant, Governor's Office of Planning and Research
Walter Winrow, President and COO, Poseidon Resources
Peter MacLaggan, Senior Vice President, Poseidon Resources



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Executive Office

July 29, 2008

Mr. Peter Douglas
Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Dear Mr. Douglas:

Carlsbad Desalination Project's Energy Minimization and Greenhouse Gas Reduction Plan

The Metropolitan Water District of Southern California (Metropolitan) and the San Diego County Water Authority are statewide leaders in water conservation, recycling, and brackish groundwater desalination. However, in addition to these demand management achievements, our resource strategy benefits from other progressive actions including seawater desalination. Metropolitan's responsibility to the public is to manage future challenges including population growth, climate change impacts, increased uncertainty in the Bay-Delta, and earthquake disruptions to imported water pipelines.

The proposed Carlsbad Seawater Desalination Project (Project) would help secure supply reliability in Southern California by mitigating against these uncertainties. Metropolitan has previously supported and continues to support the project.

Metropolitan has committed to providing incentives of \$250 per acre-foot for locally-developed seawater desalination supplies that offset the demands for imported supplies, up to \$14 million annually to support the Project. To receive the incentive, water agencies receiving desalinated supplies from the Project must demonstrate that the water offsets an equivalent amount of water imported from Metropolitan.

Coastal Commission staff have questioned if it is appropriate for the Carlsbad Desalination Project's proposed Energy Minimization and Greenhouse Gas Reduction Plan (GHG Plan) to account for the fact that seawater desalination would lessen the need for additional water to be imported into the region. Metropolitan believes it is appropriate for the Project's GHG Plan to be based on offsetting net carbon emissions because San Diego County will use 56,000 acre-feet per year less imported water upon Project start up. By net, we mean the difference in energy related emissions required for moving water through the State Water Project compared to operating the seawater desalination project.

Mr. Peter Douglas

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July 29, 2008

Offsetting demand for imported water is a condition for receiving Metropolitan's financial incentives. Reduced demand will assist Metropolitan's ability to store wet-year water, improve operational flexibility and reduce requirements for dry-year water transfers delivered through State Water Project infrastructure. If the Project is not approved, regional demand for imported water will not be reduced by the 56,000 acre-feet per year to be produced by the Project.

The conditions placed on the Carlsbad Desalination Project set an important precedent for seawater desalination development in California. In that light, Metropolitan supports the Project's GHG Plan, which we believe will achieve carbon neutrality by offsetting the Project's net greenhouse gas emissions.

Thank you for considering our comments.

Yours truly,


Jeffrey K. Hindinger
General Manager

WAT:tw

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cc: Ms. Maureen A. Stapleton
General Manager
San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123

Mr. Peter M. MacLaggan
Poseidon Resources Corporation
501 West Broadway, Suite 840
San Diego, CA 92101

Item W16b
Exhibit 2

Assembly Bill 32
California Global Warming
Solutions Act
of 2006

Assembly Bill No. 32

Passed the Assembly August 31, 2006

Chief Clerk of the Assembly

Passed the Senate August 30, 2006

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 2006, at ____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Division 25.5 (commencing with Section 38500) to the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 32, Nunez. Air pollution: greenhouse gases: California Global Warming Solutions Act of 2006.

Under existing law, the State Air Resources Board (state board), the State Energy Resources Conservation and Development Commission (Energy Commission), and the California Climate Action Registry all have responsibilities with respect to the control of emissions of greenhouse gases, as defined, and the Secretary for Environmental Protection is required to coordinate emission reductions of greenhouse gases and climate change activity in state government.

This bill would require the state board to adopt regulations to require the reporting and verification of statewide greenhouse gas emissions and to monitor and enforce compliance with this program, as specified. The bill would require the state board to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions levels in 1990 to be achieved by 2020, as specified. The bill would require the state board to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions, as specified. The bill would authorize the state board to adopt market-based compliance mechanisms, as defined, meeting specified requirements. The bill would require the state board to monitor compliance with and enforce any rule, regulation, order, emission limitation, emissions reduction measure, or market-based compliance mechanism adopted by the state board, pursuant to specified provisions of existing law. The bill would authorize the state board to adopt a schedule of fees to be paid by regulated sources of greenhouse gas emissions, as specified.

Because the bill would require the state board to establish emissions limits and other requirements, the violation of which

would be a crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Division 25.5 (commencing with Section 38500) is added to the Health and Safety Code, to read:

DIVISION 25.5. CALIFORNIA GLOBAL WARMING
SOLUTIONS ACT OF 2006

PART 1. GENERAL PROVISIONS

CHAPTER 1. TITLE OF DIVISION

38500. This division shall be known, and may be cited, as the California Global Warming Solutions Act of 2006.

CHAPTER 2. FINDINGS AND DECLARATIONS

38501. The Legislature finds and declares all of the following:

(a) Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems.

(b) Global warming will have detrimental effects on some of California's largest industries, including agriculture, wine,

tourism, skiing, recreational and commercial fishing, and forestry. It will also increase the strain on electricity supplies necessary to meet the demand for summer air-conditioning in the hottest parts of the state.

(c) California has long been a national and international leader on energy conservation and environmental stewardship efforts, including the areas of air quality protections, energy efficiency requirements, renewable energy standards, natural resource conservation, and greenhouse gas emission standards for passenger vehicles. The program established by this division will continue this tradition of environmental leadership by placing California at the forefront of national and international efforts to reduce emissions of greenhouse gases.

(d) National and international actions are necessary to fully address the issue of global warming. However, action taken by California to reduce emissions of greenhouse gases will have far-reaching effects by encouraging other states, the federal government, and other countries to act.

(e) By exercising a global leadership role, California will also position its economy, technology centers, financial institutions, and businesses to benefit from national and international efforts to reduce emissions of greenhouse gases. More importantly, investing in the development of innovative and pioneering technologies will assist California in achieving the 2020 statewide limit on emissions of greenhouse gases established by this division and will provide an opportunity for the state to take a global economic and technological leadership role in reducing emissions of greenhouse gases.

(f) It is the intent of the Legislature that the State Air Resources Board coordinate with state agencies, as well as consult with the environmental justice community, industry sectors, business groups, academic institutions, environmental organizations, and other stakeholders in implementing this division.

(g) It is the intent of the Legislature that the State Air Resources Board consult with the Public Utilities Commission in the development of emissions reduction measures, including limits on emissions of greenhouse gases applied to electricity and natural gas providers regulated by the Public Utilities Commission in order to ensure that electricity and natural gas

providers are not required to meet duplicative or inconsistent regulatory requirements.

(h) It is the intent of the Legislature that the State Air Resources Board design emissions reduction measures to meet the statewide emissions limits for greenhouse gases established pursuant to this division in a manner that minimizes costs and maximizes benefits for California's economy, improves and modernizes California's energy infrastructure and maintains electric system reliability, maximizes additional environmental and economic co-benefits for California, and complements the state's efforts to improve air quality.

(i) It is the intent of the Legislature that the Climate Action Team established by the Governor to coordinate the efforts set forth under Executive Order S-3-05 continue its role in coordinating overall climate policy.

CHAPTER 3. DEFINITIONS

38505. For the purposes of this division, the following terms have the following meanings:

(a) "Allowance" means an authorization to emit, during a specified year, up to one ton of carbon dioxide equivalent.

(b) "Alternative compliance mechanism" means an action undertaken by a greenhouse gas emission source that achieves the equivalent reduction of greenhouse gas emissions over the same time period as a direct emission reduction, and that is approved by the state board. "Alternative compliance mechanism" includes, but is not limited to, a flexible compliance schedule, alternative control technology, a process change, or a product substitution.

(c) "Carbon dioxide equivalent" means the amount of carbon dioxide by weight that would produce the same global warming impact as a given weight of another greenhouse gas, based on the best available science, including from the Intergovernmental Panel on Climate Change.

(d) "Cost-effective" or "cost-effectiveness" means the cost per unit of reduced emissions of greenhouse gases adjusted for its global warming potential.

(e) “Direct emission reduction” means a greenhouse gas emission reduction action made by a greenhouse gas emission source at that source.

(f) “Emissions reduction measure” means programs, measures, standards, and alternative compliance mechanisms authorized pursuant to this division, applicable to sources or categories of sources, that are designed to reduce emissions of greenhouse gases.

(g) “Greenhouse gas” or “greenhouse gases” includes all of the following gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(h) “Greenhouse gas emissions limit” means an authorization, during a specified year, to emit up to a level of greenhouse gases specified by the state board, expressed in tons of carbon dioxide equivalents.

(i) “Greenhouse gas emission source” or “source” means any source, or category of sources, of greenhouse gas emissions whose emissions are at a level of significance, as determined by the state board, that its participation in the program established under this division will enable the state board to effectively reduce greenhouse gas emissions and monitor compliance with the statewide greenhouse gas emissions limit.

(j) “Leakage” means a reduction in emissions of greenhouse gases within the state that is offset by an increase in emissions of greenhouse gases outside the state.

(k) “Market-based compliance mechanism” means either of the following:

(1) A system of market-based declining annual aggregate emissions limitations for sources or categories of sources that emit greenhouse gases.

(2) Greenhouse gas emissions exchanges, banking, credits, and other transactions, governed by rules and protocols established by the state board, that result in the same greenhouse gas emission reduction, over the same time period, as direct compliance with a greenhouse gas emission limit or emission reduction measure adopted by the state board pursuant to this division.

(l) “State board” means the State Air Resources Board.

(m) “Statewide greenhouse gas emissions” means the total annual emissions of greenhouse gases in the state, including all

emissions of greenhouse gases from the generation of electricity delivered to and consumed in California, accounting for transmission and distribution line losses, whether the electricity is generated in state or imported. Statewide emissions shall be expressed in tons of carbon dioxide equivalents.

(n) "Statewide greenhouse gas emissions limit" or "statewide emissions limit" means the maximum allowable level of statewide greenhouse gas emissions in 2020, as determined by the state board pursuant to Part 3 (commencing with Section 38850).

CHAPTER 4. ROLE OF STATE BOARD

38510. The State Air Resources Board is the state agency charged with monitoring and regulating sources of emissions of greenhouse gases that cause global warming in order to reduce emissions of greenhouse gases.

PART 2. MANDATORY GREENHOUSE GAS EMISSIONS REPORTING

38530. (a) On or before January 1, 2008, the state board shall adopt regulations to require the reporting and verification of statewide greenhouse gas emissions and to monitor and enforce compliance with this program.

(b) The regulations shall do all of the following:

(1) Require the monitoring and annual reporting of greenhouse gas emissions from greenhouse gas emission sources beginning with the sources or categories of sources that contribute the most to statewide emissions.

(2) Account for greenhouse gas emissions from all electricity consumed in the state, including transmission and distribution line losses from electricity generated within the state or imported from outside the state. This requirement applies to all retail sellers of electricity, including load-serving entities as defined in subdivision (j) of Section 380 of the Public Utilities Code and local publicly owned electric utilities as defined in Section 9604 of the Public Utilities Code.

(3) Where appropriate and to the maximum extent feasible, incorporate the standards and protocols developed by the

California Climate Action Registry, established pursuant to Chapter 6 (commencing with Section 42800) of Part 4 of Division 26. Entities that voluntarily participated in the California Climate Action Registry prior to December 31, 2006, and have developed a greenhouse gas emission reporting program, shall not be required to significantly alter their reporting or verification program except as necessary to ensure that reporting is complete and verifiable for the purposes of compliance with this division as determined by the state board.

(4) Ensure rigorous and consistent accounting of emissions, and provide reporting tools and formats to ensure collection of necessary data.

(5) Ensure that greenhouse gas emission sources maintain comprehensive records of all reported greenhouse gas emissions.

(c) The state board shall do both of the following:

(1) Periodically review and update its emission reporting requirements, as necessary.

(2) Review existing and proposed international, federal, and state greenhouse gas emission reporting programs and make reasonable efforts to promote consistency among the programs established pursuant to this part and other programs, and to streamline reporting requirements on greenhouse gas emission sources.

PART 3. STATEWIDE GREENHOUSE GAS EMISSIONS LIMIT

38550. By January 1, 2008, the state board shall, after one or more public workshops, with public notice, and an opportunity for all interested parties to comment, determine what the statewide greenhouse gas emissions level was in 1990, and approve in a public hearing, a statewide greenhouse gas emissions limit that is equivalent to that level, to be achieved by 2020. In order to ensure the most accurate determination feasible, the state board shall evaluate the best available scientific, technological, and economic information on greenhouse gas emissions to determine the 1990 level of greenhouse gas emissions.

38551. (a) The statewide greenhouse gas emissions limit shall remain in effect unless otherwise amended or repealed.

(b) It is the intent of the Legislature that the statewide greenhouse gas emissions limit continue in existence and be used to maintain and continue reductions in emissions of greenhouse gases beyond 2020.

(c) The state board shall make recommendations to the Governor and the Legislature on how to continue reductions of greenhouse gas emissions beyond 2020.

PART 4. GREENHOUSE GAS EMISSIONS REDUCTIONS

38560. The state board shall adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions from sources or categories of sources, subject to the criteria and schedules set forth in this part.

38560.5. (a) On or before June 30, 2007, the state board shall publish and make available to the public a list of discrete early action greenhouse gas emission reduction measures that can be implemented prior to the measures and limits adopted pursuant to Section 38562.

(b) On or before January 1, 2010, the state board shall adopt regulations to implement the measures identified on the list published pursuant to subdivision (a).

(c) The regulations adopted by the state board pursuant to this section shall achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from those sources or categories of sources, in furtherance of achieving the statewide greenhouse gas emissions limit.

(d) The regulations adopted pursuant to this section shall be enforceable no later than January 1, 2010.

38561. (a) On or before January 1, 2009, the state board shall prepare and approve a scoping plan, as that term is understood by the state board, for achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from sources or categories of sources of greenhouse gases by 2020 under this division. The state board shall consult with all state agencies with jurisdiction over sources of greenhouse gases, including the Public Utilities Commission and the State Energy Resources Conservation and Development Commission, on all elements of its plan that pertain to energy

related matters including, but not limited to, electrical generation, load based-standards or requirements, the provision of reliable and affordable electrical service, petroleum refining, and statewide fuel supplies to ensure the greenhouse gas emissions reduction activities to be adopted and implemented by the state board are complementary, nonduplicative, and can be implemented in an efficient and cost-effective manner.

(b) The plan shall identify and make recommendations on direct emission reduction measures, alternative compliance mechanisms, market-based compliance mechanisms, and potential monetary and nonmonetary incentives for sources and categories of sources that the state board finds are necessary or desirable to facilitate the achievement of the maximum feasible and cost-effective reductions of greenhouse gas emissions by 2020.

(c) In making the determinations required by subdivision (b), the state board shall consider all relevant information pertaining to greenhouse gas emissions reduction programs in other states, localities, and nations, including the northeastern states of the United States, Canada, and the European Union.

(d) The state board shall evaluate the total potential costs and total potential economic and noneconomic benefits of the plan for reducing greenhouse gases to California's economy, environment, and public health, using the best available economic models, emission estimation techniques, and other scientific methods.

(e) In developing its plan, the state board shall take into account the relative contribution of each source or source category to statewide greenhouse gas emissions, and the potential for adverse effects on small businesses, and shall recommend a de minimis threshold of greenhouse gas emissions below which emission reduction requirements will not apply.

(f) In developing its plan, the state board shall identify opportunities for emission reductions measures from all verifiable and enforceable voluntary actions, including, but not limited to, carbon sequestration projects and best management practices.

(g) The state board shall conduct a series of public workshops to give interested parties an opportunity to comment on the plan. The state board shall conduct a portion of these workshops in

regions of the state that have the most significant exposure to air pollutants, including, but not limited to, communities with minority populations, communities with low-income populations, or both.

(h) The state board shall update its plan for achieving the maximum technologically feasible and cost-effective reductions of greenhouse gas emissions at least once every five years.

38562. (a) On or before January 1, 2011, the state board shall adopt greenhouse gas emission limits and emission reduction measures by regulation to achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions in furtherance of achieving the statewide greenhouse gas emissions limit, to become operative beginning on January 1, 2012.

(b) In adopting regulations pursuant to this section and Part 5 (commencing with Section 38570), to the extent feasible and in furtherance of achieving the statewide greenhouse gas emissions limit, the state board shall do all of the following:

(1) Design the regulations, including distribution of emissions allowances where appropriate, in a manner that is equitable, seeks to minimize costs and maximize the total benefits to California, and encourages early action to reduce greenhouse gas emissions.

(2) Ensure that activities undertaken to comply with the regulations do not disproportionately impact low-income communities.

(3) Ensure that entities that have voluntarily reduced their greenhouse gas emissions prior to the implementation of this section receive appropriate credit for early voluntary reductions.

(4) Ensure that activities undertaken pursuant to the regulations complement, and do not interfere with, efforts to achieve and maintain federal and state ambient air quality standards and to reduce toxic air contaminant emissions.

(5) Consider cost-effectiveness of these regulations.

(6) Consider overall societal benefits, including reductions in other air pollutants, diversification of energy sources, and other benefits to the economy, environment, and public health.

(7) Minimize the administrative burden of implementing and complying with these regulations.

(8) Minimize leakage.

(9) Consider the significance of the contribution of each source or category of sources to statewide emissions of greenhouse gases.

(c) In furtherance of achieving the statewide greenhouse gas emissions limit, by January 1, 2011, the state board may adopt a regulation that establishes a system of market-based declining annual aggregate emission limits for sources or categories of sources that emit greenhouse gas emissions, applicable from January 1, 2012, to December 31, 2020, inclusive, that the state board determines will achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions, in the aggregate, from those sources or categories of sources.

(d) Any regulation adopted by the state board pursuant to this part or Part 5 (commencing with Section 38570) shall ensure all of the following:

(1) The greenhouse gas emission reductions achieved are real, permanent, quantifiable, verifiable, and enforceable by the state board.

(2) For regulations pursuant to Part 5 (commencing with Section 38570), the reduction is in addition to any greenhouse gas emission reduction otherwise required by law or regulation, and any other greenhouse gas emission reduction that otherwise would occur.

(3) If applicable, the greenhouse gas emission reduction occurs over the same time period and is equivalent in amount to any direct emission reduction required pursuant to this division.

(e) The state board shall rely upon the best available economic and scientific information and its assessment of existing and projected technological capabilities when adopting the regulations required by this section.

(f) The state board shall consult with the Public Utilities Commission in the development of the regulations as they affect electricity and natural gas providers in order to minimize duplicative or inconsistent regulatory requirements.

(g) After January 1, 2011, the state board may revise regulations adopted pursuant to this section and adopt additional regulations to further the provisions of this division.

38563. Nothing in this division restricts the state board from adopting greenhouse gas emission limits or emission reduction

measures prior to January 1, 2011, imposing those limits or measures prior to January 1, 2012, or providing early reduction credit where appropriate.

38564. The state board shall consult with other states, and the federal government, and other nations to identify the most effective strategies and methods to reduce greenhouse gases, manage greenhouse gas control programs, and to facilitate the development of integrated and cost-effective regional, national, and international greenhouse gas reduction programs.

38565. The state board shall ensure that the greenhouse gas emission reduction rules, regulations, programs, mechanisms, and incentives under its jurisdiction, where applicable and to the extent feasible, direct public and private investment toward the most disadvantaged communities in California and provide an opportunity for small businesses, schools, affordable housing associations, and other community institutions to participate in and benefit from statewide efforts to reduce greenhouse gas emissions.

PART 5. MARKET-BASED COMPLIANCE MECHANISMS

38570. (a) The state board may include in the regulations adopted pursuant to Section 38562 the use of market-based compliance mechanisms to comply with the regulations.

(b) Prior to the inclusion of any market-based compliance mechanism in the regulations, to the extent feasible and in furtherance of achieving the statewide greenhouse gas emissions limit, the state board shall do all of the following:

(1) Consider the potential for direct, indirect, and cumulative emission impacts from these mechanisms, including localized impacts in communities that are already adversely impacted by air pollution.

(2) Design any market-based compliance mechanism to prevent any increase in the emissions of toxic air contaminants or criteria air pollutants.

(3) Maximize additional environmental and economic benefits for California, as appropriate.

(c) The state board shall adopt regulations governing how market-based compliance mechanisms may be used by regulated entities subject to greenhouse gas emission limits and mandatory

emission reporting requirements to achieve compliance with their greenhouse gas emissions limits.

38571. The state board shall adopt methodologies for the quantification of voluntary greenhouse gas emission reductions. The state board shall adopt regulations to verify and enforce any voluntary greenhouse gas emission reductions that are authorized by the state board for use to comply with greenhouse gas emission limits established by the state board. The adoption of methodologies is exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

38574. Nothing in this part or Part 4 (commencing with Section 38560) confers any authority on the state board to alter any programs administered by other state agencies for the reduction of greenhouse gas emissions.

PART 6. ENFORCEMENT

38580. (a) The state board shall monitor compliance with and enforce any rule, regulation, order, emission limitation, emissions reduction measure, or market-based compliance mechanism adopted by the state board pursuant to this division.

(b) (1) Any violation of any rule, regulation, order, emission limitation, emissions reduction measure, or other measure adopted by the state board pursuant to this division may be enjoined pursuant to Section 41513, and the violation is subject to those penalties set forth in Article 3 (commencing with Section 42400) of Chapter 4 of Part 4 of, and Chapter 1.5 (commencing with Section 43025) of Part 5 of, Division 26.

(2) Any violation of any rule, regulation, order, emission limitation, emissions reduction measure, or other measure adopted by the state board pursuant to this division shall be deemed to result in an emission of an air contaminant for the purposes of the penalty provisions of Article 3 (commencing with Section 42400) of Chapter 4 of Part 4 of, and Chapter 1.5 (commencing with Section 43025) of Part 5 of, Division 26.

(3) The state board may develop a method to convert a violation of any rule, regulation, order, emission limitation, or other emissions reduction measure adopted by the state board

pursuant to this division into the number of days in violation, where appropriate, for the purposes of the penalty provisions of Article 3 (commencing with Section 42400) of Chapter 4 of Part 4 of, and Chapter 1.5 (commencing with Section 43025) of Part 5 of, Division 26.

(c) Section 42407 and subdivision (i) of Section 42410 shall not apply to this part.

PART 7. MISCELLANEOUS PROVISIONS

38590. If the regulations adopted pursuant to Section 43018.5 do not remain in effect, the state board shall implement alternative regulations to control mobile sources of greenhouse gas emissions to achieve equivalent or greater reductions.

38591. (a) The state board, by July 1, 2007, shall convene an environmental justice advisory committee, of at least three members, to advise it in developing the scoping plan pursuant to Section 38561 and any other pertinent matter in implementing this division. The advisory committee shall be comprised of representatives from communities in the state with the most significant exposure to air pollution, including, but not limited to, communities with minority populations or low-income populations, or both.

(b) The state board shall appoint the advisory committee members from nominations received from environmental justice organizations and community groups.

(c) The state board shall provide reasonable per diem for attendance at advisory committee meetings by advisory committee members from nonprofit organizations.

(d) The state board shall appoint an Economic and Technology Advancement Advisory Committee to advise the state board on activities that will facilitate investment in and implementation of technological research and development opportunities, including, but not limited to, identifying new technologies, research, demonstration projects, funding opportunities, developing state, national, and international partnerships and technology transfer opportunities, and identifying and assessing research and advanced technology investment and incentive opportunities that will assist in the reduction of greenhouse gas emissions. The committee may also advise the state board on state, regional,

national, and international economic and technological developments related to greenhouse gas emission reductions.

38592. (a) All state agencies shall consider and implement strategies to reduce their greenhouse gas emissions.

(b) Nothing in this division shall relieve any person, entity, or public agency of compliance with other applicable federal, state, or local laws or regulations, including state air and water quality requirements, and other requirements for protecting public health or the environment.

38593. (a) Nothing in this division affects the authority of the Public Utilities Commission.

(b) Nothing in this division affects the obligation of an electrical corporation to provide customers with safe and reliable electric service.

38594. Nothing in this division shall limit or expand the existing authority of any district, as defined in Section 39025.

38595. Nothing in this division shall preclude, prohibit, or restrict the construction of any new facility or the expansion of an existing facility subject to regulation under this division, if all applicable requirements are met and the facility is in compliance with regulations adopted pursuant to this division.

38596. The provisions of this division are severable. If any provision of this division or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

38597. The state board may adopt by regulation, after a public workshop, a schedule of fees to be paid by the sources of greenhouse gas emissions regulated pursuant to this division, consistent with Section 57001. The revenues collected pursuant to this section, shall be deposited into the Air Pollution Control Fund and are available upon appropriation, by the Legislature, for purposes of carrying out this division.

38598. (a) Nothing in this division shall limit the existing authority of a state entity to adopt and implement greenhouse gas emissions reduction measures.

(b) Nothing in this division shall relieve any state entity of its legal obligations to comply with existing law or regulation.

38599. (a) In the event of extraordinary circumstances, catastrophic events, or threat of significant economic harm, the Governor may adjust the applicable deadlines for individual

regulations, or for the state in the aggregate, to the earliest feasible date after that deadline.

(b) The adjustment period may not exceed one year unless the Governor makes an additional adjustment pursuant to subdivision (a).

(c) Nothing in this section affects the powers and duties established in the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code).

(d) The Governor shall, within 10 days of invoking subdivision (a), provide written notification to the Legislature of the action undertaken.

SEC. 2 No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Item W16b

Exhibit 3

Partial Transcript of August 6, 2008 hearing

Pages 59-75:	Staff presentation
Pages 75-78:	Ex partes
Pages 78-95:	Poseidon presentation
Pages 95-165:	Public comment
Pages 165-169:	Poseidon rebuttal
Pages 169-180:	Staff response
Pages 180-234:	Commission deliberations

1 COURT REPORTER: Audible, please.

2 CHAIR KRUEER: Let's see, there is Commissioner
3 Burke, and Commissioner Blank, Potter, myself, Vice Chair
4 Neely, and Commissioner Hueso.

5 So, it is six, zero, unanimous, so we have adopted
6 the findings.

7 And, before we -- staff, Commissioners, my
8 colleagues, people out in the audience, maybe it would be a
9 good time, before we jump into the next item, that we take a
10 bio-break for 10 minutes.

11 [Recess &

12 Item No. 5.a. Condition Compliance

13 Energy Minimization & Greenhouse Gas Reduction Plan]

14 So, with that, we will start with the Condition
15 Compliance 5.a., and will go to staff.

16 Mr. Luster, do you want to go first.

17 ENVIRONMENTAL SPECIALIST LUSTER: Thank you, Mr.
18 Chair, Commissioners. Our next item is 5.a. Condition
19 Compliance.

20 I would like to introduce Sarah Townsend, the
21 coastal analyst who will be making the presentation.

22 COASTAL STAFF ANALYST TOWNSEND: Good morning,
23 Chair Krueer and Commissioners. This next item is consider-
24 ation of Condition Compliance for Poseidon Resources proposed
25 energy minimization and greenhouse gas reduction plan.

1 As you may recall from last November's hearing,
2 Poseidon offered, as part of its project description to make
3 it desalination facilities net carbon neutral. In your
4 approval of this project, the Commission required through
5 Special Condition 10 that Poseidon submit a plan describing
6 how it would achieve that level of greenhouse gas reduction.

7 Staff has been working with Poseidon and a number
8 of agencies over the past several months to develop an
9 acceptable plan. Poseidon's most recent plan is attached to
10 Exhibit 1 to the staff report, and staff is recommending you
11 approve the plan as modified in the staff report.

12 Please note that staff provided you with an
13 addendum last night, or early this morning, that includes
14 correspondence received regarding the plan.

15 Please note, too, that Poseidon has clarified that
16 the intent of this plan is not to have the project be net
17 carbon neutral, but to bring the net indirect greenhouse gas
18 emissions from purchased electricity to zero. This is not
19 the same as being carbon neutral, which generally means
20 bringing to zero a larger set of both direct and indirect
21 emissions, such as emissions from transportation of
22 materials, products, waste from employees, emission from fuel
23 combustion from stationary sources, emissions from production
24 of purchased materials, et cetera.

25 However, staff concurs with Poseidon that the

1 focus of its plan should be on just those net indirect
2 emissions resulting from the facility's electricity use,
3 since they do represent a majority of the emissions expected
4 during the life of the project.

5 Staff's presentation today will briefly summarize
6 some key points of Poseidon's proposed plan, and staff's
7 recommended modifications, provide a brief background of
8 Assembly Bill 32, the state's landmark greenhouse gas
9 emission reduction statute, and describe why staff's
10 modifications to Poseidon's plan are needed to insure
11 conformity to Special Condition 10, and the Commission's
12 findings.

13 Poseidon's proposed plan includes several features
14 to reduce the desalination facility's expected energy use,
15 and includes other features meant to mitigate for the
16 remaining net indirect emissions resulting from the
17 desalination facility's electricity use.

18 One of the key energy reduction measures will be
19 Poseidon's use of an energy recovery system to reduce its
20 overall electricity use. Poseidon is also considering
21 installing a solar voltaic system on its roof, and using
22 electricity generated from that system to further reduce its
23 net emissions. It has also identified a number of other
24 measures it expects will reduce or offset its net emissions,
25 including a reforestation project in the San Diego area,

1 purchase of offsets for renewable energy credits, and others.

2 The plan, as proposed, would also establish a
3 committee to assess, select, and account for the various
4 emission reduction measures, and would require the San Diego
5 Air Pollution Control District to maintain a data base
6 showing the results of Poseidon's efforts.

7 Just a quick note regarding these last few points.
8 We understand Poseidon may be proposing today a change in its
9 proposed committees, and we also understand that at this
10 point the San Diego Air Pollution Control District has not
11 yet committed to managing Poseidon's data base.

12 Now, onto staff's recommended modifications.
13 Staff recommends the Commission approve the plan with some
14 key modifications to insure the plan is consistent with
15 Special Condition 10, as well as the Commission's findings
16 and applicable Coastal Act provisions.

17 Staff has evolved a very simple approach to
18 provide the Commission with the necessary level of assurance.
19 The recommended modifications are shown on page 4 of the
20 staff report, and they include, first, have Poseidon
21 implement its plan using AB32. This modification includes
22 two main steps, one, insure Poseidon uses the protocols,
23 mechanisms, and criteria approved by the California Air
24 Resources Board, CARB, or by the California Climate Action
25 Registry, CCAR, which are the two entities most responsible

1 for implementing AB32.

2 Two, insure Poseidon uses CCAR's climate action
3 reserve program, or other CARB or CCARB approved protocols to
4 implement the plan, and account for its emission reduction
5 measures. Staff understands a representative from the CCAR
6 Climate Action Reserve is here today, and will present more
7 details about this program for you.

8 Second, have Poseidon submit annual reports for
9 Executive Director review and approval, that show the
10 verified results of Poseidon's reduction measures.

11 Third, have Poseidon modify the plan to match the
12 review processes being implemented by CARB or CCAR.

13 And, finally require Poseidon to submit a revised
14 plan that incorporates these modifications.

15 Staff's recommendations are based entirely on
16 coordination and consultation with Poseidon, as well as a
17 number of state, regional, and local agencies that provided
18 assistance and comments during development of Poseidon's
19 plan. All of the agencies that participated in reviewing the
20 plan, including CARB and CCAR, recommended that AB32 serve as
21 the basis for Poseidon's plan.

22 In addition, and through our recent consultation
23 with Poseidon, staff is recommending the following additional
24 modifications, and in the first of staff's proposed modifica-
25 tions on page 4, we recommend you allow Poseidon to use not

1 only those programs approved by CARB or CCAR, but also those
2 approved by any of the state's Air Pollution Control
3 Districts pursuant to AB32. Staff believes this will broaden
4 the scope of acceptable emission reduction programs available
5 to Poseidon, and will insure the same level of verification
6 and scrutiny provided by the CARB and CCAR programs.

7 Now, before I explain the need for staff's
8 recommended modifications, I'll provide a very brief back-
9 ground of AB32. The statute adopted by the state in 2006
10 establishes a state wide target to reduce by 2020 all
11 greenhouse gas emissions emitted in the state to 1990 levels.

12 Meeting this goal will require a substantial
13 change in how the state addresses the effects of proposed
14 developments, including those effecting coastal resources, as
15 noted in your findings.

16 AB32 includes a number of mechanisms, protocols,
17 and criteria, that are to be used to implement this goal.
18 AB32 includes provisions that apply to the regulated
19 community, to voluntary efforts to offset emissions, and to
20 market-based strategies for emission reductions. These
21 provisions include 6 criteria that apply to all emission
22 reduction measures implemented in support of AB32. The
23 criteria are meant to insure that emission reductions are
24 real, permanent, quantifiable, verifiable, enforceable, and
25 in addition to measures that would otherwise occur.

1 CARB is developing regulations to implement
2 provisions applicable to both the regulated community, and
3 the voluntary, market, which will take effect in 2012. CCAR,
4 the state's Climate Action Registry, also implements AB32 by
5 providing a verification system for entities in the voluntary
6 market, like Poseidon, which will not be subject to AB32's
7 initial regulatory requirements, but may wish to have their
8 emission reduction efforts recognized by the state.

9 Staff understands that Poseidon joined CCAR last
10 week, and has committed to use CCAR and CARB approved
11 protocols for at least one of its projects, the reforestation
12 efforts the Commission required as part of its approval last
13 November.

14 Now, I will return to the need for modifications.
15 As I mentioned earlier, staff is recommending the Commission
16 approve Poseidon's plan with modifications. These
17 modifications are meant to insure that the measures Poseidon
18 implements meet the applicable criteria of AB32. This will
19 provide the necessary level of assurance that the plan
20 conforms to the Commission's conditions and findings.

21 As you may know, there is currently a wide variety
22 of emission reduction measures and credits available on the
23 market today, some of which are of uncertain value, or which
24 have not been seen to result in actual emission reductions.
25 This is one reason why CARB is adopting regulations that meet

1 the 68032 criteria.

2 By using the mechanisms of AB32, Poseidon's
3 efforts will be independently verified, and will be available
4 as part of the state's implementation of the statute.
5 Staff's understanding is that the most significant elements
6 of Poseidon's plan, as currently proposed, do not yet conform
7 to AB32 standards, which means that Poseidon would not be
8 able to fully participate in AB32-based mechanisms, such as
9 trading emission reduction credits within a state approved
10 market. It also means that the Commission will not have the
11 level of assurance necessary to show that the plan results in
12 emission reductions recognized by California.

13 Additionally, staff's recommendations insure that
14 Poseidon's plan avoids redundancy and confusion over what
15 protocols might apply to various proposed measures, and how
16 those measure will be evaluated.

17 As noted above, the plan, as currently proposed,
18 would establish its own review committee, its own reporting
19 and accounting mechanisms, and its own verification system,
20 outside of those already established and available through
21 CCAR. Staff's recommended modification would simplify this
22 process, and provide independent verification that Poseidon's
23 plan will meet its goal of net zero indirect greenhouse gas
24 emissions, from the purchase of its electricity.

25 Poseidon has raised a number of concerns about

1 staff's recommended modifications, which I will address
2 briefly. For example, Poseidon has stated that its plan is
3 voluntary, and that it is not regulated under AB32. This is
4 true. Staff recognizes that Poseidon is not regulated by
5 AB32; however, as noted previously, AB32 also applies to
6 voluntary measures that are meant to be part of the state's
7 emission reduction efforts.

8 Poseidon has stated a number of times that its
9 plan is meant to meet AB32 requirements for voluntary offset
10 programs, and that it considers the plan to be a model for
11 voluntary emission reductions under AB32. Although the plan
12 as currently proposed would not conform to AB32, by adopting
13 staff's recommendations, the Commission would insure that the
14 plan meets Poseidon's stated goal.

15 Poseidon has also expressed the concern that
16 staff's modifications would limit Poseidon to using less than
17 1 percent of the offset market. Staff recognizes that
18 offsets approved by CARB, CCAR, and the air districts will be
19 a small percentage of all available offsets; however, staff's
20 recommendation would insure that any offsets Poseidon
21 purchases are verifiable and legitimate.

22 Regarding the concern about supply, staff
23 understand that CCAR expects to have at least 5 million
24 approved offset credits available by the time Poseidon starts
25 operations, therefore, even if Poseidon chose to simply

1 purchase approved offsets to zero out its net emissions, it
2 would be fewer than 2 percent of the expected approved supply
3 from just one of the approved entities.

4 We note, too, that CARB also has in place AB32-
5 based protocols for one of the measures the Commission
6 specifically requested of Poseidon, the \$1 million worth of
7 trees for reforestation, and that Poseidon has committed to
8 use those protocols. Poseidon has also committed to use the
9 CCAR approved methodology for determining the project's
10 greenhouse gas emissions. Staff's recommendations would
11 provide that Poseidon build on these commitments, and insure
12 all of its plan be reviewed under CARB and CCAR approved
13 measures.

14 Poseidon has also requested that its plan include
15 a contingency measure that would allow it to opt out if
16 certain emission reduction efforts -- if offsets are not
17 reasonably available, or if the market is somehow
18 dysfunctional.

19 If these conditions exist, Poseidon has proposed
20 that instead deposits go into an escrow account to be used
21 for future emission reduction measures. Staff's concern with
22 this proposal is that Poseidon's plan does not assign the
23 conditions under which the market would be considered
24 disrupted or unstable, or at what costs offsets would be
25 economically infeasible. Again, however, staff believes this

1 concern to be alleviated by having Poseidon participating
2 fully in AB32-approved mechanisms, which are to include
3 considerations of costs and feasibilities.

4 As another concern, Poseidon has stated that
5 staff's recommendations would have it mitigate for growth
6 emission; however, this is incorrect. Staff concurs with
7 Poseidon that the plan is to mitigate only for its net
8 emissions. The difference is that Poseidon's plan, as
9 currently proposed, does not allow for independent
10 verification of all of its net emissions. This issue
11 illustrates one of the most significant differences between
12 Poseidon's plan and staff's recommended modification, that
13 is, how to treat what Poseidon describes as project related
14 measures.

15 Poseidon states that its project related measures
16 should not have to meet the AB32 criteria; however, AB32 does
17 not include such a distinction, and in fact, the state says
18 its criteria are meant to apply to any greenhouse gas
19 emission reduction measure implemented in support of AB32.

20 This is a key issue in the Commission's decision
21 today, because it involves the single largest emission
22 reduction measure Poseidon is proposing. Specifically,
23 Poseidon is proposing emission reduction credits for
24 offsetting water imports in the state water project. This
25 one measure would represent about two-thirds of Poseidon's

1 proposed emission reductions; however, the plan as currently
2 proposed would not insure this measure can be adequately
3 verified by an independent third party, as established in
4 AB32.

5 Now, you received a number of comments about this
6 measure, including correspondence staff provided to you
7 earlier, which shows a split of opinions, including some
8 differences within the same agencies about whether this
9 measure should, or should not, count for part of the
10 project's emission reductions.

11 Staff's review of the available information, and
12 water agency planning documents, shows that Poseidon's
13 project would not result in reduced emissions due to reduced
14 water imports. Nonetheless, staff recognized that answering
15 this question would require significant additional research
16 about how the state water system operates, how decisions are
17 made to import or redirect water, and other similar issues.

18 Staff recommendation, therefore, is that the
19 Commission not decide one way or another on this question,
20 but that it allow the question to be answered through the use
21 of the CARB and CCAR processes available to address just this
22 sort of issue. The result would be that this proposed
23 measure would be evaluated just like the others in Poseidon's
24 plan, and would be reviewed using CARB or CCAR approved
25 protocols.

1 By adopting staff's recommended modifications, the
2 Commission will insure that this key mitigation element
3 receives the necessary level of expert scrutiny and
4 verification to provide the Commission with the assurance
5 that the project is adequately mitigated.

6 In closing, staff recommends the Commission
7 approve Poseidon's plan as modified by the staff's recommend-
8 ations in our report. We understand the applicant has a
9 presentation for you, but we will be available for your
10 questions.

11 Thank you.

12 **EXECUTIVE DIRECTOR DOUGLAS:** Mr. Chairman, I have
13 some additional comments --

14 **CHAIR KRUEER:** Yes, Director.

15 **EXECUTIVE DIRECTOR DOUGLAS:** -- relative to the
16 issue of whether or not the Commission has the authority to
17 impose conditions relating to greenhouse gas emissions.

18 As we described before, when this matter was
19 before you, and the Commission approved it, and adopted these
20 conditions, the Commission has, on a number of occasions, had
21 extensive discussions about the impacts of greenhouse gas
22 emissions, and greenhouse gases and carbon deposition, on
23 coastal resources.

24 You looked at the variety of policies in the
25 Coastal Act, the variety of coastal resources that are

1 adversely affected by climate change, by temperature change,
2 by deposition from greenhouse gases in the atmosphere, and
3 you have imposed those conditions relating to greenhouse gas
4 reductions in other projects. It was a major element in the
5 Commission's denial of the LNG terminal off of Oxnard,
6 relative to the impacts of greenhouse gas emissions, that
7 would result from that project. As you recall, we had
8 identified that the emissions from that would equate to about
9 40 percent of the city of New York's emissions in any year.

10 You also used that as an issue, and looked at that
11 issue, relative to the toll road. There are other major
12 projects that clearly this Commission has identified as
13 needing to address the greenhouse gas emissions generated by
14 the specific project.

15 And, your approach has included both reducing up
16 front the amount of energy to be used, so that you reduce the
17 potential for greenhouse gas emissions, and then compensation
18 or mitigation, which includes the offsets, and then
19 adaptation somewhere along the line.

20 So, the Commission has a history of dealing with
21 this issue, and we think that there is no question that you
22 have the legal basis for addressing the issue, as well as
23 looking at the particular policies in the Coastal Act that
24 are being applied, relative to the inconsistency with some of
25 the policies and the need to use the override policy in the

1 Act.

2 The other point I wanted to make is that, as we
3 entered into this, and as the Commission discussed at the
4 time that it was approved, we are not going out to try to
5 reinvent a wheel here. We recognize other agencies'
6 jurisdiction, other agencies' responsibilities, specifically
7 the State Air Resources Control Board, and the regional
8 boards, and work with the Energy Commission. That is why we
9 spent considerable time coordinating with these agencies as
10 we crafted our approach to the plan submitted by Poseidon in
11 response to your condition that you imposed as necessary in
12 order to make the findings that this project would be
13 consistent with the Coastal Act.

14 I think that those coordination sessions were very
15 productive. We appreciate all the agencies' representatives
16 who participated in that. Our staff worked really hard to
17 insure that coordination, and that is why we came up with the
18 recommendation that we have, which really relies on those
19 agencies that have the primary responsibility for addressing
20 greenhouse gas emissions pursuant to AB32.

21 And, we have recently had a lot of input from
22 various sources in this administration, questioning our going
23 off on our own, relative to greenhouse gas impacts, and
24 reductions, and compensation mitigation, which is just wrong.
25 We have, as I say, gone out of our way to coordinate and to

1 work with the other agencies, and we have crafted our
2 recommendation here for suggested modifications for this plan
3 accordingly, and that is what it does.

4 It does not put the burden on you, or your staff,
5 to make determinations that we really have no expertise to
6 make, specifically, whether or not there is going to be a
7 reduction of energy use, or consumption and resulting in the
8 reduction of greenhouse gas emissions from the production of
9 this water through the Poseidon desalination project, that
10 would then be reduced by a comparable amount in reduction of
11 State Water Project pumping, or energy needs. We have no way
12 of determining whether or not that is real, or illusory.

13 That is why we are recommending what we are, to
14 rely on CARB, and the other entities to make that determin-
15 ation, given the expertise that they have.

16 So, with that, Mr. Chairman, we have completed our
17 report -- oh, I think Ms. Schmeltzer has some additional
18 comments.

19 CHAIR KRUEER: Ms. Schmeltzer.

20 CHIEF COUNSEL SCHMELTZER: Thank you, Mr. Chair.

21 I just wanted to clarify a statement that was
22 made about voluntary participation under AB32. That part of
23 the presentation was discussing how AB32 is set up; however,
24 the project that the Commission has approved does have
25 Special Condition 10 which requires a Greenhouse Gas

1 Reduction Plan, so that is not voluntary.

2 The mechanisms under which that may be fulfilled
3 could be under what is called the voluntary part of AB32, so
4 I just wanted to make sure people were clear about the use of
5 the term "voluntary".

6 EXECUTIVE DIRECTOR DOUGLAS: Right, and I am sorry
7 I didn't make that clear, because as you will remember, when
8 the Commission approved this, Poseidon said we are
9 voluntarily doing all of this, relative to greenhouse gas
10 emissions. And, we and the Commission made clear that is
11 nice, but that is not what is necessary to comply with
12 Coastal Act policies. What is necessary is the assurance
13 that you have an enforceable condition that will, in fact,
14 result in greenhouse gas reductions.

15 So, you accepted a lot of the things that were
16 being proposed, but you incorporated them in your capacity as
17 a regulatory agency, and insuring compliance with the Coastal
18 Act policies, that as a condition of your permit.

19 CHAIR KRUEER: Thank you, Director Douglas, and
20 thank the staff for their presentation.

21 With that I will go to ex partes on this, again,
22 and some of you might have covered it previously, and if you
23 have just say that, under the findings. If you need
24 something more to add then I will start on the end with
25 Commissioner Hueso.

1 **COMMISSIONER HUESO:** Thank you, and the same
2 meetings I had with Poseidon, they had, again, mentioned that
3 they had a problem with the AB32 law, and that it was not
4 being applied to this project appropriately.

5 And, my staff member, Alonzo Gonzalez, also had
6 meetings with Poseidon on this matter, and never got to
7 disclose the details of his conversation with them, so I
8 never was apprised of the specific conversation, nor the
9 content with Gabriel Solmer and David Grubb, and Bruce
10 Reznik, other than I think in a meeting with Bruce Reznik and
11 Gabriel Solmer, he mentioned that they were opposed to this,
12 as proposed by the applicant, and in support of the staff
13 recommendation.

14 **CHAIR KRUER:** Thank you, Commissioner Hueso.
15 Vice Chair Neely.

16 **VICE CHAIR NEELY:** Mr. Chairman, mine are on file.

17 **CHAIR KRUER:** Mine are on file, with the
18 additional one that I spoke about under the findings, that
19 was the meeting with Gabriel Solmer, Bruce Reznik, Marco
20 Gonzalez, and Leslie Gaun, that I previously disclosed under
21 the previous ex parte under the findings.

22 Commissioner Lowenthal.

23 **COMMISSIONER LOWENTHAL:** Mine are on file, as
24 well, and the same as the ones I had mentioned for the
25 previous item.

1 I also wanted to mention I had a discussion that
2 started out as a personal discussion with Mr. Keith Lewinger,
3 from the Fallbrook Water Agency, and I had asked a question
4 about this project relative to offsets, and it was informal,
5 but I just wanted to communicate that.

6 CHAIR KRUER: Thank you, Commissioner Lowenthal.

7 Anyone else?

8 Commissioner Reilly.

9 COMMISSIONER REILLY: Thank you, Mr. Chair, my ex
10 partes on Item 5.a. are on file.

11 CHAIR KRUER: Thank you.

12 Commissioner Potter.

13 COMMISSIONER POTTER: Thank you, Mr. Chair, I had
14 a conversation last Wednesday with McCabe and MacLaggan,
15 similar to the one described by Commission Hueso.

16 I also had Bruce Reznik of Coast Keepers in my
17 office on Monday, expressing his support for staff's
18 recommendation. He was followed by Grant Wesaman of ORCA,
19 who provided similar testimony.

20 CHAIR KRUER: Thank you, Commissioner Potter.

21 Commissioner Achadjian.

22 COMMISSIONER ACHADJIAN: Thank you, Mr. Chair.

23 On August 1st, 11:00 a.m. I did have a conference
24 call with Ms. McCabe and representatives of Poseidon, with
25 similar discussions as reported by Commissioner Hueso.

1 **CHAIR KRUER:** Thank you, sir.

2 Commissioner Blank.

3 **COMMISSIONER BLANK:** Specifically, on energy
4 minimization, Special Condition 10, in my meeting with Bruce
5 Reznik, he said he felt this does not comply with the goals
6 of AB32, that it improperly calculates carbon neutrality by
7 assuming CDP will fully offset the State Water Project
8 transfers, and improperly calculates GHG emissions by
9 omitting direct emissions, and is too spective [sic.] and
10 does not contain sufficient specificity for GHG offsets.

11 The rest of my ex partes are on file.

12 **CHAIR KRUER:** Thank you Commissioner Blank.

13 Commissioner Kram.

14 **COMMISSIONER KRAM:** My previous ex parte was
15 disclosed in connection with the discussion on W4.a.

16 **CHAIR KRUER:** Thank you, sir.

17 Commissioner Burke.

18 **COMMISSIONER BURKE:** [No response]

19 **CHAIR KRUER:** Commissioner Scarborough.

20 **COMMISSIONER SCARBOROUGH:** Similarly for the
21 findings, mine were the same.

22 **CHAIR KRUER:** Thank you, very much.

23 And, with that we will open the public hearing,
24 and will go to the applicant, Rick Zbur, for Poseidon
25 Resources.

1 Sir, how much time for your organized present-
2 ation?

3 MR. ZBUR: YES, if we could, before you set the
4 clock, just make sure we can get our slides up, because we
5 are going to be very tight.

6 CHAIR KRUER: We aren't not going to start the
7 time until you get them up, but how much time do you need?

8 MR. ZBUR: I think we were planning on 30 for both
9 of the plans, so I think we would like to allocate 20 for the
10 greenhouse gas plan, and 10 for the wetlands plan, and then
11 if we could have rebuttal in addition to that, we would
12 appreciate it.

13 CHAIR KRUER: Okay, how much time for rebuttal,
14 sir, are you requesting?

15 MR. ZBUR: Three to five minutes.

16 CHAIR KRUER: We'll give you five minute, thank
17 you.

18 MR. ZBUR: Thank you, very much, Mr. Chairman.

19 CHAIR KRUER: That's 20 minutes.

20 MR. ZBUR: I would like to start with Mr. Peter
21 MacLaggan, who will start the beginning of the presentation.

22 CHAIR KRUER: This is just on 5.a., correct?

23 MR. MAC LAGGAN: Wetlands, right?

24 CHAIR KRUER: No, nice try.

25 MR. MAC LAGGAN: Good morning, Mr. Chairman, my

1 name is Peter MacLaggan, on behalf of the application,
2 Poseidon Resources.

3 Today we are here for you to consider and adopt
4 the greenhouse gas plan submitted by Poseidon in satisfaction
5 of Special Condition 10. We have submitted a letter to the
6 Commission that includes the form of the motion which would
7 allow you to adopt Poseidon's plan. Attached to that letter
8 is the version of the plan Poseidon seeks your approval of
9 today, and which is copied on green paper.

10 The plan was developed in consultation with an
11 incorporated input from a multitude of state, regional, and
12 local agencies, and incorporates that input.

13 The initial plan was submitted to your staff last
14 fall, Poseidon has worked closely with Commission's staff to
15 address a number of staff's concerns with that plan, and
16 those discussions have led to a number agreed upon
17 modifications to the plan. Those are listed in Exhibit A of
18 the submittal that Poseidon provided on August 2 to the
19 Commission, in response to the staff report.

20 However, what I would like to make very clear to
21 the Commission this morning is that there are four key areas
22 of disagreement that remain between Poseidon's proposal and
23 the Commission's recommended modifications of the plan.
24 While Poseidon supports staff's recommendation that the
25 Commission approve the plan, Poseidon is not in support of

1 the recommended modifications.

2 To start out, it is important to keep in mind that
3 the plan is a voluntary commitment on the part of Poseidon.
4 Since the project does not emit greenhouse gas emissions,
5 AB32 does not impose requirements on the project, and is not
6 anticipated to impose any requirements in the near term.

7 Instead, AB32 regulates direct emitters, such as
8 San Diego Gas and Electric Company, which will be the source
9 of the project's electricity, nor has the California Air
10 Resources Board adopted regulations applicable to the
11 project, so Poseidon's commitment is voluntary, although it
12 is enforceable through Condition 10.

13 Poseidon's commitment also is unprecedented. In
14 fact, this is the first major infrastructure project to
15 completely offset its incremental increase in electricity
16 usage. The plan has several robust and enforceable measures
17 to insure tht the project's net greenhouse gas emission
18 reductions will be certain, verified, and reduced to zero.

19 Some of the key elements of the plan include
20 state-of-the art energy minimization measures and green
21 building design features, reforestation of the San Diego
22 areas impacted by the 2007 wildfires, purchase of carbon
23 offsets and renewable energy credits to sufficient zero out
24 the project's net indirect greenhouse gas emissions, and the
25 total cost of this plan is estimated to be \$61 million.

1 With respect to the four key differences which
2 remain between Poseidon's proposal and staff's recommended
3 modifications to the plan, these disagreements focus on
4 recommendations by staff that would incorrectly apply AB32 so
5 that Poseidon would be required to offset the project's gross
6 emissions rather than net greenhouse gas emissions; secondly,
7 artificially constrain the offset market by severely limiting
8 the carbon offsets available for acquisition by Poseidon.
9 And, third, eliminate a contingency plan to address the
10 potential dysfunction in the emerging and maturing carbon
11 offset market.

12 And, finally, staff is recommending prohibiting
13 Poseidon from opting into any new government carbon certified
14 programs that may become available in the future.

15 As you can see from this graphic, the light blue
16 portion of the graphic, specifically, the plan requires
17 Poseidon will offset the project's incremental increase in
18 carbon emissions that will result from the electricity used
19 to produce the desalinated water relative to the energy
20 required to import equivalent amount of water from the State
21 Water Project. Staff is proposing that, instead, Poseidon
22 offset the entire amount on that chart, and that is the net
23 result of their recommended modifications to our plan.

24 Now, what you see on this chart, the project will
25 produce 56,000-acre feet per year of desalinated water that

1 will directly replace on a 1:1 basis water that otherwise
2 would be imported to Poseidon's customers from the State
3 Water Project. The Metropolitan Water District, in
4 communications to the Commission on July 29, in a letter to
5 Mr. Douglas, confirms that the project will reduce regional
6 demand for imported water by 56,000-acre feet. In fact, the
7 Metropolitan Water District is financing our customers
8 participation in this program, to the tune of \$14 million per
9 year, expressly because it will replace water demands on MWD,
10 and in exchange for that commitment, that financial
11 commitment, our customers are required to document annually
12 that they will replace water. So, there is a verification
13 step that is in place.

14 And, contrary to what you heard from the San Diego
15 City Attorney earlier today, there is tremendous evidence in
16 the record that each of our customers will be resulting in
17 replacement of water through their purchases from Poseidon.

18 Each of the public agencies, or officials, that
19 are listed on the slide before you, has written the
20 Commission to endorse Poseidon's plan to offset the project's
21 net greenhouse gas emissions, and to confirm that this
22 approach, rather than staff's recommendation is consistent
23 with state policy.

24 Particularly noteworthy here is a letter received
25 yesterday from the California Air Resources Board, and the

1 Air Resources Board is the entity under state law, that is
2 responsible for the implementation of AB32, and under
3 Condition 10, your staff is required to consult with CARB to
4 get input on how to implement the plan. In CARB's letter,
5 you will note that they point that the netting out of the
6 imported water that will no longer be used, is the
7 appropriate way of looking at this project.

8 Notably, Commission staff has supported a net
9 offset approach for a separate project that is on today's
10 agenda. The Southern California Edison proposed generation
11 facility, and even though that facility is a direct emitter
12 of greenhouse gas emissions that is regulated under AB32,
13 staff did not apply AB32 criteria and standards for the
14 voluntary offsets to determine whether Edison should receive
15 credit for replaced power; yet, they are applying the
16 criteria to determine whether or not Poseidon -- who is not
17 regulated by AB32 -- should receive credit for the replaced
18 power. Staff got it right on the Edison project, they got it
19 wrong on Poseidon's project.

20 Staff's recommendation would limit Poseidon to
21 acquiring offsets for only a handful of projects that have
22 been verified by the California Climate Action Reserve and/or
23 the Air Resources Board, and represents less than a tenth of
24 one percent of the available domestic carbon offset market.
25 Staff's proposed restrictions, therefore, could result in the

1 unavailability of offsets necessary to achieve the goals of
2 the greenhouse gas plan, and are opposed by Poseidon on this
3 basis.

4 As a member of the California Climate Action
5 Registry, however, Poseidon is committed to acquiring offsets
6 from CCAR and/or CARB to the extent that these entities have
7 offsets that are both available and cost effective.

8 But, given the uncertainty at this point, Poseidon
9 is also seeking authorization to acquire offsets from/through
10 additional respected third-party providers that are members
11 of the offset quality initiative, which includes CCAR. CCAR
12 has recognized several other entities as being reputable
13 suppliers, and we are simply asking to have the ability to
14 gain access to those offset providers. Offsets acquired from
15 these providers would be consistent with AB32 principles for
16 voluntary offsets.

17 With respect to the proposed contingency plan, the
18 carbon offset market is new, and it is unpredictable. In
19 order to address a dysfunction that might occur on the offset
20 market, Poseidon's Plan proposes a contingency that subject
21 to the Executive Director, or the Commission's approval,
22 would allow Poseidon to pay into an escrow fund in lieu of
23 acquiring offsets. Monies deposited into this account, in
24 lieu of purchasing offsets, would be spent on carbon offsets
25 as soon as the market stabilizes and becomes available again.

1 Without such a contingency, Poseidon would be at
2 risk of being in violation with Special Condition 10, in that
3 the event the offsets are not reasonably available.

4 Additionally, Poseidon's proposal would allow
5 Poseidon to opt into carbon offset fee or mitigation programs
6 that may be developed in the future by relevant governmental
7 agencies, so that Poseidon has flexibility to utilize the
8 most efficient and cost effective means to fulfill its
9 commitment on the plan.

10 Poseidon's proposed greenhouse gas plan is
11 estimated to cost \$61 million. Staff's recommendation for
12 gross offsets would increase this amount up to a 5-fold
13 increase in the cost of removing the carbon emissions from
14 the project. Its proposed restrictions on the availability
15 of offsets could result in another 2.5 tons increase in the
16 costs of offsets, in combination, staff's recommended
17 modifications could raise the total cost of the greenhouse
18 gas mitigation imposed upon the project to \$121 million from
19 what we estimate to be \$61 million under Poseidon's plan.

20 We respectfully submit that the additional costs
21 would place an excessive burden on the project, and the San
22 Diego regional water supply.

23 With that, Mr. Chairman, I would like to turn the
24 podium over to Mr. Zbur, who has some additional comments.

25 MR. ZBUR: Good morning, again, Chairman Kruer,

1 and members of the Commission. My name is Rick Zbur, with
2 Latham and Watkins, counsel for the applicant, Poseidon
3 Resources.

4 I would like to now turn to several key issues
5 regarding staff's recommendation with respect to the GHG
6 plan, which we believe should not be adopted, according to
7 the staff recommendation, because they exceed Coastal Act
8 requirements, misapply AB32, are inconsistent with state law,
9 and would inhibit Poseidon's ability to meet the plan
10 requirements over the life of the project.

11 Therefore, for each of the reasons I am going to
12 discuss, Poseidon is asking the Commission to approve
13 Poseidon's plan without staff's conditions, referring
14 specifically Special Condition 10, of the proposed
15 development permit.

16 Although Poseidon's greenhouse gas plan originated
17 as a voluntary commitment, Poseidon agreed to make its
18 voluntary commitment, the voluntary commitment defined by
19 Poseidon, to make it enforceable through Special Condition
20 10; however, the Commission's authority to impose
21 requirements under the plan, beyond Poseidon's voluntary
22 commitment, are carefully circumscribed by three provisions
23 of the Coastal Act. No other Coastal Act provisions are
24 applicable to these issues.

25 The energy minimization features are contained in

1 30253.4, and the plan amply satisfies the coastal
2 requirements to minimize energy use with a \$55 million energy
3 minimization plan, which includes applying reasonably
4 feasible lead standards, as well as energy recovery and other
5 features.

6 In addition, Section 30253 provides the Commission
7 may only impose conditions consistent with requirements --
8 and look at the word requirement -- imposed by CARB. AB32
9 does not impose any requirements on any desalination
10 facilities like the project, and staff cannot point to a
11 single provision in AB32 that imposes a requirement that
12 would be applicable to the project. There is nothing in the
13 staff report.

14 The limitations on the Commission's authority over
15 air programs are underscored by another provision, 30414(a),
16 which expressly prohibits the Commission from establishing
17 any ambient air quality standard, or emission standard, or
18 air pollution control program. AB32 established that
19 greenhouse gas emissions are regulated as an air pollution
20 control program, and they gave exclusive rule-making
21 authority and implementation authority to CARB.

22 CARB has not promulgated any requirements
23 applicable to indirect emitters like the project, and has not
24 adopted programs even governing the voluntary offsets yet.

25 While the staff report suggests that the AB32

1 framework is firmly in place and applies to the project, the
2 fact of the matter is that CARB only released a discussions
3 draft of its climate change draft scoping plan in June of
4 this year, and both AB32 and the scoping plan focused on the
5 regulation of direct emitters -- which the project is not.
6 The scoping plan does not anticipate imposing requirements on
7 indirect emitters in the near term -- like the project --
8 but, rather contemplates developing incentives for voluntary
9 reductions for indirect emitters like the project.

10 To further illustrate how far before the horse
11 staff is putting the cart, CARB will need to undertake a
12 thorough rulemaking process in accordance with the State
13 Administrative Procedures Act before it may promulgate
14 regulations to implement AB32's air pollution control
15 program. That process will require both public review and
16 comment on proposed regulations, and would require CARB to
17 adopt findings that, among other things, to make sure that
18 the regulations are cost effective, feasible, and equitable
19 among sources.

20 To adopt staff's recommendation would be to apply
21 AB32 principles -- which they cite -- which are applicable to
22 CARB's rule-making function directly on the project, and they
23 cannot do that without affording Poseidon, and in doing so
24 would not afford Poseidon, and other indirect emitters, of
25 the important procedural protections contained in AB32 and in

1 state law.

2 Accordingly, by defining principles of AB32 that
3 are applicable to CARB's regulatory process to the project,
4 staff's proposal of a gross offset program violates Coastal
5 Act Section 30414(a) because it would impose an air quality
6 standard, and an emission standard, or an air pollution
7 control program, or all three that is expressly prohibited by
8 the Coastal Act.

9 Staff's proposed carbon offset program is also
10 inconsistent with the standards and rationale underlying CEQA
11 impact analysis. Under CEQA, a project's impact are measure
12 from a baseline, which is the environmental conditions as
13 they exist when a project undergoes the environmental
14 analysis. The use of a baseline allows for a reviewing
15 agency to examine a project's actual impacts as compared to
16 the conditions after the project.

17 For example, under existing conditions, water is
18 imported to San Diego County through the state water project,
19 which requires energy that produces carbon emissions -- if
20 you look at the example. This illustrative example, which is
21 roughly proportionate to the actual impacts, if we assign a
22 value of 100 units to represent carbon emissions resulting
23 from the imported water, then the baseline in the absence of
24 the Poseidon project, is 100 units. Since the Poseidon
25 project would completely replace the imported water, energy

1 is no longer assigned to that imported water, and there are
2 no longer any emissions or carbon use impacts from the
3 importer water. Instead, energy is required to produce
4 Poseidon's water, which would be, roughly, proportionate to
5 125 carbon units.

6 Once Poseidon implements its net offset plan, it
7 would offset 25 carbon units. As a result, the remaining
8 energy required to produce Poseidon's water would have a
9 value of 100 units, which is the same as the existing
10 baseline. Accordingly, Poseidon's net offset proposal would
11 not result in any impacts above the existing baseline.

12 And, with respect to those 100 carbon units, that
13 are in the baseline, those are regulated by CARB, as a direct
14 emitter, so those emissions will be coming down.

15 This slide also shows the impact of the project on
16 the carbon emissions above the baseline, which is what Mr.
17 MacLaggan showed you before.

18 Next slide.

19 Standard CEQA methodology would allow a project to
20 account for beneficial impacts that are reasonably
21 anticipated to result from the project. The replacement of
22 the imported water is not only reasonably anticipated, but it
23 has been confirmed by MWD -- and here is the language in
24 their letter. They have committed to provide Poseidon's
25 customers -- the water district -- with a financial

1 incentive. Receipt of that financial incentive requires the
2 water district to demonstrate that they are replacing an
3 equivalent amount of water from MWD. MWD's program will also
4 verify and audit to insure that the water is replaced.

5 Staff asserts that Poseidon must offset the carbon
6 from the imported water, because it cannot guarantee that it
7 will not be used. Essentially, what they are saying is you
8 have to apply AB32 offset provisions that would apply to
9 credits that are going to be sold on a market to the
10 project's impact analysis. Any project, because it requires
11 that you have a guarantee of that water not being imported,
12 this water would never be applicable to that. So,
13 essentially, the bottom line is that they are requiring
14 Poseidon to offset all of the energy from the replaced water.

15 If water continues to be pumped to Southern
16 California from the state water project, it would be for new
17 or expanded uses. Those new uses would be required under
18 CEQA to address the impacts of importing the new water, and
19 as a result of SB97, the Office of Planning and Research is
20 preparing guidelines for the mitigation of greenhouse gas
21 emissions under CEQA, which are anticipated to be effective
22 next year.

23 Moreover, the attorney general has become used to
24 using his enforcement powers to assure that greenhouse gas
25 emissions are evaluated and mitigated under CEQA. According

1 to staff's proposal, Poseidon would need to offset carbon
2 emissions associated with imported water it is replacing, but
3 since only new or expanded projects would be using this
4 imported water, and those projects are required to mitigate
5 the carbon impacts under CEQA, staff's proposal would result
6 in double mitigation for the same impacts.

7 Using staff's logic, the Commission would require
8 a project using low flush toilets to demonstrate that the
9 foregone water would not be used by another hypothetical
10 project, in order to get credit for it.

11 In summary, there are four fundamental differences
12 between staff's proposal and Poseidon. Poseidon's plan
13 requires offsetting of net emissions, those that are above
14 the baseline, and it defines net -- and its voluntary
15 proposal was that net was defined by the difference between
16 its electrical use and the reduction of the electrical use
17 from the foregone water from the state water project. That
18 was its voluntary commitment. Staff cannot rejigger its
19 voluntary commitment at this time.

20 The second fundamental difference is that staff's
21 proposal also limits Poseidon to an artificial market to
22 purchase carbon offsets. One of the things that is a little
23 bit frustrating is that we submitted mid last week a set of
24 changes to respond to the staff report, which we had only
25 gotten 3 or 4 days beforehand, one of which was to,

1 basically, respond to the staff's concern about having a
2 3-person committee verify the offsets.

3 Our response to that is, we will take away the
4 committee, we'll use CCAR, but we want three other entities
5 that are, basically, equivalent, and in this offset quality
6 initiative to allow us to purchase offsets through. That is
7 part of what is submitted and attached to your revision
8 today, and was not reflected in the staff's comments.

9 This artificial limitation, literally, limits
10 Poseidon to purchase less than 1 percent of its domestic
11 market. We think it makes it unworkable. We want to buy
12 offsets through CCAR, but we ask the Commission to not impose
13 a plan that at the get go, we don't have certainty that we
14 can buy the requisite offsets.

15 Finally, staff recommends that the plan not
16 include any contingency program to insure that the require-
17 ments can be met during times of market dysfunctions.

18 The thing we point out to you on this is that the
19 original plan had the committee making that determination,
20 now the revisions that we gave you have the Coastal
21 Commission staff, or Commission making that determination.

22 **CHAIR KRUEER:** Sir, your time is up.

23 **MR. ZBUR:** Thank you, very much. We appreciate
24 the opportunity to address the Commission, and we request
25 that the plan that is attached to the documents in green be

1 adopted today, and we have given you the motion should the
2 Commission decide to do that.

3 Thank you, very much.

4 **CHAIR KRUER:** Okay, thank you.

5 Before I go into the speaker slips, and again if
6 you are not here to talk about 5.a. the Energy Minimization
7 and Greenhouse Gas Reduction Plan, just let us know, and you
8 can speak at the next one, if that is the one that was your
9 intent. And, then we can move through this.

10 Mr. Reznik, I didn't see a speaker slip. Is your
11 organized presentation for the next item?

12 **MR. REZNIK:** Yes.

13 **CHAIR KRUER:** Thank you, very much.

14 Rachel, this item? yes, greenhouse gas. We don't
15 have your speaker slip in here, so you can do it later, and
16 if this is the one where you want to do your organized
17 opposition, we will provide that.

18 How much time are you requesting, sir?

19 **UNIDENTIFIED SPEAKER:** Roughly 20 minutes.

20 **CHAIR KRUER:** That is fine, sir.

21 **UNIDENTIFIED SPEAKER:** And, I am going to hand it
22 off, initially, to Jonas Minton, from the Planning
23 Conservation League, followed by Dr. Rosenblum, and then I am
24 going to close.

25 **CHAIR KRUER:** Okay.

1 UNIDENTIFIED SPEAKER: Thank you.

2 CHAIR KRUEER: That is fine, sir.

3 MR. MINTON: Good morning, Commissioners, I am
4 Jonas Minton, senior advisor to the Planning Conservation
5 League. For 30 years I worked for the California Department
6 of Water Resources, and including serving as the deputy
7 director. I am going to have two points for you today.

8 First, is that the Carlsbad desalination project
9 will not reduce energy for pumping water to Southern
10 California, or accompanying greenhouse gas emissions.

11 The second point I am going to share with you is
12 why the staff's recommended permit condition is not only a
13 good idea, but it is necessary.

14 As most of you know the San Diego County area
15 receives a large portion of its water supply from the
16 Metropolitan Water District in Southern California, which, in
17 return, receives a large part of its supplies from the
18 California Department of Water Resources where I served.

19 You have received a letter from the Metropolitan
20 Water District indicating that they consider that the water
21 supply from the Carlsbad project to be an offset. But, a
22 very careful reading of that letter does not indicate that
23 they will reduce their pumping of water all the way from
24 northern California to Southern California. This is the one
25 very important reason: San Diego is not their only customer.

1 Even if San Diego did not take the water, Metropolitan is
2 required by its act, its organic act, to provide water
3 supplies to its other customers in Southern California
4 equally, or in some cases even more water intensive, places
5 like the Coachella Valley Water District, San Bernardino
6 Valley Municipal Water District, Castaic Lake Water Agency.

7 Let's go up the water supply chain. If
8 Metropolitan did forego the water supply what would the
9 California Department of Water Resources do? As a former
10 employee, I can tell you it is drummed into our heads that we
11 will comply with the contract, and bond, and covenants used
12 to finance the state water project. In the last 10 years,
13 Metropolitan has received less than 64 percent of the water
14 to which it is contractually entitled. They will take that
15 water. If they don't take that water, the Department of
16 Water Resources is required to deliver it to others. So,
17 although this does supply water for this region, it does not
18 offset energy use or greenhouse gas emissions.

19 Now, to my second point, this is not just an issue
20 of accounting, there real consequences to your actions. I
21 will hand out an abstract of research done by Professor
22 Martin Weisman from Harvard University, and I am just going
23 to go over this very quickly with you, because it is so
24 significant.

25 In looking at the results of the 22 major climate

1 models, he found that there is a 5 percent chance -- that is
2 1 in 20 -- that by the end of this century, earth
3 temperatures will increase by as much as 18 degrees
4 Fahrenheit. One chance in 20. He defines, quote:

5 "At a minimum such temperatures would trigger
6 mass extinctions and biosphere ecosystem
7 disintegration, matching or exceeding the
8 immense planetary dioxin associated in earth
9 history with a handful of previous geo-
10 environmental mega catastrophes."

11 My next handout is an abstract of research showing
12 that at least one previous time in our history we have seen a
13 temperature increase of 22 degrees in just 50 years -- 22
14 degrees in 50 years. Before I prepared this testimony, I
15 tripled fact checked it, because that shocked me, and I was
16 frankly a little concerned giving it today, because it
17 sounded so draconian.

18 Last night, I was in my hotel, and I turned on the
19 TV, and watched a PBS NOAA special on the earth, and they had
20 this same statistical analysis and conclusions. That means,
21 unless we drastically reduce our greenhouse emissions, there
22 is one chance in 20 that our grandchildren will not live out
23 their full lifetime. That is what it means, one chance in
24 20.

25 Lastly, are these questions within your purview,

1 your jurisdiction? yes, they are directly on point. Even a 3
2 degree -- not 18 degrees -- a 3 degree increase in global
3 temperatures will melt the ice sheets. That will increase
4 sea level by over 20 feet. One horrific result, right here
5 where we are today, communities such as this, would no longer
6 be known as Oceanside, but would be know as Ocean -- not that
7 funny, actually.

8 The statistics for climate change, to give you
9 your last challenge, the things or the decisions you make
10 today accumulate. That greenhouse gas emission that goes up
11 there persists for several decades, the results, in our
12 scale, human kind, are irreversible. If within the next
13 decade we see temperatures starting to spiral out of control
14 it is going to be too late to say, "Umm, I'm bad, do over."

15 With that, I encourage you to adopt the staff's
16 recommendation.

17 Next will be Dr. John Rosenbloom giving you
18 additional information about greenhouse gas offsets, thank
19 you.

20 **MR. ROSENBLUM:** I am John Rosenbloom. I am giving
21 calculations of the gas, the greenhouse gas credits for
22 displacing water, and I wanted to show you some slides.

23 While he is looking --

24 So, first of all, I want to address something that
25 is very narrow, just the displacement of imported water, and

1 the greenhouse gas impacts; however, climate change is a real
2 catastrophe, much more than just to this one community, or to
3 the state, it is for the world.

4 And, the other point is that the state water
5 program, and the Colorado system will have to find some
6 water, although they will be faced with inavailability. I
7 just don't think there will be enough water to supply
8 everyone.

9 Now, this is the first slide. Now, this is how
10 the regional water plan intends to provide water. This was
11 the plan, without taking too much climate catastrophe into
12 account. And, at the top there, in the red, under 2010 is
13 the desalination project.

14 So, the first obvious thing is that there is a
15 reduction of imported water -- that is the arrow that I am
16 showing; however, there is also an increase in the amount of
17 water that is required, socalled new water. And, when you
18 look at the numbers -- this is the numbers, and what I am
19 trying to show here is the for all of the measures between
20 these two arrows, some of that water is allocated to
21 displacement, some of it is allocated to new. And, the
22 allocations are 46 percent of any of these measures,
23 including the desalination at the top, are allocated to
24 import reduction; however, 54 percent are new water.

25 So, from there we go and see what the impacts on

1 electrical energy and greenhouse gas emissions are. So, here
2 is a revised graph from what Poseidon showed before. These
3 are all of the imports on the left-hand column, and on the
4 right-hand column, this is how much of those imports can be
5 allocated to the 56,000-acre feet per year of desalination.

6 The rest of the desalination project, as proposed
7 by Poseidon, with the existing power plant replaced, so the
8 water is topped at about 103,000 megawatts hours per year,
9 and then there is some very complex technical issues that
10 would indicate -- given the experience of just about every
11 other seawater desalination project -- is that the boron will
12 become an issue, a very complex technical issue that has to
13 be addressed. It will increase energy conservatively, by
14 about 10 percent, however, it will increase the cost of that
15 desalination plant immensely, and that is something that I am
16 not privi to, yet.

17 So, first of all, only 72,000 megawatt hours can
18 be allocated to displacement of imported water. Poseidon --
19 the equivalent is about 191,000. And, then the rest needs to
20 be offset, create a zero net impact is 241,000, of which
21 Poseidon is proposing, under their vastly increased
22 displacement allocation, they are requesting 56.

23 However, the main issue is the greenhouse gas
24 impacts, and here again, I start with the allocation of
25 deported water to the 56,000, and then we look at what the

1 actual electricity requirement, the greenhouse gas impacts,
2 and I can find 18,000 times a year, credit from imported
3 water, Poseidon is hoping for a lot more.

4 And, then, there is a lot more to create the net
5 zero carbon, indirect, just from the electricity. A key
6 author looked at other, the other elements in Poseidon plan,
7 so they are also larger, except for this, as is stated by the
8 facts, is two-thirds of the amount of greenhouse gas,
9 indirect greenhouse gas emissions.

10 And, then, finally, I believe there is a very
11 strong need for Condition No. 10, very strong, and it begins
12 with independent measurements and verification of
13 performance, and I am not saying just energy, but the whole
14 performance of the plant, which I believe that boron will
15 become a problem.

16 Next, we need an accountable allocation of
17 greenhouse gas offsets, and it appears that the AB32
18 protocols are being developed with CCAR are the best way to
19 do it, and they are an independent way, rather than me, or
20 Poseidon, clashing of experts.

21 And, then, finally, this is the last message, we
22 need an accountable allocation of the costs of the offsets,
23 as Poseidon has said. The market for carbon offsets is very
24 unstable, and anyone who has tracked a European experience
25 can see what speculators and the states can do to that

1 market, that the \$10 per ton that is being proposed as a top
2 is already below what carbon has been traded for, at least
3 \$30 now, and it is inevitable, inevitable, as it is a climate
4 crisis that were inevitable, so those carbon costs will go
5 up. So, in a sense, I agree with Poseidon, it is a very
6 unstable issue.

7 However, they are proposing a virtual smokeless
8 desalination plant, and there are other alternatives, but I
9 won't get into them now, because this is what we are really
10 talking about, these for now.

11 Thank you.

12 MR. REZNIK: Good morning, my name is Bruce
13 Reznik. I am the executive director of San Diego Coast
14 Keeper, and they are pulling up my slide presentation, brief
15 as it is, next. I also wanted to let you know that there is
16 a handout from two consultants on the greenhouse gas that was
17 handed out today.

18 When I met with Commissioner Kruer on this issue,
19 a few days ago, he warned me to take a few deep breaths. I
20 know I get a little emotional, so I am going to try to do
21 that.

22 There is one thing I think everyone agrees, on
23 both sides, which is this is one of the most important
24 decisions this Commission is ever going to make. This sets
25 the policy and direction on water supply and energy, and

1 carbon footprints for the State of California. So, you see,
2 they have all got desal buttons, because they have got more
3 money than we do. I just put on the slide Got Climate
4 Change? We do, we know we do. We see it all of the time,
5 and it will only get worse with this project.

6 I wanted to talk a little bit about the moral
7 issues here, because I think that is what it boils down to
8 for me. Now, this was a quote about civil rights that John
9 F. Kennedy gave shortly before his assassination, but I
10 thought it was relevant:

11 "We face, therefore, a moral crisis of the
12 country and the people, cannot be quieted by
13 token moves or talk. It is time to act.
14 Those who do nothing are inviting shame,
15 those who act boldly are recognizing a right
16 as well as reality."

17 I am asking this Commission to recognize right and
18 reality. Everybody talks about global warming. Everybody
19 acknowledges that the crisis, the moral and environmental
20 crisis we face and the imperative to do something about it --
21 I won't read the list from Al Gore down to all of your
22 appointing authorities. As a matter of fact, some of them
23 are cosigners of AB32, one of them who is up there, "We must
24 simply do everything in our power to slow down global
25 warming, before it is too late." All the way to Pope

1 Benedict, and frankly even President Bush, at this point
2 finally.

3 We don't even need to rely on the scientists. We
4 don't need rely on the scientists, because we can see it with
5 our own eyes. You know, we have had people talk already
6 about the drought. We know we are in an historic drought.
7 We know the Colorado River is drying up. Our reservoirs are
8 at an all-time low. That is the result of climate change.

9 Now, why in God's name would we approve the most
10 energy dependent, and energy intensive project to create
11 local water when there are better options, to acerbate the
12 very problem we are trying to address, is beyond me. If
13 somebody could pull me out in the hallway after this and
14 explain how that makes a lick of sense, please do so.

15 But it is not only drought. It is historic floods
16 faced in the mid-west. It is 11 of our warmest years on
17 record have occurred in the last 13, and it is the most
18 intense hurricane season ever, we all saw Katrina and Rita --
19 and, of course, the fires we have all heard about. And those
20 fires -- and this is related to the 2007 fires down here --
21 are consistent with what climate change in models have been
22 predicting for years. And, most frightening is that massive
23 destructive wildfires could occur even more frequently, at a
24 greater velocity, due to global warming.

25 It is a moral imperative to not add one ounce of

1 carbon to the atmosphere, let alone the 80,000 metric tons
2 this company is trying to put out into our air.

3 The reality is that we need to act now. Dr.
4 Hanson, one of the first people who warn about climate
5 change, said we have used up all of the slack in the schedule
6 for actions needed, otherwise it will become impractical to
7 constrain atmospheric carbon dioxide to a level that prevents
8 the climate system from passing tipping points that lead to
9 disastrous climate change that spirals dynamically out of
10 humanity's control.

11 I don't know what else people need. I don't know
12 if the clouds need to open up -- I mean, indeed, the choice
13 is to walk down and say, we are screwing up the planet. We
14 are doing it fast, and we need to act now.

15 This is the cap, right now. Are we going to take
16 climate change seriously? are we going to do everything we
17 can to address it? or are going to say, we signed AB32, we
18 signed the Kyoto protocols, we had press conferences, we
19 patted ourselves on the back, the problem is solved, we can
20 move on.

21 Well, that is what a lot of folks want to do, but
22 the reality is these are the token measures that President
23 Kennedy was talking about. We need to take real steps, and
24 that is things like Special Condition 10. We need to --
25 this is literally the first step of AB32, and the first step

1 of this state's resolve to take serious actions to address
2 climate change, and this is not going to be done by approving
3 one of the most energy intensive carbon contributing projects
4 ever put forward before this Commission with a plan that
5 offers token reductions.

6 This project will immediately become one of San
7 Diego Gas and Electric's largest, if not the largest single
8 facility consumer of electricity. It is just absurd that we
9 have gotten there.

10 And, I won't get into the legal ramifications. I
11 think your staff has covered it. You have the legal
12 authority. I think it is offensive when I continually hear
13 the voluntary word -- it may be voluntary under AB32, but it
14 is an insult to the authority of this Commission and State
15 Lands, that you couldn't require it, that you did require it,
16 this is a required condition, and not a voluntary condition.

17 And, I am frankly offended when Poseidon gets up
18 here and they talk about carbon neutrality. It happens in
19 every press release: the State Lands Commission, this
20 project's unconditional commitment to be carbon neutral;
21 there is no evidence that it will have an adverse impact.
22 Saying does not make it true. And, the mitigation plan that
23 will mitigate less than 20 percent of their full impact does
24 not make that true.

25 And, well, we know right now, by their own

1 admissions, the facility is going to put out 97,000 metric
2 tons of carbons in the atmosphere every year. We know that
3 that is an under estimation because it doesn't include direct
4 impacts. The only way they get carbon mitigation is saying
5 that there is going to be a 1:1 offset.

6 In the driest time, which you have already heard
7 about in San Diego, do you really believe that we are going
8 to take a drop less of the state water project, the Colorado
9 River water, than we can get? we are going to take every
10 single drop we can get, everyone of you knows it, I know it,
11 Poseidon knows it, everyone in this Commission room knows it.

12 This is new water, and they, themselves,
13 acknowledge it. They say, well, there may be some new
14 projects that, you know, but for our facility, one half of
15 it, but you have to worry about that later. No, we have to
16 worry about that today and now. And, putting off their
17 responsibilities to future projects, is not the way we are
18 going to address climate change.

19 Let's see, I know I am running short on time. The
20 plan also lacks any kind of real specificity. If you read
21 through it, you heard about the reasonable, you know, to
22 become reasonably practical we will follow these standards,
23 we are exploring roof top voltaic, photo voltaic, 30 percent
24 reasonably available, that is not good enough.

25 And, it is not the job of this Commission, by the

1 way, to provide corporate welfare to insure that a project
2 that would otherwise not be approved, be cost effective, is
3 made so by passing off the costs of carbon impacts and marine
4 impacts to the people of San Diego, the people of California,
5 and future generations. We know we need water. Nobody has
6 said that more than Coast Keeper.

7 There are better options out there, like
8 conservation and recycling that are more energy intensive.
9 This decision today is going to be judged by history, and
10 when future generations look back on this Commission, are
11 they going to say, what in God's name were these people
12 doing, at a time when we needed to be do everything we could
13 to stop and slow climate change, to approve the most energy
14 intensive plan, with just a hint of reductions, despite the
15 promises of Poseidon. Are they going to look back at the
16 bold leadership provided by this Commission setting a course
17 for water and energy policy in California, for my children
18 and grandchildren, our children and grandchildren, your
19 children and grandchildren? I pray to God it is the latter.

20 Thank you.

21 **CHAIR KRUER:** Thank you, sir.

22 And, with that, Rachel Solorzano, for
23 Assemblymember Mary Salas, and then after that, Melissa
24 Jones, executive director of the Energy Commission.

25 **MS. SOLORZANO:** Good afternoon, Commissioners, I

1 am here on behalf of Assemblymember Mary Salas.

2 Assembly member's district includes the cities of
3 Imperial Beach, Chula Vista, National City, Coronado, and San
4 Diego. Our constituents are served by the Sweetwater
5 Authority, which has signed a long term purchase agreement
6 with Poseidon Resources, for 2400-acre feet of water.

7 There is no doubt this project will help us meet
8 the needs of our region by providing a drought-proof supply
9 of water that is locally produced and locally controlled.

10 With the state of emergency now in effect in
11 numerous counties throughout the state, it is vital to San
12 Diego to lessen its dependence on imported water, and the
13 Carlsbad desalination project will help us to do so.

14 It is clear the Commission shares, based on your
15 approval of the project's Coastal Development Permit last
16 year. Assemblymember Salas supports the permit conditions
17 the Commission attached to the project last. Poseidon's
18 energy minimization and greenhouse gas reductions plan offers
19 precedent setting commitment and the marine life mitigation
20 plan is complete and comprehensive. Both plans meet the
21 project's obligations under the Coastal Act.

22 We ask that you approve these two plans as they
23 are proposed, and refrain from any additional mitigation
24 requirements that are unjustified and threaten the financial
25 viability of the project.

1 Time is of the essence, and we cannot afford to
2 put off the construction of this landmark project. I
3 respectfully ask you to please finalize approval of the
4 Carlsbad desalination project today.

5 Thank you.

6 CHAIR KRUEER: Thank you, very much, Ma'am.

7 Melissa Jones, Kevin Sharrar.

8 MS. JONES: Good morning, for the record, my name
9 is Melissa Jones. I am an executive director of the
10 California Energy Commission. It is a pleasure to be before
11 you today.

12 First, I think it is notable that the Poseidon
13 project demonstrates that desalinization of ocean and
14 brackish waters is becoming an important element in
15 California's strategy to meet its water needs. The Energy
16 Commission's long study, of both ocean and brackish water
17 desalinization, and its industry and research approved
18 technologies are to address issues associated with
19 desalination.

20 The Poseidon project is consistent with our
21 efforts to improve the efficiencies of the environmental
22 effects of desalinization, and to lower its costs to
23 customers. Towards those ends, this project's plans for
24 mitigation are laudable.

25 Poseidon's voluntary commitment to offset 100

1 percent of its net or incremental increase in greenhouse gas
2 emissions above the baseline conditions, along with their
3 lack of growth-inducing impacts, is a ground breaking
4 commitment on Poseidon's part.

5 Poseidon's plan to mitigate carbon emissions from
6 the increase of electricity requires it to deliver its
7 project water to customers, as compared with the baseline of
8 current electricity required to serve those customers from
9 the state water project, is supportable.

10 The city and the Coastal Commission's environ-
11 mental analysis have both concluded that the project will not
12 cause growth-inducing impacts. I was recently informed that
13 Poseidon has applied for membership -- and they may already
14 be a member -- of the Climate Action Registry, and that they
15 are committed to follow the accounting protocols for
16 reporting emissions and reductions. We believe that this is
17 an important step forward in making sure that the reductions
18 are verifiable and all possibly accounted for.

19 I support the project, and would answer any
20 questions, if you have any.

21 CHAIR KRUEER: Thank you, Ms. Jones, for coming
22 here today.

23 Kevin Sharrar.

24 MR. SHARRAR: Thank you, for the opportunity to
25 speak today. My name is Kevin Sharrar, and I live in

1 Carlsbad with my wife, Tracy, and my two children, Braden and
2 Savannah, the four of us are fortunate to live in what is
3 arguably one of the most beautiful places in the country,
4 Carlsbad. We have beaches, lagoons, the flower fields,
5 hiking trails, and so many other places to enjoy our natural
6 environment. My family really loves it here, and we hope
7 that when Braden and Savannah grow up, they call it their
8 home, as well.

9 But, quite honestly, I worry about Carlsbad, and
10 frankly all of San Diego County, to what the future holds,
11 specifically, I don't believe enough attention has been paid
12 to our overall water supply, something too many of us take
13 for granted. Our water supplies depend on outside sources,
14 the Colorado River, and Northern California, and we don't
15 have enough water supplies, locally, of our own.

16 So, what happens to us when the drought worsens
17 and our imported water continues to get shut off? To be
18 candid, we, the people of San Diego, can't afford to keep
19 going on the business-as-usual mentality. Frankly, life as
20 we know it is changing, changing on all levels.

21 The time is now for us to embrace new and
22 innovative solutions to cure our present day water supply
23 deficits, the deficits that we currently have, and as well as
24 meet our needs in the future, so that future generations,
25 like Braden's and Savannah's, will be afforded the

1 opportunity to live in San Diego, that we have all come to
2 enjoy, including having water coming out of our tap.

3 We need a water supply solution that is
4 dependable, and environmentally sensitive. I support the
5 Carlsbad desalination project because it is that type of
6 water supply solution.

7 We ask lastly, I would like to leave you with this
8 thought: I believe that each and every one of us will
9 fundamentally leave two things for our children to consider
10 and ponder once we are gone, their inheritance, and our
11 legacy. Granted, inheritances aren't at issue today, but
12 perhaps legacies are. I respectfully submit that your legacy
13 could include the vision and determination to help provide
14 dependable water for their future. I am confident that my
15 legacy will.

16 Please approve Poseidon's submitted greenhouse
17 reduction plan today, thank you for your attention.

18 CHAIR KRUEER: Thank you, sir.

19 Nancy Donaven, I think it is, and then Carlton
20 Lund, and Joey Ricano.

21 [No Response]

22 Nancy is not here.

23 MS. DONAVEN: I'm here.

24 CHAIR KRUEER: Oh, I see, there she is, I'm sorry.
25 We have time, so take your time, Nancy.

1 **EXECUTIVE DIRECTOR DOUGLAS:** And, again, Mr.
2 Chairman, we are talking about the greenhouse gas mitigation
3 plan, and not whether or not the overall project is -- you've
4 already approved that.

5 **CHAIR KRUER:** Yes, that is true. He did wind it
6 up --

7 **EXECUTIVE DIRECTOR DOUGLAS:** I noticed that.

8 **CHAIR KRUER:** -- and I am trying to be fair and
9 let everybody from the public, easier on the findings, and
10 there is a little overlap here, I am sure, but I agree with
11 you.

12 Ms. Donaven, is it?

13 **MS. DONAVEN:** Yes, Nancy Donaven, from Huntington
14 Beach, good morning, Commissioners -- I think it is still
15 morning -- Commission staff, and others present.

16 I came here today for one thing, and that is to
17 ask you, please, to protect the ocean and the air we breathe.
18 AB32 was passed in 2006 and is on its way to helping
19 California cope with the issues of global warming, and
20 consequent destruction of our earth.

21 I went back to New York a few weeks ago, and
22 visited a beach where I lived during the summers of my
23 childhood. The fish trawlers are gone. The clam bed which
24 was so prolific is gone, and so are the black skimmers who
25 were there by the hundreds, all in two generations.

1 As Commissioners, you have the responsibility of
2 protecting our coast from the depredations which seem to
3 convenient to businesses. We must not be in a business-as-
4 usual mode. We must not be in a business-as-usual mode. We
5 must be in a mode of asking what needs to be done to preserve
6 our coast and to make up for the depredations which have
7 already occurred.

8 I leave it to your individual consciences to
9 decide what needs to be done with this desalination project.
10 Remember that there are other methods to obtain more water so
11 that anything that this project does to add to our greenhouse
12 gases is a negative.

13 What other ways? why conservation and recycling
14 the water, of course. Well, conservation is not more water,
15 it means better use of water. Recycling would provide a
16 bigger supply and the carbon footprint would be a lot
17 smaller, and less destruction to the ocean, than desalination
18 of seawater.

19 One other thing, we have a very talented and
20 dedicated staff. I hope you will heed their advice, you and
21 I, too, pay for it, why not take advantage of their
22 expertise?

23 Thank you, very much.

24 **CHAIR KRUER:** Thank you, Ma'am.

25 Carlton Lund, and again, Joey Racano, then Mark

1 Massara.

2 MR. OWEN: Mr. Chairman, members of the
3 Commission, Carlton left his time to me, and I don't think
4 you remember me from November, but I brought several dozen
5 people with us, and I would like to release them and speak
6 for them, if you would give me, perhaps, some time. I do
7 have a speaker slip in there.

8 CHAIR KRUER: Sir, everybody gets 3 minutes, so if
9 somebody wants to speak for the 3 minutes, we have already
10 the organized presentations, but we cannot afford more than 3
11 minutes per speaker.

12 MR. OWEN: Oh, I am fine. I have less than 3
13 minutes.

14 CHAIR KRUER: Yes, what is your name, sir, and go
15 ahead.

16 MR. OWEN: Ted Owen.

17 CHAIR KRUER: Ted Owen, yes, sir, go ahead.

18 MR. OWEN: Good morning, and thank you very much
19 for bringing your hearing here to us today, instead of us all
20 having to traverse to another location. My name is Ted Owen.
21 I am the president and CEO of the Carlsbad Chamber of
22 Commerce. We are the tenth largest Chamber in the state, and
23 I represent about 75,000 employees.

24 I am here in support of the Carlsbad desalination
25 project. Out of consideration for your time -- and thank you

1 for giving me Carlton's time -- instead of each of our
2 Chamber members speaking, I will, hopefully, speak for the
3 majority of them today.

4 As you know, California is in the midst of one of
5 our worse droughts in years, and San Diego's imported water
6 supplies have been hit very hard. The future of our imported
7 water in San Diego County is very dim. Protecting our
8 economy and public health is important to the people standing
9 before you today, and to the thousands more throughout this
10 county who support this project and have been following its
11 journey for the last 10 years.

12 While 10 years is a long time to wait for a
13 project, everyone agrees we need, 10 years is a long time to
14 wait for a project that scientific studies have proven can be
15 built and operated without negative impacts to the environ-
16 ment.

17 Recognizing food and gas prices, the mortgage
18 industry meltdown, and unpredictable economies, have made the
19 people of San Diego County both angry and somewhat scared.
20 Now, we are being asked to restrict our water use, and to add
21 insult to injury we are going to be required to pay more for
22 less.

23 The Carlsbad desalination project offers the
24 region a viable solution. The two mitigation plans before
25 you today fulfill Poseidon's obligations under the Coastal

1 Development Permit you issued last year, in fact, Poseidon's
2 voluntary -- I believe -- greenhouse gas plan is
3 unprecedented.

4 As you consider your staff's proposed
5 modifications to these plans before you today, please ask
6 yourself these two questions: does the Coastal Act give the
7 Coastal Commission the legal authority to require the project
8 to abide by AB32 criteria when the project isn't regulated
9 under AB32? and, secondly, most importantly, what are the
10 costs associated with the staff's proposed modifications to
11 the mitigation plan, and how would these costs impact the
12 ratepayers and the project's financial viability? The
13 doubling the costs would be devastating.

14 I don't believe this Commission approved a project
15 last year only to burden it with mitigation costs that
16 ultimately threaten its existence. Poseidon's proposed
17 mitigation plans meet the project's obligations under the
18 Coastal Act, and will insure the project is environmentally
19 denied.

20 We urge your leadership in approving the
21 mitigation plans today, and make sure they are fair,
22 justifiable and protective of the ratepayers.

23 Thank you, very much for letting me take this
24 time.

25 CHAIR KRUE: Thank you, Mr. Owen.

1 Mr. Racano, and again, we are on the Greenhouse
2 Gas Reduction Plan -- and why do you think I mention that to
3 you?

4 MR. RACANO: Because you thought I was going to do
5 my "I have a dream" speech.

6 CHAIR KRUER: Yes, and you have three minutes,
7 sir. We are glad you are here.

8 MR. RACANO: Oh, thank you, thank you, Chair
9 Kruer, it is always a pleasure to come before this
10 Commission, and today is no exception.

11 Much, as was the case with the California Energy
12 Commission's staff when their IEPR report that definitively
13 showed the problems associated with once-through cooling,
14 here is no exception. Your crackerjack staff has come up
15 with an excellent idea, to hold profit-making accountable
16 here on the coast of California. I support you in your
17 endeavor to protect our coast, and our precious coastal
18 resources, and I think that to take advantage of staff's work
19 on this would be a good idea, and a good move in that
20 direction.

21 Of course, I am aghast that there are those who
22 see our coast as a profit center, and I feel we should be
23 desalinating our waste water streams so as to bring about
24 sustainability; however, right now I did want to come before
25 this Commission and thank you for all of your hard work.

1 I urge you to support staff on this, thank you.

2 CHAIR KRUEER: Thank you, Joey Racano, thank you,
3 very much.

4 Mr. Massara, then Patti Krebs, then Ed Kimerau --
5 can't read it.

6 MR. MASSARA: Honorable Chair, Commissioners, I am
7 Mark Massara, representing the Sierra Club's Coastal Program.

8 Commissioners, preliminarily, we are not here to
9 contest your abandonment of California's long held policy
10 prohibiting privately owned profit-based residential fresh
11 water desalination facilities, or the wisdom of subjecting
12 Carlsbad and San Diego water ratepayers to the most expensive
13 fresh water in the history of the United States -- you
14 considered and crossed that one-way bridge last November.

15 Today, we would like to address the climate change
16 and greenhouse gas emissions, and atmospheric impacts that
17 were unknown, unaddressed, and unmitigated in your November
18 '07 approval of this project, and to oppose Poseidon's
19 inadequate and self-serving plan presented here today. Your
20 job is not to make this project and its applicant profitable,
21 but instead to protect the health of the coast.

22 Poseidon claims, in the PR, that they are off-
23 setting greenhouse gas emissions and impacts 100 percent.
24 But, you know, from the fine print, that this is a ruse, it
25 is a scam, it is untrue and it is a fiction. You know that

1 Poseidon wants to establish a committee they would dominate
2 to evaluate and address impacts. You know that they can, if
3 they choose, walk away from the entire offset commitment, and
4 simply pay \$10 a ton for emissions.

5 Similarly, this fiction that water imports would
6 be reduced 1:1 with Poseidon's water is a tall tale, as well,
7 given the inclusion of zero growth controls of conservation
8 measures associated with this plan.

9 In sum, the Poseidon plan is untethered and
10 unconnected to any verifiable or measurable scheme whereby it
11 can ever be independently known if success is achieved.

12 Commissioners, the only way to assure success is
13 to tie the Poseidon plan to reality, to the state's AB32
14 program and goal. It doesn't matter whether the facility is
15 strictly regulated by AB32 or not. It only matters that it
16 is tied to some coherent, rational and measurable process.
17 For this reason, we are submitting over 400 letters from
18 around the State of California in support of urging you to
19 support your staff's recommendations and not abandon them
20 here today.

21 Thank you.

22 CHAIR KRUER: Patti Krebs.

23 MS. KREBS: Good morning, Mr. Chairman and
24 Commissioners. My name is Patti Krebs and I am with an
25 organization called the Industrial Environmental

1 Organization, and we promote corporate environmental
2 responsibility and sustainability. As an industry
3 association, we are also very closely involved with the
4 implementation of AB32, and in fact I served as a member of
5 one of the statutory committees in AB32, the Economic and
6 Technology Advancement Advisory Committee.

7 ARB has a very aggressive program. They have
8 already set target reductions by sectors. They are already
9 in rule development for early actions, and the sectors are
10 also already under mandatory reporting, and those include
11 power plants, cement producers, landfills, and refineries.

12 The ARB plan is aggressive, but it is also
13 methodical, it is incremental, it is designed to meet the
14 goals, but it is fair to businesses, as well.

15 Desalination is not in a capped sector, it is a
16 downstream user. The ARB scoping plan has just been
17 released. It is not even due for adoption until later in the
18 year. The appendices just came out last week. While cap and
19 trade is in the plan, as well as offsets, those have not yet
20 been approved. The Western Climate Initiative also was just
21 San Diego last week, their plan is being developed.

22 Progressive corporate citizens like Poseidon join
23 the Climate Action Registry. This is the way that companies
24 can have their reductions tracked, they can have them
25 validated and accounted for. And, the Climate Registry is

1 very highly regarded, and they have achieved results that can
2 be shown, and measured.

3 Poseidon has gone above and beyond what they are
4 planning in their Greenhouse Gas Reduction Plan, and we would
5 urge you to support it as they have submitted it.

6 Thank you, very much.

7 **CHAIR KRUER:** Thank you, Ms. Krebs.

8 Ed Kimura, Sara Honadle.

9 **MR. KIMURA:** Thank you, Mr. Chairman and members
10 of the Commission. My name is Ed Kimura. I am here speaking
11 on behalf of the San Diego Chapter of the Sierra Club.

12 We concur with the staff to modify the energy
13 minimization and gas reduction plan. The other thing I would
14 like to add -- and I will be very brief about it -- is that
15 there is this concern that AB32 does not apply. I would beg
16 to differ with you, because one concern that I have that
17 hasn't been discussed is that while there is a climate
18 change, a temperature change, the area that carbon dioxide
19 impacts is the ocean acidification. This is a growing
20 problem throughout the world, and it certainly is going to
21 start effecting us here along the coastal areas.

22 The second item I have to recommend, that hasn't
23 been discussed so far, is to consider the energy minimization
24 problem over the life cycle of the project. That means
25 taking into consideration what is sometimes called cradle-to-

1 the-grave planning, and that has been used in an economic
2 sense and from an engineering standpoint, to do the cost
3 evaluation cradle-to-the- grave, but here we should be
4 looking at it from the standpoint of minimizing electrical
5 energy demands.

6 So, therefore, I would certainly recommend that as
7 an addition, and those conclude my comments, thank you.

8 CHAIR KRUEER: Well, what we are going to do is to
9 try to break for lunch around 12:30, or so. So, we are going
10 to have to stop in the middle, and I hate to do this, but we
11 have way too many speaker slips to go through. There is
12 probably 45 more, and no one would get a change to eat. So,
13 we are going break for lunch in a little bit here.

14 What we are going to do is to stop going through
15 the speaker slips, keep this order, and continue the public
16 hearing until after we come back from lunch, and I'll give
17 you that time after we go through a few public speaker slips.

18 Director Douglas, do you have a problem with any
19 of that?

20 EXECUTIVE DIRECTOR DOUGLAS: No.

21 CHAIR KRUEER: Okay, and because the hearing is
22 still open, and we are discussing the subject, please during
23 the lunch break you are welcomed to talk to any of us, but
24 don't talk to us about any of these items that are on the
25 agenda, because we have already done our ex partes, and it

1 would be inappropriate to discuss anything with us in regard
2 to this item, or the next item.

3 12:10 p.m.

4 [Public Speakers Heard, Lunch & Closed Session Taken]

5 CHAIR KRUEER: Now, we still have, and we are going
6 to continue and move through the process, and there are quite
7 a few speaker slips here, and if you don't feel the necessity
8 to use the whole 3 minutes, please don't, and don't reiterate
9 what some other people are saying, if possible.

10 We will continue on 5.a., the Condition Compliance
11 on the approval of Energy Minimization and Greenhouse Gas
12 Reduction Plan. And, again, if you would stay with your
13 issues and questions, and agree or disagree with the plan, or
14 what you think it should be, it is appreciated, and if you
15 don't need to speak, or you are really on 5.b. let us know,
16 and we will just keep going, otherwise we are going to be
17 here a long time.

18 Sara Honadle.

19 MS. HONADLE: Good afternoon, Sara Honadle, I am a
20 member of the Surfrider Foundation, and a resident, along
21 with my 2 daughters and husband, in the Vallecitos Water
22 District.

23 Primarily, first and foremost I am a parent. My 8
24 and 9-year old daughters are very aware of our climate change
25 issues. They come back to me after a day at school,

1 concerned about the rising water levels that are projected in
2 their lifetime, and, I would be remiss not to address their
3 concerns this afternoon.

4 You have, within your ability today, to consider
5 all of the data that you have been presented with. Some of
6 that, I believe, is pretty biased. Obviously, project
7 proponents are going to give you the best possible spin to
8 make their greenhouse gas emissions as minimal as possible,
9 and your own staff has stated, sort of opposite that.

10 So, I would urge you to follow the recommendations
11 previously presented by Bruce Reznik, on behalf of Coast
12 Keeper and Surfrider, and at the very least, your own staff.

13 Thank you.

14 **CHAIR KRUE:** Thank you, Ma'am.

15 Andrew Sienkiewich -- I am sorry, I cannot
16 pronounce it, and thank you for staying sir.

17 **MR. SEINKIEWICH:** Thank you, Mr. Chairman, and
18 members of the Commission, Andrew Seinkiewich, with the
19 Metropolitan Water District. There were a number of comments
20 made by earlier speakers that made reference to our
21 organization. I would like to express our position, and
22 perhaps a few points of clarity.

23 First of all, we do believe it is appropriate for
24 the project's greenhouse gas plan to be based on offsetting
25 net carbon emissions, and this is because when this project

1 turns on -- the 56,000-acre feet turns on, it will reduce
2 56,000-acre feet of demand off of the Metropolitan system.

3 In particular, by "net" what we mean is the
4 difference in the energy-related emissions required for
5 moving water through the state water project, as compared to
6 operating a desalination plant.

7 Now, we felt previously, and informed you that we
8 are supporting the project financially. We have made a
9 decision to support this desalination project, and four
10 others. It is a \$900 million commitment, in financial
11 incentives. We will be paying upwards of \$250 for each acre
12 foot that is produced for 25 years. The reason we are doing
13 this is because it makes good economic sense, when you look
14 at the regional water supply reliability strategy. The
15 alternative would be to import more water, as opposed to
16 developing these local resources.

17 When you look at it, we are backing not only
18 desalination plants, we are backing recycling and
19 conservation, anything we can do in local water management,
20 makes sense from a regional perspective.

21 Now, we are paying money so people don't buy our
22 water, why are we doing that? because we defer infrastructure
23 costs and expansion of our system in the future. I point
24 out, the state water project is not fully developed, as the
25 demands go up, we will have huge costs in terms of enlarge-

1 ments on the facility.

2 Also, I would like to point out that in years like
3 this, when the state water projects apply is very limited. A
4 project coming on like this, would still defer the use of our
5 system, and that is because on top of the water that
6 contractually moves by the State of California through the
7 project, we are engaged in water transfers. We are still
8 going to use the same infrastructure, the same pumping plant,
9 still moving water through the system that sources other than
10 derived from the state water project, and those are
11 expensive, and a project like this would help us avoid those
12 costs.

13 So, I thank you, and again we believe that net is
14 the way to go, thank you.

15 CHAIR KRUER: Thank you, sir.

16 Patti Kreb -- spoke already. And, Ted Owen, you
17 spoke, I see another slip in here.

18 Faith Picking, Stefanie Sekich.

19 MS. PICKING: Good afternoon, Chair and
20 Commissioners. Thank you for visiting us, and for allowing
21 me to speak on behalf of the Poseidon desalination plan, and
22 in support of the adoption of their mitigation plans.

23 CHAIR KRUER: Could you state your name, for the
24 record, please.

25 MS. PICKING: My name is Faith Picking, and I am

1 here representing Bio-Com. Bio-Com is an association of over
2 550 life science companies, and related service providers in
3 Southern California.

4 In the past two decade, Southern California has
5 become a magnate for the life science companies, amounting to
6 one of the largest life sciences coffers in the world. In
7 San Diego, alone, the life science companies support over
8 37,000 employees with an annual local economic impact of
9 approximately \$8.5 billion.

10 With that being said, none of this would even be
11 possible without a reliable supply of clean water to support
12 the current and expanding needs of the life science
13 industries. Water is critical in the research, development,
14 and manufacturing of life science products. For many
15 companies, this one item may be their deciding factor for
16 them coming to Southern California. Life science companies
17 need water in order to be successful. We cannot survive
18 without it.

19 Given the current economic and water crisis,
20 California needs concerns the state's supply of water in
21 order to promote the success of Southern California's life
22 science industry. Desalinization is a central part of a
23 diversified water strategy, by which Southern California can
24 address its long term water needs.

25 And, therefore, on behalf of Bio-Com, I strongly

1 urge you to approve the final permit for the Poseidon
2 Resources desalination project.

3 Thak you, very much.

4 Thank you, Ma'am.

5 Larry Porter, Robin Everts, Keith Lewinger.

6 **MR. LEWINGER:** Good afternoon, Mr. Chairman,
7 members of the Commission. My name id Keith Lewinger. I am
8 here today speaking on behalf of the board of directors of
9 the San Diego County Water Authority. I chair the water
10 authority's water planning committee. I am also general
11 manager of the Fallbrook Public Utility District.

12 The water authority testified last December at the
13 initial hearing in favor of the project, and we appreciate
14 the Commission's action to approve the permit for the
15 project. We encourage very swift resolution of the
16 outstanding conditions -- like today.

17 This project will provide our region with reliable
18 new local supplies of 56,000-acre feet, about 8 percent of
19 the total supply needed for San Diego County.

20 As you just heard from the Metropolitan Water
21 District, that 56,000-acre feet is water that will then not
22 have to be pumped over the Tehachapis. Earlier, you heard
23 Mr. Jonas Minton say, "Well, that won't reduce the amount of
24 water that the state water project delivers."

25 Well, he is right, but what he forgot to tell you

1 was that the vast majority of the state water contractors are
2 north of Tehachapis. Metropolitan Water District is south of
3 the Tehachapis, so the water that is saved won't have to be
4 pumped over the Tehachapis; therefore, you should consider
5 the net result of energy saved, and carbon credits.

6 Water supplies from this agency will serve
7 agencies who have contracted to purchase water from Poseidon,
8 and it will replace imported water that would, otherwise, be
9 pumped over the Tehachapis, as I just mentioned.

10 As such, the water authority supports the approach
11 whereby direct, indirect carbon emissions associated with the
12 importation of water, offset by the project, are netted out.

13 Further delays in this project will complicate the
14 water authority's task of providing reliable water for the
15 region. Earlier, you heard speaker talk about we should be
16 doing conservation, we should be doing recycled water,
17 instead of this project. I beg to differ. We need to do all
18 of those things. No one of them is a silver bullet.

19 In the Southern California region, Metropolitan
20 Water District has estimated that we need 200,000-acre feet
21 of conservation, and we need 200,000-acre feet of
22 desalination, and we need 200,000-acre feet of recycled
23 water. No one of them will solve our problem, so you can't
24 be picking and choosing which one you want, you need them
25 all, and this water will offset 56,000-acre feet of water

1 delivered to the San Diego region.

2 That 56,000-acre feet could be on line by 2011 if
3 you approve the Conditions today. In 2011 that could be the
4 difference between stressed ponds and dead ponds. That could
5 be the difference between mandatory cutbacks to our
6 customers, or voluntary conservation. That 56,000-acre feet
7 could mean the difference between economic growth, and
8 economic shutdown.

9 I urge you to approve the offsets based on net
10 reductions. Thank you.

11 CHAIR KRUEER: Thank you, sir.

12 Larry Porter, Robin Everts.

13 Mr. Porter?

14 MR. PORTER: Yes, sir, Chairman Krueer, and members
15 of the Commission, my name is Larry Porter. I am with
16 Residents for Responsible Desalination, and I want to bring
17 up the point again, when I inappropriately spoke before.

18 The man from Metropolitan and the man from the San
19 Diego County Water Authority did not show you a letter that
20 was a declaration and/or a determination by the Metropolitan
21 Water District that these offsets would actually happen.

22 Metropolitan has not said that they will deliver
23 56,000-acre feet less of water, which is the water that
24 Poseidon is intending to deliver. That fact, that is a fact,
25 that is a fact, and all you are hearing from these folks are

1 illusions. Well, yes, it could reduce, but there is no fact
2 that says Metropolitan has agreed that it will deliver that
3 amount of water left. So, the argument that is being used
4 doesn't hold any water, thank you, Chairman Kruer.

5 CHAIR KRUER: Thank you, sir.

6 Robert Simmons, Chris Dugan.

7 MR. SIMMONS: Mr. Chairman, may I ask somebody to
8 give me a verbal cue when I have 30 seconds left?

9 CHAIR KRUER: Yes, sir, we will do that.

10 MR. SIMMONS: Thank you.

11 CHAIR KRUER: State your name for the record.

12 MR. SIMMONS: My name is Robert Simmons. I am a
13 retired professor of Biology with USD, former chief trial
14 counsel for the Sierra Club. I have about 20 years
15 experience dealing with coastal water issues, similar to
16 those that are before you today.

17 I am very familiar with this project, and I am
18 here to say that both mitigation plans that have been
19 submitted to you by Poseidon are good plans. They fully
20 comply with the applicable facts in the case, your require-
21 ments delivered last November are reasonable, consistent with
22 the Coastal Act, and they ought to be implemented by you by
23 adoption today without modifications or delay.

24 I am disheartened to hear good friends of mine,
25 like Bruce Reznik, testify to you today that he urges you not

1 to, quote, not to add one ounce of greenhouse gas to the
2 atmosphere. He, and several others who I know, and have
3 worked with, argue you to reject the plan by Poseidon, in
4 favor of restrictive and preemptive expensive modifications.

5 What saddens me with this is that these very
6 people who are asking you to forego one ounce of greenhouse
7 gases, are seeking to stop a project that will provide
8 drinking water for 112,000 families in San Diego.

9 With respect to the issue that is before you right
10 now, the position of your staff is incomprehensible to me,
11 impressing you to impose modifications that are not only not
12 necessary, are illogical, and erroneous, at least contrary to
13 law. On the one hand, your staff tells you that, yes,
14 Poseidon is not subject to the mandates of AB32, but on the
15 other hand they then tell you --

16 CHAIR KRUEER: You have 30 seconds, sir.

17 MR. SIMMONS: -- the right to compel it.

18 On the one hand, nobody has explained why staff is
19 recommending a full offset credit to Southern California
20 Edison, a direct producer of greenhouse gas, and at the same
21 time denying it to Poseidon. And, thirdly, you are hearing
22 from staff, well, we can't rely upon an offset because there
23 is no guarantee that the water that Poseidon will be
24 replacing, will be replaced. But, you have a letter from
25 Metro saying --

1 CHAIR KRUER: Mr. Simmons, time, please.

2 MR. SIMMONS: -- that it will be replaced, well,
3 Commissioners --

4 CHAIR KRUER: Thank you, for your testimony.

5 MR. SIMMONS: -- this is nonsense. Don't delay
6 this by continuing this process of spinning wheels, and
7 minimizing the importance of this project.

8 Thank you, for your indulgence.

9 CHAIR KRUER: Thank you.

10 Andrea Cook, Dr. Cook.

11 MR. COOK: Thank you, for listening to us today.

12 My name is Andrea Cook. I am a Ph.d. climating scientist,
13 and have been tracking carbon molecules around the earth for
14 almost 20 years, am I not acquainted? I have been tracking
15 these things, and where they go, and how the carbon cycle
16 works, and the whole thing about climate change, and
17 greenhouse gases, and how they interact with the other
18 impacts of water, et cetera.

19 I am no longer collecting my own data, I have
20 switched into being an implementer of climate changes.
21 Scientists create the data, and now we want to take what we
22 know and implement acquiring greenhouse gas reductions as
23 soon as we can.

24 This plan that is before you now goes towards --
25 steps towards reducing our greenhouse gas emission in an

1 unprecedented way. Our nation has not signed onto doing
2 this, our state has, our local jurisdiction has, and this is
3 way out front and where we are trying to get, in terms of
4 greenhouse gas reductions, and mitigations for climate
5 change, and it considers the water impacts, and the
6 greenhouse gas impacts.

7 We have reviewed Poseidon's plan. Their plan is
8 solid. There are ways to do it. We are on Board. We work
9 here locally. We are willing, through our organization, the
10 California Center for Sustainable Energy, to help guarantee,
11 and to work with CARB, that they get credits that make sense,
12 and are good credits.

13 I don't want anymore greenhouse gas emissions.
14 They have signed up to lead here in San Diego in showing how
15 industry can do that, and it is doing it ahead of AB32, and
16 the AB32 is coming, will soon be in place, but it is not in
17 place now. All of the rules are not set up. We do not know
18 exactly how these systems will work. We are developing
19 systems on multiple levels that will come together.

20 To restrict it to one certain way that isn't
21 developed yet, is difficult. There are opportunities that
22 will be developed over the years, and should be, I believe,
23 should be made available to them. They want to make
24 reductions, they want to make them now.

25 I am concerned about stopping it any longer. We,

1 certainly need the water, we need the greenhouse gas, and we
2 need precedent that says, companies will do this, they are
3 willing to do this, if this is how you do it, how you make it
4 real and solid, and this is setting precedent. You don't
5 throw the baby out with the bath water.

6 We just went through this in Chula Vista, in some
7 level, working with them on their emissions, and they have
8 already reduced their emissions from their operations. They
9 are going out into their community in doing it. They have
10 agreed to implement the greenhouse gas standards for energy
11 efficiencies, and outdo it by 15 percent. And, yet the press
12 comes out and says, well, you gutted it because you went for
13 15 percent rather than 20.

14 This is an historic step forward, and this is one
15 of them, and I think you should go with the Poseidon plan as
16 it is, and let them do the reductions now.

17 Thank you.

18 **CHAIR KRUER:** Thank you, Ma'am.

19 Ronald Lekles, Jr. and Chuck Badger next, and
20 Rachel Davis after that.

21 **MR. LATHAM:** Good afternoon, my name is Ronnie
22 Latham, the associate executive director at the Magdalena
23 Ecke Family YMCA and aquatics park.

24 For more than 50 years the YMCA has operated in
25 this aquatic park in Aqua Hedionda Lagoon. They are known as

1 Camp H20. The YMCA aquatic park is a summer camp geared
2 towards kids between ages of 7 years old, to 17, offering
3 affordable day camp activities, including swimming, kayaking,
4 paddle boat, row boating, and fishing.

5 The camp plays an important role in educating the
6 youth about precious marine environments, and the need to
7 preserve the lagoon for future generations.

8 I am here to urge you to accept Poseidon's
9 proposed Marine Life Mitigation Plan. I also hope that you
10 have -- that you will take advantage of Poseidon's commitment
11 to serve as a long term steward of the lagoon, once the power
12 plant is decommissioned. The lagoon means a lot to the YMCA
13 families, and we should not take its long term preservation
14 for the lagoon -- not take the long preservation for granted.

15 Poseidon should be given the opportunity to
16 demonstrate that its Marine Life Mitigation Plan will benefit
17 the lagoon.

18 Thank you for your support of the YMCA.

19 CHAIR KRUER: Thank you, sir.

20 Chuck Badger.

21 UNIDENTIFIED SPEAKER: [Inaudible]

22 CHAIR KRUER: Okay, we will put you down for 5.b.
23 then, thank you, Ma'am.

24 Bob Simmons, Kevin Byrne.

25 [No Response]

1 Jack Griffith, Ofelia Escobedo.

2 UNIDENTIFIED SPEAKER: She is not here.

3 CHAIR KRUEER: Thank you.

4 Gary Arant.

5 MR. ARANT: Mr. Chairman, members of the
6 Commission, my name is Gary Arant, and I am general manager
7 of the Valley Center Municipal Water District.

8 I am here today representing my agency and 8 other
9 public water agencies in this region that have signed -- and
10 this is important -- takeorpay [sic.] contracts for
11 desalted seawater from the Carlsbad Poseidon Plant.

12 I am also here today representing the Association
13 of California Water Agencies, an association that represents
14 450 public water agencies, serving over 90 percent of the
15 water used in California.

16 Since you approved this project last year, a
17 couple of important things have happened. Flows through the
18 Sacramento delta have been reduced, and the Governor has
19 declared a statewide drought.

20 Currently, my customers in my agency are suffering
21 a 30 percent cutback, mandated cutback in imported water
22 supplies, and this is affecting agricultural customers
23 throughout San Diego County.

24 VWR and the state water plan has called for the
25 state to diversify its water resources, to secure our long

1 term needs, and desalinated seawater is an important element
2 in that diversification. The longer it takes to bring this
3 project on line, the more perilous our situation becomes.
4 Additional delays in this project will only make our
5 conditions worsened.

6 We encourage the Commission to take action today
7 to finalize the permit, and the conditions to the permit.

8 As you have heard from your own staff, Poseidon's
9 greenhouse plan is voluntary. The project is not regulated
10 under AB32. As to the issue as to whether they should
11 mitigate net, or gross demand, I will point out that in the
12 urban water management plans, and the resource management
13 plans of Metropolitan, the water authority, my agency, and
14 the other member agencies of the water authority, that the
15 desalted seawater is counted upon as a source of supply, and
16 will replace on a 1:1 basis imported water coming to this
17 region. So, in our view, the mitigation plan should address
18 the net energy impact.

19 And, in general, the mitigation plan should be
20 fair, and should let this project remain a financially viable
21 project.

22 So, again, I would encourage your Commission to
23 finalize this permit today by approving the Greenhouse Gas
24 Emission Plan, and also the Marine Life Mitigation Plan.

25 Thank you.

1 CHAIR KRUER: Thank you, sir.

2 Chris Duggan, Angelika Villagrana, next after you.

3 MR. DUGGAN: Okay, good afternoon, Chairman Krue, and honorable Commissioners, I am Chris Duggan. I am with
4 the San Diego Regional Economic Development Corporation.
5

6 As we are all aware, and as we have heard numerous
7 times here that California is in a crisis. We do have a
8 drought, it is serious, and it is statewide. Our ability to
9 attract and maintain high paying jobs depends on affordable
10 dependable water supplies.

11 On the issue that you have before you today, the
12 EDC urges this Commission to adopt Poseidon's energy
13 minimization greenhouse reduction plan. Poseidon's energy
14 minimization and GHG reduction plan is comprehensive. It
15 fully complies with Special Condition 10.

16 When we look at the plan's performance criteria,
17 we feel that it is strong, and the voluntary commitment is
18 there to mitigate the project's indirect GHG emissions,
19 through the minimization of energy by implementing new
20 technologies, and high energy efficiency designs, also
21 through the purchase of offset credits, funding
22 reforestation, and lastly putting in place the oversight
23 measures that need to be there.

24 This plan identifies feasible mitigation
25 opportunities, and provides regulatory assurances that the

1 implementation of the mitigation plan will continue to be
2 subject to a state agency's coordinated process to insure the
3 best available mitigation feasibility.

4 Again, on behalf of the San Diego Regional
5 Economic Development Corporation, we urge you to support
6 Poseidon's plan.

7 Thank you.

8 CHAIR KRUEER: Thank you, sir.

9 Angelika Villagrana.

10 MS. VILLAGRANA: Thank you, Mr. Chairman,
11 Commissioners. My name is Angelika Villagrana, I represent
12 the San Diego Regional Chamber of Commerce, its 3,000
13 members, and their 400,000 employees.

14 The San Diego Chamber has been a long time
15 supporter of the desalination project. We have testified in
16 support before many agencies, and we were also before you
17 last year.

18 We have been kept informed by Poseidon as to the
19 various conditions that were added as the project moved
20 forward, and as Poseidon continued working on its mitigation
21 policies, and we have been assured and we are confident that
22 adequate safeguards are in place to mitigate environmental
23 issues.

24 The project is an excellent additional tool to
25 diversify our water supply, especially, with historic

1 droughts hanging over all of our heads right now. This extra
2 resource is critical for our region, and for our economy.

3 As many of us are still trying to get our arms
4 around AB32 implementation, we believe that Poseidon has
5 stepped up and done a good job with its mitigation plans;
6 therefore, the San Diego Regional Chamber of Commerce urges
7 you to approve the mitigation plans submitted by Poseidon,
8 and not delay the project any further by adding additional
9 conditions.

10 It is in all of our interests to get this
11 additional water source now on line as soon as possible,
12 thank you.

13 **CHAIR KRUER:** Thank you, Ma'am.

14 Jim Schmidt, and then Corie Lopez, Fred
15 Sandoquist.

16 **MR. SCHMIDT:** Chairman Kruer, and Commissioners,
17 Jim Schmidt, retired banker and attorney. I am representing
18 San Diego East County Chamber of Commerce, representing the
19 cities of El Mesa, El Cajon, Lemon Grove, Spring Valley, an
20 unincorporated area.

21 I just would like to, again, urge you to only
22 approve the requirements and modifications that Poseidon
23 agrees with, because that is very important, and that would
24 include their position on the greenhouse gas.

25 This project is a must for the San Diego region.

1 We are at the end of the line on resources for water. Back
2 when I talked to you last fall, I told to you about the
3 horror stories I faced, I saw up in Monterey and Santa
4 Barbara, the horror stories on water. When you have a water
5 problem and you can't water your lawns, et cetera. It was
6 unbelievable what I saw up there. We don't want to face
7 that.

8 One of the underlying issues you have here, people
9 that oppose everything. They oppose growth. They oppose new
10 growth, new housing, new roads, whatever. One of the facts
11 that I want to mention about San Diego County, on growth, the
12 number one growth issue here, why we are growing, is we are
13 living too long. The San Diego Association of Governments
14 show that in 2030, people over 65 years old are going to
15 increase 134 percent, almost 2.5 times. So, I hope the
16 opponents are not going to argue against the use of
17 prescription drugs, because that is helping me to live a lot
18 longer.

19 But, San Diego needs more water. Let's approve
20 this project as Poseidon has suggested, and again, with
21 people living longer that is the issue of growth, and I hope
22 that continues, and I hope we all continue to live longer,
23 like all of you, I hope when you age to 65, you are still
24 here, thank you.

25 **EXECUTIVE DIRECTOR DOUGLAS:** Let the record show

1 staff supports growth through age.

2 [Audience Reaction]

3 CHAIR KRUEER: Okay, Corie Lopez, Chris Sandoquist.

4 MS. LOPEZ: Good afternoon, my name is Corie
5 Lopez, with Food and Water Watch. We are a non-profit
6 consumer advocacy organization. We promote clean and safe
7 water to all public.

8 We certainly believe that the Carlsbad
9 desalination plant has the potential to create more problems
10 than it will solve. So, regulatory agencies, and other
11 experts, have expressed concern over the environmental
12 impacts the Carlsbad desalination plant will have on our
13 sensitive coastal areas, and greenhouse gas emissions.

14 Although, we do not support the construction of
15 the Carlsbad desalination plant, it has already been
16 approved, and as it moves forward we want to insure that the
17 health and safety of the public, and environment, are
18 protected.

19 Food and Water Watch, and other members of this
20 community are concerned with the potential loss of oversight
21 to make society comply with environmental regulations, and
22 conservation practices. Poseidon has a track record of not
23 being transparent. One way to help insure Poseidon complies
24 with environmental regulations, and is transparent, is for
25 this Commission to adopt their staff's recommendations.

1 Thank you.

2 CHAIR KRUER: Thank you, very much.

3 Fred Sandoquist.

4 MR. SANDOQUIST: Mr. Chairman, I'll hold my
5 remarks to Item 5.b.

6 CHAIR KRUER: Okay, thank you, sir. We will put
7 you down for 5.b.

8 Again, anyone else, we encourage that, if you want
9 to do that.

10 Christopher Cole, I believe it is, and Kimberly
11 Thorner.

12 UNIDENTIFIED SPEAKER: If you would call a number
13 of speakers ahead, it would help, please.

14 CHAIR KRUER: I have been doing that, okay.

15 UNIDENTIFIED SPEAKER: Thank you.

16 CHAIR KRUER: Thank you.

17 MS. THORNER: I have "good morning" written down,
18 so good afternoon. I am actually thankful it is not evening,
19 when I was here last time. My name is Kimberly Thorner. I
20 am the general manager of Oliveheim Municipal Water District.

21 I am here today speaking on behalf of VOCAL, and
22 VOCAL stands for Voice of the Consumer at the Local Level.
23 VOCAL is an organization of several water agencies in San
24 Diego County, including Fallbrook Public Utilities District,
25 Oliveheim Municipal Water District, Otay Water District, and

1 Padre Dam Municipal Water District, together we represent
2 over 400,000 rate payers in San Diego County.

3 Several of VOCAL's members have joined me in the
4 audience today, and in the interest of your time, I'll convey
5 the groups comments on the matter before you today.

6 VOCAL was organized so that water ratepayers had a
7 voice in Sacramento. Unlike the Metropolitan, the DWI, the
8 water authority, we are retail water agencies. As such, we
9 are the ones who interact with the rate payers, on a daily
10 basis. We are also the ones that are held directly
11 accountable for the delivery of reliable and affordable
12 water.

13 Many of you are elected and appointed officials.
14 You know what it means to be held directly accountable. We
15 take that obligation very seriously. We know you do, as
16 well.

17 The bottom line for VOCAL is that San Diego must
18 become water self sufficient. We can no longer depend on the
19 bay delta in its environmentally damaged condition. The bay
20 delta conservation plan, even if it were implemented, would
21 be 7 to 10 years before Southern California could see any
22 water from that plan. We cannot wait for that to happen, and
23 VOCAL focuses on desalinated water, recycled water, and
24 conservation. Echoing the sentiments of one of the previous
25 speakers, you need all three of those for Southern

1 California.

2 We are also focused on getting through the
3 regulatory requirements on these projects, to get them on
4 line, so that they mean real water.

5 We are here today asking the Commission to
6 finalize its approval of the Carlsbad desal plant mitigation
7 plans. We urge you to bring to a close the 2-year permitting
8 process on a project that should have rightfully been built
9 years ago.

10 We also ask the Commission to be mindful -- to the
11 limits of its regulatory authority -- the mitigation
12 requirements that are placed on this project must be
13 justifiable, and they must be based on the project's
14 obligations under the *Coastal Act*.

15 We appreciate staff's due diligence, but the
16 amendment they are asking you to make to Poseidon's
17 greenhouse gas and wetlands mitigation plans are unprecedent-
18 ed. Excessive and arbitrary mitigation will unnecessarily
19 drive up the project's costs. These costs are going to
20 ultimately be passed on to the San Diego ratepayers, the
21 customers that we serve. We do not believe this is what you
22 had in mind when you approved this project 9 months ago.

23 On behalf of VOCAL, we appreciate the Commission's
24 actions today, and your support for fair, justifiable and
25 affordable permit conditions, so that we can get this project

1 moving and on line.

2 Thank you.

3 CHAIR KRUEER: Thank you.

4 Robert Gilleskie, Eric Munoz, and Stefanie
5 Ungerson.

6 MR. GILLESKIE: Good afternoon, Mr. Chairman,
7 members of the Commission, thank you for the opportunity to
8 speak to you this afternoon. My name is Robert Gilleskie,
9 and I represent the California Center for Sustainable Energy.
10 We are an independent non-profit, sponsoring the responsible
11 use of energy technologies.

12 And, I am here this afternoon, not as a project
13 proponent, but as one who is the independent evaluator for
14 Poseidon's repts to make this project carbon neutral, not
15 just carbon neutral, but to minimize their use of energy.

16 After a thorough evaluation by our staff, our
17 energy experts, we have concluded that this project is indeed
18 sound. In fact, Poseidon has broken new ground in its
19 proposal. To the best of our knowledge, this is the only
20 major -- I mean major infrastructure project in the State of
21 California that is being designed to be net carbon neutral
22 from the start.

23 This plant will not only provide an alternative
24 source of energy, and a source of water for San Diego County,
25 but it will also set an excellent example of how to implement

1 AB32.

2 Thank you.

3 CHAIR KRUER: Thank you, sir.

4 Eric Munoz.

5 MR. MUNOZ: I'm on 5.b.

6 CHAIR KRUER: Okay, thank you, sir, 5.b.

7 Stephanie Jungersen, John Steinbeck.

8 MS. JUNGENSEN: Good afternoon, my name is
9 Stephanie Jungersen, and I'm here on behalf of the San Diego
10 North Economic Development Council. It is my pleasure to
11 testify before you today.

12 The San Diego North Economic Development Council
13 is a coalition of private and public sector entities working
14 together to grow and sustain the economy of the north county.
15 As you can imagine, our ability is to attract and retain
16 businesses, and link partially to San Diego's attractive
17 climate and environment.

18 Our economic stability is also tied to the
19 availability of water resources. Many of San Diego's high
20 tech and bio-tech companies are clustered in north county,
21 and rely on high quality water for manufacturing, and
22 operations. San Diego County must have access to a more
23 reliable, drought proof, and locally controlled supply of
24 water to sustain our economy and our quality of life.

25 On behalf of all of our members, and all of our

1 employees, we respectfully ask the Commission to approve
2 Poseidon's proposed mitigation plans.

3 Thank you.

4 CHAIR KRUER: Thank you, Ma'am.

5 John Steinbeck.

6 MR. STEINBECK: I'm on 5.b.

7 CHAIR KRUER: Merle Moshin, John Scott.

8 [No Response]

9 John Scott, Merle Moshin, William Ruckel.

10 MR. SCOTT: My name is John Scott, and I am 77
11 years old, so I guess I am part of the problem, according to
12 an earlier speaker.

13 I had other remarks prepared for today, but
14 because of the Chair's admonitions, I decided to modify
15 those. I live in Huntington Beach, and I live between AES
16 and OCSD. As the result of that, I consider myself to be
17 somewhat of an expert on pollution. OCSD emits about 2 tons
18 of pollutants into the air each day, and now they dump
19 somewhat less than 200 million gallons of pollutants into the
20 ocean each day. AES dumps about 2 tons of pollutants into
21 the air, in my neighborhood each day, and they dump God knows
22 what into the ocean.

23 Carbon neutral seems to have a couple of different
24 meanings for different groups here. Poseidon seems to have
25 one understanding of it, and environmentalists seem to have

1 another. Let me tell you what I think is carbon neutral. I
2 have had for over 20 years panels that heat my water, and for
3 most of the year I don't use any gas to make the hot water
4 that I need. Two years ago, I put 20 solar panels on my
5 roof, and those panels produce all of the electricity that I
6 need. I don't -- my bill from Edison is \$5 each month for
7 services, and nothing for electricity.

8 My back yard is filled with native plants. On
9 these hot days I give each of those plants 2 gallons of
10 water, and that is more than adequate for them. Every two
11 weeks I wash the panels, and when I do I wonder what in God's
12 name is the Coastal Commission doing? Those panels are just
13 absolutely filthy, and if your charge is to clean the air,
14 then I think you need to look at my solar panels and see what
15 the air contains.

16 CHAIR KRUER: Mr. Scott.

17 MR. SCOTT: Yes.

18 CHAIR KRUER: Your time is up, sir, thank you for
19 coming.

20 MR. SCOTT: That was the fastest 3 minutes I've
21 ever seen.

22 CHAIR KRUER: They get fast when you are 77,
23 right? like me, and well, I am getting there, so they go
24 pretty fast.

25 William Ruckel, and David Nydegger.

1 I'm sorry, Ma'am, I am sorry, what is your name?

2 MS. MOSHIE: My name is Merle Moshie.

3 CHAIR KRUER: Go ahead, Ma'am.

4 MS. MOSHIE: I am president of Residents for
5 Responsible Desalination, a party to the meet and greet in
6 Huntington Beach, California.

7 My questions, and my apprehensions regarding the
8 findings, mitigations, compliances, and plans for the
9 Carlsbad desalination plant, revolve around how all of these
10 would fit into a plan by Governor Schwarzenegger and Diane
11 Feinstein to bring to the November ballot a bipartisan
12 comprehensive water bond. The bond would one, improve the
13 conveyance of water by including a significant investment in
14 healing and safe guarding the Sacramento San Joaquin delta
15 delivery system. It would increase water storage facilities,
16 such as reservoirs, and ground water aquifers. It would
17 emphasize heavily conservation and reclamation. It would
18 protect a healthy environment.

19 We simply hope that any finding by the Commission
20 will not conflict with this sort of comprehensive plan. It
21 would appear that allowing a global profiteer to piecemeal
22 efforts at desalination up and down the California coast does
23 not lend itself well to a comprehensive plan.

24 Lastly, for those of you who think you know the
25 Governor well, he remains a quixotic figure, as witnessed by

1 the 1 percent sales tax increase suggestion in today's paper,
2 and he may well decide that his legacy -- as did Pat Brown --
3 lies in his creating a lasting water solution to our water
4 crisis. And, we can only hope that desalination, as proposed
5 by Poseidon Resources, plays little or no part at all in this
6 development.

7 Thank you.

8 **CHAIR KRUEER:** Thank you, Ma'am.

9 William Ruckel and David Nydegger. Mr. Nydegger,
10 go ahead, sir.

11 **MR. NYDEGGER:** Evening, Chairman Krueer, members of
12 the Commission, my name is David Nydegger. I am the
13 president and chief executive officer of the Oceanside
14 Chamber of Commerce here in Oceanside. We have over 900
15 businesses I'm representing.

16 The business community is very, very concerned
17 about the future of water as it relates to the business
18 community. We have substantial agriculture in the area.
19 They have already been hit with fires, been hit with frost,
20 have been asked to reduce their water consumption by 30
21 percent, so this is a very, very serious issue.

22 We would like very much for you to support
23 Poseidon in their efforts, and make the desal plant a
24 reality, thank you.

25 **CHAIR KRUEER:** Thank you, sir, and thank you for

1 testifying.

2 Michael Cowett, and Joel Levin, and Don
3 Christianson.

4 **MR. COWETT:** Good afternoon, Michael Cowett, law
5 firm of Best Best and Krieger. We serve as general counsel
6 to the Sweetwater Authority, Valley Center Municipal Water
7 District, Santa Fe Irrigation District, and special counsel
8 to Oliveheim Municipal Water District, Ricon del Diablo, and
9 Rainbow, six of the nine retail agencies that have contracted
10 to purchase desalted water, speaking in favor of Poseidon's
11 greenhouse gas reduction plan, to offset net impacts of the
12 greenhouse gas emitted to produce the recycled water.

13 The main point here is that the reason that these
14 six agencies contracted to purchase desalted water is to
15 replace imported water, not to increase their water supply,
16 and that is subject to audit by the Metropolitan Water
17 District, that is, we are planning to serve existing
18 customers, not new customers.

19 The purpose was to enhance the reliability of our
20 water supply, in light of the uncertainties, environmental
21 constraints, and drought conditions that are impacting the
22 delta.

23 The project will mitigate for the incremental gas
24 emissions needed to produce desalted water. If water users
25 in the San Joaquin Valley, or other areas of California

1 increase the supply of pumped water, we believe it is those
2 users who should pay for the mitigation of that increase, not
3 the customers who are buying the desalted water in San Diego.
4 We urge your support for the Poseidon plan, thank you.

5 CHAIR KRUEER: Thank you, sir.

6 Joey Levin.

7 MR. LEVIN: My name is Joel Levin -- got to work
8 on my writing, I think. I am the vice president of the
9 California Climate Action Registry. The registry has been
10 referenced quite a bit here today, so I thought it would be
11 useful to come up and in my 3 minutes give you a little over
12 view of the registry, and what we do and what we don't do.

13 The California Registry is a nonprofit 501(c)(3)
14 organization. We were chartered by California state law in
15 2001, and given a mandate to do two things: first, to develop
16 broadly recognized accounting standards for measuring
17 emissions, and emission reductions of greenhouse gases; and
18 second, to establish a registry, where these things could be
19 tracked and publicly reported, or not, an advocacy
20 organization. We, generally, don't take positions on public
21 policy issues, probably the only one in the room here today
22 that can say that.

23 In our registry for entity footprints we have over
24 360 organizations that are tracking and publicly reporting
25 their greenhouse gas emissions through our system, including

1 many of California's largest companies.

2 More recently, we have turned our focus to
3 developing a registry for greenhouse gas reduction projects.
4 In developing our project protocols, or accounting standards,
5 we seek to build on existing international best practices,
6 and come up with standards that can be broadly accepted by
7 industry, environmental community, regulators, and local
8 communities. It is not a simply task, but it is one that I
9 think we have been quite successful, as evidenced by the
10 strong support for our program from all of these sectors.

11 It is also reflected in the composition of our
12 board, which includes representation from such diverse
13 organizations as California EPA, Metropolitan Water District,
14 Shell Oil Company, Pacific Gas and Electric, Goldman Sachs,
15 the Sierra Club, and the Natural Resources Defense Council.
16 These are all folks on our board, and I think you will agree
17 that it is quite a diverse mix.

18 We currently have five approved project protocols,
19 three for different types of forestry projects, plus land
20 fill methane capture, and agricultural methane capture. We
21 have about another 10 protocols under development over the
22 next year and a half.

23 Once the project has been carried out and
24 verified, the developer is credited with the appropriate
25 number of offsets in their account on the climate action

1 reserve, and the offsets can then be traded with anyone else
2 who has an account in the system, or they can be permanently
3 retired.

4 The reserve has a very high degree of public
5 transparency. This is part of our philosophy as an
6 organization, so if for example Poseidon were participating,
7 and they were committed to retire a certain number of tons of
8 offsets, the retired tons, along with detailed information
9 about the projects they came from, the protocols they were
10 calculated under, and to verify that they used, would all be
11 visible to the public on our web site.

12 The reserve component of our program is like new,
13 and has been in operation for about 2 months. We currently
14 have two projects that have been registered, with a total of
15 about --

16 CHAIR KRUER: Sir, your time is up.

17 MR. LEVIN: Okay.

18 CHAIR KRUER: Thank you, very much.

19 MR. LEVIN: Thank you.

20 CHAIR KRUER: Don Christianson.

21 MR. CHRISTIANSEN: Good afternoon, my name is Don
22 Christiansen. I live in Carlsbad. I am a long term advocate
23 of seawater desalination, and renewable energy. I am also an
24 advocate of sustainability. I view sustainability as a
25 three-legged stool. There is the environmental component,

1 the social component, and the economic component. You need
2 all three legs to have balance, and balance is the key. It
3 doesn't have to be perfect. It has to be stable enough to
4 support whatever the issue is.

5 At this time, we are discussing water and
6 electrical energy. We need water for life. We use
7 electrical energy to improve our quality of life.

8 There have been years of due diligence on
9 Carlsbad's proposed seawater desalination plant to get us
10 where we are at this point in time. There has been much talk
11 in the past about conservation. Conservation is a good
12 thing; however, whether it is water or electricity, we can't
13 conserve what we don't have. and the more sources of supply
14 we have, whether it is water or electricity, the more
15 reliable we are, or our sources are.

16 There has been a lot of talk about climate change.
17 Recently, I attended a meeting where the guest speaker was a
18 professor from Scripps Oceanographic. When of his takeaway
19 points was look for wet areas to get wetter, and dry areas to
20 get drier. With that, I would like to welcome you all to the
21 California coastal desert.

22 The greenhouse gas reduction plan calls for being
23 net carbon neutral for electricity used. I look at this as
24 progress on the sustainability front. There is an old saying
25 that the devil is in the details. I request that you don't

1 get hung up on the details, and end up forfeiting the greater
2 good of a drought proof water source, because of a quixotic
3 quest for perfection.

4 The three legs of sustainability do not have to be
5 perfect to achieve the goal of a sustainable drought proof
6 water supply. I encourage you to think globally, assess
7 regionally, act locally, by approving this project with no
8 further conditions.

9 I appreciate your time, and the opportunity to
10 share my opinion.

11 CHAIR KRUER: Thank you, sir.

12 Jack Minnon, Tom Lemmon.

13 MR. MINNON: I'll speak on 5.b.

14 CHAIR KRUER: On 5.b., thank you, sir.

15 Tom Lemmon, and after that Milt Dardis, and after
16 that, Joy Shih.

17 MR. WIDDICK: I am going to speak in place of Tom
18 Lemmon, if that is all right. He had another meeting to
19 make.

20 CHAIR KRUER: What is your name, and you need to
21 put a speaker slip in.

22 MR. WIDDICK: I'll have to do a slip?

23 CHAIR KRUER: Yes, that's it, just --

24 VICE CHAIR NEELY: Afterwards.

25 CHAIR KRUER: Afterwards, go ahead.

1 **MR. WIDDICK:** Okay, my name is Mike Widdick.

2 Good afternoon everyone, my name is Mike Widdick.

3 I am a business agent with the Teamsters Construction here is
4 San Diego, and I am speaking on behalf of Tom Lemmon, who is
5 the business manager for San Diego County Building and
6 Construction Trades Council.

7 The Carlsbad desalination project will create good
8 jobs, and have a tremendous positive impact on thousands of
9 San Diego workers and their families.

10 Right now, the quality of life for San Diego's
11 working families is being threatened by many things, lack of
12 affordable housing, as we all know, soaring gas prices,
13 driving costs for groceries and everyday goods, and rising
14 water rates.

15 The California Coastal Commission has the power to
16 help clear the way for new jobs, and address San Diego's
17 water supply crisis by finalizing this approval of the
18 Carlsbad desalination facility.

19 I urge you to issue your final approval of the
20 Carlsbad desalination plant today, and let us get to work,
21 thank you.

22 **CHAIR KRUE:** Thank you, sir.

23 Joy Shih, and then Doug Korthof.

24 [No Response]

25 Okay, neither one are here? okay.

1 With that -- oh, go ahead, sir.

2 MR. KORTHOF: Doug Korthof, and I am a member of
3 the general public, and I come from Seal Beach, and I have
4 good news, and bad news, but it is the same. The good news
5 and the bad news there will never by a geyser of water coming
6 from desalination. You know, we have to rely upon other
7 methods, such as conservation, and reclamation. That is the
8 facts.

9 The outrageous thing here, we are talking about,
10 Poseidon says there are no impacts to their air pollution.
11 The idea that this is all new water, all old water, is very
12 difficult to swallow. In reality, what will happen is it
13 will go into new construction, and you know, we have 200
14 gallons a day goes in, and 100 gallon a day goes out in
15 sewage, and the more people the more usage.

16 Some of this water will probably all go to new
17 construction, because you have to have new water before you
18 can justify new construction.

19 Now, this is an enormous use of energy. It is
20 about \$500 in current prices per acre foot in electrical
21 costs alone, that is the electrical costs. And, it is
22 extremely energy intensive.

23 Now, MWD says they will pay \$250 in subsidies, but
24 what the reality is, is that we will pay, all over
25 California, we will be chipping in for San Diego's water, and

1 \$250 will be the start of it -- if it ever happens -- and
2 there will be much more. It will be by a geyser of money from
3 everybody in California, as MWD is nothing but us.

4 What I suggest, if Poseidon has a problem finding
5 offsets, and I think that you have to worry about things like
6 credits. The California Air Resources Board hands out
7 credits like candy. They give extra credits, partial
8 credits, and credits all over the place. The only real
9 credits that count are the benefits to the communities.

10 I suggest that it would be a lot easier for
11 Poseidon, so long as it exists in this incarnation -- we know
12 it is not going anyway -- why don't they do something like
13 finance solar power? We installed solar power systems all
14 throughout California, and Poseidon could do something like,
15 you know, the amortized costs for solar power on your roof is
16 less than the cost of the utility electric that it replaces.

17 So, if Poseidon puts in solar power on the roofs
18 of houses in Carlsbad, you know, it wouldn't have to cost
19 them any money at all. All they would have to do is float
20 the bonds, could be public service bonds, tax free bonds, put
21 in solar power, and the vast majority of the money comes from
22 the citizens. They could, maybe, give a little bit extra,
23 and finance it, and the majority of the money and the private
24 property -- the roofs come from the citizens, and this would
25 be a real benefit for the local communities. It wouldn't

1 involve arcane credits, and replanting trees that are just
2 going to be burned down again as the climate is changing, and
3 would actually have a benefit for the people of Carlsbad, and
4 Oceanside, and all of San Diego.

5 So, I think that that would be the best way, if
6 you are going to do offset credits, you know, so long as
7 Poseidon exists, which will be for long.

8 CHAIR KRUEER: Thank you, sir.

9 And, with that, that was the last speaker slip,
10 and now we are going to have rebuttal. We will go back to
11 Mr. Zbur, and you have five minutes for Poseidon.

12 MR. ZBUR: Good afternoon, Chairman and members of
13 the Commission. I just wanted to make a couple of responses,
14 and then Mr. MacLaggan, I think, will finish, if I have any
15 additional time.

16 First point I wanted to address was Mr. Mitton's
17 assertion that we have asserted that water will not be used
18 in other places. That is actually not accurate. What we
19 have said is that Poseidon's customers, the water districts,
20 have agreed to replace the water, and therefore that the
21 water that is replaced, where that goes is speculative, but
22 wherever it goes, CEQA will apply to require those people to
23 mitigate it.

24 So, our view is that the new users of the water
25 should be responsible for the environmental mitigation of

1 that. That is consistent with CEQA methodology. That is
2 consistent with -- we have assurances that the attorney
3 general will enforce that.

4 In addition, this Commission determined that the
5 project was not growth inducing. That was part of your
6 findings. The requirement that Poseidon be assigned the
7 mitigation for the replaced water is just not consistent with
8 the determination that you have already made that the project
9 is not growth inducing.

10 Another point that we wanted to address is the
11 request by Mr. Massara that the AB32 criteria should apply to
12 the energy reduction from replaced water. This is really the
13 key issue related to the growth versus net issue, and is the
14 crux of what is before the Commission. Essentially, what the
15 staff does is they apply these vague principles to the
16 replaced water, which, in effect, would impose the growth
17 requirements, because the principles would require that the
18 replaced water would have contractual agreements that the
19 replaced water would be retired and not used by anyone. That
20 effectively would not allow -- it effectually imposes the
21 growth requirement.

22 Your staff has indicated that it does not have the
23 expertise in this area to evaluate this. Each of the
24 agencies that are responsible for the implementation of AB32,
25 have supported Poseidon's ability to take credit for the

1 replaced water, and in the packets are the letters from the
2 California Air Resources Board, the California Energy
3 Commission, the Resources Agencies are in the blue packet we
4 distributed. They have supported the net approach, and
5 supported Poseidon's calculation of the net approach.

6 Finally, the last point I would like to raise is
7 with respects to the references to the committee to verify
8 the offsets that was originally in the Poseidon's proposal.
9 I am a little bit frustrated, in that what we are asking you
10 to adopt today is the proposal that is attached to your green
11 sheet. We made a number of changes to respond to the staff's
12 concerns when we got the staff report a week ago Friday. We
13 got those into the staff, and the staff has not responded to
14 the changes that we made to address their concerns.

15 One of those was that they said that they had a
16 concern about the committee verifying the offsets. The
17 committee that we had originally proposed, included Poseidon,
18 it included CCSE, the California Center for Sustainable
19 Energy, and the San Diego APCD, a three-member committee.

20 The APCD had concerns about their ability to do
21 this, because of their authority, so that was an issue that I
22 think was valid upon the staff's part. They recommended,
23 instead, that we buy all of our offsets through CCAR. We
24 have not problems buying our offsets through CCAR. We think
25 they are a high quality verifier. Our concern is that CCAR

1 is in very early stages of the implementation.

2 As you heard, they have three forestation
3 protocols, one for land fills and one for dairies. That
4 really limits the offsets we can buy in the early year, and
5 while we are hopeful that they will progress fast with these
6 other protocols out there, we want to be able to buy offsets
7 in the broadest market to keep the costs reasonable.

8 So, what we have done is, the proposal you have
9 takes out the committee that the staff had concerns about,
10 and it says we will buy credits through CCAR, or three of the
11 other entities that are all part of the offset quality
12 initiative, which are listed in your program, that we think
13 that they are equivalently high quality entities. CCAR is
14 one of the four entities that is a member of that quality
15 initiative, and includes some other think tanks that don't
16 sell credits, but that is what we are proposing. So, we do
17 think that these are CCAR equivalents. It would broaden out
18 the market, and that is really our proposal.

19 There are some other things that are in there,
20 that we tried to respond to the staff's concerns, which I
21 don't think I am going to have time to go through, but we
22 would be happy to walk you through that if you have any
23 questions related to the proposals.

24 So, the main things that are in that are the
25 differences on gross and nets, and in order to apply the net

1 approach, you need to not apply these AB32 principles to the
2 offsets to the replaced water. The application, by
3 definition, means that Poseidon cannot take credit for it.
4 The other main differences are the CCAR issue, with the three
5 other entities, and the two contingency plans.

6 If I have any more time, I would like to --

7 CHAIR KRUER: You don't.

8 MR. ZBUR: No, so.

9 CHAIR KRUER: Thank you.

10 MR. ZBUR: We will close.

11 CHAIR KRUER: Appreciate it.

12 With that, I will close the public hearing and go
13 back to staff for staff response.

14 Mr. Luster.

15 ENVIRONMENTAL SPECIALIST LUSTER: Thank you, Chair
16 Kruer. I'll start with a number of comments.

17 First, in response to the last comment by Mr.
18 Zbur, staff did respond to Poseidon's latest changes last
19 week. We concurred with Poseidon's proposal to allow the use
20 of CARB, CCAR and additionally any programs adopted by state
21 air districts for any of their emission reduction programs.

22 We did not concur with Poseidon's proposal
23 allowing use of programs developed by any government entity.
24 We weren't sure how widespread that would be, that could
25 include all sorts of things, water districts, very small

1 government entities that may not have the expertise, but we
2 did concur with their proposal to use air districts, along
3 with CCAR and CARB for approved programs. We didn't concur
4 with their proposal to allow them to use SDG&E programs.

5 And, regarding the proposal to change their
6 committee structure for reporting, we asked for more
7 information about that. We didn't have enough information to
8 go on. They just said that they were going to do away with
9 that, and we had some more questions about it, and we haven't
10 heard what those changes are. They may be reflected in this
11 latest document, but we haven't had a chance to review that,
12 yet.

13 Going on, just covering on AB32, Poseidon is
14 subject to the Coastal Act and the only methods to address
15 greenhouse gas emissions that are approved by the state are
16 those established in AB32, so through your findings and
17 Special Condition, staff is recommending that Poseidon's
18 Greenhouse Gas Emission Reduction Program be implemented
19 using the guidelines provided by AB32. The Coastal Act
20 doesn't have independent guidance on how to deal with those
21 issues, so staff believes the best and only real protocols
22 and mechanisms approved at the state level are those that are
23 being developed and are developed through AB32.

24 Poseidon has also asked to use some emission
25 reduction methods not established through the state system.

1 For example, they reference the offset quality initiative,
2 which includes three entities, the Climate Trust, the
3 Environmental Resources Trust, and the Climate Group.

4 Staff researched what was available through these
5 entities, and found that they do not have consistent
6 standards or protocols, so staff believes Poseidon's proposal
7 would be confusing and onerous to implement, and would not
8 provide the level of independent verification the state has
9 identified as a necessary part of its greenhouse gas
10 reduction approach.

11 Additionally, AB32 does have mechanisms for
12 developing these guidelines and protocols for voluntary
13 efforts for regulated entities, pretty much any sort of
14 emission reduction measure that is meant to be part of the
15 state's program, regulated community, voluntary, market based
16 incentives are covered by AB32, and we believe that is the
17 appropriate method to use.

18 That has also been supported by the agencies we've
19 worked with. You heard from CARB. They still support the
20 use of AB32. The air district supports staff's recommend-
21 ations, so we believe our coordination efforts with the
22 involved agencies supports staff's recommendations, as well.

23 Regarding comments about the Commission's
24 authority being limited by Coastal Act provisions. Staff is
25 not suggesting imposing an emission control program,

1 therefore we don't believe our proposal is inconsistent with
2 Section 30414. It is not inconsistent with what CARB is
3 doing, and in fact CARB and the air district supports the use
4 of AB32.

5 Additional authority the Commission has for
6 implementing this program, is through the use of Section
7 30260, the override as determined in your findings. The
8 findings state that the project's adverse effects will be
9 mitigated to the maximum extent feasible, and staff's
10 recommendation would help carry out that aspect of the
11 Commission's findings.

12 Regarding gross versus net, that whole question,
13 again staff is not asking that Poseidon mitigate its gross
14 emissions, just the net. Much of the difference in the two
15 proposals is that staff is addressing the expected net
16 emissions from the facility's electrical use, and Poseidon is
17 relying on speculative changes in water deliveries to somehow
18 reduce emissions. As you have heard several times today, the
19 state water project will not necessarily reduce its
20 electrical use or its emissions, due to Poseidon's project.

21 The state water project is affected by any number
22 of issues that may increase or decrease its pumping rates,
23 and regardless of how those issues play out, Poseidon's
24 project is expected to continually use about 30 megawatts of
25 electricity to produce its water, and the emissions would

1 result from that use of that electricity.

2 Also, regarding the state water project, you
3 received a letter from the Metropolitan Water District. The
4 letter, however, is not consistent with the Met's program
5 that establishes its desal incentives, or Met's water
6 management plans. Met describes its desal program as
7 allowing Metropolitan to redirect imports, not necessarily
8 reduce them. For example, Met's recent integrated water
9 resources plan from 2004 -- which staff is adding to the
10 record -- states that desal is expected to offset water use
11 in one area of its service area, and allow it to send
12 additional imported water to other parts of its service area.

13 Moreover, Metropolitan doesn't say anything about
14 reducing its electricity use in its emissions, which is the
15 impact that the Commission is addressing today. Even at the
16 local level, some of the planning documents from as recently
17 as earlier this year, from the water districts Poseidon has
18 contracted with, show expected increase in imports over the
19 next 25 years, in addition to their desalination supplies.

20 For example, the January 2008 update of the
21 Oliveheim Water District urban water management plan -- which
22 staff is adding to the record -- shows that it and three
23 other associated districts will increase their imports.

24 Further, the state water project has a lower
25 emission factor than Poseidon's electricity supplies, so if

1 there is an offset, it would be a much lower level than
2 Poseidon proposes. Similarly, in the San Diego region, much
3 of the imported water comes from the Colorado River, and
4 pumping that supply has its own emission factor adding more
5 complexity to the issue.

6 Again, however, staff is not asking that you
7 decide this question today, but to allow the agencies with
8 expertise to make the determination to work through these
9 issues and to figure out what offset, if any, is appropriate.

10 You also heard a comment earlier about staff
11 treating an Edison project differently than this project. We
12 are not recommending emission reduction requirements for that
13 project, because its net emissions are so low. You will hear
14 the details of that project a little later, today, but if you
15 would like, Ms. Dettmer is available now to answer any
16 questions you may have about the difference between the
17 Edison project and Poseidon's.

18 I believe the Edison project is in the range of
19 something like 750 tons of emissions over its 30-year life.
20 With Poseidon, their gross emission are expected to be about
21 90,000 tons per year, so there is a significant range between
22 the two projects, and staff believe that the Edison project
23 is small enough whereas Poseidon's was significant enough for
24 the Commission to handle.

25 Regarding CEQA, we should note that the project's

1 environmental impact report did not address greenhouse gas
2 emissions at all, and so the Commission establishes the
3 baseline, just Poseidon's project, what emissions would
4 result from it.

5 I also want to note that the California Air
6 Pollution Control Officers Association, in January published
7 its report called CEQA and climate change -- which staff is
8 adding to the record -- and it provides guidance on how it
9 intends to address climate change issues through CEQA,
10 including those associated with meeting AB32's emission
11 reduction targets.

12 Staff believes this provides further support for
13 staff's recommendation that the Commission allow the air
14 districts, along with CARB and CCAR to address the issues
15 involved with verifying Poseidon's proposed plan.

16 A couple of points on the cost of the mitigation,
17 based on your findings, staff's recommendations will not
18 prevent the project from being built, or render the project
19 economically infeasible. Your findings identify costs of up
20 to several hundred dollars per acre foot, above Poseidon's
21 stated costs, and Poseidon has stated that had it included
22 those cost then its assessment of project feasibility --
23 Poseidon's proposed \$6 million program over 30 years -- would
24 increase the costs of its water by about \$3.50 per acre foot,
25 and its estimates of \$32 million would add about \$19 per acre

1 foot, and that is well below the range of the costs that
2 staff identified in the report, and that Poseidon said it had
3 already assessed as part of its feasibility.

4 We note, too, that an even larger desal facility
5 being built in Australia has committed to use entirely
6 renewable energy for its operations, and will purchase that
7 energy using a government regulated offset program, which is
8 similar to what staff is proposing in having Poseidon use
9 CARB CCAR or air district approved measures.

10 And, I think that is all that I have for now. I
11 believe Ms. Schmeltzer and Director Douglas have something.

12 **EXECUTIVE DIRECTOR DOUGLAS:** I just have a couple
13 of comments, and then ask Ms. Schmeltzer to address some of
14 the legal issues Mr. Zbur raised.

15 But, I just want to underscore, again, the
16 assertion that somehow we are using Coastal Commission
17 authority to subject Poseidon to AB32 is simply wrong. We
18 recognize that this project is not subject to AB32 controls
19 at this time, but what we are saying is we are using the
20 Coastal Act the policies and authorities that you have under
21 the Coastal Act, and the responsibility that this Commission
22 has to protect coastal resources consistent with the policies
23 in the Coastal Act leads to a requirement for greenhouse gas
24 mitigation, and offsets and reductions of emissions. And,
25 that the best way to deal with that is to use the protocols

1 and the approaches set forth in AB32, that that makes sense,
2 because that is where the expertise lies.

3 And, if in fact, Poseidon is going to keep its
4 promise of being carbon neutral, I don't understand why they
5 object to a review by an entity that will, in fact, verify
6 whether or not that is the case, and that is exactly what we
7 have recommended.

8 In terms of the state water project, or the
9 reductions and the offsets there, that just doesn't make
10 sense to us. We are not talking about water here. We are
11 not talking about displacing or placing water, and where that
12 is going to go. We are talking about the energy that it
13 takes to provide the desalinated water by Poseidon.

14 And, if they are looking to get credit because
15 there is going to be a reduction in energy generation, or
16 energy use in the state water project, as a result of the
17 Poseidon project, we just don't see how that happens. All of
18 what we have heard is speculative -- that may or may not
19 happen. We have no reason to believe that there is going to
20 be any reduction whatsoever in energy usage for bringing
21 state water from the north to the south, as a result of this,
22 or any other project that we know about at this point. So,
23 that just doesn't match.

24 But, in any event, we are not saying that it can't
25 work that way, if in fact there is a reduction in energy

1 usage. We are just saying that that needs to be verified by
2 somebody who has got the expertise, who could look at it, and
3 say, "Yes, indeed, as the result of this project, or but for
4 this project, there would be this level of energy production
5 for the state water project, but because of this project
6 there is going to be a reduction, which means less air
7 emissions, and they get credit for it," they would get it,
8 under our recommendation.

9 The final point is, we have not said this project
10 is not growth inducing. We have said this project is not
11 growth inducing in the coastal zone. What happens outside of
12 the coastal zone, as a result of this water being freed up
13 for the Met, that they could use elsewhere for projects that
14 are waiting for water, that don't have water now, that is
15 beyond the purview of this Commission, and we have never
16 expressed an opinion on that.

17 So, I think it is misleading to say that we have
18 concluded this is not growth inducing. It is not growth
19 inducing in the coastal zone.

20 With that, let me ask Ms. Schmeltzer to make some
21 comments on legal issues.

22 **CHIEF COUNSEL SCHMELTZER:** Thank you.

23 Poseidon's attorney, Mr. Zbur, stated that the
24 Commission only had three statutory provisions under which it
25 could assert authority. He specifically mentioned 30253(4)

1 30253(3) and 30414(a).

2 The first is the Commission's ability to minimize
3 energy use, which he asserted that Poseidon was doing.

4 For the second, he paraphrased what that statutory
5 language said, and he said that it said that the Commission
6 may only impose conditions requirements that have been
7 imposed by CARB. That is actually a misstatement of that
8 statutory provision. That provision that says that "For the
9 minimization of adverse impacts new development shall be
10 consistent with the requirements imposed by an air pollution
11 control district, or CARB," which the Commission's staff
12 proposal in having this follow AB32 and CCAR, we believe is
13 consistent, and that it does comply with that, and it is not
14 contrary to it, as described.

15 In addition, as Mr. Luster described, 30414(a)
16 only talks about not creating a new air program, which again
17 staff is not proposing.

18 What he left out was 30260, which is the override
19 provision, that the Commission made in its findings that it
20 adopted this morning. Under the override provision of the
21 findings, which begins -- the discussion begins on page 115
22 of your findings.

23 There is extensive discussion of adverse impacts,
24 the impacts to coastal resources that can occur from green-
25 house gas emissions, and global warming, and the Commission

1 does have the authority, and does exert that authority under
2 Special Condition 10, in this case, and so the authority for
3 Special Condition 10 also flows from 30260.

4 CHAIR KRUER: Okay, thank you, is that it from
5 staff.

6 EXECUTIVE DIRECTOR DOUGLAS: Yes.

7 CHAIR KRUER: Thank you for your presentation, and
8 your comments.

9 Now, I will go to the Commission, and Commissioner
10 Hueso, first, and then Commissioner Reilly.

11 [MOTION]

12 COMMISSIONER HUESO: Yes, I move that the
13 Commission approve the Energy Minimization and Greenhouse Gas
14 Reduction Plan as attached to the letter submitted by the
15 permittee, Poseidon Resources LLC, dated August 6, 2008, as
16 compliant with Special Condition 10 of the Coastal
17 Development Permit E-06-013.

18 CHAIR KRUER: I have a motion, is there a
19 "second"?

20 COMMISSIONER POTTER: Second.

21 CHAIR KRUER: Seconded by Commissioner Potter --

22 EXECUTIVE DIRECTOR DOUGLAS: Mr. Chairman.

23 CHAIR KRUER: What?

24 EXECUTIVE DIRECTOR DOUGLAS: I just wanted to
25 check with counsel.

1 The motion that staff has recommended, I am just
2 wondering whether that is the motion that needs to be made,
3 and then that motion needs to be amended, or whether or not
4 the motion proposed by Commissioner Hueso is the correct way
5 to go? I thought it needed to be --

6 **CHAIR KRUER:** I don't think so, but, we will see
7 what the attorney says, but I think -- I am not a lawyer, but
8 it sounds like he can do it.

9 **CHIEF COUNSEL SCHMELTZER:** It would be helpful if
10 the entire motion was read. I think you just referred to the
11 motion as it was stated here, but if you could read the whole
12 motion into the record, that would be helpful.

13 **COMMISSIONER HUESO:** I actually did, but you want
14 me to also state the resolution to the proof.

15 **CHIEF COUNSEL SCHMELTZER:** I have that, so I --

16 **COMMISSIONER HUESO:** I did.

17 **CHAIR KRUER:** He did read the whole motion.

18 **CHIEF COUNSEL SCHMELTZER:** Okay.

19 **CHAIR KRUER:** And, the question was, can he do it
20 that way? to the general counsel, from Director Douglas.
21 And, I think he can.

22 **CHIEF COUNSEL SCHMELTZER:** Yes.

23 **CHAIR KRUER:** So, with that, and there has been a
24 "second" by Commissioner Potter.

25 Commissioner Hueso, would you like to speak to

1 your motion?

2 COMMISSIONER HUESO: Yes, and I have some
3 questions of staff.

4 CHAIR KRUER: That's fine.

5 COMMISSIONER HUESO: This came back to the air
6 quality issues, specifically to this project.

7 What disturbed me a little bit -- and I will just
8 give you some general feedback concerning the Oxnard facility
9 -- you said that facility doesn't generate a lot of energy,
10 so you don't really see fit to apply the state's AB32
11 regulations to that project, because it was not a big
12 generator.

13 What are we talking about, in terms of the amount
14 of wattage that that facility is going to be generating? just
15 to compare it to this project? do we know what the amounts
16 are, in terms of this project is going to be using 50
17 megawatts, per year, or is it -- what is the usage of this
18 desal project?

19 EXECUTIVE DIRECTOR DOUGLAS: Okay.

20 COMMISSIONER HUESO: And, if we can get that as a
21 comparison to the Oxnard one?

22 EXECUTIVE DIRECTOR DOUGLAS: Well, Allison is
23 going to come back and address this, she has been working on
24 it.

25 But, just so that you know, we have been looking

1 at projects coming before the Commission, and as we have
2 indicated to you before, we are only suggesting the
3 application of greenhouse gas reduction conditions on major
4 projects, that have major emissions per year of carbons. We
5 are not applying them to every project that comes along.

6 So, we have identified new subdivisions, we have
7 identified new Caltrans projects, major energy projects, but
8 when we looked at this particular project -- and Allison can
9 explain to you why -- we just felt it was not an area where
10 we wanted to enter into this particular issue.

11 COMMISSIONER HUESO: I understand that, and just
12 to get an idea of what criteria you are using, what are we
13 talking about here? in differences?

14 COASTAL PROGRAM MANAGER DETTMER: Sure, for the
15 Edison project, on your agenda later today, we did ask Edison
16 to do a greenhouse gas analysis, which they did do. They
17 submitted their calculations to us, as well as their analysis
18 of what their net emissions would be over the 30-year life of
19 the project.

20 We had that analysis peer reviewed, independently
21 reviewed by Steve Radus with Marine Research Specialists. At
22 the end of the day, Mr. Radus agreed with Edison's analysis.
23 And, what the conclusion was, was that over the 30-year life
24 of the project, there would be about 726 metric tons of CO2
25 emitted, and that is over a 30-year period, which is a

1 relatively small number. In the staff report, we go through
2 that, and we give an example that that equates to driving 8
3 Prius for 15,000 miles over that 30-year period.

4 And, just to back up a little bit, Edison's
5 project is a direct emitter, and so they will come under AB32
6 requirements, probably in the next 3 or 4 years. I
7 understand that may be 2011 or 2012, and they will be
8 regulated system wide.

9 So, what we were looking at for the Coastal
10 Commission is to actually look at that gap, if Edison had
11 their project approved, and that they were going to be in
12 operational phase later in 2008, that this Commission would
13 consider, possibly, requiring mitigation or offsets for that
14 gap period, so maybe for the next 4 or 5 years. So, we are
15 really talking about a very small number.

16 So, in staff's judgment, we did not think that
17 this Commission needed to require mitigation or offsets.

18 **COMMISSIONER HUESO:** But, you didn't answer the
19 question about what the desal facility --

20 **ENVIRONMENTAL SPECIALIST LUSTER:** Yes.

21 **COMMISSIONER HUESO:** Okay.

22 **ENVIRONMENTAL SPECIALIST LUSTER:** The Edison
23 project, as Allison said, is just over 700 tons, over a
24 30-year life. Poseidon's project looks like about 2.7
25 million tons over the 30-life of this project, so

1 substantially greater, and that is why Commission staff
2 worked so hard on this emission reduction program for the
3 Poseidon project.

4 COMMISSIONER HUESO: In and around the facility,
5 itself, in and around the plant, will the air quality be
6 effected in the area around the plant? will the facility be
7 discharging pollutants in the area in which the construction
8 for this project is proposed?

9 ENVIRONMENTAL SPECIALIST LUSTER: Our understand-
10 ing of --

11 COMMISSIONER HUESO: And, the specific number of
12 the 2.7 million, will that discharge be in and around the
13 facility --

14 EXECUTIVE DIRECTOR DOUGLAS: No.

15 COMMISSIONER HUESO: -- of the plant?

16 ENVIRONMENTAL SPECIALIST LUSTER: That discharge
17 is just from the electrical generation needed to run the
18 plant, so the air quality impacts would be based on where the
19 energy production facilities are. If they use some of the
20 power from the Encino Power Plant, there could be some nearby
21 emission effects.

22 COMMISSIONER HUESO: So, we don't necessarily know
23 where this project is going to effect the air quality?

24 ENVIRONMENTAL SPECIALIST LUSTER: Because we are
25 only looking at greenhouse gas emissions, that is not really

1 considered a local problem, as much as a world wide problem
2 and so, generally, any emission reduction anywhere in the
3 world affects the greenhouse gas problem.

4 **EXECUTIVE DIRECTOR DOUGLAS:** Well, it is also a
5 difference. It is not an air pollutant. We are not talking
6 about that. We are talking about emissions of a gas that
7 goes into the atmosphere, and that effects the climate, and
8 the temperature on the planet, not the kind of air pollutants
9 that are discharged and regulated by air pollution control
10 limits. So, it does not affect the air quality around the
11 facility.

12 **COMMISSIONER HUESO:** Because every project we've
13 looked at -- you have cited some projects, like the LNG where
14 we looked at air quality, where air quality in the area of
15 the coastal resources were directly affected, and because you
16 use those as examples, I thought it was slightly misleading
17 because we were talking about air quality in the coastal
18 zone, and here we are talking about air quality regionally,
19 statewide or --

20 **EXECUTIVE DIRECTOR DOUGLAS:** In the LNG case, for
21 example, one of the big issues was air quality, separate from
22 greenhouse gases, they are distinct.

23 And, one --

24 **COMMISSIONER HUESO:** The number had to do with the
25 shifting and the exchange of the material, so it had a more

1 direct -- from my recollection, in the testimony and the
2 arguments, it had to do more with an immediate impact of the
3 air quality in the area.

4 **EXECUTIVE DIRECTOR DOUGLAS:** That was a separate
5 issue, and that was one on what rule would be applied, would
6 the onshore rules for air quality, air pollutants, air
7 emissions, be applicable, or would the rules that apply to
8 the islands be applicable? That is for air quality.

9 For greenhouse gases, that was totally different.
10 That was the question of how much, in terms of greenhouse
11 gases, were going to be emitted, and that was a different
12 issue. Both of those were issues that formed the basis for
13 our recommendation of denial, but they were distinct.

14 **COMMISSIONER HUESO:** Would you agree that in
15 future years, the power sources that are going to electrify
16 the grid, are going to be more diverse. We might see more
17 wind power come on line? more solar power come on line? more
18 hydro-thermal power? is that something that we contemplate in
19 this action?

20 **EXECUTIVE DIRECTOR DOUGLAS:** I think it is
21 inevitable, and it is already occurring, and we understand
22 that part of the source here needs to be renewable. We just
23 don't know what that is going to be, unless Tom you have
24 something?

25 **COMMISSIONER HUESO:** But, it is possible in the

1 future, that a greater source of our grid is going to come
2 from renewable sources, and sources that are friendly to the
3 environment?

4 EXECUTIVE DIRECTOR DOUGLAS: We hope so.

5 COMMISSIONER HUESO: So, it is possible that this
6 project will have a smaller carbon footprint in future years,
7 if that improves?

8 ENVIRONMENTAL SPECIALIST LUSTER: That is correct,
9 both Poseidon's proposal and staff's are based on an annual
10 reporting and recognition that the emission factor for the
11 San Diego Gas and Electric will change every year, as they
12 put more renewable energy sources on line, their emission
13 factor will go down, and Poseidon would have to, presumably,
14 do fewer mitigation measures, because of that.

15 COMMISSIONER HUESO: But, are you taking that into
16 consideration in our policy, in staff's policy towards this
17 project?

18 ENVIRONMENTAL SPECIALIST LUSTER: Yes.

19 CHIEF COUNSEL SCHMELTZER: Yes, and also, to
20 answer your question, relatively anticipated that that will
21 happen over time, and we can't base mitigation on speculative
22 increases in renewable power in the future. We don't know
23 when those will occur, and how much they will occur, so we
24 can't do something now that relies on something unknown in
25 the future.

1 But, what we have built into the review process is
2 an annual report that will look at what is happening on the
3 ground as it happens, and then in that way be able to take
4 account of actual improvements to the power grid, as far as
5 renewable resources, as they occur.

6 COMMISSIONER HUESO: Okay, and I think that that
7 is the principal issue that I am looking at here. I think
8 this power plant is definitely a consumer of electricity,
9 thereby having an impact on air quality regionally, and I
10 think we are using, in this instance, the Commission to kind
11 of effect air quality regionally, which I think is a good
12 goal, but I think, from my perspective, we are looking at the
13 Coastal Act and it endeavors to specifically concentrate in
14 the coastal zone.

15 I remember having a project, the Pebble Beach
16 Project, that sought to replace trees in the Del Monte Forest
17 at a rate of 10:1 -- I forget what it was -- and I remember
18 us being told specifically that we cannot mitigate for
19 impacts, you know, outside of the coastal zone in an area
20 that wasn't in the coastal zone, because it wasn't, it wasn't
21 identical, and here we are trying to apply that policy
22 towards air quality, which I think kind of exceeds the scope
23 of coastal area.

24 But, I understand that this is a very, very
25 sensitive issue, and I am very concerned about air quality,

1 but there is always, you know, there is always some
2 contradiction in terms of we heard some person speak earlier,
3 during non-agenda public comment, about San Diego's waiver
4 for water treatment, and that we are the only city that
5 obtains a waiver. Well, one of the arguments our city has
6 been making is because we don't go through tertiary
7 treatment, we have been able to show that we haven't
8 negatively affected the coastal resources and the water, due
9 to the depth of our outfall.

10 But, because of that, we haven't been negatively
11 affecting air quality, because tertiary treatment is a very,
12 very intense industrial use that has an impact on air
13 quality. So, on the one hand, we've been contributing to
14 better air quality to try to find a balance between good
15 water quality, and good air quality, and this is one of those
16 projects that falls into the balance, where we need water,
17 but it is going to affect air quality.

18 And, from my perspective, in terms of what we are
19 doing in our city, in terms of trying to reduce our
20 dependence on the river delta in Sacramento, this is one
21 those efforts that would really have a real effect on
22 reducing our dependence on the river delta. In addition to
23 conservation, in addition to other methods of retreating
24 water, we are really trying to reduce our dependence on
25 foreign water, and that does have a direct impact on air

1 quality.

2 And, I do think that this project will reduce our
3 dependence on outside water, thereby reducing our impacts for
4 air quality, so I do think there is a direct relationship
5 there between this project and our intent to make our city
6 self sufficient, and create a well balanced portfolio of
7 predictable and affordable water.

8 CHAIR KRUEER: So, you recommend a "Yes" vote?

9 COMMISSIONER HUESO: So, I recommend a "Yes" vote.

10 CHAIR KRUEER: Thank you, sir.

11 COMMISSIONER POTTER: Thank you, Mr. Castro.

12 CHAIR KRUEER: Commissioner Potter, as the
13 "seconder", would you like to speak to the motion?

14 COMMISSIONER POTTER: Sure, I'll try to speak to
15 the condition, itself.

16 I want to talk, just for a second, about my level
17 of comfort with being the "seconder" of this motion, and I
18 will talk specifically to what Director Douglas talked about
19 for a moment, which was what is the level of reduction in
20 gases that are going to go into the atmosphere, as a result
21 of this project? And, I am comfortable that what is before
22 us today, in this GHG plan, does comply with Special
23 Condition 10, that the measures that are provided through
24 this will provide enough reductions that are certain and
25 verifiable, and would reduce to zero the impacts of this

1 project.

2 And, you know, there is one element that I am not
3 overly compelled by, but I do think that there is significant
4 investment into energy reducing portions of this project that
5 make a difference. The commitment to the use of solar seems
6 kind of weak to me. What it says is if it is economically
7 feasible over the life of the project, then we will do it. I
8 would prefer to see it done, period, because I do think it is
9 a viable source of energy that would be appropriate for this
10 project.

11 The reforestation plan, I think that is a good
12 idea. There is, certainly, quantifiable return on that
13 investment, and if there is another fire, there is another
14 fire, but that is not an issue before us today.

15 And, in the purchase of offsets, I think makes a
16 difference. There is a proposal as part of this, that there
17 be, at least, third party providers who would be verifying,
18 quantifying, through annual reports to this Commission, the
19 viability and successes of those purchases, and I think that
20 is an appropriate way to verify the success of that intent.

21 And, then, finally, it does seem to me that the
22 carb process is going to require, you know, public review and
23 the associated findings, and I think it is feasibility,
24 equitability, and cost effectiveness, something like that,
25 but I think those are reasons why, specific to the GHG

1 portion of this -- which is Special Condition 10 -- that is
2 why I have a level of comfort with what is before us, as
3 proposed, and the motion, itself.

4 CHAIR KRUER: Thank you, Commissioner Potter.
5 Commissioner Reilly.

6 COMMISSIONER REILLY: Thank you, Mr. Chair.

7 I was going to ask for some additional comments by
8 one of the folks who testified, and then offer -- I have a
9 couple of questions about the motion, itself.

10 CHAIR KRUER: Sure.

11 COMMISSIONER REILLY: The gentleman from CCAR, the
12 registry, I think you weren't quite able to complete your
13 comments within the three minutes that we gave you, and
14 assuming that you don't have too many more minutes, I think
15 your testimony was certainly pertinent to the issues before
16 us, and I would like to hear your concluding comments.

17 MR. LEVIN: Okay, sure, and I was pretty close to
18 done. I just wanted to talk a little bit about supply. I
19 know that has been an issue that people talked about, whether
20 there would be --

21 CHAIR KRUER: Your name, for the record, please.

22 MR. LEVIN: Sorry, Joel Levin, with the California
23 Climate Action Registry.

24 So, what I was summing up to say is that we
25 currently, the reserve program that we track and register

1 greenhouse gas reduction projects has been operational for
2 just a couple of months. We currently have two project
3 registered, with about 200,000 tons of credits issued. We
4 have about another 5 in hand that we are reviewing, and about
5 another 25 that I have been actually talking with developers
6 and expect to be delivered over the next 6 to 12 months, or
7 so.

8 So, just in terms of projects that I am aware of,
9 conservatively, we are expecting to have about 1.5 million
10 tons, or so, by next year, and about 5 million tons
11 registered by the end of 2012. So, the kind of volumes that
12 you are talking here with this project are, actually, fairly
13 minor, in the scope of our program. Unless our program is,
14 you know, a complete failure, the volumes we are looking at
15 are much greater than what you would need for this.

16 But, I wanted to say that I don't think supply
17 would really be an issue.

18 **COMMISSIONER REILLY:** So, just to be clear, what
19 is CCAR seeing as their preferred relationship relative to
20 Poseidon project before us?

21 **MR. LEVIN:** A preferred relationship? Well, what
22 we understood was the staff proposal was to, essentially, say
23 that they would buy -- to have an account on the reserve, and
24 then they could negotiate purchases with project developers,
25 and those would be tracked through the reserve, and then they

1 would buy them and retire them, and that would be publicly
2 visible.

3 So, that is sort of how we operate. It is,
4 essentially, it is a banking system where people can register
5 projects, and then we track trades of those credits and
6 verify them.

7 COMMISSIONER REILLY: So, it is both sale and
8 verification?

9 MR. LEVIN: Yes, we don't get involved in the
10 financial transactions --

11 COMMISSIONER REILLY: No, that's right.

12 MR. LEVIN: -- but, we track ownership of the --

13 COMMISSIONER REILLY: Fine, thank you.

14 MR. LEVIN: -- and it is all very public visible.

15 COMMISSIONER REILLY: Thank you.

16 MR. LEVIN: Yes.

17 COMMISSIONER REILLY: Staff had mentioned that the
18 air quality board and CCAR and CARB had all indicated support
19 for having the verification be part of their process, as
20 opposed to some other process. It seems like a lot of the
21 same agencies, along with State Lands.

22 And, I would also say Lieutenant Governor
23 Garamendi, who I have tremendous respect for, is also sort of
24 saying that they see the argument that Poseidon should, in
25 fact, get credit for the energy saved in the MWD imports.

1 So, it seems like they are agreeing with you on one point,
2 and they are agreeing with them on the other point.

3 I am sympathetic on allowing these credits, but
4 what I am not clear about, in terms of the motion before us,
5 as opposed to CCAR or CARB verification, is under the motion
6 before us, who actually does the verification on -- who does
7 the verification, you know, in a publicly transparent way,
8 under the current motion before us --

9 EXECUTIVE DIRECTOR DOUGLAS: We have --

10 COMMISSIONER REILLY: -- and I --

11 EXECUTIVE DIRECTOR DOUGLAS: -- no idea.

12 COMMISSIONER REILLY: Okay.

13 EXECUTIVE DIRECTOR DOUGLAS: And, that is one of
14 the problems, that we don't know what it is that you are
15 going to be adopting here, if you adopt this --

16 COMMISSIONER REILLY: Yes, why don't you take a
17 shot at that.

18 EXECUTIVE DIRECTOR DOUGLAS: -- unless it was
19 changed.

20 MR. ZBUR: There are two separate provisions that
21 are part of the motion, and they are sort of getting muddled
22 a but, so if I could sort of take one at a time.

23 One provision in the Poseidon proposal, basically,
24 allows for Poseidon to opt in to offset programs that may be
25 developed by government agencies, like the AQMD, you know,

1 the air districts, and we did have SDG&E on that. We don't
2 have any problems taking SDG&E, and just limiting it to the
3 air districts on that piece of it.

4 COMMISSIONER REILLY: I think staff's problem was
5 the court of all of the governments, because they didn't know
6 what that meant.

7 MR. ZBUR: All of the governments, I mean we,
8 basically, want to make sure that, you know, that basically
9 government supervise their programs, but if you wanted to
10 limit it to the -- you know, we think the most likely folks
11 that will do it will be CARB, probably the South Coast
12 District air districts, will probably be the most likely ones
13 that will develop them, if they do, soon.

14 So, that piece crossed, is really just something
15 we thought that if it is a government supervised program, we
16 should be able to opt in. That is probably better
17 verification than anything else. So, that is one piece. We
18 don't have any limits. We don't have any concerns, and could
19 take out the small governments, the SDG&E, if you would like.

20 The other piece, which is a separate provision, is
21 that the staff's proposal would require that all of our
22 purchase of credits be run through, or purchased through
23 CCAR. We have no problem doing that. We think CCAR is a
24 high quality entity. Our concern is, as you have heard, is
25 that it is simply that we are going to be subject to this for

1 the next 30 years, and then next 3 or 4 years, we don't know
2 how fast things are going to be moving, and we need to be
3 able to buy the credits that we need, and in fact we are
4 going to be buying some credits up front.

5 So, we are just concerned that there may not be
6 enough credits from CCAR, and what we have asked is that,
7 just like CCAR, we would be able to buy credits that are run
8 through other entities that are doing the same thing as CCAR,
9 and those three other entities are all entities that are part
10 of offset quality initiative, and we can provide more
11 information about that, if you would like.

12 **COMMISSIONER REILLY:** My interest is, not only in
13 the acquisition of credits, it is also the verification of
14 reductions --

15 **MR. ZBUR:** The way our proposal works is that
16 basically, all of them would have to be run through one of
17 those four entities, and we are happy to have CCAR to be the
18 main one, so long as we can get credits that are sort of at
19 the market price through CCAR.

20 But, it would be run through those entities, and
21 we would, at the end of each year -- I mean, there are time
22 periods in our plan, but that basically, there are two things
23 that have to happen. One, we have to sort of have CCAR
24 emission factors to measure the emissions from our -- that
25 are going to be offset, and once the emission factors are

1 available, we have to, within a certain amount of time,
2 submit a report that says what needs to be offset, and at
3 that point demonstrate that we have provided offsets.

4 We can do the annual report that would, basically,
5 show what our emissions are, what our offsets are. We would
6 have to show that it was run through one of those four
7 programs, and we have to provide documentation that they were
8 verified through one of those four programs.

9 COMMISSIONER REILLY: All right, and don't go
10 away.

11 Is that any clearer for staff, then it has been in
12 the past? does staff want to comment on that?

13 ENVIRONMENTAL SPECIALIST LUSTER: Well, we still
14 have to call this a verification issue.

15 CCAR has a very clear transparent verification
16 mechanism in place. We have looked into --

17 COMMISSIONER REILLY: What are these other three
18 entities that are listed there on the quality program?

19 ENVIRONMENTAL SPECIALIST LUSTER: The Climate
20 Trust, the Environmental Reserve Trust, and I don't recall
21 the other name, right off hand. They each have their own
22 different protocols, and don't appear to have independent
23 third party verification built into their processes.

24 We have just found a little bit out about them
25 through their web sites, which don't provide a whole lot of

1 detail, but there is not enough for staff to assume that
2 those entities would provide the same level of verification
3 that CCAR would, and that is established in AB32 as being
4 necessary for state programs.

5 COMMISSIONER REILLY: Well, let me ask this of the
6 applicant, then, would Poseidon be will to accept the
7 requirement of going through CCAR unless you can come back
8 and demonstrate to the executive director that that is
9 infeasible because they just don't have the credits, or they
10 are not available to you?

11 MR. ZBUR: Yes, I mean, really the key issue for
12 us we are worried that we are not going to have enough
13 credits, and we would actually like that the infeasibility
14 issue be focused in part on whether the credits are available
15 at a generally domestic market price, and if is -- you know,
16 if we can show that it significantly exceeding that of going
17 through CCAR, we would like to have the ability to evaluate
18 --

19 COMMISSIONER REILLY: Through CCAR unless you come
20 back and get an "Okay" then? can you live with that?

21 MR. ZBUR: Say that again?

22 COMMISSIONER REILLY: It is CCAR unless you come
23 back and get an "Okay" for mediation.

24 MR. ZBUR: Yes, we are fine with that, and we
25 would just like the criteria to take the cost into account.

1 **COMMISSIONER REILLY:** All right.

2 And, what I am also hearing is that we modified
3 your other language about local governments, and stuff, you
4 are staying with?

5 **MR. ZBUR:** That is acceptable, as well. We would
6 like to have the major air districts and CARB included in
7 that.

8 **COMMISSIONER REILLY:** Mr. Chair, that clears up a
9 couple of things for me, thank you.

10 **CHAIR KRUEER:** Thank you, very much, Commissioner
11 Reilly, for those questions.

12 Commissioner Burke.

13 **COMMISSIONER BURKE:** First of all, let me try and
14 help out the discussion between Commissioner Hueso and Mr.
15 Douglas.

16 What one was talking about was particulate matter,
17 2.5, which is a particle in the air which is small enough to
18 transfer to your blood vessels, through your lungs, when you
19 are breathing, and go into your blood stream. The other was
20 a gas which goes into the air, and causes diminishing of the
21 air quality, in that manner, so they are totally two
22 different things. And, one is a regional -- one is a very
23 localized, and one is a regional, regional problem.

24 And, I don't think that this project should be
25 penalized because they are facing a problem that is an

1 international problem. First of all, we are asking them to
2 go out and buy credits, at the best known institution that we
3 can find. Well, there is no place the world -- forget the
4 United States of America -- in the world, because after this
5 project came along, I asked them to go to the South Coast Air
6 Quality District, and they did that. They met with the
7 people out there. The guys went through their whole plan,
8 and found it to be acceptable. So, when they made the
9 briefing to me, my question was if these people who are
10 verifying these credits, are not government organizations, or
11 government licensed, how do you know that this credit is not
12 from some guy in the small village burning a fire in front of
13 his hut, and selling air credits by putting the fire out?

14 So, he looked at me and said, "There is no way
15 that you can know that."

16 So, but that is not our job, and that is not what
17 is before us today, but that definitely has an impact on any
18 project that we are going to consider, which has, as part of
19 its mitigation, the purchase of air credits, pollution
20 credits.

21 So, I think that what staff is trying to do is
22 admirable, but I don't think it is doable. So, I am going to
23 support yours and Commissioner Hueso's motion, to go ahead
24 and get this done in this manner.

25 CHAIR KRUER: Thank you, Commissioner Burke.

1 Commissioner Wan.

2 COMMISSIONER WAN: Yeah, I just want to deal with,
3 maybe just three or four issues, very quickly.

4 The first one deals with the issue of what the
5 amount of credits we should be dealing with, and that is the
6 replacement water issue. Poseidon says that this will
7 directly replace water, and therefore they only need to
8 offset the net energy -- and we are talking about the energy
9 offsets here for that replacement water.

10 From my perspective, if there were conditions that
11 actually required that water be replacement water, and not
12 new water, I would agree with that, okay. But, there aren't
13 any such conditions. There are promises, but there aren't
14 any contractual agreements, and therefore there is no
15 certainty that they will really offset this water from the
16 state water project. And, as we have heard, in fact, it will
17 probably be diverted to other uses, and that is not really,
18 therefore an offset.

19 And, therefore, they may not be reducing the
20 overall energy use for the state water project, and that is a
21 very serious issue, in terms of the amount of credits that
22 they need to have.

23 Therefore, from my perspective, this needs to be
24 dealt with by either providing the proof. If you can provide
25 the proof to us that is fine, but if you don't then we need

1 to deal with this the way the staff is recommending.

2 There is a second issue, major issue, for me, and
3 that is this, quote, opt out -- what I can an opt out
4 provision, where they are allowed to pay just \$10 per ton --
5 rather than doing what we have all been talking about. If
6 they are allowed to retain that opt out provision, that is
7 the cheapest way to go, and they are going to do that, and
8 you are going to see a token replacement here. You are not
9 going to see real replacements. And, I am not sure I
10 understand why that opt out provision is in there, given all
11 of the other ways, particularly after this discussion with
12 Commissioner Reilly, for them to make sure -- and that we
13 make sure that they can actually buy these credits, why the
14 opt out provision?

15 But, there is one thing that is most important
16 here, okay. Poseidon maintains that this is voluntary,
17 because they don't directly emit anything, and it is through
18 their use of electricity that we are dealing with it, and
19 that we don't have the authority to require this of them.
20 That is a very dangerous path for this Commission to go down.

21 Section 30253(4) requires that new development
22 minimizes energy consumption. That is directly on point to
23 what is happening here. We are talking about energy usage.
24 It is not talking about direct emission, it is talking about
25 energy consumption, and 30260 requires that all impacts be

1 fully mitigated. It does not exempt energy consumption
2 impacts from that.

3 The two sections together give this Commission its
4 regulatory authority. To decide that this is voluntary will
5 set an unacceptable precedent for all future projects that
6 need greenhouse gas emission reductions. If you find that
7 the *Coastal Act* does not allow us to require greenhouse gas
8 mitigations, regardless of what plan you adopt, whether you
9 go with the applicant's plan, or not, please don't undermine
10 our long term regulatory authority by saying that this is
11 voluntary. Because, if you say it is voluntary here, and
12 that we don't have that authority, then it is voluntary with
13 everything else, as well.

14 And, you don't need to do that, to even agree with
15 the applicant's plan, and I think that is a very, very
16 important thing for everyone here to remember, relative to
17 this Commission's regulatory authority.

18 **COMMISSIONER REILLY:** Well, Mr. Chair, just
19 quickly, is there anything in the motion before us that would
20 restrict or effect the Commission's jurisdiction? And, I ask
21 counsel to respond to that.

22 **COMMISSIONER WAN:** Can I answer that question, in
23 fact, there is, because in this --

24 **COMMISSIONER REILLY:** Either attorney can answer
25 it, so that is fine.

1 **COMMISSIONER WAN:** Let me answer, and then the
2 attorneys can answer, because this was my question, my issue.

3 Let me tell you that in here, which we have asked,
4 according to Commissioner Hueso's motion, we adopt this in
5 its entirety, there are statements in here about it being
6 voluntary.

7 **COMMISSIONER REILLY:** Where?

8 **COMMISSIONER WAN:** First page.

9 If you remove just the word "voluntary" that would
10 change it.

11 **CHAIR KRUEER:** Okay, well, we will hear from our
12 other counsel, now.

13 **EXECUTIVE DIRECTOR DOUGLAS:** Well, one of the
14 problems we have got -- as they are looking -- is that we
15 have not had time to review everything that, apparently, will
16 be adopted if this motion passes.

17 I was under the impression that there was nothing
18 in the motion that would say this is a voluntary plan, but
19 rather that this complies with the requirements of the
20 Commission's condition for a Greenhouse Gas Reduction
21 Mitigation Plan. If I am wrong, on that, please let me know.

22 **COMMISSIONER HUESO:** I agree with that.

23 This entire motion is designed to comply with
24 Special Condition No. 10 --

25 **EXECUTIVE DIRECTOR DOUGLAS:** Right.

1 **COMMISSIONER HUESO:** -- which is condition of
2 approval of the project.

3 So, none of this is being stated as voluntary, but
4 rather -- and if there is any language that implies that this
5 is a voluntary requirement, it conflicts with Special
6 Condition No. 10, so, if there are some comments regarding --
7 because I know there were some comments here with voluntary
8 offsets, but I think that doesn't get to the point of this
9 being a voluntary matter. This entire plan is specifically
10 designed to get to Special Condition No. 10 --

11 **EXECUTIVE DIRECTOR DOUGLAS:** Right.

12 **COMMISSIONER HUESO:** -- and I think in its spirit
13 and intent, it does that.

14 **CHAIR KRUEER:** Commissioner Potter.

15 **EXECUTIVE DIRECTOR DOUGLAS:** And, as far as we are
16 concerned, Mr. Chairman, the maker of the motion having
17 clarified that, if that is agreeable with the "seconder" then
18 that is the way the motion, if it is approved, will be
19 passed, and we will make whatever adjustments have to be made
20 to, in fact, reflect that.

21 **CHAIR KRUEER:** I see both Commissioner Potter
22 nodding his head, that he is fine with that, and Commissioner
23 Hueso.

24 **COMMISSIONER REILLY:** Well, just to try to
25 complicate it a little bit further.

1 I don't think it matters if it is a voluntary
2 plan, or not. They offered a voluntary plan, we codified it
3 under Condition 10, and made it a requirement, and so it
4 doesn't matter whether you call it a voluntary plan, or not.

5 The issue is that there is nothing -- we don't
6 want to have anything in the motion before us, to indicate
7 that the Commission does not have the authority to require
8 measures above and beyond what they submitted.

9 COMMISSIONER HUESO: That is precisely correct.

10 CHAIR KRUER: I think you are right, Commissioner
11 Reilly.

12 Commissioner Potter, you have no problem with
13 that, either, right?

14 COMMISSIONER POTTER: No, in fact, I concur
15 exactly with what Commissioner Reilly just stated. I was
16 about to do the same.

17 CHAIR KRUER: Thank you.

18 Okay, Commissioner Burke, or Commissioner --

19 COMMISSIONER SCARBOROUGH: We've taken care of it.

20 CHAIR KRUER: It is taken care of.

21 COMMISSIONER BURKE: Yes, we are doing a tag team
22 over here.

23 I just wanted to report that I had an exparte,
24 just a few seconds ago, with Rick Zbur, because what I wanted
25 to do was clarify the fact that if, in fact, a government

1 institution like South Coast Air Quality Management District,
2 did organize a qualification unit, and license some one of
3 these companies to sell credits that had been verified by a
4 government agency, that they would be willing to do that. He
5 said it was already in the proposal.

6 So, that is what my ex parte is.

7 CHAIR KRUER: Okay.

8 Commissioner Thayer.

9 EXECUTIVE DIRECTOR DOUGLAS: Mr. Chairman?

10 CHAIR KRUER: Yes.

11 EXECUTIVE DIRECTOR DOUGLAS: Can I just clarify --

12 CHAIR KRUER: Are you Commissioner Thayer?

13 EXECUTIVE DIRECTOR DOUGLAS: Pardon me?

14 CHAIR KRUER: Commissioner Thayer was going to
15 speak.

16 EXECUTIVE DIRECTOR DOUGLAS: Well, he was a little
17 slow.

18 CHAIR KRUER: He said that about you.

19 EXECUTIVE DIRECTOR DOUGLAS: He's been saying that
20 for 30 years.

21 CHAIR KRUER: Commissioner Thayer, do you want to
22 yield to Director Douglas?

23 COMMISSIONER THAYER: No.

24 CHAIR KRUER: No, so go ahead, Commissioner
25 Thayer, and then Director Douglas.

1 COMMISSIONER THAYER: Now?

2 CHAIR KRUEER: Yes.

3 COMMISSIONER THAYER: Okay, sorry, I just wanted
4 to clarify one small point, and that is Commission Reilly,
5 earlier on made the discussion of some of the agencies that
6 had weighed in, and had worked on the air issues, and the
7 offset issues, and as he pointed out, the Lieutenant Governor
8 did write a letter on that issue, as Ann Sheehan, another one
9 of our Commissioners, but the State Lands Commission hasn't
10 yet weighed in on that issue.

11 And, of course, as you know, the Lands Commission
12 heard this last fall, about the same time as the Coastal
13 Commission, and had almost the exact same concerns, and
14 directed that staff return with additional information on, in
15 essence, both Conditions 8 and 10. We have worked closely
16 with your staff, in that regard.

17 Our staffs have a lot of the same concerns and the
18 same analyses of these issues, and we will be reporting to
19 our own Commission on August 22, and so at that point, the
20 State Lands Commission will be evaluating the same thing, and
21 the people with whom I almost have a first name basis, at
22 this point, in the crowd, will be there, as well, I am sure,
23 and we will hear all of the same issues, again, and the State
24 Lands Commission will figure out what it will do then.

25 But, I wasn't sure whether Commission Reilly was

1 inferring that the State Lands Commission had already weighed
2 in on this, and it hasn't, really.

3 CHAIR KRUEER: Okay, anything else, Commissioner
4 Thayer, okay.

5 Director Douglas, what were you going to say?

6 EXECUTIVE DIRECTOR DOUGLAS: I just wanted to
7 clarify.

8 There was some conversation in which Mr. Zbur
9 indicated -- in an exchange with Commissioner Reilly, I
10 believe it was -- that they were prepared to just use only
11 purchase from CCAR, unless the executive director approves
12 others, in case there aren't enough available. Is that
13 incorporated into the motion?

14 CHAIR KRUEER: Yes.

15 COMMISSIONER HUESO: From my reading of the
16 motion, there is a Special Exhibit A where it talks about
17 priority acquisition and verification, and it talks about
18 CCAR or CARB, and I am fine with CCAR being the first choice,
19 and then having any other options available pursuant to
20 approval of the executive director, just so long as they have
21 the opportunity to look at other cost effective savings,
22 because, from my perspective, as long as we make sure that
23 the credits are purchased through a program that accomplishes
24 what --

25 EXECUTIVE DIRECTOR DOUGLAS: Okay, there are a

1 couple of issues, just to make clear, because we don't want
2 to come back and have an argument over this.

3 Poseidon would only purchase from CCAR, unless the
4 executive director approves other sources for acquisition
5 because they don't have enough credits available. That is
6 what I understood on that part of it.

7 CHAIR KRUER: And, reasonably priced. Price was
8 one of the issues, too. In other words, if they go to CCAR
9 -- I am just telling you what they said, and we agree or
10 disagree, but I am just saying they added a caveat on that.

11 EXECUTIVE DIRECTOR DOUGLAS: Okay, but they would
12 have to come back --

13 CHAIR KRUER: Right, they would --

14 EXECUTIVE DIRECTOR DOUGLAS: -- if they are going
15 to go to somewhere else, they would have to come back and
16 say, "We can't buy the credits we need here, because of this
17 reason" --

18 CHAIR KRUER: Right.

19 EXECUTIVE DIRECTOR DOUGLAS: -- "therefore can we
20 go somewhere else."

21 CHAIR KRUER: Yes.

22 EXECUTIVE DIRECTOR DOUGLAS: And, if we have a
23 dispute, it comes back to you.

24 CHAIR KRUER: Right.

25 EXECUTIVE DIRECTOR DOUGLAS: And, then, the second

1 question was, they would use any programs adopted by any air
2 districts, by CARR, or CCARB and eliminate all of the other
3 governmental entities, local. I heard them say that, but I
4 wanted to make sure that that was included in the motion.

5 COMMISSIONER HUESO: That is fine. That is
6 acceptable.

7 EXECUTIVE DIRECTOR DOUGLAS: Okay.

8 COMMISSIONER BURKE: [remarks off microphone]

9 COURT REPORTER: Please use your microphone.

10 CHAIR KRUEER: On your mike, please.

11 EXECUTIVE DIRECTOR DOUGLAS: Well, I thought they
12 said any --

13 COMMISSIONER BURKE: Well, let's call them up and
14 ask that, because I want to get that clarified.

15 CHAIR KRUEER: Fine, Commissioner Burke, that is a
16 good idea.

17 Mr. Zbur, you heard what Director Douglas said.

18 MR. ZBUR: We are happy and it is acceptable to
19 have any major air district, or CARB and the South Coast,
20 either one of those is acceptable to us.

21 CHAIR KRUEER: Okay.

22 EXECUTIVE DIRECTOR DOUGLAS: That is included,
23 okay.

24 CHAIR KRUEER: And, the "second" they can adopt
25 that?

1 **COMMISSIONER POTTER:** Yes.

2 **CHAIR KRUEER:** Is there anyone else?
3 Director Douglas.

4 **EXECUTIVE DIRECTOR DOUGLAS:** Yes, this is not
5 relative to what is in the motion. This is for clarification
6 because we are going to have to implement this.

7 One of the opt out provisions does indicate that
8 they can opt out if the market is unstable for credits. And,
9 I don't understand any criteria for what is unstable, and
10 what that means? If we could get some guidance, so that we
11 don't end up being in an argument over that, because that is
12 still part of the motion.

13 **COMMISSIONER POTTER:** Mr. Douglas, as the
14 "second" I would be in support of knocking out the opt out
15 piece. I think to keep buying your way into this does
16 nothing for the environment. It is just paying for a sin.

17 So, I would support, or offer as the "second" if
18 the maker agrees, that the condition is that the opt out
19 piece is eliminated.

20 **COMMISSIONER HUESO:** I am okay with eliminating
21 it, but I would ask that we include at least some provision
22 for review --

23 **COMMISSIONER POTTER:** Bring it back here.

24 **COMMISSIONER HUESO:** -- given extenuating
25 circumstances that are beyond anyone's control, if we can

1 have, at the executive director's discretion, working with
2 the applicant to determine a condition which fits that, where
3 we can either have the executive director make a recommend-
4 ation back to the Commission that we can act on.

5 I am just --

6 COMMISSIONER REILLY: Mr. Chair --

7 COMMISSIONER HUESO: -- from my perspective, I am
8 not interested in having them opt out of a requirement. I
9 don't want that, at all, but given certain circumstances, it
10 may be prudent to wait out a certain period, to purchase
11 credits that either are at a more favorable rate, or I don't
12 know, if the program ends, and if there is no substitute
13 program, if they were in transition in programming. I mean,
14 there may be a situation in which it may render the applicant
15 in default, and we don't want to put this project in that
16 situation.

17 MR. ZBUR: Mr. Chair, would it be in order for me
18 to explain what the proposal does, because I think a lot of
19 the concerns would be addressed, although I do believe that
20 Mr. Douglas is right, that the opt out has a subjective
21 standard.

22 So, essentially, what it says is if there are
23 market disruptions, or the price of offsets make the
24 compliance infeasible, we would have to come back to the
25 executive director, first, and he would have to make a

1 determination that those factors occurred, and if that is the
2 case we would be able to go into the opt in program. It may
3 be for a temporary period of time. It may be for a longer
4 period of time. It is up to the executive director to make
5 that determination.

6 We are just worried about the fact if there are
7 not offsets on the market, as there have been many cases with
8 other offset markets. But, anyway, if there is a disagree-
9 ment, then it would come to the Commission.

10 **EXECUTIVE DIRECTOR DOUGLAS:** That's right.

11 **COMMISSIONER POTTER:** Exactly, this placing the
12 money into an escrow account, and then letting that account
13 sit there is perpetuity, does nothing as far as zero
14 reductions.

15 **MR. ZBUR:** I think the term of the escrow period
16 is subject to the Executive Director's determination, and if
17 there is a disagreement we would bring it to the Commission.

18 So, this isn't something that is permanent, it
19 also has contingencies.

20 **COMMISSIONER HUESO:** I'm fine with that.

21 **COMMISSIONER POTTER:** I am absolutely fine with
22 it.

23 **CHAIR KRUEER:** Okay, we are fine.

24 Commissioner Shallenberger.

25 **COMMISSIONER SHALLENBERGER:** Yes, I would like to

1 ask Joel Levin of the California Registry to come up for just
2 a question, and that is that I am talking now about the
3 baseline reason, which seems to be the other major issue
4 before us, the disagreement between the project proponent and
5 the staff recommendation.

6 If the Commissioner were to request the project's
7 baseline be determined through the California Registry, how
8 would you calculate that? how would it be calculated?

9 MR. LEVIN: Okay, well, if you can bear with for a
10 second, as I need to talk a little bit about greenhouse gas
11 accounting rules.

12 There is, in international practice, all green-
13 house gas emissions are divided into Scope 1, Scope 2, and
14 Scope 3 emissions. Scope 1 emissions are direct emissions,
15 which in this project are very small, and hasn't really been
16 any discussion.

17 Scope 2, is indirect emissions from purchases and
18 sales of electricity, and schemes -- there is no scheme here
19 -- so, Scope 2 emission would, basically be -- and this an
20 international standard -- essentially, your purchases of
21 electricity, minus your sales of electricity, so that is your
22 net purchases of electricity.

23 Scope 3 is all other kinds of indirect emissions
24 that go up and down the supply chain, and so, for example
25 what you are talking about with the State Water Project, the

1 way I understand that, that would, essentially, be a Scope 3
2 emission.

3 In international accounting standards, you keep
4 all three of those separately. They are all significant,
5 each one of them is real, but they are different. They are
6 apples and oranges, so you can't add Scope 1 and Scope 2
7 together, or Scope 2 and Scope 3.

8 Under our program, we require people to report
9 Scope 1 and Scope 2. Scope 3 is voluntary. Some people
10 report certain aspects of their Scope 3, some don't.

11 So, if we were to calculate this, it depends a
12 little bit on what you ask for. If you said you would like
13 the California Registry just to calculate the base line, and
14 we'd like it to be their Scope 2 emissions, then, it would be
15 just that, it would be their net electricity purchases, which
16 is not to say that the emission reductions associated with
17 the State Water Project are nothing, but it is a different
18 type of emission. It is not something that we have a
19 calculation methodology for right now.

20 So, that would be sort of a policy decision for
21 you, if you wanted to, to put those together, and math them
22 out, but in terms of the way we calculate, Scope 2 would be
23 just straight electricity purchases.

24 **COMMISSIONER SHALLENBERGER:** May I ask you one
25 more question.

1 MR. LEVIN: Sure.

2 COMMISSIONER SHALLENBERGER: If I were to tell you
3 -- and we can talk later about whether it is true -- but, if
4 I were to assert that this project coming online will make no
5 difference in the exports through the State Water Project
6 into the Metropolitan Water District, how would you then
7 calculate that, in this project?

8 MR. LEVIN: Well, again, we don't have a protocol
9 for that. It is not something -- the way that we operate is
10 we develop accounting standards through a big public process,
11 with a working group, and we will establish rules for how you
12 measure a specific source. To look at what are the emissions
13 associated with water from the State Water Project, we just
14 have never tackled that, so I am not even sure I could answer
15 that.

16 COMMISSIONER SHALLENBERGER: Okay, thank you, I
17 did want to address that.

18 As my fellow Commissioners know, I worked in water
19 policy for 15 years, began with the Peripheral Canal Bill
20 passing the legislature, and ditch ditch, and many bonds,
21 right up and including the current proposal about
22 alternatives to the delta, and there has been a lot of talk
23 about the use of the words gross versus net, which I think is
24 a bit of a smokescreen as opposed to what is really going to
25 happen here.

1 The State Water Project is over contracted, and
2 when Metropolitan Water District says it is not fully built
3 out, that is absolutely true, and nobody would disagree with
4 that, nor will it ever be fully built out. It was a grand
5 concept, and it didn't -- there was no understanding at the
6 time of what the impact of the State Water Project and the
7 Central Valley Project would have on the delta. The delta is
8 now in a state of -- and I don't think anybody would disagree
9 that it is in a complete state of deterioration, and we are
10 not sure -- nobody is actually sure that it can be saved.

11 There are actually three different alternatives
12 being floated now for ways to save it, but none of those
13 alternatives include fully building out the State Water
14 Project.

15 So, the Metropolitan Water District -- and these
16 are round numbers, so if somebody ends up going to court, you
17 are going to have to look it up on your own -- but, the
18 Metropolitan Water District, I believe, has contracted for,
19 approximately, 2 million acre feet of water a year. I don't
20 believe they have ever gotten more than 1.7 million acre
21 feet, and it has gone down way below that in times of
22 drought.

23 We have heard a lot of statements about being in a
24 time of drought, and we are. I absolutely agree that we need
25 to have a broad portfolio of new water sources, and

1 desalination is one of them, and this project, absolutely,
2 should be one of the pieces in the portfolio for increasing
3 reliability of water, but if it were to go online tomorrow,
4 and have maximum productions, it would not reduce the amount
5 of water being pumped through the State Water Project into
6 the Metropolitan Water District, and yes, that is over the
7 Tehachapis, and no it would not have to go through an EIR
8 review, because that is contracted water.

9 The Metropolitan Water District has a contract for
10 that water, and every year they go through how they are going
11 to distribute that water within their jurisdiction, which
12 includes selling it to San Diego.

13 So, I have to commend staff, our staff, for what I
14 understand working very constructively with both the Energy
15 Commission staff and the Air Resources staff. The first
16 letter we got from the Energy Commission, dated July 18, was
17 very clear and constructive and told us where it needed to be
18 strengthened.

19 Eleven days later we get a letter which is about
20 as mealy-mouthed as a state agency can be. This is a Governor,
21 an administration who has claimed AB32 as the most strongest
22 legislation in the country. He has gone abroad, he has gone
23 to Germany, he has gone to many places, and California is
24 leading on what we are doing about climate change.

25 And, then, the first big project to come before

1 us, happens to be before the Coastal Commission, it is going
2 to have a huge impact on climate change, and we get letters
3 like this from the Air Resources Board, who we know staff has
4 been working constructively on real substance with our
5 staff.

6 But, as I read these, none of them, including the
7 Deputy Director of the Department of Science, who admits the
8 State Lands has not had a hearing on this yet, but
9 apparently, already has an opinion on it, none of them --
10 actually, they are very careful about how they word this.
11 They talk about it should only be the net greenhouse gases
12 that are taken into account. None of them say that there is
13 going to be a reduction of State Water Project energy use to
14 pump it over the Tehachpis.

15 Metropolitan Water District is going to, and needs
16 to, and has a right to take all of the water that is
17 available to them out of the delta.

18 This project is going to increase reliability. It
19 is going to increase, kind of stop the ebs and flows of
20 drought, and time of plenty.

21 So, I really, on the baseline, and here is -- now
22 I am getting to the problem, is that we have a 32-page
23 redlined proposal that comes from the project proponent,
24 which I got this morning, I admit I have not read, and
25 therefore the motion that is before me, I don't know what it

1 does with this baseline.

2 So, now I am going to turn to staff and say with
3 the motion that is before us, and with your understanding of
4 the amendments that have been made to it, with having to do
5 with the Registry, what else is different between your
6 proposal for a motion, and the one that is before us, because
7 I am going to need to vote on this without having actually
8 read the proposal that is before us.

9 **ENVIRONMENTAL SPECIALIST LUSTER:** Staff's
10 understanding, addressing your concerns as I understand it,
11 one of the main differences, is that Poseidon refers to the
12 state water offset as a project related measure that is,
13 essentially, automatically included in calculating where it
14 starts for its net emissions.

15 And, so, although CCAR would -- it would work with
16 CCAR to get agreed emission credits in place, the issue of
17 the State Water Project would not be included in that review.
18 That is staff's understanding, just having briefly read
19 through the plan we received this morning.

20 **COMMISSIONER SHALLENBERGER:** Well, it is funny,
21 because our critics say, you know, you are specialists in
22 greenhouse gases, and you are not specialists in climate
23 change, and the Air Resources Board is the specialist, and
24 Assembly Bill 32 put them in charge for determining things
25 like this, and yet we are about to, perhaps, pass something

1 which says that we are, in fact, in a position to know what
2 the baseline is.

3 So, I would like to urge my fellow Commissioners
4 not to approve the resolution, as it sits before you, because
5 of the baseline calculation, which we are not in a position
6 to foreclose the Air Resources Board making their own
7 determination.

8 CHAIR KRUEER: Commissioner Scarborough.

9 COMMISSIONER SCARBOROUGH: Yes, thank you.

10 Talking overarching, I agree with Commissioner
11 Shallenberger about the importance of adding desal to the
12 portfolio of the water supply. Getting to the elements of
13 baseline, yes AB32 staff have worked together at many
14 different levels.

15 What the new letter from the Energy Commission
16 describes is a further understanding with further meetings --
17 and the executive director was here this morning, I am sorry
18 you weren't able to ask her further questions, Ms.
19 Shallenberger, when she was here, but she tried to describe
20 in her letter the better understanding of, perhaps, is the
21 glass half full, or is it half empty?

22 The concept of net or gross has been wrestled
23 around through CARB, through the CEC, through the Resources
24 Agency, through many, in fact, as I know in here with many of
25 our staff.

1 In essence, what I understand from a Resources
2 perspective -- indeed, we are arguing within our family as
3 well -- is that, yes, Met will continue to receive that
4 water. They are not going to turn the state tap off. Other
5 projects that will then need to use that water will have to
6 go through a process by which they get the okay to use that
7 water. And, it is that new project that will then have to be
8 in compliance with CARB and APCD, or whatever local district,
9 on their greenhouse gas emission reductions for that project.

10 So, therein lies the neutrality of the 100, with
11 the charts of 100 and the 25. So, net versus gross is pretty
12 clear that the impacts on the increase of the 56,000-feet
13 that they are providing, that is what they are reducing.

14 So, from a Resources Agency perspective, from
15 CARB, naturally, it still astonishes me how people refer to
16 AB32. Yes, it was a bill, you understand that, Commissioner
17 Shallenberger, and it got signed. The implementation of that
18 bill is still being done.

19 It was noted by several local speakers that just
20 last week some of the documents had hit the street. It is
21 not final. It is not approved. A scoping plan is out for
22 public comment. You can't refer to AB32 as having guidelines
23 by which a project will have to mitigate, yet, it will, and
24 that is why, therefore, a sister agency, as CARB, should be
25 adjoined to this, which it is. CCAR, CARB, they are all a

1 collected family, of which you are joining by approving this
2 mitigation plan that has CARB connected to it.

3 So, Resources Agency, for one, agrees that the
4 project mitigation plan as an overall water supply portfolio
5 expansion, completely supports the concept of it going net,
6 as justified in the letter attached from the Energy
7 Commission, and the ARB.

8 **CHAIR KRUEER:** Thank you, Commissioner Scarborough.

9 And is that it, before I call for the motion?

10 I'm sorry, Commissioner, do you want to go again.

11 No. I am going to wait until last, just so we don't get into
12 a debate here.

13 **COMMISSIONER SHALLENBERGER:** Yes, I just wanted to
14 respond that either this is water being freed up for new
15 development, or it is not.

16 It is my understanding, given the condition of the
17 Metropolitan Water District's water supply, that this isn't
18 for new development, and I agreed with people who said that
19 it was not growth inducing. They don't have enough water for
20 reliable water source, given what is already on the ground.

21 So, when I hear the Resources Agency saying that
22 it will have to go through, get a permit for new development,
23 now I am hearing that it is new development. So, I don't
24 believe that is true. I don't think it is, and if it is not
25 due to new development, there will be no environmental

1 review, because it is already contracted for.

2 My question to staff is, given that we are not
3 working off your motion, is there a way to have this baseline
4 issue addressed by the agencies, state agencies, who in fact
5 are recognized as that is their expertise, not ours, rather
6 than us foreclosing that now?

7 **ENVIRONMENTAL SPECIALIST LUSTER:** My initial
8 suggestion, as you heard earlier from the CCAR represent-
9 ative, of the different, three different forms of emissions,
10 if the Commission required CCAR to evaluate all Scope 2 and
11 Scope 3 forms of emissions from the project, that would allow
12 CCAR to review the state water project offsets, and to see
13 whether they meet various criteria.

14 **EXECUTIVE DIRECTOR DOUGLAS:** I think that the most
15 important element of that is since we have a real difference
16 of opinion here, on what the baseline is, and we agree with
17 your analysis of this, to have a credible independent review
18 of what the baseline is, if you could ask CCAR to look at the
19 category 3 -- I know they don't have any protocols yet for
20 that, but at least they have got the expertise to be able to
21 look at that and determine, in their best judgment, what they
22 think the baseline might be. You could look at that as an
23 alternative.

24 **COMMISSIONER SHALLENBERGER:** And, if there is an
25 amending motion to do that, would the project proponent

1 probably come forward and say this is going to cost time, and
2 delay?

3 **EXECUTIVE DIRECTOR DOUGLAS:** Well, you could
4 approve the plan today, which would get you passed that issue
5 of prior to issuance, with a provision, a proviso, that you
6 have the baseline determined by CCAR, and that if they have a
7 dispute with what that means, in terms of feasibility or
8 costs, again they could come back, and you could authorize
9 them to come back for an amendment, if they wish.

10 **CHAIR KRUEER:** Okay, I am going to go to
11 Commissioner Lowenthal, and then I will address this last
12 idea of yours, Director Douglas.

13 Commissioner Lowenthal.

14 **COMMISSIONER LOWENTHAL:** Actually, was wondering
15 if the applicant -- looked like the applicant had a response
16 to that. Would that be appropriate, on the baseline being
17 described by CCAR, would that be appropriate, just to hear
18 what his response would have been? from Mr. Zbur?

19 **CHAIR KRUEER:** You can do that.

20 **COMMISSIONER LOWENTHAL:** May I ask Mr. Zbur to do
21 that?

22 **MR. ZBUR:** We would not like that. We would want
23 it to be clear, as I think the ARB letter said, that it be
24 the net approach, which allows us to automatically reduce the
25 water that is foregone from the State Water Project, so we

1 would actually prefer that the plan be adopted, as the motion
2 would do.

3 COMMISSIONER LOWENTHAL: Okay, and I also wanted
4 to just make a couple of comments regarding the imported
5 water from the State Water Project.

6 I think we all understand that Metropolitan has a
7 contract for the amount that it does take annually, and I
8 don't look to creating additional facets to water portfolios
9 necessarily as a 1:1 trade. I think, in the reality of a lot
10 of what is going on with water in our state, drought being
11 one of them, it is difficult to make that 1:1 assumption if
12 there are 100 units of water produced by the desal project,
13 that 100 units would be reduced in terms of imported
14 supplies.

15 I think what we are seeing in communities across
16 California, we have been seeing this for many, many years,
17 separate from various contamination issues, so where they may
18 have had ground water resources in the past, they actually
19 take greater imported supplies, and so that ends up upsetting
20 this 1:1 offset that we may expect when we add new facets to
21 the portfolio.

22 So, I understand the difference in the total
23 landscape and what has changed, and why. For instance, water
24 imported into San Diego may continue at the same level, or
25 into other areas, one accounting for increase in population,

1 not necessarily inducing the growth, and two, accounting for
2 any changes in local portfolio that need to take place
3 because of their need to address any contamination issues.

4 And, so, I just wanted to make that remark, and
5 also mention that I am a board member of the MWD and am very
6 familiar with their operations, and do understand the
7 challenges that members of the audience and communities may
8 experience when it comes to looking at why we continue to
9 take the same amount of contractual water annually.

10 But, I think it is a little bit more complex, than
11 the 1:1 offset we would expect from every project.

12 **CHAIR KRUEER:** Thank you, Commissioner Lowenthal.

13 I'll go to Commissioner Thayer, then myself, and
14 then I am going to call the question.

15 **COMMISSIONER THAYER:** I'll be brief.

16 I wanted to respond, in connection to the question
17 about Ms. Sheehan, one of my Commissioner's letters. I think
18 she does a good job of speaking two different voices here.

19 One of them, she speaking as a representative of
20 the administration, and advocating that the approach taken on
21 the replacement versus additive questions for the water
22 offsets is something that the Commission, this Commission,
23 the Coastal Commission, should feel satisfied with the permit
24 conditions -- not a State Lands Commission issue. In the
25 next sentence, she gets onto the State Lands Commission role

1 that she has, a separate one, indicates she will be
2 considering this matter further, before she acts as a
3 Commissioner.

4 So, I think, her letter reflects knowing a lot
5 about the project for her work as a State Lands Commissioner,
6 but she is speaking as a official who is not a State Lands
7 Commissioner, in this letter.

8 CHAIR KRUEER: Okay?

9 COMMISSIONER THAYER: Yes, thank you.

10 CHAIR KRUEER: Thank you.

11 Yes, I would like to just say that at this point
12 in time, this project has been before us quite some time ago,
13 and before that, and I think it is time to move forward today
14 with this motion. I have heard a lot of testimony, some
15 things got cleared up, like voluntary, that I had issue with,
16 those words. But, I am concerned that we move forward today,
17 and take a decisive action on this.

18 In listening to the testimony of all of the
19 people, today, it was excellent, but listening to the
20 regulatory agencies, that are going to be responsible for
21 AB32, at this juncture, on an approved project like this, I
22 have no problem understanding, from my own perspective, that
23 there is the net versus the growth.

24 If somebody is going to spend \$300 million on a
25 project, and it goes under the old "no good deed goes

1 unpunished," they should get some credits. And, what happens
2 is AB32 comes along, which is fine, et cetera, but if you add
3 -- I don't want to have happen -- the support, in this case,
4 of the staff recommendation because if you did that, and
5 added -- the testimony was given that the mitigation plan
6 went from \$55 million to \$121 million -- and it isn't just
7 \$19 a ton, or some of the numbers you had.

8 The infrastructure costs of putting all of that
9 money up front, and putting all of that money that you have
10 to amortize over a period of time, those are the things that
11 create very big difficulties, that delay projects, and that
12 makes them, sometimes, infeasible. You just can't add \$50 or
13 \$60 or \$70 million to a project like that. The capital
14 markets won't allow it.

15 And, in this case, there is a good participation
16 between the private sector and the public sector, and I think
17 there has been a lot of testimony that now is the time. I
18 think I have heard enough about that the plan is flexible,
19 good, fair, and equitable.

20 And, it is always good to hear from Mr. Simmons.
21 I think he is one of the most astute men in law today, that
22 has for so many years been in water, et cetera, and his
23 testimony was very important to hear that today, along with
24 Dr. Cook, and others.

25 So, with that we will move on.

1 The maker and seconder are asking for a "Yes"
2 vote, and Clerk, would you call the roll, please.

3 **SECRETARY MILLER:** Commissioner Achadjian?

4 **COMMISSIONER ACHADJIAN:** Yes.

5 **SECRETARY MILLER:** Commissioner Blank?

6 **COMMISSIONER BLANK:** Yes.

7 **SECRETARY MILLER:** Commissioner Burke?

8 **COMMISSIONER BURKE:** Yes.

9 **SECRETARY MILLER:** Commissioner Lowenthal?

10 **COMMISSIONER LOWENTHAL:** Yes.

11 **SECRETARY MILLER:** Commissioner Hueso?

12 **COMMISSIONER HUESO:** Yes.

13 **SECRETARY MILLER:** Commissioner Kram?

14 **COMMISSIONER KRAM:** Yes.

15 **SECRETARY MILLER:** Commissioner Neely?

16 **VICE CHAIR NEELY:** Yes.

17 **SECRETARY MILLER:** Commissioner Potter?

18 **COMMISSIONER POTTER:** Aye.

19 **SECRETARY MILLER:** Commissioner Reilly?

20 **COMMISSIONER REILLY:** Yes.

21 **SECRETARY MILLER:** Commissioner Shallenberger?

22 **COMMISSIONER SHALLENBERGER:** No.

23 **SECRETARY MILLER:** Commissioner Wan?

24 **COMMISSIONER WAN:** No.

25 **SECRETARY MILLER:** Chairman Krueer?

1 CHAIR KRUER: Yes.

2 SECRETARY MILLER: Ten, two.

3 CHAIR KRUER: Ten, two, the motion passes, and the
4 Commission hereby finds that the Compliance Plan entitled
5 Carlsbad Seawater Desal Plant Energy Minimization and
6 Greenhouse Gas Reduction Plan, prepared and submitted by the
7 permittee, Poseidon Resources, Channelside, LLC, dated August
8 6, 2008, is adequate and fully implemented to comply with the
9 Special Condition 10 of the Coastal Development Permit
10 E-06-013.

11 We are going to take a break now, a 10-minute
12 break.

13 [Recess &

14 Item No. 5.b. Condition Compliance
15 Marine Life Mitigation Plan]

16 CHAIR KRUER: Is everybody ready to go? Director
17 Douglas, are you all set? Okay.

18 EXECUTIVE DIRECTOR DOUGLAS: We are ready to
19 proceed, Mr. Chairman, if you are.

20 CHAIR KRUER: And, that is what we are going to
21 do, Director Douglas, go to 5.b.

22 EXECUTIVE DIRECTOR DOUGLAS: Tom.

23 ENVIRONMENTAL SPECIALIST LUSTER: Okay, thank you,
24 Chair Krueer and Commissioners. This next item is Condition
25 Compliance report for Poseidon Resources proposed Marine Life