MEETING

STATE OF CALIFORNIA

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

REGULAR MONTHLY BUSINESS MEETING

COPY

Board Room

8800 Cal Center Drive

Sacramento, California

Wednesday, April 28, 1993

10:00 a.m.

Janet H. Nicol
Certified Shorthand Reporter
License Number 9764

1 APPEARANCES

2

BOARD MEMBERS PRESENT:

3 Michael Frost, Chairman

4 Wesley Chesbro, Vice Chairman

5 Sam Egigian

6 Jesse Huff

7 Kathy Neal

8 Paul M. Relis

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STAFF PRESENT:

11 Ralph Chandler, Executive Director

12 Robert F. Conheim

13 Catherine Foreman

14 Tracy Webb, Acting Board Secretary

15 Don Wallace

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

2 BOARD CHAIRMAN FROST: Good morning and welcome to
3 the monthly meeting of the California Integrated Waste
4 Management Board.
5 Could we call the roll first to establish a
6 quorum.
7 ACTING BOARD SECRETARY WEBB: Board Members
8 Chesbro.
9 BOARD VICE CHAIRMAN CHESBRO: Here.
10 ACTING BOARD SECRETARY WEBB: Huff.
11 BOARD MEMBER HUFF: Here.
12 And I'm glad to see that you have your script.
13 ACTING BOARD SECRETARY WEBB: Egigian.
14 BOARD MEMBER EGIGIAN: Here.
15 ACTING BOARD SECRETARY WEBB: Neal.
16 BOARD MEMBER NEAL: Here
17 ACTING BOARD SECRETARY WEBB: Relis.
18 BOARD MEMBER RELIS: Here.
19 ACTING BOARD SECRETARY WEBB: Chairman Frost.
20 BOARD CHAIRMAN FROST: Here.
21 Thank you.
22 Now, do any Board Members have any ex parte
23 announcements they would like to make? Any Board Members
24 have any ex parte announcements they would like to make at
25 this time?

1 No. Okay. Thank you.

2 Now, I have a few announcements about today's

3 agenda before we begin.

4 First, Item No. 10 will be taken following Item

5 No. 4. So as soon as we're done with Item 4 we'll go right

6 into Item 10.

7 Item 16 has been pulled from today's agenda.

8 Now, let us proceed now to Item 1, which is the

9 board consent agenda. And in the consent agenda, we

10 included Items 3, 5, 6, 8 and 11.

11 Now part of Item 7 is also consent. That's the

12 legislative item. And the bills in that item, all of the

13 bills are on consent except AB 440, AB 1220, AB 1829, and SB

14 466.

15 So the consent agenda includes Items 3, 5, 6, 8

16 and 11, and under Item 7 all bills except AB 440, 1220, 1829

17 and SB 466.

18 Now, before I call for a motion are there any

19 members of the board wish to request any items be removed

20 from the consent agenda?

21 BOARD MEMBER EGIGIAN: Mr. Chairman.

22 BOARD CHAIRMAN FROST: Mr. Egigian.

23 BOARD MEMBER EGIGIAN: I would like SB 1021

24 removed for explanation before --

25 BOARD CHAIRMAN FROST: SB 1021 is removed.

Any others?

BOARD MEMBER HUFF: Yes, Mr. Chairman.

At the risk of deleting this item completely, AB 315, AB 337, AB 457, and AB 1569.

BOARD CHAIRMAN FROST: Okay. All right. Now, Item 7 will include all bills on the consent except, probably ought to do it the other way but I don't have the other numbers, AB 440, 1220, 1829, SB 466, SB 1021, AB 315, 337, 457, and 1569.

All right. Okay. Now, could we have a motion, please.

BOARD VICE CHAIRMAN CHESBRO: So moved.

BOARD MEMBER HUFF: Second.

BOARD CHAIRMAN FROST: Moved and seconded.

Call the roll, please.

ACTING BOARD SECRETARY WEBB: Board Member Chesbro.

BOARD VICE CHAIRMAN CHESBRO: Aye.

ACTING BOARD SECRETARY WEBB: Huff.

BOARD MEMBER HUFF: Aye.

ACTING BOARD SECRETARY WEBB: Egigian.

BOARD MEMBER EGIGIAN: Aye.

ACTING BOARD SECRETARY WEBB: Neal.

BOARD MEMBER NEAL: Aye.

ACTING BOARD SECRETARY WEBB: Relis.

1 BOARD MEMBER RELIS: Aye.

2 ACTING BOARD SECRETARY WEBB: Chairman Frost.

3 BOARD CHAIRMAN FROST: Aye.

4 Item No. 2, report from the board's committees.

5 And the first, Mr. Jesse Huff, Chair of the Permitting and

6 Enforcement Committee.

7 Mr. Huff.

8 BOARD MEMBER HUFF: Our committee met on Monday --

9 on Wednesday, April 21. Our agenda was short, but had a lot

10 of substance.

11 Of the three items discussed, all three will be

12 presented today.

13 They are Items 10, 17, and 16.

14 10 is the Campo permit.

15 17 is the Subtitle D process.

16 And 16, oh, that was taken off; wasn't it? You

17 just took that off, pulled it off the agenda. Okay.

18 It was interesting.

19 And that concludes my report.

20 BOARD CHAIRMAN FROST: Thank you.

21 All right. Now, Kathy Neal, Chair of the

22 Legislation and Public Affairs Committee.

23 Ms. Neal, do you have a report?

24 BOARD MEMBER NEAL: Just a brief one.

25 First, I will say that I concur with Mr. Huff's

1 request the items to be removed from the consent agenda.

2 And secondly I have asked Pat Macht, our public

3 affairs director, to share with you briefly some feedback

4 that we have received from our public education campaign on

5 source reduction.

6 So Pat.

7 MS. MACHT: Thank you.

8 As you're aware, we're about halfway through our

9 pilot program on source reduction education.

10 And we have received so far over 2,000 phone calls

11 from consumers who have seen or heard our advertisements and

12 are requesting information.

13 We've received a thousand coupons from members of

14 the public from our newspaper advertisements.

15 We also have notified cities and counties about

16 our plan to bring forward a local education kit. That

17 effort has generated 50 phone calls in the last two weeks

18 that indicate that they are anxious and ready and willing to

19 receive these materials.

20 We've received letters of support from Santa Clara

21 County, from the City of Napa, as well as oral comments from

22 the City of Bakersfield, all indicating that this is the

23 appropriate role for the Waste Board, their enthusiasm and

24 their interest in receiving this from us.

25 And on Earth Day, I'll just give you a couple of

1 anecdotal experiences here.

2 On Earth Day our kit was publicized on Channel 3

3 during their Earth Day report which was at -- they broadcast

4 their news from Smurfit and it generated 180 calls just in

5 that day alone.

6 And finally I'd like to share with you an anecdote

7 that was shared with me by a member of the public.

8 Apparently this gentleman went into the

9 Albertson's store in Folsom and got a single item, they

10 bought a single item.

11 And the clerk turned to him and said, "Would you

12 like paper or plastic or nothing?"

13 And the guy said, "Oh, you've heard that radio

14 commercial too."

15 And the clerk said, "Yes, I have."

16 So I think that we certainly had expected to hear

17 from consumers and to have them get religion and but what's

18 also gratifying I think is to know that the people who are

19 giving out the bags and the people who are responsible for

20 this are also getting the message.

21 So that's sort of a midway update and we look

22 forward to presenting to the committee and to the board some

23 more substantive results in about a month or two.

24 BOARD MEMBER NEAL: Thank you.

25 I think we ought to feel good that this is at

1 least one thing that we do that local government likes and
2 certainly at least through the anecdotal evidence and
3 usually I think with this kind of activity that is certainly
4 an indication that we're meeting with some degree of success
5 even with the limited exposures that our program has had so
6 far.
7 BOARD CHAIRMAN FROST: Thank you very much,
8 Ms. Neal.
9 Mr. Egigian, do you have a report from the Policy
10 and Technical Assistance Committee?
11 BOARD MEMBER EGIGIAN: Mr. Chairman, we met last
12 week and the important item on our agenda was the tire
13 grants.
14 Staff has worked out a way that additional people
15 will be eligible and probably receiving these grants. It's
16 something that you'll hear later on in our meeting.
17 I think it was -- a good job was done and I want
18 to commend the staff on this.
19 BOARD MEMBER HUFF: What's the next committee?
20 BOARD VICE CHAIRMAN CHESBRO: Well, I'll call on
21 Mr. Relis to report on the Markets Committee.
22 BOARD MEMBER RELIS: Mr. Chair, we have five items
23 on today's agenda, Items 11, 12, 13, 14 and 15, that were
24 heard in committee so that will be the extent of my report.
25 BOARD CHAIRMAN FROST: Okay. Mr. Chesbro, do you

1 have a report from the Local Assistance and Planning
2 Committee?
3 BOARD VICE CHAIRMAN CHESBRO: Yes, Mr. Chairman.
4 The Local Assistance and Planning Committee did
5 not have any items that needed to be forwarded to the board.
6 The committee did approve to formally notice the
7 proposed used oil recycling regulations pertaining to the
8 exemption certificates for use by oil manufacturers.
9 The committee also recommended changes to the
10 draft statewide waste prevention plan and this plan will be
11 brought back to the committee next month and then brought
12 forward to the board assuming that the committee approves
13 it.
14 BOARD CHAIRMAN FROST: Thank you, Mr. Chesbro.
15 Now to conclude, as chair of the Administration
16 Committee I just like to report on a couple of items.
17 We're proceeding with plans to establish a child
18 care center and should have a time table for implementation
19 by our next meeting.
20 Today we're also forwarding a fiscal update which
21 is later on our agenda.
22 Also in my absence Board Member Huff attended
23 legislative budget subcommittee hearings and I would like
24 Mr. Huff to report on those hearings at this stage in the
25 agenda.

1 BOARD MEMBER HUFF: Thank you, Mr. Chairman.

2 I want to say it was a great privilege and

3 pleasure to be back before the Legislature and participating

4 in the legislative process. There are a number of old

5 friends on the subcommittees and I enjoyed meeting with them

6 and conducting business with them.

7 I went before the Assembly Ways and Means

8 Subcommittee, Sub No. 4, for the second time last week.

9 Their issues and concerns centered around the

10 amount of our reserve in the Integrated Waste Management

11 Account as well as our contracts.

12 With regard to the reserve I proposed to them that

13 the board's statutory authority to raise our fee from 75

14 cents to a dollar represented the functional equivalent of

15 having a reserve. You really didn't need to propose a

16 reserve and you certainly didn't need to raise 75 cent fee

17 if, in fact, all you were going to do is put the money in

18 the bank. You didn't need to charge more money just so you

19 could bank money.

20 But on the other hand if our budget began to

21 unravel, that we certainly would be compelled to examine the

22 question of the fee within the context of our statutory

23 authority to go to a dollar.

24 They kind of liked that argument so they bought

25 it.

1 On the contracts there had been a concern raised
2 by the Legislative Analyst that our contracting dollars
3 represent kind of a slush fund and they were sensitive to
4 that.
5 I suggested that two years ago this board had
6 contracts of about $14 million. The current year we have
7 contracts of about $7 million. And in the budget year we
8 have contracts of about $1 million. And if this represented
9 a slush fund, it was certainly going in the direction they
10 would like to see it go.
11 It was a very logical progression as we built our
12 board up and our staff up that we would have a lesser
13 reliance on contract money to get the work done and a
14 greater reliance on in-house staff.
15 So they bought that argument.
16 So they were very fine and they approved our
17 budget as proposed with the numbers that were printed in the
18 Governor's budget.
19 In the Senate there was a surprise in the
20 subcommittee. The chair of the subcommittee, Senator
21 McCorquodale, announced at the beginning of the subcommittee
22 that all budgets that shared in revenues from the Motor
23 Vehicle account, which obtains money from every person in
24 the State of California who registers their automobile, all
25 budgets that have an element of money from that account

1 could expect that that money might be liberated, to be used
2 for other purposes to offset the General Fund expense.
3 And particularly the Chair was thinking about
4 using Motor Vehicle account money in the Corrections budget
5 to offset the General Fund expense incurred there,
6 incarcerating people who either steal cars, use cars in
7 crimes, or drive when they are drunk.
8 So Cal EPA, their budget has $500,000 of Motor
9 Vehicle account money in it and that was one of the first
10 budgets wherein the Chair relieved them of that sum of money
11 and suggested to them that they find it in the Waste Board.
12 Well, Cal EPA was agreeable. This is a wash to
13 them whether they use Motor V money or Waste Board money.
14 And so we were the next budget and the Chair asked
15 me where we were going to get the money. And he said that I
16 had about 10, 15 seconds to consider my answer or else he'd
17 provide one for me.
18 So I provided the answer of the used oil fund and
19 particularly the residual of that fund that drops into the,
20 what is it, the publicity account? Yeah. Which has about
21 8.7 million in it. And that's a projected 1993-94 year-end
22 balance. Okay. 8,7 million.
23 Well, that seemed to be all right and I told them
24 that they'd have to write notwithstanding language to get
25 around the administrative caps and the uses that are

1 proscribed for that money in the Public Resources Code and
2 that didn't seem to bother them either.
3 Now, I understand that there are some in the
4 Legislature who might have some concerns about that and I
5 think that those concerns probably are perfectly legitimate,
6 but they weren't mine at the moment when I had to scratch up
7 $500,000 out of somewhere.
8 So it will be an item of conference as the budgets
9 are now written, but it will be an item of conference in the
10 Cal EPA budget. It's not shown in our budget. It will be
11 shown in the Cal EPA budget.
12 With regard to our budget, the committee approved
13 the numbers as proposed, so our budget in both houses have
14 the same numbers.
15 The Senate did adopt some language on the -- I had
16 that language here too but I don't know where it is -- on
17 the question of the reserve requiring that we report to the
18 Legislature before we raise the fee from 75 cents and tell
19 the Legislature what alternatives we have examined and why
20 we would proceed with raising the fee in order to protect
21 our budget from unraveling as opposed to anything else.
22 And that's control language requiring a report to
23 the Joint Legislative Budget Committee and to the Chair of
24 both fiscal committees prior to and giving them 30 days
25 prior to us taking such action.

1 They also had some supplemental language about
2 contracts that the Senate added.
3 So those three items that the Senate did will be
4 items of conference but the first one will be a matter
5 regarding the Cal EPA budget, the second one will be insofar
6 as the control language only and the third one will be
7 supplemental report language.
8 BOARD CHAIRMAN FROST: Okay. Thank you, Mr. Huff.
9 BOARD MEMBER HUFF: It was otherwise a very
10 enjoyable experience and I enjoyed the Senate Committee as
11 well. It was fun to watch them work.
12 BOARD CHAIRMAN FROST: Okay. Now, we'll move to
13 Item 4, which is consideration of award of contract for the
14 used oil market research and media campaign.
15 Tom Rietz will make this presentation.
16 MR. RIETZ: Mr. Chairman, several months ago the
17 board approved the contract concept for the used oil
18 recycling program's media campaign.
19 The scope of work for this contract includes
20 conducting market research and developing a marketing
21 strategy.
22 Staff is now asking for the board's approval to
23 award the contract to the lowest qualified bidder, Deen and
24 Black Public Relations of Sacramento.
25 Christy Porter will now briefly describe the

1 proposal, the evaluation process, and Deen and Black's
2 qualifications.
3 MS. PORTER: Thank you.
4 Staff is excited about getting started on this to
5 get the word out to the public on our used oil program. We
6 were fortunate enough to have received a total of 17
7 proposals from several very reputable firms in California.
8 Six of these were initially disqualified due to
9 failure to meet the minority, women-owned business, and
10 veteran-owned business requirements.
11 The evaluation team consisted of six members
12 representing several different divisions here, Public
13 Affairs, Household Hazardous Waste, Used Oil Section, and
14 the Administration Division.
15 I feel we did a very thorough evaluation following
16 the contract review procedures and I feel confident in our
17 scores.
18 We ended up with three different firms meeting the
19 minimum score of 80 percent.
20 The qualified bidder were DDB Needham, Pacific
21 West Communications, and Deen and Black Public Relations.
22 Of these the lowest qualified bidder was Deen and
23 Black at $249,600.
24 Deen and Black is a Sacramento based firm.
25 They met the minority, women and veteran-owned

1 business requirements with 60 percent of their work going to
2 these businesses.
3 They also have Mering and Associates, which is a
4 local reputable advertising firm.
5 Deen and Black is a leading firm in the state for
6 developing government campaigns focused on consumer behavior
7 relating to automobiles. They have done several campaigns
8 for State agencies including the Office of Traffic Safety
9 for a Smooth Operator traffic congestion campaign, and the
10 Bureau of Automotive Repairs for a smog check campaign.
11 They've also worked for the California Transit
12 Association and several local districts.
13 They have also worked with Farmers Insurance
14 Company on a youth education safety program.
15 And Robert Deen, who is one of the their
16 principals, will be the project manager and he's here to
17 answer any questions you might have.
18 What Deen and Black will be doing for us is
19 initially doing research to find out what will motivate the
20 public to recycle their used oil. They'll be doing this
21 through focus groups and opinion polls and looking at
22 existing research.
23 And then based upon that they will be designing a
24 cost-effective campaign for us, which it sounds like we'll
25 be needing.

1 I'm confident in Deen and Black's ability to do
2 this work for us and to come up with an effective campaign.
3 And with that I'd like to request the committee's
4 approval to award this contract to Deen and Black.
5 BOARD CHAIRMAN FROST: All right. Any discussion
6 of this item?
7 BOARD MEMBER NEAL: Move approval.
8 BOARD VICE CHAIRMAN CHESBRO: Second.
9 BOARD CHAIRMAN FROST: It's moved and seconded to
10 approve this recommendation.
11 Call the roll, please.
12 ACTING BOARD SECRETARY WEBB: Board Member
13 Chesbro.
14 BOARD VICE CHAIRMAN CHESBRO: Aye.
15 ACTING BOARD SECRETARY WEBB: Huff.
16 BOARD MEMBER HUFF: Aye.
17 ACTING BOARD SECRETARY WEBB: Egigian.
18 BOARD MEMBER EGIGIAN: Aye.
19 ACTING BOARD SECRETARY WEBB: Neal.
20 BOARD MEMBER NEAL: Aye.
21 ACTING BOARD SECRETARY WEBB: Relis.
22 BOARD MEMBER RELIS: Aye.
23 ACTING BOARD SECRETARY WEBB: Chairman Frost.
24 BOARD CHAIRMAN FROST: Aye.
25 Now we're going to move to Item 10, which is

1 consideration of draft permit for authority to construct
2 under Cooperative Agreement between the Campo Environmental
3 Protection Agency and Cal EPA.
4 Martha Vazquez -- actually Ralph is going to
5 introduce this item.
6 Ralph Chandler.
7 EXECUTIVE DIRECTOR CHANDLER: Thank you,
8 Mr. Chairman and Board Members.
9 BOARD CHAIRMAN FROST: Excuse me. Just a preface
10 to Mr. Chandler by saying that I would like -- I would like
11 you to make it very clear as to what exactly we're voting on
12 today and what we're not voting on today, because I think
13 that's an important fact.
14 EXECUTIVE DIRECTOR CHANDLER: Very good. And my
15 remarks will do so.
16 Let me just briefly describe then how I intend to
17 present the staff's presentation this morning.
18 Inasmuch as this item has been heard at the
19 committee level first on March 26th in San Diego and then
20 again last Wednesday in Sacramento, I am proposing to have
21 staff give a very brief technical overview that Mr. Vlach
22 will do here shortly.
23 I would also like Mr. Conheim to amplify briefly
24 on the nature of the Cooperative Agreement, specifically
25 what we gain by being a party to that agreement.

1 And then I will make some concluding remarks
2 specific to your request, Mr. Chairman, relative to what
3 we're actually considering today relative to what is in and
4 what is not in the draft permit to construct, et cetera.
5 So with that, Bernie, if you can give a five to
6 seven minute overview of staff's technical presentation.
7 MR. VLACH: Thank you, Mr. Chairman. Good
8 morning, Mr. Chairman, members of the board.
9 My name is Bernie Vlach and I'm representing the
10 Waste Management Board staff.
11 My part of the staff presentation will cover two
12 areas.
13 Number one, I will give a brief history of the
14 process that provides the opportunity for your consideration
15 of this issue today.
16 And number two I would like to give a brief
17 description of the project that is being proposed by
18 Mid-American Waste Systems and Muht-Hei Incorporated.
19 Regarding the history of the project, about six
20 years ago, the Campo band of Mission Indians began to
21 consider various options that would provide economic
22 development for the tribe.
23 After deliberations the tribe concluded that a
24 solid waste management project provided the best economic
25 opportunities for them.

1 Two years ago the tribe, through its own system of
2 government, established two new entities.
3 Number one, a wholly owned tribal corporation
4 called Muht-Hei, which was responsible for the development
5 of the waste management, solid waste management project.
6 And number two, environmental regulatory agency
7 with the moniker, CEPA, Campo Environmental Protection
8 Agency, that would provide environmental protection for the
9 tribe not only from the dangers proposed by a solid waste
10 management project, but from all other potential sources of
11 pollution.
12 In 1971 the Governor signed legislation, Assembly
13 Bill 240, which provided Native American tribes in
14 California an opportunity to enter into cooperative
15 agreements with the State that would ensure equivalent
16 environmental protection for all citizens of the state.
17 The statutes were subsequently codified into the
18 Public Resources Code.
19 And it requires the State must enter into these
20 agreements when they are solicited by a tribe.
21 Specifically the Cooperative Agreement provides
22 the mechanism by which the various state departments will
23 ensure that there is a functional equivalency between State
24 environmental laws and regulations and those of the Campo
25 Environmental Protection Agency.

1 The State of California through the California
2 Environmental Protection Agency and CEPA entered into such a
3 Cooperative Agreement on December 10th of 1992, ensuring
4 that the regulations of CEPA are functionally equivalent to
5 those of the State.
6 About the same time in late 1992, the final
7 Environmental Impact Statement for the project, which was
8 being prepared by the Bureau of Indian Affairs was issued.
9 That process was recently consummated yesterday
10 with the signing of a record of decision by the Secretary
11 for the Department of the Interior.
12 That document establishes mitigation measures and
13 mitigation monitoring plan for this project.
14 About that same time in late 1992 CEPA proposed a
15 permit for the project. The permit is the first in a series
16 of two permits. The proposed permit is a tentative
17 authority to construct the landfill.
18 At a later date the proponent will provide to the
19 staff and the board an opportunity to review a permit to
20 operate the landfill.
21 And you will be revisiting this issue again in six
22 months to a year.
23 The issue before you today is for the construction
24 of the landfill and does not provide -- CEPA does not
25 provide authority to Mid-American or Muht-Hei to dispose of

1 any waste at this time.

2 Staff had 75 days to review the permit and was

3 granted additional time at the staff's request and to

4 satisfy other needs.

5 The proposed permit is unique. It's a first of

6 the type that you may be seeing. It's a streamlined permit

7 in that the various State departments, including the Water

8 Resources Control Board and the Air Quality Management

9 District, are commenting on the permit at the same time.

10 It isn't a sequential process, it's a parallel

11 permit review process.

12 The State agencies, departments involved,

13 including the Waste Management Board and the State Water

14 Resources Control Board, triaged the issues that were

15 developed by the permit and the decisions were made that the

16 Waste Management Board staff would review only certain

17 issues.

18 And I would like to draw your attention to page 42

19 of your agenda item and for the record would like to point

20 out those issues that were reviewed by State staff, and

21 which are the only issues that are being considered that are

22 being brought to you for your consideration this morning.

23 They are the proposed landfill operations, the

24 proposed drainage and erosion control measures, the landfill

25 gas collection and monitoring systems, a slope stability

1 study, a proposed leachate control system, and closure and
2 postclosure maintenance plan.
3 Staff did not review air or water quality plans or
4 any mitigation measures to protect air and water quality.
5 Those were in the domain of the San Diego Air Pollution
6 Control District for air issues, the State Water Resources
7 Control Board for water quality issues.
8 The staff did not review any CEQA documentation
9 for this project because this project is exempt from the
10 requirements of CEQA, and that's a statutory exemption that
11 was part of AB 240.
12 And the staff did not review any waste diversion
13 issues, so-called AB 939 goals or objectives, as these are
14 not relevant to the project.
15 Staff initial comments on the proposed permit were
16 provided to CEPA on February the 2nd, 1993, and I would like
17 you to refer to pages 72 through 83 in your agenda package.
18 There's a letter of transmittal from Martha Vazquez to Mike
19 Connolly, the director of Campo Environmental Protection
20 Agency.
21 And beginning on page 74 I think it might be
22 useful for you to look at the format here, because I believe
23 Mr. Conheim will be referring to this a little later in the
24 presentation.
25 The comments of the staff are organized A through

1 K, I believe, and within each letter there are numbers
2 representing the comments.
3 This is the format that was started on February
4 and subsequent to comments by the staff and responses by
5 CEPA are with reference to this format and the structure.
6 During this time staff negotiated with CEPA those
7 issues that were relevant to the operations of the landfill
8 and those issues that were relevant to the construction of
9 the landfill.
10 And that -- that was memorialized in a letter to
11 Phil Morales. I think I'll refer to that in little bit.
12 Staff and CEPA negotiated over these comments and
13 on March the 10th staff and CEPA agreed on the final set of
14 comments and that's -- those are found on page 110 of your
15 agenda package.
16 And again I'd like to point out for the record --
17 I'm sorry 119 in your agenda package.
18 Beginning on page 120 you'll see again -- sorry to
19 say, but these pages are out of sequence a bit. They're
20 actually printed backwards. Page 122, you can see it starts
21 at A, B, and then page backwards to page 120 it goes C, D,
22 E, F, G, H, I, J, K.
23 This is the same numbering scheme that was used
24 and it's referred back to on page 72 through 83.
25 And this again was the final set of comments by

1 the staff.

2 Now, this sets the stage for the hearings that

3 were held by the Permitting and Enforcement Committee

4 meeting on March the 26th in San Diego and on April the 21st

5 of this month here in Sacramento.

6 Now, that really concludes the part of my

7 presentation about the history of the process.

8 Now I would like to talk a little bit about the

9 landfill project itself, and I'm only going to cover this

10 briefly.

11 The project is located in southeastern San Diego

12 County. And there is a location map on page 46 of your

13 agenda package. If you're not that familiar with the

14 location you can see if fairly clearly. It shows the Campo

15 Indian reservation down there in the right-hand corner and

16 the project would be at the lower, at that lower square of

17 that two parts of the reservation.

18 The landfill is designed to receive Group III type

19 waste, which are the typical municipal type waste. This is

20 not a hazardous waste landfill and hazardous waste are

21 prohibited.

22 Although the landfill is located on a 600-acre

23 tract, it's only 400 acres will be used for landfilling.

24 The other 200 acres are for pertinent facilities,

25 particularly a rail haul spur, as this project is designed

1 to be a rail haul project.

2 The capacity, of course, is 3,000 tons of waste

3 per day and the landfill should have a life of approximately

4 30 years.

5 And again I'd like to refer to another page of

6 your item, of your package, on page 67 I think there's an

7 important document or page that shows the sequencing of

8 development of the landfill.

9 The reason I would like you to look at this is

10 because there's going to be some discussions later about

11 some staff concerns over slope stability and which are still

12 outstanding.

13 And these are generally considered construction

14 issues.

15 And if you'll notice on the right-hand side of the

16 landfill there's what's a east ridge berm road. There's an

17 east ridge berm, this berm that runs on the east side of the

18 landfill from the north to the south that staff still has

19 some remaining concerns about, that the landfill will be

20 constructed.

21 But as you should note that the sequencing of

22 development of the landfill starts on part one or the cell

23 number one and so that berm is not even an issue in the

24 early stages of the construction, although the staff has

25 received assurances from CEPA that that issue will be

1 resolved before any waste is disposed of at the landfill.

2 Mr. Chairman, that is the end of my presentation.

3 BOARD MEMBER HUFF: Are those assurances in

4 writing?

5 I like things when they're memorialized.

6 MR. VLACH: No. They're not in writing, but I

7 believe Mr. Connolly for the record at our last meeting

8 stated for the record that he was in agreement with that.

9 BOARD MEMBER HUFF: We will have him state that

10 again because we do have the steno here and she'll take it

11 down when he says it and then it will be in writing perhaps

12 again.

13 MR. VLACH: Yes.

14 BOARD MEMBER RELIS: Mr. Chair, in regard to that,

15 I think could we just see -- could you tell us where the

16 boundary of Phase I is?

17 MR. VLACH: If you refer to page 67 it's my

18 understanding that the cell up in the upper left-hand corner

19 of the landfill is the first cell and that would be where

20 the construction would begin.

21 BOARD MEMBER RELIS: So is that called Phase I for

22 reference or is it something broader than that?

23 MR. VLACH: My understanding it's Phase I would

24 include that cell as well as some of the rail requirements,

25 rail siting, Phase I it says.

1 BOARD MEMBER RELIS: I'd like to just get clear on
2 that.
3 MR. VLACH: That's an important point; yes.
4 BOARD CHAIRMAN FROST: What page was the map on,
5 the overall map?
6 MR. VLACH: Page 46.
7 BOARD CHAIRMAN FROST: You said that this was
8 being designed as a rail haul. From where would the rail --
9 where do the rail lines come from? I see the one. There's
10 a rail line coming in from Imperial County. Is that --
11 MR. VLACH: I think the rail line was originally
12 designed, intended to provide access between Imperial County
13 and the Campo reservation or -- I really -- I can't answer
14 that question. I know that --
15 MS. VAZQUEZ: Mr. Chairman.
16 MR. VLACH: I don't know.
17 BOARD CHAIRMAN FROST: Ms. Vazquez.
18 MS. VAZQUEZ: Martha Vazquez, deputy director of
19 Permitting and Compliance Division.
20 It should be noted that as staff reviewed this
21 project, we only looked at the area within the permitted
22 boundary. We did not include a review outside of that. And
23 we have evaluated the impact of the rail system.
24 BOARD MEMBER RELIS: That was in our comment
25 letter too, that is part of the record of decision that we

1 have. It's probably somewhere in there, the whole issue of
2 transport, I guess.
3 MS. VAZQUEZ: Our evaluation is consistent with
4 the way we evaluate other projects. We only looked at the
5 permitted facility.
6 MR. VLACH: I think I can say that the rail line
7 does tie into the interstate commerce network and so in that
8 respect the waste could be received to the landfill from
9 anywhere in the United States through the network. The line
10 does not go much further east than the reservation. I
11 believe after the Campo reservation to the east of the
12 reservation it's nonfunctional. So it would be only
13 functional I believe between San Diego and the Campo
14 reservation, but then it extends through the network to any
15 other place that the network would encompass.
16 BOARD CHAIRMAN FROST: Can it receive waste from
17 Mexico?
18 MR. VLACH: I think that the rail line does
19 extend, partially dips down into Mexico. I'm not sure if
20 there's a -- I don't know whether it stops there or could
21 stop there.
22 MS. VAZQUEZ: That would be a question that should
23 be asked of Mid-American, the project proponent.
24 BOARD CHAIRMAN FROST: Okay. Does that conclude
25 the staff's --

1 EXECUTIVE DIRECTOR CHANDLER: No. I'd like
2 Mr. Conheim to briefly touch on the Cooperative Agreement
3 and what we gain by being a party to this agreement.
4 MR. CONHEIM: Mr. Chairman and Members, because
5 your consideration of this matter is pursuant to this
6 Cooperative Agreement, a contract, it's unique and it's
7 important to note what benefits the State derives from being
8 part of this agreement.
9 There are about eight or nine that I was able to
10 discretely list.
11 Number one, the State by entering into this
12 contract does not give up its claim to jurisdiction, it
13 merely defers it and agrees to participate in the review of
14 not only the landfill's regulation, the regulations, but the
15 design and operation of the landfill.
16 The review of the State's regulations of the
17 CEPA's regulations allowed the State under this contract to
18 make suggestions and make comments and CEPA actually
19 incorporated many of the State's suggestions and that
20 allowed Cal EPA to make the determination that when the
21 agreement was signed CEPA's regulations were the functional
22 equivalent of State regulations.
23 Another benefit that the State derives is that
24 CEPA agrees to amend its regulations if there's a change in
25 State law that results in different or more stringent

1 standards.

2 Number four, CEPA agrees to issue permits only if

3 they comply with their own regs, provide not less than the

4 level of environmental protection of permits which would be

5 under State jurisdiction, and permits which implement all

6 feasible mitigations.

7 CEPA agrees under this contract to enforce its own

8 regulations and to notify the State agencies of enforcement

9 actions which it takes or intends to take.

10 CEPA agrees to allow State agencies access to the

11 landfill's records, inspection reports, monitoring data,

12 et cetera.

13 CEPA also agrees to provide the State agencies

14 physical access to the landfill in order for State

15 inspections of the facility.

16 The State agencies under the agreement actually

17 have actual enforcement powers over the tribal landfill,

18 subject to some limitations.

19 And CEPA does concede jurisdiction, the tribe does

20 concede jurisdiction for one limited purpose, that is to

21 enforce the terms and conditions of the Cooperative

22 Agreement.

23 And so there is actually an enforcement protocol

24 and program within the terms of the Cooperative Agreement

25 which the State can enforce and not have to fight the

1 jurisdictional question. It could enforce the terms and
2 conditions of the contract.
3 And that by way of summary are the major points of
4 benefit that consideration that the State derives from being
5 part of the Cooperative Agreement.
6 There's one other provision of law that's
7 important to note that if outside of the Cooperative
8 Agreement the State were to have to take enforcement action
9 that the provisions of the Cooperative Agreement and the
10 permit constitute permits under State law, so that when
11 we -- if we had to go to court this law says that all of
12 CEPA's regulations and the Cooperative Agreement and the
13 permit can be deemed a State permit for purposes of
14 enforcement. That doesn't give us jurisdiction, but it gets
15 us over a technical hurdle of actually calling this a State
16 permit under State law.
17 So those in summary are the benefits that we get
18 under the Cooperative Agreement.
19 BOARD MEMBER HUFF: Mr. Conheim, would you say
20 then that the Cooperative Agreement has been really rather
21 thoughtfully and finely crafted?
22 MR. CONHEIM: Yes, Mr. Huff. It took many months,
23 indeed over a year of negotiation, hard wrought on both
24 parties. Both parties had to come from very divergent
25 points to get to this point.

1 BOARD CHAIRMAN FROST: Mr. Chandler.

2 EXECUTIVE DIRECTOR CHANDLER: Mr. Chairman, let me
3 just say in summary that we believe that this Cooperative
4 Agreement between the State and CEPA represents a
5 significant milestone inasmuch as it sets the precedent for
6 how future development purposed on Native American lands can
7 be afforded a comparable level of State environmental
8 oversight.

9 By continuing to participate in this process the
10 citizens of the State, as well as other interested parties,
11 can be assured that if and when this proposed project moves
12 forward it will have met functionally equivalent standards
13 as set forth by the responsible agencies with oversight
14 authority spelled out in the Cooperative Agreement.

15 Today CEPA advances their draft tentative
16 authority to construct the permit as they are allowed to do
17 under the terms of the agreement.

18 The staff review resulted in many technical issues
19 being deferred to the second phase of the proposed permit.

20 I would again like to refer you to pages 120
21 through 122 of today's item to underscore just how little of
22 the proposed project has received the findings of functional
23 equivalency to date.

24 Beginning on page 120, Item C, which address the
25 solid waste facilities permit to construct. Of the items

1 listed there, 1 through 14, all but two have been deferred.
2 Item D, drainage and erosion control, deferred.
3 Item E, leachate control, deferred.
4 Item F, gas collection and monitoring, deferred.
5 Item G, slope stability. The last sentence in
6 that first paragraph reflects the conclusion that that will
7 be deferred.
8 Item H, closure and postclosure plans, deferred.
9 Item I, closure and postclosure maintenance costs,
10 deferred.
11 Item J, compliance with minimum standards. Under
12 that item both 1 and 2, deferred.
13 Item K, financial assurance, deferred.
14 So as you can see, we have very little before us
15 at this time.
16 However, on those few areas where functional
17 equivalency has been found to be satisfied, staff have made
18 those determinations.
19 And it's my recommendation that the staff continue
20 to work with CEPA through the transmittal of its findings on
21 the limited set of design and construction parameters where
22 we have determined functional equivalency.
23 And in doing so we recognize that there is
24 considerable technical issues which remain open and to date
25 unaddressed and will need to be resolved prior to the

1 issuance of a permit to operate.

2 The transmittal of staff's review keeps us, quote,
3 "in the game," if you will, which I believe, given the terms
4 of the Cooperative Agreement is precisely the role we are
5 being asked to fulfill.

6 With water quality being appropriate in the domain
7 of the State Water Board, this board can rest assured that
8 the outstanding technical issues still yet to come before us
9 receive the upmost review and consideration.

10 So finally, let me reiterate that under no
11 circumstances would there be any doubt that the transmittal
12 of staff's review, afforded CEPA, be affording the operator
13 the right to begin any landfilling operations without being
14 in violation of the stipulated agreement.

15 So with that clarification as to what staff has
16 reviewed, what has been deferred, that concludes staff's
17 recommendation and summary at this time, Mr. Chairman.

18 BOARD CHAIRMAN FROST: Thank you, Mr. Chandler.

19 Just to paraphrase what you said, virtually all
20 major issues of the operation of this landfill are not
21 before us at this time and have, in fact, been deferred.

22 But what is before us at this time, it seems to
23 me, is a construction of part of a landfill.

24 And what I don't know how much money is going to
25 go into that, but it seems like a very large gamble for

1 people to take to put that kind of money into development of
2 a landfill not knowing whether any of the permit issues to
3 actually operate the landfill are actually resolved.
4 And so while I guess it ought to be clear that
5 those issues aren't resolved and may or may not be resolved
6 satisfactorily and that there could be a lot of money spent
7 on construction between now and then.
8 Mr. Conheim, you said that we had the functional
9 equivalency of our enforcement authority through this
10 contract with some exceptions and that concerns me.
11 What do you mean by that?
12 How is our enforcement authority different, how
13 would it be different on this than any other landfill?
14 MR. CONHEIM: Paraphrasing from both the statute
15 and the Cooperative Agreement, state agencies can only take
16 enforcement over actual or threatened violation of the
17 Cooperative Agreement, the permit, or any regulation.
18 Cal EPA, at our request, must provide notice,
19 written notice to CEPA, including a description of the
20 violation, and request enforcement by CEPA.
21 And finally, CEPA must have failed to take the
22 suggested action that the agencies are suggesting.
23 So there's a slight time delay in limitation.
24 And number two, the remedies that we would get are
25 initially breach of contract.

1 BOARD CHAIRMAN FROST: Civil?

2 MR. CONHEIM: It's civil remedies, but only under
3 the breach of contract, so that we could not file an
4 enforcement action, I don't think, generally under --

5 BOARD CHAIRMAN FROST: Not file a notice and
6 order?

7 MR. CONHEIM: Not against -- not initially against
8 Mid-American, but our action would initially be against
9 CEPA, the environmental protection agency of the tribe, and
10 then after they failed we could then take enforcement action
11 against Mid-American, but that might throw us into a
12 litigation posture on the sovereignty issue at that point.

13 But we clearly have jurisdiction to go hammer CEPA
14 under breach of contract assuming that they refuse to
15 enforce.

16 And it also triggers our ability to take the
17 direct enforcement action, but I think we would then be
18 treading on the across the line and at least from the
19 perspective of the tribe and that might put us into
20 litigation.

21 So the differences are that this is a little
22 slower, a little less direct, but nevertheless we can get
23 the -- we have access, we can get the inspections and we can
24 make the same findings and we can bring to the attention of
25 both the tribe, the Campo environmental protection agency,

1 and surrounding communities what our perceptions and our
2 inspections find.
3 BOARD CHAIRMAN FROST: Okay. Mr. Huff.
4 BOARD MEMBER HUFF: Yeah. I'm trying to remember
5 what my question was, because I was listening to your
6 answer.
7 Okay. I remember now.
8 Mr. Chandler, you listed all those things that
9 have been deferred and my concern is at least some people
10 may by listening to that list get the idea that we're
11 somehow avoiding something. So I would hasten to ask you
12 what to all the Board Members is the obvious, when do we
13 normally consider all of these things that have been
14 deferred? Is it not a permit to operate?
15 EXECUTIVE DIRECTOR CHANDLER: I think the very --
16 Bernie's opening remarks he listed the six areas and I think
17 five of the six areas, correct me if I'm wrong, Bernie,
18 typically relate to the operation of a solid waste facility,
19 operation of a landfill. And it's by that nature as we
20 typically review permits that those are considered
21 operational in character and I think the applicant
22 recognizes that as we did that we do not have at this time
23 the type of technical information that will render a
24 decision until we move into the operational permit phase of
25 this two-phase project. And so at that point we will be

1 looking at that type of information, but it's before -- it's
2 typical --
3 BOARD MEMBER HUFF: It's quite natural and normal
4 that we should defer these things to a permit to operate
5 EXECUTIVE DIRECTOR CHANDLER: This is the first of
6 this kind, but as we deal with other projects in the state,
7 you're correct, Mr. Huff.
8 BOARD CHAIRMAN FROST: I understand what you're
9 saying, but going back to my question, it is unusual in that
10 somebody is being given a permit to construct, which is
11 generally tied to a permit to operate, and this time it is.
12 BOARD MEMBER HUFF: I would point out to you,
13 Mr. Frost, that there are other landfills in this state that
14 have actually begun construction before they have come
15 before us for a permit. There are other people, other
16 companies, that have spent sums of money on the gamble that
17 they will get their proper permits. This is not the first
18 time.
19 EXECUTIVE DIRECTOR CHANDLER: Mr. Chairman, I also
20 think the use of the permit to construct a model, if you
21 will, was taken from the two-stage process that the air
22 districts use and this is, as you know, to be a solidified
23 or combined permit for all agencies, all responsible
24 agencies overseeing this project and the use of this
25 two-phase project came from the use that the air districts

1 typically use in their projects.

2 BOARD CHAIRMAN FROST: Okay. Does that conclude

3 the staff's presentation?

4 EXECUTIVE DIRECTOR CHANDLER: Yes, Mr. Chair.

5 BOARD MEMBER RELIS: Just a couple of questions

6 here.

7 BOARD CHAIRMAN FROST: Mr. Relis.

8 BOARD MEMBER RELIS: I would just like an

9 explanation from staff, I guess we just received the record

10 of decision and we don't have that before us, but could you

11 just briefly explain to us where that fits in the overall

12 review of this project?

13 MS. VAZQUEZ: I want to ask Ms. Talams to answer

14 that question.

15 MS. TALAMS: Good morning. For the record my name

16 is Suzanne Talams from the Permits Branch.

17 Now that the record of decision is signed by the

18 Secretary of Interior, Mr. Babbitt, it allows the Campo band

19 of Mission Indians to enter into the lease agreement with

20 Muht-Hei, which is a tribal corporation and they may

21 therefore sublease to a company like Mid-American to go

22 ahead and begin construction of the landfill.

23 BOARD MEMBER RELIS: And will we receive copies of

24 the record of decision?

25 MS. TALAMS: I believe we have those in house.

1 MS. VAZQUEZ: Yes. I believe CEPA brought copies
2 with them if you would like.
3 BOARD MEMBER RELIS: If we can pass them out that
4 would be helpful.
5 I also understand that the Water Board yesterday
6 took up this matter and is there anyone from the Water Board
7 here today who would --
8 EXECUTIVE DIRECTOR CHANDLER: Yes, Mr. Relis.
9 I've asked Karen O'Haire, staff counsel for the Water Board,
10 to be in attendance and perhaps Karen could just briefly
11 summarize the action taken by the State Water Board
12 yesterday.
13 MS. O'HAIRE: Good morning. I'm Karen O'Haire.
14 I'm an attorney with the State Water Board.
15 I brought along copies for the Board Members of
16 the resolution that the State Water Board adopted yesterday
17 at their meeting.
18 They discussed this item and listened to people
19 present their views on it.
20 They adopted a resolution which is conditional
21 that if the integrity of the slope stability, the
22 information is submitted to staff and evaluated.
23 It cannot be determined at this time if it's
24 functionally equivalent because we just recently received
25 that.

1 But if the liner design is modified as presented
2 in the operator's letter to us that they submitted on April
3 27, staff concerns would be addressed and if the provision
4 of an alternative water supply of the same quality and
5 quantity that it is a feasible mitigation measure, which
6 shall be required prior to the operation of the project.
7 If these three things are done, then the tentative
8 authority to construct is functionally equivalent, will
9 provide not less protection than we would have provided had
10 the State Board issued a tentative authority to construct
11 permit and that mitigation measures have been implemented.
12 BOARD MEMBER RELIS: I raise that only to hear
13 from the sister agency, because we're trying to clarify our
14 roles here and I'm not proposing that we engage in a
15 discussion of this report, just to hear it.
16 MS. O'HAIRE: That's fine.
17 BOARD VICE CHAIRMAN CHESBRO: I do have one
18 question.
19 BOARD CHAIRMAN FROST: Mr. Chesbro.
20 BOARD VICE CHAIRMAN CHESBRO: What's the
21 significance of tentative authority to construct?
22 MS. O'HAIRE: That was a permit that was
23 submitted, the draft tribal permit that we acted on.
24 BOARD VICE CHAIRMAN CHESBRO: Why is it called
25 tentative at this step in the process?

1 When does it become not tentative as far as the
2 Water Board is concerned?
3 MS. O'HAIRE: That's how it was submitted to us
4 for review. That's just their name for the permit. It's a
5 different name than we do.
6 BOARD MEMBER HUFF: It's their name not yours or
7 ours.
8 MS. O'HAIRE: I'm sorry, what?
9 BOARD MEMBER HUFF: It's their name not yours or
10 ours.
11 MS. O'HAIRE: Correct.
12 BOARD CHAIRMAN FROST: That conclude the staff
13 presentation?
14 Thank you.
15 Now we're going to call on people who have
16 indicated that they wish to speak from the audience. There
17 are a number of people who wish to speak. We will not be
18 able to complete this before we break for lunch so we will
19 continue the speakers after lunch.
20 I would ask that -- and we will try to call on the
21 proponents first and then the opponents.
22 And I would ask that you try to be brief, to the
23 point, and not repeat what the previous speakers have said.
24 And it's important that we can only consider the
25 Waste Board issues here. If there are other issues that

1 other agencies need to consider that we can't consider
2 those. We can only consider the waste issues in this
3 setting.
4 So I'd like to, with that preface I'd like to
5 start by calling on Campo EPA in whatever order you wish to
6 speak.
7 I have Michael Connolly and Taylor Miller, Campo
8 EPA, whichever order you would like to proceed in.
9 MR. CONNOLLY: Thank you, Mr. Chairman.
10 My name is Michael Connolly. I'm the chairman of
11 the Campo EPA.
12 The name tentative authority to construct was
13 placed on the ATC because it's conditional upon the issuance
14 of a record of decision, and that was the reason for the
15 "tentative" term.
16 There was a little history earlier, I'd like to
17 clarify to a certain extent, that Campo EPA originated in
18 concept about six years ago, long before the tribe actually
19 started the tribal corporation. It was one of the initial
20 concerns that the tribal members had in looking at the
21 exploration of a commercial waste facility.
22 The resolution that the tribe passed that created
23 the Campo EPA and gave its authority was the Campo
24 Environmental Policy Act of 1990.
25 Another point I'd like to make about the Campo EPA

1 is that our charter is not to look at what the commercial
2 side of the facility, whether this facility is going to make
3 money or not, whether it's a good business deal or not.
4 The issue of whether this is an appropriate form
5 of economic development is a tribal decision and as a
6 regulator my role is very restricted to making sure that the
7 standards that the operator is -- has to live by are to the
8 level that the tribe has requested.
9 And that before any conversations even commenced
10 with the landfill operator, the tribe stated that they
11 wanted standards that would meet or exceed the level of the
12 State of California.
13 We went through a very very exhaustive procedure
14 with the State regulatory agencies.
15 I think we have done a very good job of
16 cooperating on something that is truly a very technical
17 issue, a very political issue.
18 There are many new laws that have come out
19 recently, new federal laws, and there will be many new state
20 laws as a result of the program approval process that you're
21 going through.
22 And a lot of the role is changing too. It's
23 moving more into a technical area from one what in the past
24 was and historically has been strictly a local issue and
25 with the development of national standards it's a very

1 dynamic area right now.

2 Of course, being on the forefront of a major

3 change like that in a regulatory program is going to be a

4 cause for concern in a lot of different quarters, but I

5 think that as long as we continue to work together we can

6 address those concerns and we can formulate plans that will

7 not only help us help the citizens of the reservation, but

8 it will help to protect the surrounding community and also

9 the other facilities in the state.

10 A lot of issues that we're addressing on Campo

11 facility are things that are going to be brand new in a lot

12 of the other jurisdictions and a lot of the local

13 enforcement agencies are going to be implementing too.

14 We developed a two-step permit process because we

15 felt that by clearly identifying the milestones that had to

16 be reached by the operators it gave us a much more clout in

17 the process than by having -- by issuing a complete permit

18 and then coming back and doing revisions after the fact.

19 We thought it was cleaner.

20 There is some risk to the operator and we have

21 spoken to them about that several times and they're well

22 aware and they'll be speaking later. They are well aware of

23 the fact that there is some risk to that.

24 We do not have any obligation to issue a permit to

25 operate because we issued an authority to construct.

1 And I just wanted to make that point.

2 And I'm very happy to have developed the

3 relationship that our agency has with the Waste Board staff

4 and I look forward to continuing working with them.

5 Do you have any questions of me?

6 I have two members of my staff that I'd like to

7 have follow me if --

8 BOARD MEMBER RELIS: Mr. Connolly, if I could

9 just, at the committee meeting when we discussed the project

10 last -- recently, you had indicated at that time that if the

11 Phase I, I'd ask a number of questions about that, and we

12 got clarification with Mr. Vlach.

13 Are we in agreement for that just for the record

14 as to what constitutes Phase I?

15 MR. CONNOLLY: Phase I is more than cell one and

16 that was an error on my part.

17 BOARD MEMBER RELIS: That's why I brought this up

18 because I don't want a misunderstanding on that.

19 MR. CONNOLLY: With regards to the slope stability

20 on the berm, and that was something that was requested that

21 I speak to here so I could get it recorded, we are willing

22 to not allow the construction of the berm until this issue

23 has been resolved satisfactorily with the staff so, and I'll

24 make that commitment here.

25 BOARD MEMBER RELIS: Is there just looking at that

1 map since you're very well aware of the map and you know
2 what Phase I means to you, can you tell us what -- can you
3 describe that on the map so we are not ambiguous about that.
4 MR. CONNOLLY: This would be -- Julie Eakins is
5 the civil engineer that worked a lot on the -- on the design
6 process and the cells and I'd like her to come up and
7 address that.
8 MS. EAKINS: I thought we defined phase in our
9 permit, but I guess not.
10 BOARD MEMBER RELIS: I think it is defined, but
11 there's clearly --
12 MS. EAKINS: For the record my name is Julie
13 Eakins. I'm a civil engineer working for CEPA.
14 Does the board have a copy of the permit, the
15 actual CEPA permit? I believe you do.
16 MR. VLACH: Mr. Chairman, that begins as
17 Attachment 8 beginning on page 123.
18 MS. EAKINS: On the very first page of the permit
19 there are definitions and Item G is defined, phase, landfill
20 phase. It's one of the 19 areas of the proposed landfill
21 which is essentially the first cell.
22 Does that answer your question?
23 BOARD MEMBER RELIS: Yes. That answers it very
24 clearly. Thank you.
25 BOARD CHAIRMAN FROST: Any further questions?

1 BOARD MEMBER HUFF: I had a question. Again, I'm
2 losing it today.
3 But remember, Bernie, I asked you if something had
4 been memorialized and you said Mike Connolly agreed to it
5 verbally?
6 What were we talking about?
7 MR. VLACH: We were talking about the outstanding
8 construction issue, which is the east berm.
9 BOARD MEMBER HUFF: Yeah. That that would be
10 resolved?
11 MR. VLACH: Yes. And I think Mr. Connolly has
12 just previously indicated that he has agreed now that he
13 will -- that issue will be resolved before any permit to
14 operate is considered.
15 BOARD MEMBER HUFF: Okay.
16 MR. CONNOLLY: That will be resolved before any
17 construction on the berm is -- that was my statement.
18 Are we okay?
19 I'd like to have Taylor Miller follow now.
20 MR. MILLER: Maybe I should -- excuse me. Taylor
21 Miller, counsel to CEPA for the record.
22 Maybe I should start with indicating what's in
23 this for CEPA, and I guess what I would say is we've been
24 engaged during the last year and a half in the effort to
25 essentially shelve what were at one time troubling

1 jurisdictional disputes relating -- excuse me -- relating to
2 jurisdiction and try to cooperate instead on establishing
3 good substantive environmental protection requirements which
4 would relate to any solid waste landfill or other solid
5 waste facility proposed for location within the Campo Indian
6 reservation.
7 It's been CEPA's and the tribe's desire from the
8 outset to try to establish a cooperative relationship and
9 not stand on its jurisdictional rights to a fault and wind
10 up with maybe setting back the whole process.
11 This has required, as Mr. Conheim mentioned, a
12 year and a half of negotiation, a lot of accommodation and a
13 lot of stepping back from impulses to certain work, a full
14 control over a situation that I think both sides would
15 really prefer.
16 The history of the permit process you've heard and
17 I won't dwell unduly on that since some of you, three of
18 you, were not at the Permit Enforcement Committee
19 proceedings, I will repeat just a little of what I said
20 there, although I will keep it more brief.
21 The application was originally filed with CEPA in
22 March of '92.
23 The application consists of 11 binders, materials,
24 takes up about four feet of shelf space. Fairly imposing
25 document.

1 CEPA did a completeness review at that time and
2 also you might not be aware submitted that application long
3 before we had a Cooperative Agreement to the staff for a
4 completeness review as well.
5 So that was in-house and I believe in May of '92.
6 We did get comments back from the board staff as
7 well as other agencies and I believe it's accurate to say
8 that staff found the application complete in most respects.
9 They did give some useful comments which we followed up on.
10 CEPA then spent the summer and fall reviewing the
11 application for adequacy, communicated a number of
12 deficiencies to the applicant and received a revised
13 application in October.
14 The reviews were conducted by CEPA staff, which
15 included people with expertise in civil engineering, soil
16 science, hydrogeology, and law, among other things. Some of
17 these people are here today to respond to questions if you
18 have them.
19 The permit has been noted combines the
20 requirements which are drawn from solid waste, water, and
21 air regulatory systems into one document.
22 So that's still another reason why this will
23 appear different to you than other permits that you have
24 seen before.
25 The initial template for drafting, I'd like to

1 point out, was provided by other various -- which were
2 already issued for other California landfills. So we did
3 not start from scratch on this. We tried to have this,
4 adopt many of the same approaches that have already been
5 adopted elsewhere.
6 The tentative that we -- actually just a side
7 note -- the tentative came from, in my view anyway,
8 tentative waste discharge requirements, which is the name
9 that the Water Board gives their permits and authority to
10 construct, permit to operate did come from the air district
11 regulatory system.
12 But I hasten to add it's just a label that we
13 picked. There are differences between the way we approach
14 this and the way the air districts typically do, because
15 they, though, ironically are the ones that have the two-step
16 process, they tend to try to telescope as much as they can
17 into the first permit.
18 So it may have in fact been misleading to use the
19 authority to construct label, because I think we are in fact
20 dividing more of the issues to the second phase than the air
21 district itself usually does.
22 The permit also drew from the mitigation
23 requirements identified in the federal Environmental Impact
24 Statement process.
25 We attempted to include all of these in the permit

1 for completeness sake, even though some of these provisions
2 did relate to operation rather than construction. So we
3 have attempted to include basically all of the mitigation
4 requirements that we could find or ourselves develop.
5 I won't repeat the background on the negotiation
6 on the Cooperative Agreement. You've heard about that and
7 the equivalency determination with regard to our
8 regulations.
9 The permit was submitted for your staff's review
10 in early December and also simultaneously to the staffs of
11 the local air pollution control district in San Diego and
12 the State Water Resources Control Board.
13 In late in the month of December we provided a
14 very lengthy matrix for the assistance of all the staffs
15 that you may not be aware of.
16 This was in view of the fact that this was a very
17 bulky document to review and the review period set by the
18 agreement was 75 days, we tried to provide a road map
19 through it. So that matrix was provided to the staffs of
20 each of the agencies.
21 And what it does is it interrelates the provisions
22 of the EIS mitigation requirements and permit conditions in
23 the CEPA permit and then also it interrelates the regulatory
24 requirements of the CEPA regulations in the permit
25 conditions so that we have a very detailed check list of

1 regulatory requirement and regulatory response. And that is
2 in the record.
3 The agreement sets forth three relatively narrow
4 criteria for permit of a draft tribal permit by state
5 agencies and these are set forth in your staff report on
6 page ten.
7 They basically require a comparison with the CEPA
8 standards to determine if the standards have been
9 implemented and the functional equivalent standards, that
10 the permit otherwise contains sufficient conditions to
11 implement the standards where typically a permit requirement
12 might need to be added to implement a broadly stated
13 regulatory requirement, and finally that the feasible
14 mitigation measures are included. That is what I mentioned
15 earlier.
16 The staff, the board staffs, have found that there
17 is sufficient basis to find that the draft tribal permit
18 meets these three criteria.
19 So we respectfully request that this board make
20 the same finding or authorize the staff to forward a comment
21 consistent with their report to CEPA.
22 Under the Cooperative Agreement CEPA is then
23 responsible for evaluating the comments it receives from the
24 state agencies and incorporate any additional functional
25 equivalency requirements in this permit prior to its

1 issuance and we intend to do that.

2 You may hear later today some technical legal

3 arguments that we heard yesterday at the State Water Board

4 from the counsel for one of the opponents to the project,

5 Backcountry Against Dumps, concerning the consistency of

6 CEPA's two-step construction and operating permit process

7 with the Cooperative Agreement.

8 Mr. Waltner, the counsel for BAD, also made some

9 additional comments in a letter addressed to your board on

10 March 26th, 1993.

11 CEPA counsel, that is me, addressed a letter to

12 your counsel recently, yesterday in fact, providing our

13 comments on these arguments.

14 That is in your record. That was the letter that

15 was just passed out to you today. I think it was actually

16 sent to you earlier.

17 I won't go over those arguments today in any

18 detail.

19 I would just like to point out that as

20 Mr. Connolly mentioned we established a two-step procedure.

21 We had, we believe, a very good regulatory basis for doing

22 that.

23 Just very briefly what they are is to prevent --

24 CEPA's being presented with a fait accompli situation, which

25 would occur if we did not assert preconstruction authority.

1 And we understand that this actually has been a problem that
2 may have been encountered by your Board in the past with
3 projects that come to you already constructed and seeking an
4 operation authority.
5 Secondly, it allows CEPA to utilize information
6 gathered during the construction phase to further evaluate
7 and regulate potential operational impacts of the project.
8 So we can use that information and not have to
9 rely upon any follow-up work after we authorize operation.
10 We don't have to have conditional subsequent.
11 Finally, it prevents CEPA as a new and relatively
12 small agency from being overwhelmed by too many issues and
13 too much data to absorb at one time.
14 Recall when we set this project up, the regulatory
15 process, we were not assured just how much interaction and
16 assistance we would have from state agencies because we were
17 a long way from having a Cooperative Agreement at that
18 point.
19 We simply felt we would do our job better by
20 paring this down to bite size for us.
21 The two-step process does put, as you've noted,
22 the applicant at some risk, because there's no assurance
23 that the permit to operate will be issued or that it might
24 not impose some burdensome and potentially expensive
25 requirements.

1 However, they understand and have accepted these
2 risks, as we understand it. Maybe they would like to
3 comment on that.
4 In any event, this is what CEPA has chosen to do.
5 One of the key principles which has guided the tribe's
6 approach to the possibility of developing a solid waste
7 facility is to control the project from within the tribe in
8 order to protect the tribe's members and its lands. CEPA
9 intends to continue doing just that.
10 Our position on the technical argument that you
11 may hear or have received in writing is that while the
12 statute authorizing state tribal cooperative agreements, AB
13 240, requires substantive equivalency of standards as a
14 prerequisite to execution of a Cooperative Agreement.
15 The statute specifically states that the tribal
16 agency processes do not need to be the same as the State's.
17 That is a very fundamental point because when we
18 negotiated the first statute and then the Cooperative
19 Agreement, the guiding principle was concern with
20 substantive equivalency. If we were to go from there into
21 procedural equivalency, then the tribe really would be
22 giving up its jurisdictional rights.
23 So we made that distinction throughout the
24 progress, in the Legislature, and subsequently.
25 And I think it's memorialized very clear in the

1 statute.

2 So it seems to us that this statutory provision

3 controls and the agreement does not require either its

4 contrary result.

5 State agencies that reviewed the permit have been

6 on notice of CEPA's two-step procedure throughout the

7 development of the Cooperative Agreement and before.

8 And the CEPA regulations themselves, which were

9 found foundationally equivalent last summer specifically

10 authorized this process. So there's been notice in that

11 respect too.

12 So finally on that issue, which is important to us

13 and that's why I'm sorry I'm taking maybe too much time on

14 it, just about done, our position is that if a state agency

15 were to determine that the draft tribal permit were not

16 functionally equivalent on the grounds that the permit

17 process separates construction and operation, that this

18 would in fact be a violation of both the statute and the

19 Cooperative Agreement.

20 That concludes my presentation.

21 If I can respond to any question now or

22 subsequently I'd be happy to do so.

23 BOARD CHAIRMAN FROST: Any questions?

24 Okay. Thank you.

25 Okay. Now I have a number of people.

1 BOARD MEMBER HUFF: Let me ask a question of staff
2 at this point.
3 BOARD CHAIRMAN FROST: Mr. Huff.
4 BOARD MEMBER HUFF: I think it's appropriate to do
5 so.
6 Just to make sure that we and everyone
7 participating in this conversation understands what is and
8 what is not before us.
9 Is it true then we are not here today to consider
10 concurrence or objection to the issuance of a permit?
11 That's the traditional sense that we operate in.
12 We aren't concurring in the issue of a permit, are
13 we, under the Cooperative Agreement, but rather considering,
14 as I read it on page 57 of our agenda under permit review in
15 the Cooperative Agreement, we are reviewing the permit and
16 making comment relative to three points in the Cooperative
17 Agreement.
18 Is that correct understanding?
19 EXECUTIVE DIRECTOR CHANDLER: Yes, Mr. Huff.
20 As I attempted to clarify earlier, the purpose of
21 the item before you is to authorize staff to transmit
22 staff's findings and I wanted to make very clear that
23 staff's findings at this point involve a review of six
24 areas, but of those six areas a significant, if not in some
25 of those areas, all of the technical issues have been

1 deferred to the permit to operate stage.

2 And Vlach's letter of March, I believe it was

3 March 10th, that I started on, on page 119, spells that out.

4 Those were staff's transmittal.

5 But the agreement calls for the board to consider

6 authorizing the staff to transmit its findings and its

7 conclusions.

8 BOARD MEMBER HUFF: That's right.

9 So in the framework of the Cooperative Agreement,

10 the permit is and remains a CEPA permit and our role and the

11 role of the Water Board and everyone else who is encompassed

12 within the Cooperative Agreement is to comment relative to

13 actually three specific concepts, ideas, that the

14 Cooperative Agreement announces.

15 And am I to understand then that the Cooperative

16 Agreement really contemplates that that is the extent of our

17 ability to comment?

18 Is that correct, Mr. Conheim?

19 MR. CONHEIM: At the permit consideration stage

20 that's what's required.

21 BOARD MEMBER HUFF: It doesn't, relative to

22 enforcement or anything else, but at the permit, this is all

23 under the section entitled permit review?

24 MR. CONHEIM: Yes.

25 BOARD MEMBER HUFF: Okay. Thank you.

1 BOARD CHAIRMAN FROST: Okay. Now I have several
2 people from Mid-American Waste who have put in a card.
3 Would you like, just whatever order you would like.
4 MR. ROBERTS: Thank you, Mr. Chairman and Members
5 of the Board.
6 My name is Jay Roberts. I'm vice president of
7 landfill operations for Mid-American Waste Systems.
8 I will be our only presenter today.
9 We do have our technical experts and legal experts
10 available to answer any questions that may come up.
11 I'll keep my presentation brief.
12 We do appreciate the opportunity in working
13 through CEPA to have worked over the last several months
14 with your staff and permitting subcommittee and the board to
15 review and respond to concerns that you have on this
16 tentative authority to construct.
17 We feel confident that we've addressed virtually
18 all the technical issues that have been presented.
19 This project has been scrutinized at every level
20 since we got involved in it in August of 1990.
21 Most notably at the federal level we have now
22 received a final record of decision on the Environmental
23 Impact Statement.
24 I don't know if you've seen Secretary Babbitt's
25 press release that came with that, but if you read that I

1 think it's evident that the Campo project was held to the
2 highest standards that have ever been put on any type of
3 project on Indian lands.
4 So we feel that the mitigations proposed through
5 the federal EIS are very rigorous standards that we'll be
6 required to live with.
7 Likewise, the permitting process that we've gone
8 through with Campo EPA is similar to projects we have gone
9 through in other states which have high standards.
10 The standards that Campo EPA have established
11 certainly comply with the State of California's. They
12 comply with federal Subtitle D standards.
13 The project meets all the standards that have been
14 imposed upon it.
15 To put it in a little bit perspective, it's my
16 understanding that there are two landfills in the State of
17 California that have liners.
18 This landfill would not only have a liner, it will
19 have a double liner, which far exceeds anything that's been
20 proposed in California to date.
21 There's been an extensive groundwater and site
22 characterization of the site.
23 We feel very comfortable that the work that's been
24 done to date can be demonstrated to be functionally
25 equivalent with the State standards.

1 We urge the board to consider this project on its
2 technical merits.
3 And you're going to hear opponents that speak to
4 many others things beside the technical merits, but in
5 keeping with the spirit and requirements of the AB 240
6 process, we look forward to you approving this on this
7 project's technical merits.
8 Couple comments related to some things that were
9 discussed earlier, points of clarification.
10 The project is served by the San Diego and
11 Imperial Valley railroad. There's a short line railroad
12 that runs from San Diego to the Imperial Valley. That
13 railroad connects on the west to the Santa Fe and it
14 connects on the east with the Southern Pacific.
15 On the issue of the two-step permitting process,
16 the process that Campo has established is very familiar to
17 Mid-American Waste.
18 We operate landfills in 13 states and I would say
19 the majority of those states have a two-step permitting
20 where we're required to first get a construction permit and
21 follow through with an operating permit.
22 Yes, there's a risk involved in that. It's a risk
23 that's a business risk that we've measured. And we have to
24 compare that risk to the risk that we took on day one when
25 we signed our agreement with Campo.

1 As you're well aware, that biggest risk in siting
2 a landfill is not the technical issues, it's the siting
3 issues.
4 And we were 99 percent of the way there in that we
5 signed an agreement with the Campo band to site this
6 landfill on their lands, which had overwhelming support of
7 the Campo people.
8 That was the number one reason we got involved in
9 this project.
10 The technical risks from here on out are very well
11 defined. We know what the regulations are. We dealt with
12 the regulations up to this point. We can measure that risk
13 and know what downside is for us going forward.
14 So we appreciate that there's some risk and
15 understand your concerns that may revolve around that, but
16 feel very confident that we can move forward and continue
17 operation of this landfill.
18 I'll be happy to answer any questions or any that
19 may come up.
20 BOARD CHAIRMAN FROST: Mr. Chesbro.
21 BOARD VICE CHAIRMAN CHESBRO: Did I understand you
22 to say that you feel that the host facility will meet
23 Subtitle D standards?
24 MR. ROBERTS: Most definitely.
25 BOARD CHAIRMAN FROST: Okay. Any other questions

1 for Mr. Roberts?

2 Thank you.

3 MR. ROBERTS: Thank you very much.

4 BOARD CHAIRMAN FROST: Now, does that conclude --

5 Mr. Roberts, is that all from Mid-American?

6 MR. ROBERTS: Yes.

7 BOARD CHAIRMAN FROST: Thank you.

8 Now I can move to the opponents and call on Diane

9 Jacob, Supervisor, District 2, County of San Diego.

10 MS. JACOB: Thank you very much, Mr. Chairman and

11 Members of the Board. My name is Diane Jacob. I'm a member

12 of the Board of Supervisors, representing the Second

13 District, the district in which this land, proposed

14 landfill, is located and I'm here on behalf of the entire

15 Board of Supervisors.

16 Board of Supervisors, San Diego County opposes the

17 proposed Campo landfill and I would like to pass out a

18 resolution, too. I'm not sure I have a enough copies. I

19 apologize.

20 The action was taken on March 2nd of 1993.

21 We urge you today not to concur with the proposed

22 Campo Environmental Protection Agency authority to construct

23 permit because it does not meet the equivalent standards of

24 the State regulations.

25 As required by Title 14, it does not meet the

1 minimum regulations because, I have several reasons.

2 One, the federal Environmental Impact Statement

3 does not meet CEQA requirements, that's California

4 Environmental Quality Act, for an environmental impact

5 report in that there was an incomplete analysis of

6 alternatives.

7 Second, the project does not comply with the CEQA

8 requirements to evaluate the cumulative impacts of the

9 project.

10 The EIS, Environmental Impact Statement, prepared

11 for the project avoided the issue of off-site transfer

12 stations and the impacts on air quality and traffic

13 congestion that will result from such a transfer facility.

14 Third, the authority to construct permit is

15 deficient because it does not meet the requirement that all

16 feasible mitigation measures be implemented.

17 Next, the project plans do not meet minimum State

18 standards in several critical areas such as storm water

19 runoff, holding pond capacity, slope stability analysis, and

20 financial assurance.

21 I'd like to go into a little more detail on each

22 of those points.

23 First, it's our contention that in order to be

24 functionally equivalent to Title 14 the project must meet

25 the standards and the requirements of the California

1 Environmental Quality Act.

2 While there is a contention that environmental
3 standards for this project only have to comply with federal
4 National Environmental Protection Act, NEPA, requirements,
5 we strongly believe that the Cooperative Agreement
6 requirement to meet State standards requires you to assure
7 that the project comply with the higher CEQA standards. And
8 the Campo landfill project does not meet the CEQA standards
9 in two critical areas.

10 The first is inadequate evaluation of
11 alternatives. The project only looked at alternatives of
12 other sites within the Campo reservation, within those
13 boundaries.

14 CEQA would have required a more complete
15 evaluation of alternatives, especially the alternative of
16 using an existing landfill within the region that has
17 available capacity, the proposed Donovan recycling facility
18 or a site to be selected in north county, which is the
19 ideal, closest to the source of the solid waste.

20 For example, transfer vehicles traveling on
21 Interstate 8 east on their way to Campo and would be an
22 average of a 75-mile one-way trip from the middle of our
23 urban area. It would pass within five to six miles of the
24 Sycamore Landfill entrance, a landfill that's located in
25 north county, which would be closer to the source of the

1 solid waste, would have lower air quality impacts on the San
2 Diego region, which is a federal nonattainment area for air
3 pollution.
4 The second CEQA requirement related deficiency is
5 that of cumulative impacts. CEQA would require that
6 potential sources of solid waste be identified and the
7 environmental impacts of bringing this waste to the proposed
8 landfill be evaluated.
9 The Campo landfill EIS does not address the source
10 of solid waste, nor the transfer of this waste.
11 In addition, there would be additional air
12 pollution in San Diego County if you approve of this
13 project.
14 No matter if the waste comes from north county
15 cities or, heaven forbid, from outside the county, there
16 will be an increase of emissions over what is necessary
17 today to get our solid waste to our landfills.
18 No new landfill in the State of California would
19 make it before your board, I contend, for a solid waste
20 facilities permit if its EIR did not address these very
21 critical issues.
22 Please don't let the Campo Landfill hide behind
23 the federal NEPA standards.
24 This Cooperative Agreement requires that all
25 feasible mitigation requirements be included as a part of

1 this project and this has not been done.

2 I'm not going to talk about groundwater.

3 Back to Title 14, the project does not meet the

4 functional equivalency standards called for in the

5 Cooperative Agreement. As I indicated, State standards for

6 detention basin capacity for storm runoff, critical

7 information regarding slope stability, and financial

8 assurance information are all lacking in the project

9 application.

10 And Mr. Worrell from County Department of Public

11 Works will address that in more detail.

12 As you know, a large number of items have been put

13 off until the permit to operate is submitted and you've

14 dealt with that in some discussion. I contend you might

15 want to consider at the very least considering all these

16 items in at one time just because of the significance of

17 this particular proposal being different than any other in

18 the nation.

19 Well, while this may be appropriate for

20 operational issues such as typical daily operations, hours

21 of operation, I do not think that it's appropriate to defer

22 such things as drainage and erosion control or financial

23 assurance issues.

24 Changes in calculations could result in the need

25 for larger detention basins.

1 Who is going to tell the Campo EPA to require of
2 Mid-American to build larger detention ponds after the
3 landfill is built? There may not be the physical room or
4 there may be conflicts with the landfill placement.
5 Now regarding the financial assurance, please
6 know, I want you to know that I've just dealt with two major
7 pollution cleanup problems in San Diego County in the past
8 several weeks.
9 Two environmental disasters that were the subject
10 of extensive news coverage.
11 One I was personally involved in, not on the wrong
12 side, trying to clean it up, of course.
13 In both instances private business went belly up
14 and the local state and federal government had to cough up
15 the dollars to pay for the cleanup.
16 In this instance of the Campo Landfill, we have a
17 private company who may have good intentions today, but what
18 about tomorrow and the long-term liability?
19 San Diego County Board of Supervisors considered
20 the issue of private landfills in our county and the board
21 commissioned a study to evaluate both the pros and the cons
22 of private versus public ownership.
23 The conclusion of the study was that the public
24 ownership was preferable in this case with one of the
25 primary reasons being the issue of environmental liability.

1 As a result, the Board of Supervisors adopted a
2 policy to have all landfills in San Diego County to which we
3 take solid waste owned by the County of San Diego.
4 Questions.
5 Will the County of San Diego and the taxpayers be
6 able to depend upon the financial assurance of Mid-American
7 for the long-term environmental liability and will the
8 County of San Diego taxpayers be able to depend upon the
9 Campo band of Mission Indians ability to generate revenue to
10 take care of this if the landfill is closed?
11 I submit to you the answer is no, we cannot depend
12 on that.
13 I'd like to refer to the Cooperative Agreement
14 which states in Section 9, and I quote:
15 "The parties understand and agree
16 that nothing in this agreement is
17 intended nor shall it be construed to
18 waive the sovereign immunity of the band
19 or to create a liability or obligation
20 on the part of the band."
21 If there is a problem in the future, who will be
22 responsible to remedy it?
23 Is the State willing to go on record today and in
24 writing to the County of San Diego that the State is willing
25 to accept that future liability?

1 I would not only on behalf of the Board of
2 Supervisors and taxpayers in our county request today of
3 you, but I would demand of you to accept the responsibility
4 of future liability if you decide to approve this permit.
5 Given the fiscal crisis both our county is in and
6 the state I would doubt that you would want to do that.
7 The Campo EPA putting important issues off until
8 the permit to operate application is basically telling you
9 and your technical staff, trust us.
10 Your technical staff made their professional and
11 thorough review of the authority to construct permit and
12 they identified many legitimate issues.
13 In 28 out of the 43 issues your technical staff
14 raised they were told by the Campo EPA that the issue would
15 be addressed in the permit to operate.
16 To my knowledge, no local government agency in the
17 state with responsibility for a landfill would be able to do
18 this.
19 First, we wouldn't even try.
20 And second your Board would not tolerate it.
21 Make sure that they can overcome these issues like
22 we would have to before being allowed to build.
23 I say to you today the Campo EPA wants to skirt
24 these issues now because they cannot or do not want to
25 comply with the California State law.

1 The trust-us approach just doesn't do it.

2 And please don't accept the idea that if a problem

3 exists today that it can be addressed at the time the

4 authority to operate permit comes before you.

5 If there are any issues that are yet unresolved

6 they can be and should be addressed now and your staff

7 identified 28 such unresolved issues.

8 Now, what does Campo and Mid-American gain by

9 obtaining your approval of the authority to construct permit

10 today before addressing all of these issues?

11 I believe that I have outlined with what I've

12 stated sufficient technical problems with this proposal to

13 more than justify the project's denial under the Cooperative

14 Agreement.

15 Therefore, I would submit to you that if you are

16 opposed to this project and if you envision in some time in

17 the future voting against this landfill project, then I

18 encourage you not to delay that, to vote against it today,

19 now.

20 On behalf of the San Diego County Board of

21 Supervisors I want to thank you for your time and I strongly

22 urge your no vote.

23 I do have copies of my testimony. It's been a

24 little bit resolved based on what happened yesterday and

25 then the news this morning, but I'd like to leave them with

1 you anyway.

2 Thank you.

3 BOARD CHAIRMAN FROST: Thank you, Supervisor

4 Jacob.

5 Any questions?

6 The one comment I'd like to make is that I know

7 you said that you would like us to vote against the permit.

8 We really don't have that authority. By the

9 Cooperative Agreement what we can do is comment on the

10 agreement and we are required by law to comment and that's

11 all we can do at this point.

12 So now in terms of what our comments say, that can

13 be discussed, but in terms of approval, that's up to -- by

14 an agreement that was not negotiated by us, it was a

15 legislation and negotiated by others, there's an agreement

16 that tells us what our role is in this and our role is we

17 comment and that's all. We don't -- that's up to Campo EPA

18 to approve the permit, not to us.

19 So I just wanted to clarify what we would actually

20 be, what our role actually is.

21 And again it's by legislation and by a negotiated

22 agreement that we were not a party to.

23 MS. JACOB: If I understand, Mr. Chairman, that

24 your comment could be no and then that goes to the Campo

25 EPA? Is that --

1 BOARD CHAIRMAN FROST: Well, our comment could be
2 that we think they are or are not in compliance with some
3 particular aspect of current regulations, and but it still
4 moves forward. They would then have to decide what they're
5 going to do with that information.
6 And most of the -- and unfortunately, as you
7 stated, most of the issues are deferred, so there's not much
8 to comment on in many of these issues because they are being
9 deferred until the permit to construction.
10 Mr. Huff.
11 BOARD MEMBER HUFF: Now, your comments, your
12 testimony really runs a little counter to the response I got
13 from staff here.
14 I asked staff if deferral of all of these matters
15 to a permit to operate was, in fact, normal and natural in
16 the context of how we formally consider these sorts of
17 issues and they said, yes, it was.
18 But your testimony says, no, it isn't.
19 MS. JACOB: And that to my knowledge, and based on
20 our county solid waste staff's information of the process,
21 you have much larger perspective to deal with, so obviously
22 there's some conflicting information as to the process that
23 San Diego County has had to go through in the process and
24 permitting and so on.
25 There have been some difference in other parts of

1 the state that I'm not aware of.

2 BOARD CHAIRMAN FROST: Okay. Any other questions?

3 Okay. Thank you very much, Supervisor.

4 And I think now we will break for lunch. We'll

5 reconvene at 1:30.

6 (Thereupon the lunch recess was taken

7 at 12:00 p.m.)

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1 A F T E R N O O N S E S S I O N

2 BOARD CHAIRMAN FROST: We will reconvene.

3 We are on Item 10.

4 And we'll continue the opposition on testimony on

5 Item 10 with Mr. Bill Worrell, representing the County of

6 San Diego.

7 MR. WORRELL: Good afternoon. I'm Bill Worrell,

8 deputy director, Department of Public Works for the County

9 of San Diego.

10 Given the late hour here and the numerous items,

11 I'm going to keep my testimony short for you.

12 There's really just five examples from the staff

13 report that I would like to point out to the board today

14 that we believe would make this tentative authority to

15 construct permit not functionally equivalent to what would

16 be required under a State solid waste facility permit.

17 In particular I'm not going to be talking about

18 operational issues, but issues related to construction which

19 is the areas which this permit would cover.

20 The first issue identified in your staff report

21 was that the facility size stated on the permit application

22 is 400 acres. 400 acres is the actual area to be filled.

23 The application should include the acreage for the entire

24 facility, which is 600 acres.

25 The Campo EPA response was that their requirements

1 don't require the applicant to include the whole site.

2 The State's response to the -- Campo EPA's

3 response is that CEPA's comments adequately address State

4 Waste Board staff concerns. That would be Item A-2 on the

5 letter dated March 10th from your staff to CEPA.

6 The second item would relate to Item A-7. Your

7 State staff commented the application should identify the

8 owner of the land and include the owner's signature.

9 Staff CEPA's response back to your staff was

10 CEPA's regulations do not require that the applicant form

11 identify the owner of the land nor require that the owner

12 signs that form.

13 Your state's review of that response was that

14 comment was adequately addresses their concern.

15 Again, not functionally equivalent.

16 A very small thing that the owner of the land

17 should have to sign off. However, when the Cooperative

18 Agreement was signed we issued a comment that essentially

19 said who will be the responsible party for remediating any

20 environmental contamination resulting from landfill

21 operations.

22 Cal EPA's response back to us was should

23 environmental contamination result from the operation of the

24 landfill, State law specifies that the landowner and the

25 facility operator are liable for any remediation.

1 However, we're not even being told in the
2 application who the landowner is because CEPA requirements
3 don't require them to identify them.
4 Again, very different from the forms that this
5 State Board requires of applicants.
6 Third area, which is Item D on the list of the
7 comment, the State staff commented further justification is
8 needed for the numerical value of the runoff coefficient
9 used in the drainage calculations.
10 It's not clear how the CE value was chosen from
11 Table 2, Binder 10.
12 And what that coefficient is is when water lands
13 on the landfill how much of it will run off and need to be
14 collected.
15 The response from CEPA is CEPA has reviewed the
16 runoff calculations including the selection of the runoff
17 coefficient used in the rational method.
18 The runoff coefficient selected, .45, is
19 considered to be acceptable based on the County of San Diego
20 hydrologic manual land use for rural residential lots with
21 less permeable soils and based on the Metro National and
22 Davidson County Storm Management Manual Land Use for Steep
23 Pastures, Grasses, Farmlands with Sandy Soils.
24 Your State's comments back, and again I quote from
25 the letter, is adequacy of response for each comment is

1 deferred to the permit for operation.

2 Again, this is different from the first two where

3 they said they found that it was functionally equivalent,

4 not that it would be considered later.

5 We obviously disagreed with that.

6 On this one they're saying wait until the permit

7 to operate.

8 However, this is a factor that sets the design

9 standard for sizing the ponds.

10 If the runoff coefficient is used at .45, a

11 certain amount of water will be generated. If it's found

12 later to need to be higher, the detention ponds that would

13 be constructed under the authority to construct permit will

14 be incorrectly sized.

15 To give you a feeling, .45 means 45 percent of the

16 rain that falls will run off.

17 On a recently issued permit in San Diego County

18 the runoff coefficient, essentially same environment, was

19 .9, or twice as high of the amount of water that runs, falls

20 on that landfill, needs to be handled in the storm water

21 system.

22 The fourth item has to do with the stability of

23 the waste slopes. And the State staff comment, again, a

24 construction-related item, Title 14, CCR, Chapter 3, Article

25 7.8, Section 17777, requires a calculated factor of safety

1 for the entire slope of at least 1.5 under dynamic
2 conditions.
3 I'll skip down to the bottom of the paragraph.
4 The seismic factor of safety for the waste slope
5 during the maximum credible earthquake is undetermined and
6 appears to be not only less than 1.5, but less than 1.0,
7 which essentially means it would be unstable, no factor of
8 safety.
9 Again, directly in conflict with your requirements
10 in Section 17777, and a construction-related issue.
11 Again, being put off under the permit to operate.
12 And under a normal process where you have only one
13 permit, a permit to operate, that probably makes sense.
14 However, you've accepted this dual process which says there
15 will be a construction permit covering construction-related
16 items and then operating permit that would cover operating
17 related items.
18 We don't think it's appropriate to put off
19 construction-related items to the operating permit as you
20 would normally do under a one-step permit process. And
21 Finally your State commented it is difficult to
22 review -- there was no CEPA response to that particular
23 comment.
24 Final one, your State staff commented it is
25 difficult to review the design of a facility as separate

1 from he operation of the facility. Future permit submittals
2 should contain descriptions of both the operation and design
3 of the facility.
4 CEPA's response is no comment.
5 The board staff's response to CEPA's response is
6 CEPA's comments adequately address the Waste Board staff's
7 comments.
8 I'm not sure how a no comment adequately addressed
9 your comment. They had said we agree, or whatever, we maybe
10 would understand.
11 And finally one area that was not covered in the
12 list of responses from your State staff was Section 17608
13 under Title 14.
14 17608 requires that the board have a finding that
15 the proposed facility is in conformance with the county's
16 solid waste management plan.
17 Again, no finding by this board that this facility
18 would be in conformance because, in fact, it's not in
19 conformance.
20 Again, the functional equivalency tests is the
21 test we're talking about today would not be met because of
22 that.
23 So based on the testimony given that I've
24 identified probably four, five areas where we believe for an
25 authority to construct permit it would be difficult to find

1 functional equivalency.

2 We would recommend that you not make that finding

3 and send them back and let them revise the permit to make

4 the changes necessary to find that, to have that finding.

5 Thank you.

6 BOARD CHAIRMAN FROST: Any questions?

7 BOARD MEMBER RELIS: I just like to hear if we

8 could get a quick staff response to some of these

9 particulars as -- since they are directed at the

10 construction phase.

11 BOARD MEMBER HUFF: And, yes, I have a question of

12 Mr. Worrell, too.

13 How many years' capacity do you have in San Diego

14 County?

15 MR. WORRELL: Ernst and Young just completed a

16 report and assuming that we keep the San Marcos permit and

17 can permit and use the remaining capacity at our other two

18 landfills and based on the waste flow assumptions that they

19 have made they estimate we have 33 years of capacity.

20 BOARD MEMBER HUFF: I see.

21 So even if you lose San Marcos you aren't going to

22 lose very much?

23 MR. WORRELL: If we lose San Marcos we lose about

24 six years of capacity.

25 BOARD MEMBER HUFF: So you'd still have 27?

1 MR. WORRELL: The problem with that is the EIR
2 that we did for that project would estimate about 70,000
3 pounds of air pollutants a day admitted from the transfer
4 vehicles to take waste to Sycamore, and as you heard
5 earlier, we are a nonattainment area. So there would be a
6 significant impact, at least in the general environment, if
7 that landfill closed.
8 BOARD MEMBER HUFF: The main reason to have San
9 Marcos is the air?
10 MR. WORRELL: It's the cumulative environmental
11 impacts, including the air; yes.
12 BOARD MEMBER HUFF: I see. Thank you.
13 BOARD CHAIRMAN FROST: Mr. Chandler.
14 EXECUTIVE DIRECTOR CHANDLER: Mr. Relis, I don't
15 have Mr. Worrell's comments before me, if you would like I
16 can ask him to go through by point and then we'll try to
17 respond.
18 BOARD MEMBER RELIS: There was the statement made
19 on slope and the runoff calculation. Seems to me those are
20 just -- we should be able to answer those.
21 EXECUTIVE DIRECTOR CHANDLER: Okay.
22 Martha, could I ask that you bring staff forward
23 or summarize?
24 MS. VAZQUEZ: They're coming forward.
25 MS. HERBST: For the record, Charlene Herbst,

1 Closure and Remediation Branch.

2 What format would you like to use? Would you like

3 for us to go through the comments? I think we have a pretty

4 good idea of what the issues were that were raised.

5 BOARD CHAIRMAN FROST: I think there were two

6 specific items.

7 BOARD MEMBER RELIS: I don't know that we need to

8 go through all, but the ones that struck me that we

9 should -- that I think we should respond to, the slope

10 question and the runoff.

11 MR. WORRELL: Item D and Item G.

12 MS. HERBST: On the drainage and erosion control

13 we have asked for more information on the drainage

14 calculations.

15 This question was raised that first of all the

16 primary responsibility for sizing of containment structures

17 rests with the Water Board, which is the requirements for

18 the sizing of those structures are contained in Chapter 15.

19 This question was raised at the Water Board

20 meeting yesterday by one of the board members, the

21 engineering board member, and the response was that the

22 impoundment as designed would provide a spillway so that

23 excess water rather than overtopping and washing out could

24 be released in a controlled manner and that satisfied the

25 Water Board's concern on that issue.

1 BOARD MEMBER RELIS: That's a Water Board issue.

2 MS. HERBST: It's part of the Chapter 15

3 regulations, yes.

4 We raised it as an issue because we wanted to

5 understand their methodology.

6 The remainder of our drainage and erosion control

7 issues have to do with erosion from the slopes once the

8 landfill is completed and is in the closure/postclosure

9 maintenance phase.

10 The other issue, there's two separate slope

11 stability issues.

12 The slope stability issues in connection with the

13 berm, do we need to go over those again?

14 BOARD MEMBER RELIS: Not in detail. I just

15 thought perhaps he was raising a different point, but if

16 not, we've got that at record.

17 MS. HERBST: In the sense, our slope stability

18 comments have actually two categories and, one, the natural

19 soil slopes are the ones that corrected with the berm

20 issues.

21 The stability of the waste slopes are a separate

22 set of comments.

23 MR. CLINKENBEARD: John Clinkenbeard, the Closure

24 and Remediation Branch.

25 The stability of the waste slopes is an issue and

1 part of our concerns relate to the fact that they don't seem
2 to have an adequate factor of safety.
3 However, the regulations allow for a more detailed
4 method to be used and the deformation to be determined.
5 And they have done additional analysis and we're
6 looking at that and trying to get some more information.
7 Again, this deals with the final configuration of
8 the landfill. If there was a problem determined, the design
9 could be changed, the amount of construction that will take
10 place initially. I'm sure the proponent wouldn't be happy
11 to be changing the design, but it could be changed to make
12 it stable.
13 MS. HERBST: If I could make a kind of a general
14 observation on the technical issues that were deferred, the
15 issues that we raised were places where information seemed
16 to be deficient and our worse case analysis of what the
17 information we received might ultimately look like led us to
18 conclude that even if things were, the data that we got back
19 made us feel there was still a problem that needed to be
20 resolved, those problems could all be resolved, that none of
21 the issues that we had raised represented essentially drop
22 dead issues for the projects.
23 They would either require some changes to the
24 final configurations at closure or they might require some
25 changes to the way postclosure maintenance was handled, but

1 they were not issues that we felt needed to be dealt with at
2 the time of the initial construction of the initial phase of
3 the landfill.
4 BOARD MEMBER RELIS: Thank you very much.
5 BOARD CHAIRMAN FROST: Thank you.
6 EXECUTIVE DIRECTOR CHANDLER: Mr. Relis, would you
7 like us to make reference to the landowner issue and the
8 CoSWMP.
9 We have Mr. Conheim.
10 MS. VAZQUEZ: I believe the first item that was
11 raised or first two or three items regarded the application
12 and Suzanne Talams can address that issue.
13 MS. TALAMS: When the review is conducted it was
14 actually conducted in this section by myself. I conducted
15 the review the way I normally would look at any other
16 landfill application.
17 I looked at the form. I looked at the document.
18 I looked at the permit. So I made comments on the
19 application form.
20 There is no provisions in the CEQA -- I mean CEPA
21 regulations that require an application form to be
22 submitted. So whether we went back and forth arguing over
23 what was in it, it's not necessary to have one.
24 That's why we accepted their comments on it. It's
25 not required. They don't need to have a form.

1 MR. CONHEIM: May I interject, Mr. Chairman.

2 The issue of landowner was handled substantively

3 in the face of these regulations.

4 The landowner is the U.S. Government.

5 It didn't make sense -- the tribe is not the

6 landowner. The territory is held in trust for the tribe.

7 So the way it was resolved was that the -- there

8 was definition put in the permit that the permittee would

9 not only be Mid-American, but also Muht-Hei, the tribal

10 corporation, that was going to derive the benefits of the

11 operation, so that together they would be liable.

12 But the issue of landowner was in apposite

13 requirement because it wouldn't have made any sense to apply

14 the same criteria under state law to the U.S. Government on

15 this type of project.

16 And we accomplished the functional equivalency by

17 getting the tribal corporation rolled into the permit.

18 The CoSWMP issue, 17608, it's a regulation without

19 effect. It's inappropriately cited and no longer has legal

20 effect. There are no CoSWMPs anymore. It cites the old

21 statutory citation that was repealed three years ago.

22 BOARD MEMBER RELIS: And in reference to the

23 supervisor who spoke earlier then, that would create -- the

24 liability would be with the tribe and the Mid-American and

25 then the federal government?

1 MR. CONHEIM: Well, the federal government, you
2 know, under general -- they're the landowner. Under common
3 law they're the landowner and they would bear whatever
4 liability they could be roped into in litigation to
5 assuming. But they would be joined in the lawsuit.
6 But they're not a permit holder. They're not a --
7 they're a trustee, you know.
8 BOARD MEMBER RELIS: Okay.
9 MS. VAZQUEZ: I would like to add that there's
10 been a lot of discussion previous to this board meeting
11 about who the landowner is.
12 Remember, this is a sovereign nation.
13 So the discussions have not been that clear.
14 We might ask Mr. Connolly, the director of CEPA,
15 to address the question further if you wish, because it is
16 not a simple answer.
17 BOARD MEMBER RELIS: Well, I don't really --
18 unless other people want to go further with it, I think I've
19 heard enough.
20 MS. VAZQUEZ: I believe the question the way
21 Mr. Worrell phrased it was that the application itself was
22 not complete.
23 And staff's response to that would be that an
24 application is really not required. The agreement does not
25 require it. There is nothing in standards that require it.

1 We just let it slide.

2 And we think that the permit and the agreement

3 would cover everything else.

4 MR. CONHEIM: So the substantive requirement is

5 handled in the permit, not the procedural requirement, which

6 is not applicable in any event.

7 BOARD CHAIRMAN FROST: Okay. Ready to move on

8 now? All right.

9 Let's call the next speaker.

10 Mr. Michael Lake, San Diego County Air Pollution

11 Control District.

12 MR. LAKE: Good afternoon. My name is Michael

13 Lake. I'm the chief of the engineering division for the San

14 Diego County Air Pollution Control District.

15 The San Diego County Air Pollution Control

16 District has been over the last several months involved in

17 the process of reviewing the application for a permit filed

18 by Mid-American Waste and also the Campo EPA permit

19 evaluation tentative authority to construct.

20 On March 23rd we provided CEPA with a several-page

21 letter itemizing areas where we felt that the permit

22 evaluation and tentative authority to construct did not

23 adequately address issues of the district, would apply in

24 our own functionally equivalent permitting of a landfill

25 operation.

1 Since that time Campo EPA has provided additional
2 information, a revision to the tentative authority to
3 construct, and in a letter to the Campo EPA dated April
4 20th, 1993, the district indicated that the permit
5 evaluation and tentative authority to construct are
6 substantial and CEPA has proposed to revise the evaluation
7 and authority to construct to address most of the issues
8 raised by the district.
9 However, there remains one significant issue that
10 has not been resolved and that is with regard to the
11 adequacy of the project health risk assessment.
12 There's primarily three issues associated with the
13 health risk assessment.
14 One is of the analytical tools that were used in
15 performing the health risk assessment were not correct, and
16 some of the basic information that was used in doing the
17 health risk assessment was inappropriate.
18 Secondly, the health risk assessment did not
19 include all the potential air contaminants that might be
20 expected to be emitted from the project. This would include
21 hydrogen chloride emissions from the landfill, gas flare,
22 and in addition heavy metals or toxics metals and
23 crystalline silica associated with particulate emissions
24 that arise from the hauling of the waste from either outside
25 the landfill or from the train operations to the landfill.

1 It's important that these emissions be considered
2 and appropriate health risk assessment be done for two
3 reasons.
4 One is to ensure that the public health of
5 surrounding community is protected at whatever maximum level
6 that the landfill can be expected to operate at.
7 And the second is to determine if there are
8 limitations to the operation of the landfill that are needed
9 to be imposed in order to make it -- to ensure that the
10 health of the surrounding community is protected.
11 So in our letter to CEPA we identified these
12 issues and also pointed out that it was important that the
13 emission levels that are used in the health risk assessment
14 be consistent with those that are eventually used in the
15 permit evaluation and are incorporated into the authority to
16 construct, and in particular that they should be reflected
17 in enforceable conditions of the authority to construct and
18 eventually the permit to operate for the project if the
19 project goes forward.
20 As such, these issues regarding the health risk
21 assessment in our mind must be resolved and any necessary
22 mitigation measures identified before a authority to
23 construct specifying these mitigation measures can be
24 issued.
25 It's our understanding based on communications and

1 conversations with CEPA that the applicant has been
2 requested to redo the health risk assessment modeling using
3 appropriate techniques and data.
4 However, we have not received final word yet that
5 the potential health impacts of crystalline silica emissions
6 and toxic metals will be addressed at this stage in the
7 permitting.
8 In that regard CEPA has suggested that the issue
9 of the health risk assessment should be deferred to the
10 permit to operate evaluation and the district has not agreed
11 with this. We feel that this is a substantive issue that
12 can, depending on the results of the risk assessment, affect
13 the level of operation and method of operation that can be
14 conducted at the landfill and still protect public health.
15 And it's been our practice for many years at the
16 Air Pollution Control District we have the two-part
17 permitting program that's been described here.
18 But what we try and do in the authority to
19 construct is identify as many issues as possible that will
20 affect the viability, the method, and level of operation of
21 the project for two reasons.
22 One is so that the applicant can make an informed
23 decision about whether or not the project is still viable
24 and within the context of the limitations and the authority
25 to construct.

1 And the second is to protect the applicant from
2 changes in requirements between the time that the
3 construction permit is granted and a final permit to operate
4 is issued.
5 So we feel that the issue, in our case the health
6 risk assessment issue, should be addressed prior to the
7 issuance of an authority to construct so that if there are
8 appropriate limitations and the level of activity of the
9 landfill or the method in which the waste is moved within
10 the landfill, that those are identified ahead of time, their
11 impact on the viability of the project is considered, and we
12 can be assured that those mitigation measures are going to
13 be put in place before construction begins and before a
14 substantial investment is made in the construction of the
15 landfill.
16 Thank you.
17 BOARD CHAIRMAN FROST: Mr. Huff.
18 BOARD MEMBER HUFF: Yes. Question of staff.
19 Are the matters that we've just heard about,
20 matters that are within our sphere of analysis with regard
21 to this permit?
22 MR. VLACH: Mr. Huff, the regulations of the Waste
23 Management Board as previously discussed deal mainly with
24 the operations and the design operation of the landfill.
25 There is a public health design parameter

1 regulation of the Waste Management Board in Title 14.

2 However, the requirement to conduct a health risk

3 assessment is not in the California Code of Regulations,

4 Title 14.

5 BOARD MEMBER HUFF: So it wouldn't be something

6 that we would be providing comments on to CEPA?

7 MR. VLACH: No. We don't -- if it was another

8 permit, we would not be requiring that of any other LEA or

9 operator, in this case. We would not be asking from our

10 review, perspective, would not be asking that of CEPA or the

11 operator here.

12 BOARD MEMBER HUFF: So this really is relevant to

13 a discussion between CEPA and the air district?

14 MR. VLACH: Yes.

15 BOARD MEMBER HUFF: Not necessarily a discussion

16 between us and CEPA?

17 MR. VLACH: Yes. That's the way I characterize

18 it.

19 BOARD MEMBER HUFF: Thank you.

20 BOARD CHAIRMAN FROST: Thank you, Mr. Huff.

21 Okay. Thank you.

22 Now, Mr. Alan Waltner, Backcountry Against Dumps.

23 MR. WALTNER: Thank you. I'm Alan Waltner. I'm

24 an attorney representing Backcountry Against Dumps.

25 I'm not going to repeat the county's comments,

1 which I think were excellent and addressed a lot of the
2 substantive issues that I would have treated, but instead
3 I'm going to focus on the basic legal obligations that this
4 board has in addressing this sufficiency finding.
5 Now, I know this is the first time that one of
6 these sufficiency findings have been brought before you and
7 there's been a general tone here that you're writing on a
8 blank slate, but really you're not.
9 The Cooperative Agreement sets out three specific
10 findings that you're obligated to make that reflect verbatim
11 what is in the statute, and I think those three specific
12 findings have been largely ignored in the discussions so
13 far.
14 First, you need to find that the permit meets the
15 functionally equivalent Campo regulations. That's probably
16 the easier of the three to meet.
17 Second, you have to find that the permit provides
18 not less than the level of protection for public health,
19 safety, and the environment that would have been achieved if
20 the State agency had issued the permit.
21 Well, that's much more problematic. I think if
22 you ask yourself if this permit as it stands now looks like
23 a permit that the State agency would have issued, it comes
24 nowhere close.
25 The third finding is that the permit shall

1 implement all feasible mitigation measures.

2 The same problem, there are only a small fraction

3 of the full range of mitigation measures that are included

4 in this permit.

5 Now, in observing this language you have, there

6 are a couple of key things to keep in mind.

7 First, these are separate finding. You have to

8 make every one of these findings.

9 What's been happening in the discussions so far is

10 people have been blending the second two findings,

11 mitigation measures and equivalence to a state permit, it's

12 sort of blending that into the functional equivalency with

13 Campo regulations analysis. There's three distinct

14 findings. You have to ask yourself each of these three

15 things separately.

16 The second thing is that the statute and the

17 Cooperative Agreement are framed in the present tense, not

18 in the future tense. Your finding must be that these three

19 criteria are satisfied now, not that they might be satisfied

20 at some point in the future.

21 And then, third, as with any other finding that's

22 required of this body under State law, you need at least

23 substantial evidence to support your decision and at this

24 point you don't have that evidence, you don't even have the

25 conclusion of the permitting process by the Campo tribe.

1 Now, obviously it's clear from the committee
2 hearing and the result of that hearing with the alternative
3 resolution that was considered at that hearing that the
4 committee, subcommittee, had some difficulty with this and
5 it's not surprising because you basically only have half of
6 a permit at this point. It's obvious it's been a major
7 point of discussion. I think it's the major weakness of the
8 submission as it is brought before you.
9 And it's important to remember that this isn't
10 what was contemplated in the Cooperative Agreement. If you
11 look at the Cooperative Agreement it defines the CEPA permit
12 that you're to consider as a permit proposed or issued by
13 CEPA authorizing and establishing conditions concerning the
14 construction and operation of a solid waste facility.
15 That's what you're obligated to consider if CEPA brings it
16 to you.
17 They haven't brought that to you yet. They've
18 only brought you half of the permit.
19 I think there's a pretty strong argument that you
20 don't even need to address this now. You could deem the
21 permit application incomplete because it doesn't have
22 conditions relating to construction and operation. This is
23 in the definitional section in Article I of the Cooperative
24 Agreement.
25 Now, the Campo band's attorney has -- or the

1 CEPA's attorney -- has pointed to a section of the code
2 saying that the State in reviewing, Secretary of Resources
3 in reviewing the Cooperative Agreement can't reject a
4 tribe's program simply because it has different procedures.
5 Well, that's not what you are doing here. You're
6 not reviewing a Cooperative Agreement.
7 If this had been brought forward to the Secretary
8 of Resources as a two-step process in the Cooperative
9 Agreement, that argument might have had some merit.
10 But what was put in the Cooperative Agreement was
11 the description of a permit that triggered a process and
12 that permit is a combined permit that addresses both
13 construction and operation of the facility.
14 Now, there's some practical problems with this.
15 Your staff has recognized that it's very difficult to
16 analyze construction without looking at operation. They
17 really go together.
18 The concern obviously is that there's going to be
19 a shell game here, that issues will be put off at this stage
20 to a future permit to operate phase, but when you get to
21 that phase everyone is going to say or the applicant for
22 sure is going to try and say that was dealt with
23 conclusively in the first phase.
24 Now, this risk is particularly acute given the
25 letter dated February 18th to the board, I believe from Mike

1 Connolly, which said that we agreed, this is purportedly
2 memorializes some discussions between staff and CEPA, that
3 CEPA and the State agreed that review of
4 construction-related items will occur now. These items will
5 not be revisited.
6 In other words there will be a rebuttable
7 presumption and the construction-related items have been
8 finally addressed at the authority to construct phase.
9 And what you've done, you have a very ambiguous
10 line that's being drawn so that it's very unclear what
11 you're being asked to decide now as to what's remaining for
12 the future.
13 And particularly the county pointed out that there
14 are a lot of construction type issues that are being
15 deferred. I think if you look through the staff comments
16 you can identify a number of them.
17 The staff, for example, indicated that the permit
18 should describe the physical plant including the buildings.
19 Well, I think there's nothing more construction
20 related than what the facility is going to look like.
21 Another issue that's clearly construction related
22 is siting of the facility. That hasn't been discussed much
23 yet, but clearly if you allow construction of a facility at
24 a particular location all the issues that go into siting,
25 including consideration of alternatives, whether this is a

1 good place to put this type of facility, this hasn't
2 explicitly been dealt with in these delineations that staff
3 has come up with in their listing of what's deferred and
4 what's not deferred.
5 If this board were to decide that this was not a
6 appropriate project in the overall scheme of things because
7 it's inconsistent with the best interest of solid waste
8 planning in the area, that the permit to operate phase, I
9 know exactly what the Campo band or proponent is going to
10 say is that you missed your chance.
11 The second point is that under AB 240,
12 specifically Section 44203, the purpose of your review is to
13 determine if the permit provides for the proper management
14 of solid waste.
15 Now, that's a pretty broad charge and it seems to
16 me that it goes to the full scope of the types of things
17 that your board is supposed to be doing, looking at AB 939
18 targets, looking at consistency with the county planning
19 process, looking at whether a facility like this in a remote
20 location that is dependent upon rail transport through a
21 foreign nation. Is it really in the best interest of
22 overall solid waste management planning?
23 That's the purpose of this review and the decision
24 that you're being asked to make today.
25 And much of that is simply being pushed off to

1 another day or being ignored.

2 Specifically with regard to the three findings in

3 Section 44205, you have an obligation to make those

4 affirmative findings based on evidence before you go

5 forward.

6 Just to give a few examples, the county gave some

7 as to whether feasible mitigation measures are required as a

8 part of this permit this before you.

9 Well, it hasn't been talked about much but rail

10 haul is not a condition of this project, although really

11 it's a mitigation measure for this project in that the truck

12 transport would be a very polluting approach comparatively

13 to getting the waste to this project. A feasible mitigation

14 measure is to direct rail haul.

15 Well, there's nothing in this permit that says

16 that that will, in fact, be required, even though it's a

17 feasible mitigation measure. And since you've ignored it at

18 this process you can't make the finding and you have failed

19 in your obligations under Section 44205.

20 Now, our recommendation at this point, the bottom

21 line is that you simply declare this permit premature and

22 wait until the full permit is before you and then consider

23 it in relation to the requirements of 240 and the

24 Cooperative Agreement.

25 Any questions?

1 BOARD MEMBER RELIS: Mr. Chair.

2 BOARD CHAIRMAN FROST: Mr. Relis.

3 BOARD MEMBER RELIS: Mr. Waltner, I perceive this
4 line of reasoning that you've developed here with the
5 counsel at some length and I'd be interested for the record
6 in hearing Mr. Conheim respond.

7 Some of your -- the latter part I think you're
8 looking at issues that are beyond our board review, I mean,
9 but regarding the determination, the three determinations
10 that he's referring to.

11 Mr. Conheim, could you comment on that?

12 MR. CONHEIM: Certainly.

13 The Cooperative Agreement and the statute have
14 language which says that the agencies shall get a permit for
15 the purpose of reviewing and commenting in order to make the
16 determinations.

17 The agency has broad discretion in how it
18 transmits those determinations.

19 The language of the Cooperative Agreement, which I
20 would like to -- I can come back to it if I can thumb
21 through it and find it -- is not quite as specific as
22 Mr. Waltner would have you read it.

23 And so staff has taken this permit and it has
24 reviewed what it could and it has provided its analysis to
25 you.

1 And it is up to you how you deal with that
2 analysis.
3 You are not reviewing this permit for concurrence
4 or objection.
5 You can make findings, you can direct the
6 executive director to transmit staff's comments or a letter
7 of comment consistent with staff's review. There are a
8 number of ways in which you can comply with the Cooperative
9 Agreement.
10 And I would like to leave my answer at that
11 because that has been my answer consistently and I will be
12 glad to answer any more questions if there's still a level
13 of information that you want on that.
14 BOARD MEMBER HUFF: In short, then, you're saying,
15 Mr. Conheim, that staff wrote their staff report in a manner
16 that would suffice to answer the requirements of the
17 Cooperative Agreement?
18 MR. CONHEIM: My concern is that the board had the
19 option to comply with the contract. I believe that what
20 staff has done and presented to you and what you were doing
21 today you have broad discretion in how to comply with the
22 contract.
23 And there were a couple of other issues.
24 I think I just fundamentally disagree with
25 Mr. Waltner that the Cooperative Agreement unequivocally

1 says that there can be only one permit.

2 He's pointed in his written arguments to language.

3 I think there's -- it's easy to find language either in and

4 out of context which would support CEPA's regulations which

5 call for a two-permit, a tiered permit process.

6 In any event that question was answered when the

7 Secretary signed the agreement and determined that CEPA's

8 regs were okay with regard to this agreement.

9 And I don't see any inconsistency in the

10 agreement.

11 And I think that CEPA had the right to bring two

12 permits.

13 I'm not saying that in doing so they made the

14 right choice, a wise choice or one that's effective or easy

15 to understand, but as a matter of law I don't see that it

16 was improper.

17 Mr. Waltner also made some comments about the

18 board either deferring or ignoring siting criteria and

19 alternatives.

20 I think we have to realize the premise under which

21 you're looking at this, AB 240's premise, is that we're

22 dealing with a sovereign nation. They're not part of the

23 County of San Diego. There's no CoSWMP or SRRE for this to

24 be drawn through.

25 Part of what we don't get to do under the AB 240

1 or the Cooperative Agreement is to make a siting decision
2 for the tribe or tell them what they can and can't site.
3 All we get to do is review their regs, review and comment on
4 their permit, try and get it to be the functional
5 equivalent, provide an equivalent level of environmental
6 protection.
7 And we were satisfied, staff was satisfied in
8 bringing this item to you at this time that the questions
9 that were deferred would be answered and that there would be
10 an opportunity for this board to review comment with an eye
11 to making the determinations with any draft permit that came
12 here and particularly with regard to the second one that
13 CEPA indicates that it will submit within a year.
14 And I think I've covered generally the regional
15 planning and siting issues and I just -- it's been our
16 position that there was no way to impose the San Diego
17 County SRRE or an old CoSwamp on a sovereign nation.
18 It might have been desirable, it might have been
19 nice, but there was no legal mechanism to do that.
20 And we addressed this problem and we expressed our
21 angst to CEPA over and over and over again and what we got
22 was a willingness to deal with a waste stream and I think
23 that they can expand on this at some point if they need to
24 rebut.
25 We were comfortable that we pursued every legal

1 mechanism we could to bring them through similar regulatory
2 requirements and this was not one that we could apply the
3 same way.
4 BOARD MEMBER RELIS: Thank you.
5 MR. CONHEIM: And only other thing that I'd like
6 to mention is Mr. Waltner raises issues regarding rail and
7 air pollution and Ms. Vazquez has already indicated that we
8 only review solid waste facilities within their boundary.
9 That is an air quality issue. It was clearly outside of the
10 areas that we reviewed and we didn't review that and we
11 wouldn't ask you to review that.
12 BOARD CHAIRMAN FROST: Okay. Mr. Relis, any
13 further questions?
14 BOARD MEMBER RELIS: No.
15 BOARD CHAIRMAN FROST: Okay. Any other questions
16 from Board Members?
17 Thank you, Mr. Waltner.
18 Now we have Donna Tisdale.
19 MS. TISDALE: My name is Donna Tisdale.
20 For those of you that I have not had the pleasure
21 of meeting, I am the president of a grass-roots group.
22 I'm an advisor to Congressman Duncan Hunter on
23 issues of waste.
24 I'm a member of San Diego County Supervisor Diane
25 Jacob's growth and environment committee.

1 I'm the chair of the Boulevard Sponsor Group,
2 which is an advisor group to the San Diego Board of
3 Supervisors on land use issues.
4 And last but not least I'm a wife and a mother and
5 one of the closest neighbors to the proposed Campo Landfill.
6 My husband and I own 140 acres and I might add
7 that we own it free and clear. I don't know how many of you
8 can say that, but to me it's an accomplishment.
9 Our 140-acre cattle ranch shares a one-quarter
10 mile common boundary with the east side of the Campo
11 Landfill site.
12 Earlier, Mr. Connolly stated the CEPA is under no
13 obligation to issue a permit to operate, but I want you to
14 know that they get a substantial bonus payment from
15 Mid-American when they do issue an authority to construct
16 and they get another one when they issue a permit to
17 operate. So there is a tremendous financial incentive for
18 them to do both.
19 The Campo Landfill has been in the works since
20 1986. We learned about it in 1989.
21 And from the day that we learned about this
22 project we have faithfully worked within the system to stop
23 the landfill and protect our sole source groundwater
24 resources, our clean air, our peace and quiet, and our
25 property values.

1 And right now I can tell you I probably know more
2 about this project than many of the proponents, because I
3 have had to live with it daily and I will probably have to
4 live with it for long time to come.
5 I can honestly tell you right now that this
6 project smells pretty darn funny and there isn't even any
7 garbage there yet and unless you have some serious problems
8 you have to have noticed that this whole thing stinks.
9 And right now to me what stinks the most is the
10 cozy relationship that we believe exists between your legal
11 counsel, Robert Conheim, and Taylor Miller, the attorney for
12 Campo EPA.
13 And it is their teamwork that we believe is
14 responsible for the fact that your board has been legally
15 maneuvered into position where you have been told that you
16 have no legal standing to say no to this authority to
17 construct.
18 Now, we know it's necessary for proponents and
19 staff to meet and work on these projects and that, of
20 course, is not our problem. We have no problem with that.
21 But it is our concern that Mr. Conheim and
22 Mr. Miller have coordinated their efforts to manipulate the
23 Cooperative Agreement language to favor the project and to
24 leave us hanging out on a limb.
25 BOARD MEMBER EGIGIAN: Mr. Chairman, may I

1 interrupt for a minute?

2 BOARD CHAIRMAN FROST: Yes, Mr. Egigian.

3 BOARD MEMBER EGIGIAN: This is the third time that

4 I've been in a meeting where we're hearing testimony pro and

5 con on this subject.

6 This is one of the first times that I and several

7 other members have taken our time to go down and to see this

8 with our own eyes and walk the property.

9 I think that everybody here is getting a fair

10 shake, and it just doesn't do you any good to keep telling

11 us that there's something wrong with our attorney and he

12 sits here, because he has an obligation to serve this board,

13 and not to argue with you.

14 I'm getting to the point where I think that, you

15 know, there's a song about people playing cards, put up or

16 be quiet about the thing, and I've used a little easier

17 terms.

18 If you have something wrong that our attorney has

19 done I think that you owe it to us and to the people of the

20 State to tell us about it.

21 Otherwise, it's not helping your cause, not in my

22 mind, to have you beating on our people here.

23 I just wanted you to know about that.

24 BOARD MEMBER NEAL: Sam, what I got from the

25 comments was the suggestion or perhaps the belief that the

1 members of this board do not have a sufficient intelligence
2 level to make up their own minds.
3 BOARD MEMBER EGIGIAN: That's right.
4 MS. TISDALE: No. That's not what I'm saying.
5 I don't think you can understand our position.
6 We have not had the access to sit down on the
7 daily basis or have numerous conversations with Mr. Conheim.
8 The proponents, they have developed a close
9 relationship. That's understandable.
10 But where we're coming from, and I would like to
11 finish because this is public comment, and what we are
12 required to live with -- Mr. Conheim's actions have caused
13 us problems. I wish that I had concrete proof.
14 I have been told things. I'm in the process of
15 trying to gain evidence. This is very difficult for the
16 public to gain access to information to things that go on
17 behind closed doors.
18 And I wish I could make you understand where we
19 are.
20 I would like to finish if you don't mind.
21 BOARD MEMBER EGIGIAN: Go right ahead. I'm
22 through.
23 I just wanted to make that point that beating on
24 part of our staff here is doing your project no good at all.
25 Not in my opinion.

1 MS. TISDALE: I can understand that.

2 Our concerns have been taken lightly.

3 There is such a thing known as the revolving door.

4 That's where regulators or even legislators leave office and

5 go to work for industry.

6 I don't know what Mr. Conheim's, is he due for

7 retirement? I don't know.

8 See, these are things we don't know.

9 BOARD MEMBER EGIGIAN: You're assuming too much

10 and you shouldn't do that unless you're sure. This is all

11 I'm saying. If you're going to try to ruin somebody's

12 reputation and life and career, do it in such a way that you

13 can put up the proof.

14 MS. TISDALE: I'm asking questions. I'm asking

15 questions.

16 BOARD MEMBER EGIGIAN: You just said something

17 stinks.

18 MS. TISDALE: It does.

19 BOARD MEMBER EGIGIAN: Then you've got a problem.

20 MS. TISDALE: We do. I'm asking you for help.

21 I don't have access to ask to know what goes on in

22 all these meetings behind closed doors.

23 BOARD MEMBER RELIS: I would just point out on

24 that score without belaboring this point, because I think

25 it's been covered amply.

1 This board is subject to I think more disclosure
2 and public review than I believe any other board in the
3 State of California and legislation deliberately set that up
4 to allow the public the opportunity to watch all our
5 deliberations including our committee meetings in a public
6 setting where we interact with the applicants and our staff
7 and our attorneys.
8 And I just -- there's not much more that can be
9 done to bring our proceedings into the public domain.
10 I'll just stop there.
11 MS. TISDALE: It's well known that a lot of
12 decisions are made behind closed doors before it ever gets
13 to the public, public forum.
14 That is where is my concern is.
15 I'm not saying that the Board Members don't have
16 the intelligence.
17 I'm saying maybe the Board Members don't have
18 access to the same information I don't have access to.
19 I'm trying to raise a question, because I would
20 like your help in pursuing this.
21 I'll try and summarize and I'm really sorry that
22 you don't feel that -- when I raise the issue of Mr. Conheim
23 mishandling the information on the dropping of the
24 indictments, he did not substantiate that information.
25 I later saw Mr. Huff and Mr. Conheim chuckling

1 over it.

2 To me that is very serious because the fact that

3 Mr. Conheim did not substantiate the information on the

4 indictments indicates that he has a very close relationship,

5 a trust relationship, with proponents, so much so that he

6 did not substantiate the information.

7 To me that raises the question if he did not

8 substantiate the information on the indictments being

9 dropped, what other information has been given to him by

10 proponents that he is not substantiated that has not been

11 proven true.

12 And that is why I have followed this line of

13 questioning because you might not be aware that the

14 documentation from the Campo projects dealings and the

15 indictments, their dealings with the Campo reservation were

16 used in supporting information in the indictments of William

17 Nikus, secretary-treasurer of Campo projects, who is an

18 attorney, who served as legal counsel for Campo project, and

19 Mr. Nikus is accused of using his position as a Washington

20 County Board of Supervisors to ram through an incinerator

21 and landfill project for Robert Barber, who is the president

22 of Campo projects.

23 And in return he is said to have accepted cash,

24 favors, and corporate ownership, interest having an

25 estimated value of $3 million, plus a 20 percent interest in

1 Campo projects valued at $750,000.

2 At the same time, Nikus allegedly received direct
3 payments for legal services for representing several Barber
4 companies, including Campo project, beginning with its 1987
5 negotiations with the Campo tribe.

6 Nikus is charged with criminal conspiracy, fraud,
7 receiving a bribe, prohibited conflict of interest, failure
8 to disclose prohibited conflict of interest, and two counts
9 of receiving an award for public -- official misconduct.

10 And that's why I brought this up to you is because
11 there are attorneys that believe they are above the law at
12 times and, you know, we're not making wild accusations.
13 These things happen.

14 I'm asking for some review and some help and some
15 investigation.

16 If nothing is happening, then I want to know
17 nothing is happening.

18 If something is happening, then we have the right
19 to know, because decisions are being based on Mr. Conheim's
20 relationship.

21 And what goes on are affecting us and the future
22 of our community.

23 And I did talk to Mr. Chandler about our concerns
24 with Mr. Conheim, and I have been given some paperwork and
25 I'm going to proceed with that.

1 EXECUTIVE DIRECTOR CHANDLER: I'd like to
2 interject here.
3 For the record she did ask for a conflict of
4 interest that is a public record, as Mr. Relis just
5 referred.
6 I provided her the State requirements on conflict
7 of interest codes, and the incompatible activity statements.
8 So I wanted to clarify what she asked for and what
9 was provided.
10 BOARD CHAIRMAN FROST: Thank you.
11 MS. TISDALE: I just want to say we're not alone
12 in our efforts. I do represent the community members that
13 could not be here today.
14 And I provided information to you previously
15 regarding opposition to the Campo Landfill from the Mexican
16 citizens south of the border, including the Mexican Teachers
17 Union with 15,000 members. They do own a thousand and 81
18 hectares immediately south of the site and within a half a
19 mile of the landfill site. They are in direct path of the
20 surface and subsurface groundwater flow.
21 And while I'm on the subject of minorities,
22 Mid-American has bragged about their property value
23 protection plan. And I'm sure it's just a coincidence, but
24 none of the neighbors of African-American descent were
25 offered the property value protection plan and they all have

1 livestock operations that will be negatively impacted with
2 the loss of their groundwater.
3 The record of decision has been signed. I have
4 not seen the mitigation requirements, but the Bureau of
5 Indian Affairs and the Army Corps of Engineers indicated
6 that Mid-American will be fairly intimidated. They have a
7 lot to do and it will be required to be done prior to
8 construction.
9 In other words, Mid-American has a long road to
10 hoe and we will be right behind them every step of the way
11 because our future depends on it.
12 And in regards to this State Water Resources
13 Control Board decision yesterday, they said that an
14 alternate water supply was a feasible mitigation regardless
15 of the fact that may be cost prohibitive and regardless of
16 the fact that the County Water Authority said we'll never
17 have an alternate water supply.
18 Thank you.
19 BOARD CHAIRMAN FROST: Okay. Questions?
20 Mr. Huff.
21 BOARD MEMBER HUFF: Question.
22 I suppose, Mr. Conheim -- and let it be said that
23 I just consulted with Mr. Conheim, and we took care not to
24 chuckle.
25 Mr. Conheim, with regard to the individuals who

1 were indicted, to your knowledge and maybe I should ask this
2 question also of other people here, to your knowledge are
3 either -- two of them, weren't there?
4 MR. CONHEIM: Yes.
5 BOARD MEMBER HUFF: Are either of them connected
6 with this project?
7 MR. CONHEIM: It's my understanding that the
8 organization Campo Projects Inc. is a company that is owned
9 by a corporation of another name back in the East in New
10 York, that they're not Mid-American, they are not the tribe,
11 and they are not part of this project.
12 BOARD MEMBER HUFF: Let me ask that of
13 Mr. Connolly. See if he knows. Maybe he knows something
14 you don't know.
15 BOARD MEMBER NEAL: While he's coming forward let
16 me also ask whether that bears relevance to the issues that
17 we need to review?
18 MR. CONHEIM: That's the point that I think that I
19 was trying to make, but you'll understand if I'm not
20 precisely clear is what I'm trying to tell you at this
21 moment.
22 Because the people that Ms. Tisdale was referring
23 to are not part of the organizations before us today and
24 because that corporation is not part of this project, I
25 believe that it is irrelevant to your consideration of

1 whether CEPA has proposed a permit, whether Mid-American can
2 meet its obligations under CEPA regs, and whether staff has
3 properly reviewed the landfill design and potential
4 operation.
5 BOARD MEMBER HUFF: Is that your point of view,
6 Mr. Connolly?
7 MR. CONNOLLY: This permit only applies to
8 Mid-American and the tribal corporation, Muht-Hei.
9 I received notification in December of last year
10 that there was an indictment, that two of the members of the
11 corporation, Campo Projects Corporation, were indicted.
12 I immediately convened a CEPA board hearing and we
13 issued a ruling that until the matter of the indictment was
14 resolved that the Campo Projects Corporation would not be
15 getting a permit from CEPA and we've not changed that
16 position.
17 BOARD MEMBER HUFF: Thank you.
18 MS. VAZQUEZ: Mr. Chairman, I would like to add
19 that CEPA did more than is required by State law.
20 We have no good character standards as they do in
21 New York and New Jersey.
22 Even if the applicant had a criminal record that
23 would not be the basis for staff recommending objection to
24 any permit. That standard does not exist in California.
25 MR. CONHEIM: But it's important to note that the

1 people that Ms. Tisdale was referring to are employees of or
2 principals in a corporation which is not the applicant in
3 this case.
4 BOARD MEMBER HUFF: Very good. Thank you.
5 MR. CONHEIM: In any event.
6 BOARD MEMBER HUFF: I think enough has been said
7 relative to the allegations of improper advice and anything
8 that is inappropriate in terms of behavior with regard to
9 advice from counsel. I don't need to go further other than
10 to say that I think all the provisions of California law,
11 all of the provisions of the State Civil Service system have
12 gone to remarkable degree to serve the public, and I think
13 that the civil servants that California has, the citizenry
14 should be proud of and should feel that because of the
15 protections of the system that operate that the citizens
16 themselves have their viewpoints protected.
17 BOARD CHAIRMAN FROST: Thank you.
18 Now, call on Mr. Ted Smith.
19 MR. SMITH: My name is Ted Smith. I'm a
20 geologist, certified engineering geologist, with the State
21 of California and a registered environmental assessor with
22 the State of California.
23 I have a master's degree in geology and a master's
24 degree in civil engineer, sanitary, solid waste management
25 specialty.

1 And I have over 25 years of professional
2 experience in the West.
3 For reasons I have documented in my letter dated
4 March the 26th, 1993, commenting on Mid-American's waste
5 management systems, solid waste disposal system permit
6 application for Campo Indian reservation landfill project, I
7 am requesting that at this time you find a negative
8 determination on the authority to construct.
9 Most of my comments are concerning water resources
10 which are documented in the attached letter to this document
11 that I've just given you, but there are some things that the
12 Integrated Waste Management Board should consider.
13 The board has been placed in a very bad position
14 to grant tentative authority to construct a poorly designed
15 landfill project based on flawed analyses and incomplete
16 studies situated in a sensitive water resources area in
17 eastern San Diego County.
18 A prudent determination of the board at this time
19 would be a negative determination.
20 If you don't stop this project now you have lost
21 the chance to stop it before significant environmental
22 damage has been done during construction.
23 There are 25 to 30 acres of natural vegetative
24 cover which will be stripped, 25 to 30 acres of natural
25 soils will be stripped. A habitat of sensitive animals will

1 be destroyed.

2 Allowing the applicant to construct the landfill

3 without an effective design, that a satisfactory monitoring

4 system is completely unheard of in the past experience, and

5 would set a strong precedence which would affect your

6 ability to control the integrated waste management systems

7 of the State of California.

8 The design is detailed in a permit application,

9 will be vastly more expensive than the currently approved

10 operational landfills in the area.

11 The EPA indicates that installation of a

12 single-liner system, and this is a double-liner system, a

13 single-liner system in the landfill increases the project

14 cost by 30 percent.

15 It is my judgment that if the double-liner system

16 is installed and that the indicated mitigation measures are

17 implemented, that an increased cost of the project beyond

18 other single-lined and unlined systems that are now working

19 might impact the economic viability of the project.

20 It is my best judgment that even without upsets or

21 remedial costs which could cost in the hundreds of millions

22 of dollars, costs -- the life cycle cost of the project as

23 described in this application would escalate the necessary

24 tipping fees to a point that the users would go elsewhere to

25 dump their waste.

1 I hope that you'll have a negative determination
2 on this authority to construct the waste facility as
3 designed.
4 I'm sorry, I'm drifting here.
5 The applicant and their consultants, Dames and
6 Moore, have made significant errors in their studies and may
7 have suppressed the information that they feel would have
8 negative impact on the acceptance of their application by
9 CEPA and the State.
10 These errors and analyses profoundly affect the
11 results, resulting design, and establish doubt that CEPA or
12 the applicant can carry out the operational studies and
13 design changes called for in the application.
14 This leads me to question whether the applicant or
15 CEPA can carry out this complex experiment, because it is an
16 experiment, it has never been done before, that makes it an
17 experiment, without having a catastrophe, which the federal
18 and state government, along with the taxpayer, will have to
19 correct.
20 The design presented in the application under
21 consideration is a dry tomb concept which is technically
22 flawed. I reference Dr. Lee, 1992.
23 The public is being led to believe that this type
24 of landfill is an effective and an extensive management
25 system for solid waste which protects the groundwater

1 quality.

2 They're not being informed that these lined

3 systems only postpone the groundwater pollution to the

4 degree that they work and thereby pass to future generations

5 well past the seventh generation the public health problems,

6 the groundwater loss, and the economic burden of the

7 management system.

8 The authority to construct should have a negative

9 determination because they have not collected enough

10 information to provide a complete description of the

11 potential failure surfaces of materials on rock slopes.

12 Slope stability analyses in the rock slopes

13 require the collection of an evaluation of much more data

14 than has been accomplished at the site.

15 In order to adequately address the stability of

16 rock slopes and fractured rock masses, you'll have to

17 address the following ten parameters.

18 Orientation, this is a dip and strike of the joint

19 system or discontinuity.

20 The spacing of the discontinuity.

21 The persistence of the discontinuity, how far they

22 extend into the rock.

23 The roughness on the plains of the

24 discontinuities.

25 And the wall strength of the rock wall on both

1 sides of the discontinuity.

2 The aperture between these planes, these walls, on

3 the discontinuity.

4 The filling material that's in the fracture or

5 discontinuity.

6 And seepage that is in and coming out of the

7 discontinuities.

8 The number of sets of discontinuities at each

9 location.

10 The block size and shape of the rock fragments

11 created by the intersection of multiple discontinuity sets.

12 These ten items at each location on the site in

13 which slopes are going to be constructed should be evaluated

14 so that stability analysis can be accomplished.

15 Dames and Moore has not analyzed the

16 discontinuities to this extent and their ability to do so is

17 in some question.

18 Please see my previous letter dated April the 2nd,

19 1993, concerning Figure 7-1, 7-2, and 7-4.

20 Dames and Moore has only looked at 40

21 discontinuities on the site. 40 discontinuities. These are

22 fractures or joints systems on the site and those were not

23 on the locations of the rock slopes, the proposed rock

24 slopes.

25 Only four trenches have been dug, but the

1 discontinuities were not characterized. Those that were
2 found were not characterized in a manner described above in
3 such details that the rock slope stability can be analyzed.
4 Many more trenches at the proposed slopes are required to
5 completely describe the potential failure of services --
6 surfaces and materials at the proposed slope locations.
7 Within the next couple of decades solid waste
8 management in California will be quite different than it is
9 today. You're going to have to process and treat all the
10 waste before you bury it in the earth.
11 However, today we still bury it unprotected. We
12 bury it raw.
13 In a Stone Age we buried our waste until we
14 contaminated the ground and caused deaths and sickness and
15 then we moved away, starting all over again.
16 The character of the waste back then was not as
17 toxic or permanent as it is today, but we still bury the
18 waste today and don't have the option of moving away.
19 This is untreated waste we're putting into the
20 ground.
21 The character of the waste in the past was such
22 that left to natural process in time the toxic, the waste
23 toxicity was neutralized.
24 Today's waste contains unidentified organic and
25 inorganic compounds whose public hazards are unknown. This

1 stuff has no life, half life. It effectively lasts forever.
2 In addition we know that municipal waste, the kind
3 of waste that is going to be put in this landfill, contains
4 up to half a percent of hazardous chemicals. We cannot
5 claim ignorance of this fact.
6 This means that 3 to 15 tons will be -- of
7 hazardous waste will be delivered to the site, but we bury
8 it still untreated. Not too good for rocket scientists, is
9 it?
10 If you vote to allow them to construct this
11 landfill, you are putting poison in the ground to be
12 released on the public at some later date.
13 When we don't -- when, we don't know, but surely
14 it will be released. Please don't do it. Just say no.
15 The rail haul aspect of the project has been not
16 been given much attention.
17 Last Saturday, April the 24th, 1993, I took a trip
18 on this rail line that the garbage train will take from the
19 town of Campo to the reservation, the site of the proposed
20 landfill.
21 The roadbed needs a great amount of work. The
22 cross ties are in bad shape. Most of the rails will have to
23 be replaced and the bridges will need certification.
24 At the present time the train's top speed is 25
25 miles an hour and that speed is too fast, can knock you out

1 of the seat.

2 Before the garbage train can make the trip there

3 it needs to be significantly repaired, upgraded, and will

4 cost millions of dollars.

5 In summary I find the application incomplete and

6 filled with important inadequacies and errors.

7 In addition I find that the involved studies,

8 data, and analyses presented in this application are flawed.

9 And the permit should have a negative

10 determination by this board.

11 I hope my comments will be truly helpful to your

12 deliberations and that you finally determine to disallow the

13 authority to construct.

14 Do you have any questions?

15 BOARD CHAIRMAN FROST: Any questions?

16 All right. No questions.

17 Thank you, Mr. Smith.

18 Now, Mr. Ed Tisdale.

19 MR. TISDALE: My name is Ed Tisdale. I echo a lot

20 of the same concerns and comments of some of the other

21 people.

22 I just got a couple things.

23 I worked on AB 240 with our community and I have

24 to agree, we didn't get for our buck, we didn't get what we

25 thought we paid for it.

1 It took us a couple of years to get all that out
2 of the way and our main purpose of that was to eliminate
3 double standards, you know, for like one set of rules for
4 maybe the reservation, another set of rules for other
5 landfills.
6 I just sort of wonder if, you know, the San Diego
7 County, they have been trying to get San Marcos through you
8 guys, same group here, for a number of months now. That
9 sort of makes me wonder if they wouldn't be better off,
10 since all this is fundamental equivalent bill, maybe just
11 turn around and do it the way Campo has done it. I mean,
12 can that be double permitted?
13 Can anybody answer that for me? I mean, is this a
14 legal issue? Seriously.
15 BOARD CHAIRMAN FROST: You're talking about San
16 Marcos?
17 MR. TISDALE: Yeah. Any landfill.
18 If a guy wanted to site a landfill somewhere,
19 could he come in and challenge whether it be legal with two
20 permits system? Would that be possible?
21 MS. VAZQUEZ: For the record, San Marcos is fully
22 permitted by this board.
23 MR. TISDALE: The Water Board, I understand, I
24 could be wrong -- but it doesn't seem to me like if this is
25 fundamentally equivalent that any municipality or any other

1 county couldn't require a two-way permit system. I mean,
2 you know.
3 Thank you.
4 BOARD CHAIRMAN FROST: Thank you, Mr. Tisdale.
5 That concludes all of the people who have asked to
6 speak on this item.
7 Is there any further discussion of this item by
8 members of the board at this time?
9 If not, Mr. Huff, would you like to make a motion?
10 BOARD MEMBER HUFF: Let me make an attempt at
11 making a motion.
12 I move that the board direct the executive
13 director to prepare and transmit to CEPA a letter of comment
14 consistent with the staff's review of this draft permit set
15 forth in the agenda item for this matter dated April 28th,
16 1993.
17 I further stipulate that this motion is based on
18 staff's review of six key items. These items are the
19 following. Landfill operations, proposed drainage and
20 erosion control measures, landfill gas collection and
21 monitoring system, slope stability, leachate control system,
22 and closure and postclosure maintenance plans.
23 Substantial unresolved issues remain regarding
24 each of these six items and final determination will be
25 deferred to the board's consideration of the permit to

1 operate as fully described in the letter from board staff to
2 CEPA dated March 10th, 1993.
3 The basis of this motion is that no waste will be
4 received until and unless the permit to operate is issued
5 pursuant to Chapter 805, statutes of 1991, as amended and
6 the Cooperative Agreement.
7 Furthermore, that the board reserves its full
8 right to review, comment, and make determinations on the
9 draft permit to operate when it is submitted to the board
10 pursuant to the above-cited authority.
11 BOARD CHAIRMAN FROST: Okay. Mr. Huff has made a
12 motion.
13 BOARD MEMBER EGIGIAN: I'll second.
14 BOARD CHAIRMAN FROST: I have a second.
15 Mr. Huff, let me ask you just for point of
16 clarification, it seems to me that the law and the
17 agreement, again which was not signed by this board, leave
18 us no option but to forward these comments.
19 Is that your understanding?
20 BOARD MEMBER HUFF: Well, it's my understanding
21 that the law and the Cooperative Agreement have embedded in
22 them the expectation that we will comment. The comments
23 that we have --
24 BOARD CHAIRMAN FROST: What if we refuse to
25 comment?

1 BOARD MEMBER HUFF: If we refuse to comment the
2 permit goes forward. It's deemed in the Cooperative
3 Agreement. It is deemed to be the same as -- where is it?
4 It says in the Cooperative Agreement if a State agency does
5 not provide such comments the permit conditions shall be
6 deemed sufficient to meet the conditions of paragraphs one,
7 two and three. So the assumption is that if we don't
8 comment, the assumption is the same, to the same result.
9 So I think it better that we make our comments and
10 provide the precise nature of the staff comments as well as
11 I indicated in my motion all of those areas where there are
12 issues to be resolved. I think that we are in a much better
13 circumstance.
14 Being told to speak into the microphone.
15 BOARD CHAIRMAN FROST: Okay. Mr. Chesbro.
16 BOARD VICE CHAIRMAN CHESBRO: Mr. Chairman, it's
17 my understanding the sense of the motion that we are
18 essentially saying that for our board's purpose the
19 operational issues and the construction issues are very
20 closely tied together and that we are in essence reserving
21 that final comment while we are on the one hand fulfilling
22 our responsibility to provide comments at this stage of the
23 game, we also are reserving our final comment on it for that
24 construction permit step and -- I'm sorry, the operational
25 permit, step in the process.

1 On that basis that I think that it's a good
2 motion.
3 BOARD CHAIRMAN FROST: Okay. Could we call the
4 roll, please.
5 ACTING BOARD SECRETARY WEBB: Board Members
6 Chesbro.
7 BOARD VICE CHAIRMAN CHESBRO: Aye.
8 ACTING BOARD SECRETARY WEBB: Huff.
9 BOARD MEMBER HUFF: Aye.
10 ACTING BOARD SECRETARY WEBB: Egigian.
11 BOARD MEMBER EGIGIAN: Aye.
12 ACTING BOARD SECRETARY WEBB: Neal.
13 BOARD MEMBER NEAL: Aye.
14 ACTING BOARD SECRETARY WEBB: Relis.
15 BOARD MEMBER RELIS: Aye.
16 I want to say something.
17 BOARD CHAIRMAN FROST: We will give you an
18 opportunity when the roll is completed, how is that?
19 ACTING BOARD SECRETARY WEBB: Chairman Frost.
20 BOARD CHAIRMAN FROST: Aye.
21 Okay. Mr. Relis.
22 BOARD MEMBER RELIS: Yeah. I just want to say for
23 the record that I think I've spent more time on this issue
24 than anything I've been on since, that has appeared before
25 the board, and that has to do with the unusual nature of

1 this, both the agreement, we've never been down this road
2 before, and the splitting of the permit.
3 It's my observation from that that at least in
4 future should another permit or application come before us
5 or request, tribal request, that we revisit this procedure,
6 we discuss it at least before we get this far down the road
7 again, because it's led to a great deal of I think from a
8 decision-maker's standpoint, complexity that I'd rather not
9 see us go through again.
10 I think that I'm satisfied after that we have done
11 everything we can do as a board at this stage to give it
12 this scrutiny. I've heard my colleagues on the board state
13 in nonequivocating terms that we are going to have a very --
14 take a very hard look at this project. It's got many
15 hurdles to overcome.
16 And I know for one that any expenditures made
17 regarding the landfill construction will have no bearing on
18 my decision.
19 And I think I've heard my colleagues say the same
20 thing.
21 So this is a small step, admittedly, that if the
22 construction goes ahead. We've restricted -- it seems
23 restricted and the big ballgame remains to be played out
24 here.
25 So I just want that for the record.

1 And I'd like to commend staff for doing, I think,
2 a very excellent work on bringing this permit, this
3 complicated matter before us and I really feel supportive of
4 the efforts that they have gone to to both address the many
5 issues, indicated which ones are unresolved, and the few
6 that are resolved. There are very few that have been
7 resolved at this point.
8 So I think they've made that very clear and
9 they've worked with all parties, I think, in a fair and
10 above board way.
11 So I'll end it with that.
12 BOARD VICE CHAIRMAN CHESBRO: Any other comments
13 from board members?
14 The motion I believe has carried.
15 And we'll take about a ten minute break. Let's
16 try to be back here at quarter after.
17 (Thereupon a short recess was
18 taken from 3:04 p.m. until 3:21 p.m.)
19 BOARD CHAIRMAN FROST: The board is now going to
20 go into executive session for personnel matters and we'll
21 return as soon as executive session is completed.
22 (Thereupon the board was in executive
23 session from 3:21 p.m. until 4:40 p.m.)
24 BOARD CHAIRMAN FROST: The board is back in
25 session.

1 And if I can figure out where we are we'll be in
2 good shape.
3 BOARD MEMBER NEAL: Item No. 9.
4 BOARD CHAIRMAN FROST: Yes, ma'am.
5 Item No. 9, which is consideration of adoption of
6 the staff recommendation for tire recycling program grants
7 award.
8 EXECUTIVE DIRECTOR CHANDLER: Mr. Chairman, I'm
9 not sure if staff have come down from recess, so if you give
10 us just a couple more seconds.
11 BOARD MEMBER NEAL: You think we can do the rest
12 of the items by exception? In other words we won't have
13 lengthy staff presentations if we can just have them
14 introduce it briefly and see if we have questions.
15 BOARD CHAIRMAN FROST: Let me tell you the items
16 that I have the public wanting to appear on are Items 14 and
17 15, so if that helps.
18 I don't have any on 9, so if you'd like to --
19 BOARD MEMBER NEAL: I have a quick question of
20 staff on 9, but other than that --
21 BOARD CHAIRMAN FROST: Okay. Well, let's give
22 them a minute to get back.
23 BOARD MEMBER NEAL: Maybe we can go through the
24 rest.
25 BOARD CHAIRMAN FROST: 10 is the -- we did 10.

1 BOARD MEMBER NEAL: 12 will be next.

2 BOARD CHAIRMAN FROST: 12 is next.

3 BOARD VICE CHAIRMAN CHESBRO: 11, 12, 13, 14, 15,

4 17.

5 We have legislative too.

6 BOARD CHAIRMAN FROST: I don't think Dorothy is

7 here yet.

8 BOARD MEMBER RELIS: Do we have markets here?

9 BOARD MEMBER NEAL: We can do legislation real

10 quick.

11 MR. WALLACE: Mr. Chairman, we could can move to

12 item 15, if you'd like. Caren Trgovcich is ready, I belive

13 to do that.

14 BOARD CHAIRMAN FROST: Let's go. Item 15, Caren

15 Trgovcich.

16 MS. TRGOVCICH: Good afternoon, Members.

17 This item is consideration of adoption of the

18 report prepared under contract with Tellus Institute on the

19 study of virgin materials and incentives in California.

20 This study was contracted last August and was

21 intended to answer two questions.

22 The first question is does California provide

23 substantially greater incentives for production of virgin

24 materials than from secondary materials.

25 And do State virgin material incentives put

1 secondary materials at a competitive disadvantage.

2 The contractor concluded after months of research

3 and discussions with various State agencies involved in the

4 administration of incentives that were evaluated, concluded

5 that California, while it does provide a number of virgin

6 material incentives, the approximate dollar value is not

7 significant enough to have an effect on the competition

8 between virgin and secondary materials.

9 Specifically, that the dollar value that was

10 identified, which is a range of anywhere between 180 million

11 and 360 million dollars, that that dollar value reflects

12 incentives primarily in the areas of oil and gas, timber,

13 and non-mining related industries or non-fuel mining

14 industries.

15 The incentives that were evaluated, while the

16 dollar value existed, that the contractor determined that

17 there was generally no direct competition between the virgin

18 material industries and the secondary material industries

19 for which these incentives were provided.

20 The primary basis for the contractor's conclusion

21 was an evaluation of these incentives.

22 The contractor looked at timber incentives which

23 valued approximately $70 million, oil and gas incentives

24 which totaled approximately $75 million, and non-fuel mining

25 incentives which totaled approximately $15 million.

1 I would say that one of the most significant
2 issues that was raised during the course of this study was
3 the controversy surrounding what constitutes an incentive.
4 Early discussions with the oil and gas industry
5 identified the calculation of an oil severance tax as a
6 controversial item whether or not the low value of the tax
7 that California included constituted an incentive.
8 As another comparison, looking at the timber
9 industry that there is controversy surrounding whether or
10 not certain incentives provided to the industry are, in
11 fact, incentives or whether or not they should be included
12 on the other side of the equation.
13 We feel that the report tends to take this into
14 account in the executive summary as well as the preface that
15 was provided to each member and I believe included into your
16 packet yesterday.
17 I have additional copies of the preface here if
18 any Member would like to be able to receive a copy of that.
19 Cathy, you want to hand the additional copies out?
20 At the Market Development Committee meeting, which
21 was held several weeks ago, there were two areas which staff
22 were asked to go back and revisit.
23 One was the preface which is being handed out
24 right now. And preface was intended to focus on, one, those
25 areas that the study did not cover and, two, the

1 controversial nature of the calculation or quantification of
2 incentives.
3 The other areas that staff were asked to focus on
4 were included in the body of the report primarily in the
5 executive summary, and those were provided to the committee
6 at the committee meeting.
7 In addition, following the completion of the
8 committee meeting, representatives of the timber industry
9 approached staff regarding concerns on the calculation of
10 the timber yield tax and other issues.
11 What these comments seemed to do was reinforce the
12 controversy surrounding the calculation of these incentives.
13 During our discussions with the timber industry we
14 evaluated their comments and what the results seem to
15 indicate is that while the controversy continues on what
16 constitutes an incentive, that the overall impact is whether
17 or not we include, for example, the timber yield tax in the
18 calculation, that the conclusions of the report would not
19 differ.
20 BOARD MEMBER NEAL: Excuse me. Can I interrupt
21 for a minute?
22 What happens with this report once we pass it
23 today?
24 MS. TRGOVCICH: The report will be published. It
25 will become a report of the board and be made available.

1 This is not a legislatively mandated report. This is a
2 contract study.
3 BOARD CHAIRMAN FROST: And why, do you know why it
4 was done? What the purpose of this study was?
5 MS. TRGOVCICH: The purpose was to answer
6 questions regarding virgin material incentives.
7 BOARD CHAIRMAN FROST: What was the -- do you know
8 what the genesis of it was, how it got started?
9 MS. TRGOVCICH: We were evaluating market
10 development options as areas for market development research
11 and being able to promote market development in California,
12 that there appeared to be a need to evaluate for existing
13 incentives what effect that had on competition between the
14 virgin and secondary material industry.
15 BOARD MEMBER NEAL: Can I suggest that maybe we
16 can just go on and approve the report since it's not
17 legislatively mandated?
18 BOARD CHAIRMAN FROST: We do have a member of the
19 public wishing to speak on this report.
20 BOARD MEMBER NEAL: Okay.
21 BOARD CHAIRMAN FROST: If you could conclude your
22 comments then we can --
23 MS. TRGOVCICH: Staff would recommend that the
24 board adopt the report with the preface that's been handed
25 out.

1 We also recommend that the preface includes
2 comments surrounding the controversial nature of the
3 calculation of the incentives and that this addresses the
4 concerns of certain industries. While it does not address
5 the specific issues, that it indicates that there is
6 controversy surrounding the calculation of the incentives.
7 That concludes staff comments.
8 BOARD MEMBER RELIS: Mr. Chair, I'll say, too, at
9 the committee meeting we -- at the committee meeting we
10 discussed this and we just indicated that we wanted to make
11 a few changes in response to committee members' comments in
12 the preface. I think this -- we have -- those of us who
13 were involved in that and I think have looked this over and
14 looks consistent. I think Mr. Chesbro suggested three small
15 word changes.
16 BOARD VICE CHAIRMAN CHESBRO: That take a couple
17 words out of the preface that's drafted here.
18 BOARD MEMBER RELIS: Concerning the last paragraph
19 it is, however working on just remove on more forward, but
20 those are the only -- that's the only change I would
21 recommend that we move this on to completed report.
22 BOARD CHAIRMAN FROST: Okay. Then I'd like to
23 call on Mr. John Hofmann.
24 MR. HOFMANN: Mr. Chairman, and Members of the
25 Board, I appreciate the opportunity to comment. I'm John

1 Hofmann with the California Forestry Association.

2 I have some papers that I'll hand out to you that

3 list some of the objections that we have to the report. And

4 I won't go through with them, all of them.

5 BOARD CHAIRMAN FROST: You're representing the

6 California Forestry Association?

7 MR. HOFMANN: Yes.

8 BOARD CHAIRMAN FROST: And you object to the

9 report?

10 MR. HOFMANN: Yes, sir.

11 BOARD CHAIRMAN FROST: Okay. You'll to have

12 explain this one to me then.

13 MR. HOFMANN: The report, as the staff has

14 recommended to you, said it's full of controversy.

15 The problem, the fear that we have is, as you

16 know, the State Legislature, as well as the federal

17 legislature, has been seriously considering legislation that

18 would impact the timber industry, curtail the operations of

19 forest products.

20 The kinds of subsidies that are claimed in this

21 report, we believe to be inaccurate, would seriously damage

22 our stance that legislation should not be introduced that

23 would prevent forest products from occurring in this state.

24 Let me just outline a couple of the items that we

25 go through.

1 As I say, our fear is if that report is published
2 it is just one more statement that is -- can be used, will
3 be picked up through legislation to say that here is yet
4 another study that shows that there are subsidies to the
5 timber industry and therefore we ought to eliminate these
6 subsidies, which we contend are, in fact, are not subsidies.
7 And if they were eliminated it would lend a
8 crushing blow to the forest products industry.
9 Let me just discuss two of those things very
10 briefly with you and there's many in that report.
11 The first one is the timber yield tax, as was
12 mentioned. The controversy there is that the report states
13 that the timber yield taxes should be increased to a level
14 of 6.8 percent.
15 The timber is a different kind of a production
16 business than most areas of private harvest or private
17 lands.
18 Timber grows very slowly, as you're aware of. We
19 cycle it. We harvest it on a cycle of about 70 to 250
20 years. So it requires extensive amount of lands and
21 extensive amount of time to hold that timber before we can
22 receive a value of it.
23 According to the report, they took the amount of
24 standing inventory, divided it by the harvest, the amount of
25 harvest per year, and took the value that the standing

1 inventory holds, and applied that to the harvest level and
2 came out to be 6.8 percent I think or 7 percent, according
3 to the report.
4 And the current level is 2.9 percent.
5 The harvest level, as I said, is 70 to 250 years.
6 If we -- if the average harvest approached 144
7 years, that would -- that period of time, that 100 -- during
8 that 144 years, we would pay the equivalent in taxes that
9 that harvest would generate at the end of the 144 years.
10 In essence, we would gain only the value that we
11 paid in taxes and there would be no incentive to operate as
12 an industry or to own forest products land.
13 The report states that the timber taxes were
14 directed towards timber production zones. Timber production
15 zones is a term that is used on the Forest Practice Act
16 designated land for timber production.
17 That application only applies to private lands and
18 it applies to those lands that we want to reserve for
19 continuing forest products over the generations. We do not
20 want it to be transferred into developments for recreational
21 use, or golf courses, or homes, or those things.
22 We needed an incentive. The value of the land is
23 much higher for commercial development than it is for timber
24 harvest.
25 And so the state allowed for reduced timber taxes

1 because of if a landowner was agreeable to restricting its
2 activity to growing long-term investments, long-term timber
3 production.
4 And as I pointed out, 144 years rotation, if the
5 timber tax was increased there would be absolutely no
6 incentive to grow timber on these lands and we would see, in
7 our opinion, we would see a decrease in timber production
8 zones that would allow for further future development of our
9 forests.
10 We think that would be disastrous to the State of
11 California.
12 Also by way of note, the state timber yield taxes
13 pay -- are charged to all timber and the payor is the first
14 nonexempt timber title holder.
15 So for federal timber, that is the timber
16 purchaser. Again, the private -- the private individual.
17 He pays a timber tax, a timber yield tax, on all federal
18 timber.
19 On private lands it's the landowner.
20 The second area of controversy that I'd like to
21 point out and that is currently under a great dispute and
22 that's the low-cost timber sales.
23 If you'll turn to the near the back of that
24 package there's a chart that is entitled below-cost timber
25 sales.

1 And very briefly I think it illustrates the
2 definition of below-cost timber sales.
3 Under federal law low-cost timber sales apply only
4 to federal timber, to federal timber sales. Under federal
5 law, federal timber cannot be sold at less than fair market
6 value.
7 So the chart shows what constitutes the costs that
8 are incurred and the revenues in return under fair market
9 value.
10 Cost of a timber sale --
11 BOARD CHAIRMAN FROST: Let me interrupt,
12 Mr. Hofmann.
13 I think we're getting a little far afield here.
14 The report concludes that the so-called subsidies
15 for virgin materials do not have an impact on secondary
16 materials.
17 That conclusion should be what your organization
18 would want out of this report.
19 It further goes on, and I don't know if you've
20 seen the preface statement --
21 MR. HOFMANN: I haven't been privileged to see
22 that.
23 BOARD CHAIRMAN FROST: But it says in the preface
24 statement, the report includes as subsidies provisions of
25 law, programs and policies that others feel are subsidies.

1 So it really, I think, deals with the questions
2 that you're raising. I mean, I may agree with you on
3 everything you're saying, but I don't think the report
4 conflicts with that and I think it reaches a conclusion that
5 the Forestry Association should want as a conclusion.
6 We've tried to say that, yes, there will be
7 differences of opinion. That's the problem of getting into
8 this whole area of at all. There's going to be differences
9 of opinion as to what -- I would agree with you. A tax,
10 just because somebody thinks the tax isn't high enough
11 doesn't make it an incentive, you know.
12 But I think it's just that this thing has been
13 neutered to the point where it is, you know, it is a report.
14 It does have something to say, but it's -- it also takes
15 care of the concerns that I think both sides would have.
16 Because I would imagine that there would be people
17 from environmental organizations that would come up and say
18 just the opposite.
19 We've tried to put language in that would deal
20 with their concerns too.
21 It's a highly controversial area and probably one
22 we shouldn't have gotten into in the first place, but we're
23 here.
24 MR. HOFMANN: I would agree.
25 My concern was that in the -- that the report by

1 the board adopting the report it lends credibility to the
2 report.
3 The disclaimer I'm pleased with. We had met with
4 the staff and they talked about putting this disclaimer in.
5 We're very pleased with that disclaimer.
6 I do have a concern that as I said it does -- the
7 passing of the report does lend a certain amount of
8 credibility to the report.
9 And the report does quote the Wilderness Society.
10 Obviously, that has the biased opinion on their side. It
11 didn't -- there was no context with the timber industry
12 whatsoever. There is no mention of a balance in the report
13 at all.
14 Your disclaimer at the front is certainly
15 appreciated, but there seems to me that in the report there
16 ought to be some acknowledgement itself that there is two
17 sides to this issue rather than just a disclaimer at the
18 front.
19 BOARD CHAIRMAN FROST: Probably be more people
20 read the preface than the report itself.
21 BOARD MEMBER RELIS: Mr. Chair, I wonder if
22 Ms. Trgovcich has a response and can help us through this.
23 MS. TRGOVCICH: Staff have worked with Mr. Hofmann
24 and we're very welcome to be able sit down and work through
25 these issues through him, with him.

1 We feel that the preface addresses the controversy
2 and what we've stated in the preface is that there are
3 various different ways to look at this.
4 For purposes of the report, the contractor tended
5 to use the more conservative estimates in order to be able
6 to identify what the range of subsidies or incentives,
7 excuse me, may be.
8 And that the preface goes on to state that we
9 recognize that this is an area of discussion, but however
10 staff have concluded that the overall questions, the two
11 questions that this report attended to -- attempted to
12 address would not change because of the nature of
13 Mr. Hofmann's comments.
14 This report does not intend to propose legislation
15 or legislative changes.
16 In fact, I believe the opposite, what this report
17 does for this board is point out that this is an area where
18 we had may be previously assumed certain conclusions that
19 were determined not to be, that in fact this is not an area
20 specifically in terms of do we provide greater incentives
21 and are those incentives placing the secondary material
22 industry at a competitive disadvantage. This report says
23 no.
24 And so what this report does for us is that we
25 will not pursue that and not suggest further proposals in

1 that area.

2 BOARD CHAIRMAN FROST: I think that's the point.

3 BOARD MEMBER EGIGIAN: Then why release the report

4 at all?

5 BOARD CHAIRMAN FROST: It does have a conclusion

6 and the conclusion is that this is not an area for us to

7 pursue.

8 BOARD VICE CHAIRMAN CHESBRO: Mr. Chairman.

9 BOARD CHAIRMAN FROST: Yes.

10 BOARD VICE CHAIRMAN CHESBRO: Just to balance this

11 thing, I mean I had real severe problems from almost an

12 opposite point of view. I'm not disputing the specific

13 numbers or facts that the timber industry is stating, but I

14 felt that the questions that were asked in here were so

15 narrow that they -- it rendered -- it didn't really answer

16 the broader question that needed to be answered.

17 However, the preface has been written from my

18 standpoint to adequately qualify the report and so I think

19 we're in sort of a standoff here. So one that hopefully we

20 can back away from and say I think that the concerns the

21 timber industry has expressed have been qualified.

22 I'm willing to vote for it just to get unstuck

23 here, because the preface adequately says that they didn't

24 address the concerns I had and I hope the industry would

25 take the same perspective.

1 BOARD CHAIRMAN FROST: Same thing.

2 BOARD MEMBER RELIS: Mr. Chair.

3 BOARD VICE CHAIRMAN CHESBRO: You know, by saying
4 that it didn't address the things they were concerned about
5 then as long as it's clearly defined what it didn't do, then
6 we ought to just get this thing going here.

7 BOARD MEMBER RELIS: I think we need to move it
8 along.

9 BOARD CHAIRMAN FROST: Mr. Relis moves.

10 BOARD VICE CHAIRMAN CHESBRO: I will second it
11 with the minor change that we mentioned.

12 BOARD CHAIRMAN FROST: Okay. Call the roll,
13 please.

14 ACTING BOARD SECRETARY WEBB: Board Members
15 Chesbro.

16 BOARD VICE CHAIRMAN CHESBRO: Aye.

17 ACTING BOARD SECRETARY WEBB: Huff.

18 BOARD CHAIRMAN FROST: Absent.

19 ACTING BOARD SECRETARY WEBB: Absent.

20 Egigian.

21 BOARD MEMBER EGIGIAN: Abstain.

22 ACTING BOARD SECRETARY WEBB: Neal.

23 BOARD MEMBER NEAL: Aye.

24 ACTING BOARD SECRETARY WEBB: Relis.

25 BOARD MEMBER RELIS: Aye.

1 ACTING BOARD SECRETARY WEBB: Chairman Frost.

2 BOARD CHAIRMAN FROST: Aye.

3 All right. Now can we go to Item 9? Are we ready

4 for Item 9?

5 BOARD MEMBER NEAL: Can we just see if we can

6 handle this through questions and then maybe move it?

7 I just have a couple questions.

8 What's the process for getting all the agreements

9 done and how long does it take?

10 MR. DIER: The process which we've laid out is

11 two. When we have contracts and then grants and we should

12 have everything out within the next two months. All the

13 paperwork signed. It had to be signed by both parties back

14 and forth, but we're probably looking at about 30 days. I'd

15 say two months. I always like to fudge.

16 BOARD MEMBER NEAL: I heard two months before and

17 it just seemed like that was an awful lot of time especially

18 for the grant funds.

19 MR. DIER: I can promise you two months, but we'll

20 probably make it in 30 days.

21 MR. WALLACE: Ms. Neal, amazingly enough sometimes

22 on the opposite end the grantee takes a lot of time in

23 signing documents.

24 BOARD MEMBER NEAL: I understand, but I would

25 think that they would want to get the -- I would just like

1 to make sure it's not on our end, that our end is not the
2 one that's lengthening the process. That seemed like an
3 unreasonable amount of time.
4 MS. GILDART: Staff has agreements written.
5 Martha Gildart.
6 Staff has agreements written and prepared to be
7 sent out in the next few days upon direction of the board.
8 It's a matter of how long the applicants take in their
9 review and get agreement and getting them back to us.
10 BOARD MEMBER NEAL: Once they get it back to us,
11 then what?
12 MS. GILDART: Ralph will be designated to sign
13 them and they'll be operative.
14 BOARD MEMBER NEAL: Once you get them back, all he
15 has to do is put a signature on so they have a couple of
16 days turnaround and then they have money?
17 MS. GILDART: They won't have the money up-front.
18 They have to commence work and start submitting invoices and
19 going through that whole process.
20 BOARD MEMBER NEAL: Then we're on a roll?
21 BOARD MEMBER RELIS: Mr. Chair, I move the item.
22 BOARD VICE CHAIRMAN CHESBRO: Second.
23 BOARD CHAIRMAN FROST: Moved and seconded.
24 Call the roll.
25 ACTING BOARD SECRETARY WEBB: Board Members

1 Chesbro.

2 BOARD VICE CHAIRMAN CHESBRO: Aye.

3 ACTING BOARD SECRETARY WEBB: Huff, absent.

4 Egigian.

5 BOARD MEMBER EGIGIAN: Aye.

6 ACTING BOARD SECRETARY WEBB: Neal.

7 BOARD MEMBER NEAL: Aye.

8 ACTING BOARD SECRETARY WEBB: Relis.

9 BOARD MEMBER RELIS: Aye.

10 ACTING BOARD SECRETARY WEBB: Chairman Frost.

11 BOARD CHAIRMAN FROST: Aye.

12 Okay. How about 12.

13 Tom Rietz.

14 MR. RIETZ: Mr. Chairman, I'll be very brief on

15 this.

16 The Market Development Committee asked us to

17 reevaluate two of the six applications for cycle two zones.

18 We have completed that evaluation process and

19 recommend approval for Riverside County and disapproval for

20 Antelope Valley, but also would encourage our staff to work

21 with them so they'll be successful hopefully in the next

22 cycle.

23 Nguyen Van Hanh is here to answer any specific

24 questions you may have.

25 BOARD VICE CHAIRMAN CHESBRO: Are you going to

1 move it, Mr. Relis?

2 BOARD MEMBER RELIS: I don't think we --

3 BOARD MEMBER NEAL: Question.

4 What did Antelope Valley do wrong, in five words

5 or less?

6 MR. VAN HANH: Good afternoon, Mr. Chairman and

7 Board Members.

8 For the record I'm Nguyen Van Hanh from the Market

9 Development Branch.

10 Antelope Valley submit an application, however the

11 staff believed that after evaluating the application that

12 they have deficiencies in terms of its business development

13 plan, its infrastructure and the ability to sustain the zone

14 program.

15 So basically the staff found those deficiencies

16 and met with the staff at Antelope Valley and look at this

17 issues. The meeting was very helpful. However, it did not

18 substantively change the findings of the staff, so we could

19 not recommend approval.

20 BOARD MEMBER NEAL: Just not to belabor this, so

21 that I can understand a little bit more some of the

22 decision-making that goes into staff recommendations in the

23 future, can I ask you to at some point come into my office

24 and give me a little more detail and explain how that

25 decision making -- that decision was arrived at.

1 MR. VAN HANH: Certainly. We will be most happy
2 to do so.
3 BOARD CHAIRMAN FROST: That was the right answer.
4 BOARD MEMBER RELIS: Mr. Chair, I move this item.
5 The committee was unanimous in its recommendation here and
6 it did split off the River -- we had entertained the
7 Riverside application and decided to bring it forward.
8 BOARD MEMBER NEAL: Move approval.
9 BOARD CHAIRMAN FROST: Moved and seconded.
10 Call the roll, please.
11 ACTING BOARD SECRETARY WEBB: Board Members
12 Chesbro.
13 BOARD VICE CHAIRMAN CHESBRO: Aye.
14 ACTING BOARD SECRETARY WEBB: Huff, absent.
15 Egigian.
16 BOARD MEMBER EGIGIAN: Aye.
17 ACTING BOARD SECRETARY WEBB: Neal.
18 BOARD MEMBER NEAL: Aye.
19 ACTING BOARD SECRETARY WEBB: Relis.
20 BOARD MEMBER RELIS: Aye.
21 ACTING BOARD SECRETARY WEBB: Chairman Frost.
22 BOARD CHAIRMAN FROST: Aye.
23 Okay. 13.
24 BOARD MEMBER NEAL: Move approval.
25 MR. RIETZ: Mr. Chairman, there were 13

1 applications were received for the first loan cycle and we
2 have reviewed them and only ten were actually approved by
3 the Loan Committee and of those we have problems with three
4 meeting the special conditions that we have established for
5 funding.
6 Nadine Ford, the Industrial Development Section,
7 will now briefly discuss the seven loan applications being
8 recommended for approval by the board.
9 Nadine.
10 MS. FORD: I wasn't going to go into detail on
11 each loan.
12 BOARD CHAIRMAN FROST: That's a good idea.
13 BOARD VICE CHAIRMAN CHESBRO: Can you tell us
14 which ones are now recommended?
15 MS. FORD: Yeah. I would like just for the record
16 state that Crusader Plastics should be deleted from your
17 list, your revised Attachment 1. They will be back at the
18 main board meeting. They were having some problems meeting
19 their special conditions.
20 If you'd like, I can just briefly tell you what
21 will happen next after the board approves these loans.
22 BOARD VICE CHAIRMAN CHESBRO: There's nine? I
23 thought --
24 MS. FORD: There's seven.
25 Ten were approved by Market Development Committee

1 and then subsequently three were unable to meet their
2 special conditions that were -- they needed to meet prior to
3 board approval.
4 BOARD MEMBER RELIS: Can you go over those again?
5 MS. FORD: Talco Plastics, Cyclean, and Crusader
6 Plastics. They all three will be back before you in May.
7 BOARD MEMBER RELIS: They're not dropping out?
8 MS. FORD: They're not dropping out.
9 Talco Plastics has had some changes with their
10 site and they will be heard by the Loan Committee on Friday,
11 but will be recommended back to the board in May.
12 BOARD CHAIRMAN FROST: So the total goes from 3090
13 to 2590?
14 MS. FORD: 2.5 approximately. Yes.
15 BOARD MEMBER EGIGIAN: What --
16 BOARD CHAIRMAN FROST: Question?
17 BOARD VICE CHAIRMAN CHESBRO: Yeah. I would say
18 that it's too bad this is at the end of a long long day,
19 because this is a pretty significant step and I would hope
20 that -- I think we said this at the committee, didn't we? I
21 think public affairs ought to do something with this to get
22 the news out that our first set of loans has gone forward.
23 MS. FORD: There is a press release that's
24 prepared and will be issued.
25 I can tell you briefly that timing. I know Kathy

1 asked us on the grants and I can give you the timing for
2 funding on these loans briefly.
3 Staff will be doing commitment letters within the
4 next two weeks.
5 Then the applicants will have 90 days to meet any
6 of those special conditions.
7 And after those 90 days that puts us at about the
8 end of July and we anticipate funding approximately four
9 weeks after that.
10 And, of course, any applicant that meets their
11 conditions ahead of time will proceed with funding.
12 BOARD MEMBER NEAL: Thank you.
13 BOARD MEMBER EGIGIAN: Are all these companies
14 operating now?
15 MS. FORD: There are two that are startup
16 companies and the rest are operating companies.
17 BOARD MEMBER EGIGIAN: And the loans are based on
18 some stability within the company?
19 MS. FORD: Yes. We've reviewed --
20 BOARD MEMBER RELIS: Sam, they've gone through the
21 equivalent of like a bank loan review.
22 BOARD MEMBER EGIGIAN: I didn't know that.
23 BOARD MEMBER RELIS: So they're not viewed as by
24 any stretch as grants or we're expecting our money back.
25 We've secured -- we have secured positions on these loans.

1 MS. FORD: Yes. We have adequate collateral on
2 all of the loans. In fact, that's what held up one of the
3 applicants today is they weren't able to provide us
4 appraisals to verify the value of the collateral and so we
5 felt that that was significant enough we needed to wait
6 until next month so that we can verify that the board is
7 secure in their positions.
8 BOARD MEMBER RELIS: I just like to add that we've
9 had very good feedback from some of the parties out there
10 pursuing these loans about the staff, our capabilities here,
11 and I just wanted to acknowledge, seems to be a very
12 excellent staff effort and to our consultant, National
13 Development.
14 MS. FORD: Been very helpful.
15 BOARD VICE CHAIRMAN CHESBRO: As well as I
16 think --
17 BOARD MEMBER RELIS: And the Loan Committee.
18 BOARD VICE CHAIRMAN CHESBRO: Very qualified Loan
19 Committee.
20 BOARD CHAIRMAN FROST: Is this the first round?
21 MS. FORD: This is the first round.
22 BOARD CHAIRMAN FROST: This is very significant
23 and ought to be -- and I'm sure will be publicized
24 accordingly.
25 MS. FORD: And there'll be a second round before

1 you next month.

2 BOARD MEMBER RELIS: Move it.

3 BOARD CHAIRMAN FROST: Moved.

4 Seconded?

5 BOARD MEMBER NEAL: Already moved.

6 BOARD CHAIRMAN FROST: Already moved.

7 Seconded.

8 Call the roll, please.

9 ACTING BOARD SECRETARY WEBB: Board Members

10 Chesbro.

11 BOARD VICE CHAIRMAN CHESBRO: Aye.

12 ACTING BOARD SECRETARY WEBB: Huff, absent.

13 Egigian.

14 BOARD MEMBER EGIGIAN: Aye.

15 ACTING BOARD SECRETARY WEBB: Neal.

16 BOARD MEMBER NEAL: Aye.

17 ACTING BOARD SECRETARY WEBB: Relis.

18 BOARD MEMBER RELIS: Aye.

19 ACTING BOARD SECRETARY WEBB: Chairman Frost.

20 BOARD CHAIRMAN FROST: Aye.

21 Okay. How about 14.

22 MR. RIETZ: Mr. Chairman, Item 14 concerns the

23 proposed recycle content trash bag regulations. As you

24 know, we have been working very closely with the industry

25 and Senator Hart's office to get these regulations

1 presentable to you and to get your approval to submit them
2 to the Office of Administrative Law.
3 We have pretty much narrowed down all the major
4 issues down to just a few fine points.
5 And I'd like Jerry Hart just to talk about the
6 last minor technical issue that we have with these
7 regulations.
8 Jerry.
9 BOARD VICE CHAIRMAN CHESBRO: While Jerry's coming
10 up let me say it's very hard to keep track of these things
11 through a long day of board meetings, but I had a number of
12 conversations about this today with representatives of CAW,
13 various food processors and plastics manufacturers. I can't
14 remember all their names.
15 Hopefully that will cover my tail in terms of
16 ex parte reporting.
17 MR. HART: Mr. Chairman, Board Members, at the
18 April 8th Market Development Committee, the committee
19 directed board staff to make several revisions and put the
20 regulations out for an additional 15-day comment period.
21 Those revisions were made.
22 The comment period concluded last week, April
23 24th.
24 We received four letters and very few suggested
25 revisions to this last draft of the regulations.

1 The staff proposed one minor nonsubstantive
2 change, just a clarity consistency kind of revision.
3 Actually it was one word from "pertinent" to "applicable."
4 So that was the only change that was presented to
5 you on the copy of the regulations in your agenda item.
6 This morning, however, several inconsistencies to
7 the regulations were presented to staff. We met with legal
8 to ensure that the proposed or inconsistent -- taking care
9 of the inconsistency would not require an additional 15-day
10 comment period, and they determined that that was the case.
11 The three revisions, again, include clarity and
12 consistency issues, involving the change of the
13 certification process from all sellers just to
14 manufacturers. This change from a previous comment period
15 was just made consistent throughout the regulations.
16 Staff would like to go ahead and make those three
17 revisions with your permission today and because the
18 revisions would not require a 15-day comment period, we are
19 still here today requesting adoption of the regulations with
20 those changes.
21 BOARD CHAIRMAN FROST: Okay. Any objection to
22 allowing the staff to make those recommendations?
23 Okay. Now, I have two people who wanted to speak
24 on this item. They're both supportive of the staff report.
25 And one probably isn't here right now, Caroline Rennie, who

1 has probably already left.

2 Bob Vetere.

3 MR. VETERE: Yes. Thank you. I'll make it real

4 quick. I don't have any allegations to make of coercion or

5 anything.

6 BOARD VICE CHAIRMAN CHESBRO: Come on.

7 MR. VETERE: Give me a minute.

8 But I would like to say that I did go over the

9 changes that Jerry is talking about. I think they bring

10 them in line with everything that we had been trying to

11 accomplish before as we discussed at the last meetings. I

12 think it makes it consistent now.

13 I represent First Branch Corporation, United

14 Plastics, Presto Plastics, Ironclad, and I'm also here on

15 behalf of Mobil Chemical, and we would all like to say that

16 at this point we feel that they represent a good compromise

17 between both sides and I think that given that the

18 specifications for the quality will be reviewed again next

19 year, a process that we would like to be a part, of course,

20 to help, I think that as they are now they represent a good

21 compromise for everybody.

22 So thank you.

23 BOARD MEMBER RELIS: With that lead-in I'd like to

24 move the item.

25 BOARD VICE CHAIRMAN CHESBRO: Second.

1 BOARD CHAIRMAN FROST: Moved and seconded.
2 Call the roll, please.
3 ACTING BOARD SECRETARY WEBB: Board Members
4 Chesbro.
5 BOARD VICE CHAIRMAN CHESBRO: Aye.
6 ACTING BOARD SECRETARY WEBB: Huff, absent.
7 Egigian.
8 BOARD MEMBER EGIGIAN: Aye.
9 ACTING BOARD SECRETARY WEBB: Neal.
10 BOARD MEMBER NEAL: Aye.
11 ACTING BOARD SECRETARY WEBB: Relis.
12 BOARD MEMBER RELIS: Aye.
13 ACTING BOARD SECRETARY WEBB: Chairman Frost.
14 BOARD CHAIRMAN FROST: Aye.
15 BOARD MEMBER RELIS: I thank Jerry Hart for his
16 work on this. At the committee meeting he received very
17 high praise. It's good to hear that.
18 BOARD CHAIRMAN FROST: Okay.
19 BOARD MEMBER NEAL: Can I ask before we go to the
20 update item maybe we can take up Item No. 7 on the
21 legislation.
22 BOARD CHAIRMAN FROST: We can do that. I'm
23 wondering if we need to do that update item.
24 BOARD VICE CHAIRMAN CHESBRO: I was thinking I
25 would like to hear it, but not right now. Maybe we ought to

1 be thinking in terms of couple or three Board Members at a
2 time. Just it's a briefing, it's not a decision-making
3 process and I would think that staff could do briefings.
4 BOARD CHAIRMAN FROST: Therefore, pull Item 17.
5 We've already done Item 18, so the only item left
6 then would be Item 7.
7 BOARD VICE CHAIRMAN CHESBRO: What about open
8 discussion?
9 BOARD MEMBER NEAL: Before you go into a lot of
10 explanation on AB 1569, which was removed from the consent
11 agenda, apparently that bill has been substantially amended
12 from the time that the committee considered it. So my
13 recommendation would be at this point to refer that back to
14 LPAC Committee so that we can do an analysis on what the
15 current content of the bill is.
16 BOARD CHAIRMAN FROST: AB 1569.
17 BOARD MEMBER NEAL: 1569.
18 BOARD CHAIRMAN FROST: Be re-referred to LPAC
19 Committee. All right.
20 BOARD MEMBER NEAL: And on AB 315 and 337.
21 BOARD CHAIRMAN FROST: Yes.
22 BOARD MEMBER NEAL: I don't see --
23 MS. FETTIG: Those are the two bills that Board
24 Member Huff requested be removed from the consent calendar.
25 BOARD MEMBER NEAL: Okay. At the time that the

1 LPAC Committee considered these two bills we would move
2 forward with the recommendation to the board neutral if not
3 in conflict with RCRA and at this time I would recommend
4 that we adopt a support if not in conflict with RCRA
5 position on those two.
6 BOARD VICE CHAIRMAN CHESBRO: I'll second that.
7 BOARD CHAIRMAN FROST: Okay. Now these -- tell me
8 what the bills do.
9 MS. FETTIG: Assembly Bill 315 by Assemblyman
10 Houser is sponsored by the Regional Council of Rural
11 Counties.
12 It provides for counties with less than 200,000
13 population to not have to meet the current requirement of
14 our regulations, that they double up this year on the amount
15 they're putting into closure/postclosure fund, and makes
16 other special exceptions for those rural counties, but it
17 does state that those exceptions should not be any weaker
18 than Subtitle D allows.
19 It was also amended in the Assembly Natural
20 Resources Committee and I have not yet seen the bill in
21 print.
22 I believe the amendment states that the Governor
23 can require this board to revise our financial assurance
24 regulations to be no more stringent than Subtitle D.
25 So the general intent is if we have areas in our

1 regulations that more stringent, they should be rolled back
2 at least for the rural counties.
3 BOARD CHAIRMAN FROST: All right.
4 BOARD MEMBER RELIS: Do you know if -- Mr. Huff's
5 not here, but he took it off consent, is that --
6 BOARD MEMBER NEAL: Right. And that's why I said
7 earlier that I concurred with that.
8 BOARD CHAIRMAN FROST: All right.
9 BOARD MEMBER EGIGIAN: Mr. Chairman.
10 BOARD CHAIRMAN FROST: Yes.
11 BOARD MEMBER EGIGIAN: Do we have to go right down
12 the list or -- I would like to be excused in just a few
13 minutes and I asked SB 1021, an explanation of that.
14 BOARD MEMBER NEAL: Sam, I was just trying to take
15 those because I thought we could dispense with them quickly.
16 BOARD MEMBER RELIS: Let's do it.
17 BOARD CHAIRMAN FROST: Ms. Neal makes the motion
18 that we move to support position on AB 315 and AB 337.
19 BOARD MEMBER NEAL: Support if not in conflict.
20 BOARD VICE CHAIRMAN CHESBRO: Which implies
21 working with the author on some amendments to try to --
22 MS. FETTIG: In drafting letters to the author,
23 can staff be directed to make clear if there is any conflict
24 with Subtitle D in their bills then to request that those
25 provisions be revised?

1 BOARD VICE CHAIRMAN CHESBRO: Yes. That's the
2 intent.
3 BOARD MEMBER RELIS: It's been seconded.
4 BOARD CHAIRMAN FROST: Call the roll, please.
5 ACTING BOARD SECRETARY WEBB: Board Members
6 Chesbro.
7 BOARD VICE CHAIRMAN CHESBRO: Aye.
8 ACTING BOARD SECRETARY WEBB: Huff, absent.
9 Egigian.
10 BOARD MEMBER EGIGIAN: Aye.
11 ACTING BOARD SECRETARY WEBB: Neal.
12 BOARD MEMBER NEAL: Aye.
13 ACTING BOARD SECRETARY WEBB: Relis.
14 BOARD MEMBER RELIS: Aye.
15 ACTING BOARD SECRETARY WEBB: Chairman Frost.
16 BOARD CHAIRMAN FROST: Aye.
17 So that applies to both 315 and 337.
18 Now, Mr. Egigian, which bill did you want to do?
19 BOARD MEMBER EGIGIAN: 1021.
20 BOARD CHAIRMAN FROST: 1021.
21 MS. FETTIG: SB 1021 by Senator Thompson.
22 BOARD MEMBER EGIGIAN: I would like to know what
23 we're supporting in concept here.
24 MS. FETTIG: As it's currently written the bill
25 establishes a recycling investment bank for the purpose of

1 making loans to facilities in the recycling business. They
2 are loans to be repaid to the bank.
3 The bill right now does not have a source of funds
4 in it. It anticipates a bond measure or some funding
5 mechanism to get the capital for the bank.
6 BOARD MEMBER EGIGIAN: Is this normal to put the
7 State in the banking business?
8 MS. FETTIG: I'm not an expert on banking. I
9 don't know that.
10 BOARD VICE CHAIRMAN CHESBRO: You could say that
11 we're in the banking business now with our loan program.
12 BOARD MEMBER EGIGIAN: I know, but this is
13 something specific.
14 And I was just wondering.
15 BOARD MEMBER RELIS: Sam, just to share what I
16 know about this.
17 I attended a meeting, asked to go to a meeting
18 where this was discussed with the representative from the
19 author of the staff, and we indicated at that time we were
20 going to hold a hearing in June at this board about the
21 various options.
22 The author indicated because of -- or not the
23 author, but the staff person -- there were, you know -- the
24 options are potentially quite broad for how you would fund
25 something like this and clearly it coming out of the General

1 Fund is very unlikely that anything like that would happen.
2 And they indicated the flexibility, if I'm
3 correct, to get input from this board on refinements or
4 changes that could be broader than refinements to the
5 structuring of the bill.
6 So that's about all I can say on that.
7 BOARD MEMBER EGIGIAN: Is the author of this bill
8 somewhat unfriendly to this board, is he introducing
9 something else?
10 BOARD VICE CHAIRMAN CHESBRO: That bill is dead, I
11 understand.
12 BOARD MEMBER RELIS: Well, it could have affected
13 our salary.
14 BOARD CHAIRMAN FROST: He tried.
15 BOARD VICE CHAIRMAN CHESBRO: Mr. Chairman.
16 BOARD CHAIRMAN FROST: Mr. Chesbro.
17 BOARD VICE CHAIRMAN CHESBRO: I would like to say
18 that this concept in general is consistent with market
19 development strategy which we adopted and there are
20 discussions going on with the California Bankers Association
21 between the author and the Bankers Association about some
22 approach which would attract private capital through some
23 sort of loan guarantee program. There's a lot of different
24 options.
25 And I think what's important is that we should

1 show our support for this concept of bringing more capital
2 to bear.
3 And then the specifics, obviously, before we would
4 tell the Governor we wanted him to sign a bill will be
5 worked out in the legislative process.
6 BOARD MEMBER RELIS: The position is support in
7 concept.
8 BOARD CHAIRMAN FROST: The position is support in
9 concept.
10 BOARD VICE CHAIRMAN CHESBRO: It's not to endorse
11 this in any details.
12 BOARD MEMBER EGIGIAN: Do the same thing that we
13 were talking about this other bill, this other item, that if
14 the board passes on it, people will think that it's the
15 right way to do it.
16 You know, these -- the State has not shown me they
17 know how to handle money, so why the hell put them in the
18 banking business, if we don't have to.
19 And I would like to take no position on even a
20 concept. So --
21 BOARD VICE CHAIRMAN CHESBRO: I'll move the
22 endorsement of the bill.
23 BOARD MEMBER NEAL: I'll second it.
24 BOARD VICE CHAIRMAN CHESBRO: I mean, I'm sorry,
25 support in concept.

1 It's late in the day.

2 I will move support in concept of the bill, which

3 I think implies that we have plenty of room and time to pass

4 judgement on the details between now and the time that we

5 would need to take a more specific position.

6 BOARD CHAIRMAN FROST: Okay. Well, Mr. Egigian,

7 is it your point that you don't support the concept or that

8 you wanted to wait until the bill was more fully developed?

9 BOARD MEMBER EGIGIAN: Both.

10 BOARD CHAIRMAN FROST: Both. Okay.

11 BOARD MEMBER EGIGIAN: That a difficult thing?

12 BOARD CHAIRMAN FROST: Don't leave much room.

13 BOARD MEMBER NEAL: We wouldn't take a full

14 support position until that happens, so I don't believe that

15 the motion is supporting the bill, just support the concept.

16 BOARD MEMBER RELIS: Mine would be a qualified

17 support, because I think we would need to know a lot more.

18 The concept, I think, is consistent with our market

19 development effort but the details are far from being

20 finished.

21 BOARD MEMBER NEAL: Sam, this does not imply that

22 the State is going to be the one who operates the bank.

23 BOARD MEMBER RELIS: No. That's true.

24 BOARD CHAIRMAN FROST: No. In fact, we should be

25 arguing that the California Bankers Association come up with

1 a bank to operate it.

2 BOARD MEMBER RELIS: Well, the whole idea of our

3 hearing coming up in June would be to get more input on this

4 matter and then use that information for input into whatever

5 legislation would go forward here.

6 BOARD VICE CHAIRMAN CHESBRO: I think it's almost

7 everybody's preferred approach to find some way to attract

8 private capital.

9 MS. FETTIG: In communicating your conceptual

10 support to the author we can include whatever qualifiers are

11 appropriate, that you're not endorsing the language on the

12 bank or the particular idea in the bill, you are endorsing

13 the concept of getting money, financial assistance, into

14 this industry.

15 BOARD MEMBER RELIS: If you were reduce it to we

16 have a financing problem for the recycling infrastructure

17 and this is the bill -- this is the only bill sort of that

18 says that there is this problem in the --

19 BOARD MEMBER NEAL: Can I correct you? It's not

20 the recycling infrastructure we are talking about. I think

21 the market --

22 BOARD MEMBER RELIS: The market. Thank you.

23 BOARD CHAIRMAN FROST: Okay. All right. Call the

24 roll.

25 ACTING BOARD SECRETARY WEBB: Board Members

1 Chesbro.

2 BOARD VICE CHAIRMAN CHESBRO: Aye.

3 ACTING BOARD SECRETARY WEBB: Huff, absent.

4 Egigian.

5 BOARD MEMBER EGIGIAN: No.

6 ACTING BOARD SECRETARY WEBB: Neal.

7 BOARD MEMBER NEAL: Aye.

8 ACTING BOARD SECRETARY WEBB: Relis.

9 BOARD MEMBER RELIS: Aye.

10 ACTING BOARD SECRETARY WEBB: Chairman Frost.

11 BOARD CHAIRMAN FROST: Aye.

12 Now, what, where do we jump now?

13 BOARD MEMBER NEAL: There is still AB 457 and I

14 had assumed that Mr. Huff would express his concern.

15 MS. FETTIG: If Board Member Huff requested that

16 AB 457 be removed from consent, it's a bill that requires us

17 to revise our LEA certification regulations, which currently

18 require at least one dedicated staff person for solid waste

19 at the LEA level. This bill would say that instead we adopt

20 performance standards for LEAs.

21 BOARD MEMBER NEAL: I think in some subsequent

22 discussions he was in some agreement that the performance

23 standards would in part suffice and address his concern.

24 BOARD CHAIRMAN FROST: In other words, instead of

25 a rural county having to have one full-time person, they can

1 have a person perform --

2 MS. FETTIG: If they could meet whatever

3 performance standards we specify with half a PY, that would

4 be adequate.

5 BOARD CHAIRMAN FROST: Mr. Huff objects to that?

6 MS. FETTIG: My understanding was that he felt a

7 neutral position might be more appropriate than --

8 BOARD VICE CHAIRMAN CHESBRO: I had some concern

9 with this too. It's a little awkward to tell the

10 Legislature to tell us to change our regulations, you know.

11 BOARD CHAIRMAN FROST: I see.

12 BOARD VICE CHAIRMAN CHESBRO: On the other hand, I

13 have to say that my position and I think the board's

14 position in establishing this in the regulations was based

15 on the belief that the Legislature was asking us to tighten

16 the requirements for LEAs.

17 So if they want to tell us to lighten up a little

18 bit on rural LEAs, I have no objection to that, because I

19 think rural counties have serious problems.

20 BOARD CHAIRMAN FROST: I think it is significant

21 to ask the Legislature to tell us to change our regulations.

22 Why don't we just tell Mr. Areias to adopt a

23 resolution asking us to do this?

24 MS. FETTIG: He has a bill and a sponsor and has

25 considerable support for this measure from rural local

1 governments.

2 BOARD CHAIRMAN FROST: Tell him we're going to

3 change our regulations to do it and so why do we need the

4 statute?

5 MS. FETTIG: We don't.

6 BOARD CHAIRMAN FROST: It's not a good precedent

7 to have a statute to tell us to change our regulations if

8 we're going to do it any way especially.

9 BOARD VICE CHAIRMAN CHESBRO: In any case --

10 BOARD MEMBER NEAL: Would you like to adopt a

11 neutral position and we'll try to work with you --

12 BOARD CHAIRMAN FROST: I would like to adopt a

13 position where we tell or tell our staff to tell the author

14 that we are in agreement with the change he would like to

15 make and intend to make it and would prefer something other

16 than a statute.

17 BOARD VICE CHAIRMAN CHESBRO: Although the

18 direction from the Legislature is via resolution or

19 something is fine because it lets us know that that's okay.

20 BOARD CHAIRMAN FROST: If we could just convert

21 this to a resolution he'll have all the same support, he'll

22 get it through, he only has to do it in one house, he can do

23 it a lot quicker, and he'll still get what he wants.

24 BOARD VICE CHAIRMAN CHESBRO: But in any case, I

25 think the motion would be neutral with the idea communicated

1 that Mr. Frost has suggested.

2 So that would be your motion or mine?

3 Mine. Okay.

4 BOARD CHAIRMAN FROST: Moved.

5 BOARD MEMBER NEAL: I'll second it.

6 BOARD CHAIRMAN FROST: Seconded.

7 Call the roll, please.

8 ACTING BOARD SECRETARY WEBB: Board Members

9 Chesbro.

10 BOARD VICE CHAIRMAN CHESBRO: Aye.

11 ACTING BOARD SECRETARY WEBB: Huff, absent.

12 Egigian.

13 BOARD MEMBER EGIGIAN: Aye.

14 ACTING BOARD SECRETARY WEBB: Neal.

15 BOARD MEMBER NEAL: Aye.

16 ACTING BOARD SECRETARY WEBB: Relis.

17 BOARD MEMBER RELIS: Aye.

18 ACTING BOARD SECRETARY WEBB: Chairman Frost.

19 BOARD CHAIRMAN FROST: Aye.

20 Okay.

21 MS. FETTIG: You have AB 440.

22 BOARD CHAIRMAN FROST: AB 440.

23 MS. FETTIG: Which is not on consent.

24 There is no recommendation from the Legislation

25 Committee.

1 BOARD MEMBER NEAL: There were a couple of bills
2 that we just sent forward directly to the board because at
3 the time of the committee meeting we did not have all of
4 content of the bills.
5 BOARD VICE CHAIRMAN CHESBRO: They were in flux.
6 MS. FETTIG: It came in print after the LPAC
7 meeting.
8 BOARD CHAIRMAN FROST: Has this one been clarified
9 since then?
10 MS. FETTIG: You have a thorough analysis in your
11 binder which describes the bill which is sponsored by
12 Assemblyman Sher with the general intent of getting our
13 regulation development process speeded up for the integrated
14 waste management plans and getting early submittal of the
15 source reduction recycling elements next year so that the
16 board is in a better position in 1995 to know statewide
17 recycling rates.
18 We have suggested a number of amendments in the
19 analysis. Staff would suggest, if we may, given the
20 shortness of time, a support if amended position or a
21 support, if you prefer, but to include the suggested
22 amendments in the letter to the author. There are
23 considerable changes.
24 BOARD CHAIRMAN FROST: I would prefer straight
25 support in that motion.

1 BOARD MEMBER NEAL: Is that a motion?

2 BOARD CHAIRMAN FROST: I can't make motions.

3 BOARD MEMBER NEAL: I'll move support.

4 BOARD VICE CHAIRMAN CHESBRO: Support with

5 suggested amendments.

6 BOARD CHAIRMAN FROST: With suggested amendments.

7 BOARD MEMBER NEAL: I move support with suggested

8 amendments.

9 BOARD VICE CHAIRMAN CHESBRO: That's a new one.

10 BOARD CHAIRMAN FROST: New category.

11 BOARD VICE CHAIRMAN CHESBRO: I'll second that.

12 BOARD CHAIRMAN FROST: Okay. Call the roll,

13 please.

14 ACTING BOARD SECRETARY WEBB: Board Members

15 Chesbro.

16 BOARD VICE CHAIRMAN CHESBRO: Aye.

17 ACTING BOARD SECRETARY WEBB: Huff, absent.

18 Egigian.

19 BOARD MEMBER EGIGIAN: Yes.

20 ACTING BOARD SECRETARY WEBB: Neal.

21 BOARD MEMBER NEAL: Aye.

22 ACTING BOARD SECRETARY WEBB: Relis.

23 BOARD MEMBER RELIS: Aye.

24 ACTING BOARD SECRETARY WEBB: Chairman Frost.

25 BOARD CHAIRMAN FROST: Aye.

1 Okay.

2 MS. FETTIG: The next bill is AB 1220, Eastin.

3 As you know this is the bill which incorporates

4 the Waste Board Water Board joint report on landfill

5 regulatory issues.

6 The analysis in your binder describes the portion

7 of the bill that we gave Ms. Eastin, which do just take

8 that.

9 As you may know, there are two additional

10 provisions which the author has agreed to amend into the

11 bill that are not part of our overlap work, which relate to

12 voting requirements on permits before this board and on any

13 savings that occur as a result of our streamlining of

14 permitting and compliance programs be used for market

15 development and recycling programs.

16 BOARD CHAIRMAN FROST: Okay.

17 BOARD MEMBER NEAL: I move support.

18 BOARD CHAIRMAN FROST: Well, I think I will agree

19 with support if we -- see, what's going to happen with the

20 voting requirement that they put in the bill is it's going

21 kill the bill.

22 And I don't think we need to take a position on

23 the voting requirement, but I do think it kills this bill.

24 And this is our -- this is our bill.

25 So I would suggest that we ask the author to find

1 another vehicle for the voting requirement and not put it in
2 this bill, because this bill is too important to us.
3 MS. FETTIG: It's my understanding that she has
4 already agreed to amend the provisions in the bill. The
5 amendments are drafted.
6 BOARD CHAIRMAN FROST: I know.
7 MS. FETTIG: She has met with Assemblyman Sher on
8 them.
9 BOARD CHAIRMAN FROST: I know. But I would
10 suggest that we indicate that we support the bill but
11 recommend that that provision be -- another vehicle be found
12 for that provision because it's going to be --
13 MS. FETTIG: Recommend that those provisions be
14 taken out.
15 BOARD CHAIRMAN FROST: -- very controversial, and
16 we're trying to get this bill through.
17 BOARD MEMBER NEAL: I think we need to really have
18 some discussion because I'm not sure that I'm at the point
19 of concluding that that kills the bill.
20 BOARD CHAIRMAN FROST: Well, it -- if it doesn't
21 it's going to come awful close.
22 But whether it does or not, it's a highly
23 controversial item to put in a bill.
24 And I'm not suggesting we take a position on the
25 vote requirement. That really is an issue that was decided

1 in the 939 negotiations. If they want to go back and give
2 us that kind of power over local governments, it's okay with
3 me. I mean, I have no objection to it.
4 But it is a fundamental change in what was
5 intended in 939.
6 BOARD MEMBER NEAL: I wasn't around when 939 was
7 crafted.
8 BOARD VICE CHAIRMAN CHESBRO: Not too many people
9 were.
10 BOARD MEMBER NEAL: I've heard varying
11 interpretations of that requirement, everything from it was
12 a frontline issue to it was an oversight, so I'm not real
13 clear.
14 BOARD CHAIRMAN FROST: I was a party to those
15 negotiations and it was a frontline issue and it was not an
16 issue that we at the time in the Governor's office took a
17 position on. We didn't care which way came it came down.
18 But the parties that negotiated the bill cared a
19 lot, particularly local government and the industry.
20 And so my guess is they're still going to care a
21 lot and they are a pretty powerful lobby.
22 BOARD MEMBER NEAL: At the same time, though, I
23 would think they care a lot about streamlining their permit
24 process and relieving them a little of that duplication.
25 BOARD CHAIRMAN FROST: That's what I'm concerned

1 about. I don't want to use our proposal to streamline as
2 leverage material for other kinds of changes because that's
3 what jeopardizes our bill, I think. I think that's what
4 puts our bill in jeopardy.
5 As I say I don't suggest that we raise an
6 objection if they want to change in the voting requirement.
7 I'm not suggesting that we object to it. I'm just
8 suggesting it doesn't belong in this bill, because it's --
9 it really jeopardizes the bill if it doesn't just out and
10 out kill it. It sure jeopardizes it.
11 BOARD MEMBER EGIGIAN: You're right, Mr. Chairman,
12 the industry sure don't like this.
13 BOARD VICE CHAIRMAN CHESBRO: Why don't we
14 consider supporting -- let's see, how could I word this?
15 This is kind of hard to do because you can't
16 really divide the baby legislatively, but it's not that
17 different from what you're talking about.
18 I'm trying to find the right wording to support
19 those portions of the bill consistent with the board's
20 recommendations.
21 BOARD MEMBER RELIS: Our report --
22 BOARD CHAIRMAN FROST: I think we can tell them --
23 BOARD VICE CHAIRMAN CHESBRO: The other
24 question --
25 BOARD CHAIRMAN FROST: We can tell the author

1 we're taking neutral position on the other questions, we
2 just are concerned about using this vehicle.
3 BOARD VICE CHAIRMAN CHESBRO: Well, I think that's
4 a legislative prerogative that it's going to be hard for us
5 to have much to say about and I think it's going to be a
6 strategic question that she's going to have to decide
7 relative to if she wants the bill passed or not. If she
8 thinks that it's jeopardizing the bill, I guess I'd rather
9 focus on what we agree on, which is the report and
10 endorse --
11 BOARD CHAIRMAN FROST: But you understand that if
12 this -- I mean, this could happen on a lot of things.
13 BOARD VICE CHAIRMAN CHESBRO: It does happen. It
14 happens all the time in the Capitol.
15 BOARD CHAIRMAN FROST: I'm talking about in this
16 bill there could be a lot more things that are attached to
17 this bill if people start doing it as a leverage bill.
18 BOARD VICE CHAIRMAN CHESBRO: I'm saying we're at
19 the author's and the Legislature's mercy.
20 BOARD CHAIRMAN FROST: All I'm suggesting is we
21 suggest to the author that we would like to see this in
22 another vehicle. I'm not saying -- we can't dictate to her.
23 BOARD VICE CHAIRMAN CHESBRO: I think it's up to
24 her to decide if it's going to kill the bill. I don't think
25 she'll intentionally kill her own bill so I think that's a

1 strategic question she'll have to face, you know, relative
2 to --
3 MS. FETTIG: It is also at this point an
4 Eastin-Sher bill with Sher as a principal co-author and he
5 will be carrying it for her in his committee as she will be
6 out of town the next several weeks.
7 BOARD CHAIRMAN FROST: I understand.
8 BOARD MEMBER RELIS: I find it somewhat of an
9 awkward -- because clearly the streamlining is what we're
10 after here. And I mean for the board to vote on a voting
11 matter that the Legislature set up this board and to tie --
12 I mean --
13 BOARD CHAIRMAN FROST: I'm not suggesting we take
14 a position on that, though.
15 BOARD MEMBER RELIS: Yeah. Break it out.
16 BOARD MEMBER NEAL: Then perhaps we take a support
17 and then we'll have to communicate to the author that the
18 board is not in agreement on the voting portion of it. So
19 we will not comment on a board position on that particular
20 aspect of the bill.
21 BOARD MEMBER RELIS: How does that get
22 communicated, because I've never dealt with --
23 MS. FETTIG: I would be happy to draft a
24 communication for the board and have the Board Members
25 review it and see if it reflects this sense you want to

1 portray.

2 BOARD CHAIRMAN FROST: That's really not my point.

3 I understand -- I'm not suggesting we take a

4 position on it, on the voting requirement. So --

5 BOARD MEMBER NEAL: That's what I just said.

6 BOARD CHAIRMAN FROST: You said we're not in

7 agreement on it. I think we are in agreement or probably

8 are in agreement, we shouldn't take a position on it.

9 BOARD MEMBER NEAL: Right. That's what I meant.

10 We're not in agreement that we either support it

11 or oppose that part of it. We have differing opinions right

12 now on I think the implications for the survival of the bill

13 with that in there.

14 What I'm suggesting is we communicate to her that

15 we support our part of the bill that we were the proponents

16 on and on the part of the bill dealing with the voter

17 requirements, we have no board position.

18 BOARD CHAIRMAN FROST: Yeah. That doesn't deal

19 with my concern.

20 I mean, that's fine with me, but that doesn't deal

21 with my concern, which is that that item is being used to

22 leverage the bill and that therefore jeopardizes the bill.

23 Now, you're right, she will have to at some point

24 make that decision herself or will find out that that's the

25 case herself. I'm not sure at what point in the process it

1 happens.

2 And if we're willing to jeopardize that bill over

3 that provision so be it.

4 I think that's a pretty important bill for us.

5 BOARD MEMBER NEAL: I'm suggesting we're not in

6 agreement that at the magnitude of impact that that has. So

7 it and seems to me --

8 BOARD VICE CHAIRMAN CHESBRO: I have a problem

9 with second guessing the author's strategy. I mean, I think

10 we can support what we have approved and say this is what we

11 want, we have no position on that other, because it probably

12 be inappropriate.

13 But from the strategy part I kind of feel like is

14 in the author's court and it's a little odd for us to be --

15 if it's not the policy part of it, to be talking to them

16 about strategically whether something should be in or out.

17 BOARD MEMBER EGIGIAN: The one just before this we

18 made the same kind of a decision on, so why is this

19 different?

20 BOARD VICE CHAIRMAN CHESBRO: I don't see how it's

21 the same.

22 BOARD MEMBER NEAL: I don't either.

23 BOARD MEMBER EGIGIAN: We told them in concept

24 that we'd like to talk to them about changing it.

25 Dorothy, can you help me on this?

1 MS. FETTIG: On the prior Sher bill, AB 440, the
2 position was support and request amendments.
3 BOARD MEMBER EGIGIAN: Yes.
4 BOARD MEMBER NEAL: But this one, other than that
5 one particular portion of the bill is one that we wrote.
6 BOARD CHAIRMAN FROST: Right. That's why it's so
7 difficult.
8 BOARD MEMBER NEAL: Right.
9 BOARD CHAIRMAN FROST: Because we wrote the bill
10 and --
11 MS. FETTIG: It will be a very thick bill most of
12 which came directly from this board, two discrete provisions
13 that she's agreed to add in that were not at our suggestion.
14 BOARD CHAIRMAN FROST: But see we negotiated this
15 bill with a broad variety of people who are now going to
16 come out strongly opposed to it. I mean, some of the people
17 that we negotiated with to get a consensus on this bill are
18 now going to be strongly opposed to it, the waste industry
19 and local government.
20 And we included them in our negotiations when we
21 put the bill together in the first place and now they're
22 off.
23 BOARD VICE CHAIRMAN CHESBRO: They understand
24 whenever they appear before us on legislative matters that
25 this is one level and the Legislature is another level and

1 they've got to fight their battles over there, you know.

2 I mean, just seems a little odd for us to --

3 BOARD MEMBER NEAL: Mike, what are you suggesting,

4 no position?

5 BOARD CHAIRMAN FROST: No.

6 I'm suggesting a support position on the bill.

7 BOARD MEMBER NEAL: Right.

8 BOARD CHAIRMAN FROST: But that we communicate to

9 the author our concern, she may or may not be aware of the

10 strength of opposition that that provision is going to

11 engender.

12 I'll soften it to say --

13 BOARD MEMBER NEAL: What I'm saying is I'm not

14 sure we're all in the same place in making that conclusion

15 at this point.

16 BOARD CHAIRMAN FROST: Well, I think you can agree

17 that the waste industry and local government is going to be

18 opposed to it.

19 Now, how effective you think they may be may be

20 different, but they were on board. They were supportive of

21 the bill up until now.

22 So I think we can express a concern.

23 BOARD MEMBER NEAL: But I think that there are

24 still compelling reasons for them to support at least that

25 portion of the bill that we wrote as well.

1 BOARD CHAIRMAN FROST: I don't think so.
2 What are they --
3 BOARD MEMBER NEAL: But then that's what I'm
4 saying. We're not all on the same page in terms of what
5 we're going to communicate to her relative to that part of
6 it and maybe we just need to let her know that there are
7 differing opinions on the board about what ultimately the
8 impact might be.
9 BOARD CHAIRMAN FROST: Yeah. Well, I'm concerned
10 about just a support position with no qualification that
11 basically does not keep faith with the people that we
12 negotiated this agreement with.
13 BOARD VICE CHAIRMAN CHESBRO: I think that my
14 suggestion of a motion which says support those portions of
15 the bill that are consistent with the board's position and
16 no position on that other -- these additions meets that
17 criteria, I think. It says we're only supporting the stuff
18 that we had negotiated and we're not taking a stand on the
19 other part.
20 BOARD MEMBER EGIGIAN: Why not take a stand on the
21 other part?
22 BOARD CHAIRMAN FROST: Well, I wasn't suggesting
23 we even take a stand on the other part. I was only
24 suggesting that we express our concern about the fact that
25 it jeopardizes the bill and they don't want to express

1 concern that it jeopardizes the bill.

2 BOARD MEMBER NEAL: Well, it's not that we don't

3 want to express a concern. It's that we're not all in

4 agreement with that concern and the level of concern.

5 BOARD MEMBER EGIGIAN: What do we normally do when

6 we're not all in agreement?

7 BOARD CHAIRMAN FROST: We vote. In this case it's

8 not that easy.

9 BOARD VICE CHAIRMAN CHESBRO: There's a motion on

10 the floor.

11 BOARD CHAIRMAN FROST: Which is your motion?

12 BOARD VICE CHAIRMAN CHESBRO: Which was endorse.

13 I could modify it if it would be helpful to say

14 that it makes clear that it's only endorsing that portion of

15 the bill which is consistent with the board's overlap study.

16 BOARD MEMBER RELIS: Can we say we think, at least

17 some of us think it's probably inappropriate for us to vote

18 on the matter of voting that -- well, I believe it is.

19 BOARD CHAIRMAN FROST: I agree. I agree.

20 BOARD MEMBER RELIS: And that the bill is so

21 important that for regulatory reform strictly speaking that

22 it should not be --

23 BOARD CHAIRMAN FROST: Maybe, Mr. Chesbro, would

24 you restate your motion?

25 BOARD VICE CHAIRMAN CHESBRO: It would be to

1 support those portions of the bill that are consistent with
2 the overlap study that the board adopted and forwarded to
3 the Legislature and take no position on anything else that's
4 in the bill.
5 BOARD CHAIRMAN FROST: Okay. All right. There a
6 second?
7 BOARD MEMBER NEAL: I'll second.
8 BOARD CHAIRMAN FROST: Call the roll.
9 ACTING BOARD SECRETARY WEBB: Board Members
10 Chesbro.
11 BOARD VICE CHAIRMAN CHESBRO: Aye.
12 ACTING BOARD SECRETARY WEBB: Huff, absent.
13 Egigian.
14 BOARD MEMBER EGIGIAN: Abstain.
15 ACTING BOARD SECRETARY WEBB: Neal.
16 BOARD MEMBER NEAL: Aye.
17 ACTING BOARD SECRETARY WEBB: Relis.
18 BOARD MEMBER RELIS: Phrasing I'm not ready to --
19 I'll abstain on this one.
20 ACTING BOARD SECRETARY WEBB: Chairman Frost.
21 BOARD CHAIRMAN FROST: Well, let's go back then.
22 BOARD MEMBER RELIS: Let's try it again.
23 BOARD CHAIRMAN FROST: Let's try this again,
24 because we have to -- this is our bill. This is the
25 problem, because this is our bill. So we can't not have a

1 support position on it.

2 BOARD MEMBER EGIGIAN: You mean this was our bill,

3 Mike.

4 BOARD MEMBER RELIS: I want to support the bill.

5 I want to make sure --

6 BOARD CHAIRMAN FROST: I'm afraid -- maybe

7 Mr. Chesbro could come up another phrase or something that

8 would --

9 BOARD VICE CHAIRMAN CHESBRO: Make it clear that

10 we're taking no position on the remaining or anything else

11 that's in the bill.

12 BOARD CHAIRMAN FROST: If we were -- let's put it

13 this way.

14 BOARD MEMBER NEAL: Let me ask you a question.

15 Do we know the section number of the bill in which

16 the provision, that there is some concern on the part of

17 some Board Members?

18 BOARD MEMBER RELIS: It's an amendment.

19 MS. FETTIG: We will know the two section numbers

20 as soon as the amendment comes out of Legislative Counsel.

21 That will be no problem to identify.

22 BOARD MEMBER NEAL: Let me take a stab at this

23 then.

24 Move to support the bill with the exception of

25 Sections X and Y, which we will get the appropriate numbers

1 on, and on those two sections we take a neutral position.

2 BOARD CHAIRMAN FROST: We take no position.

3 BOARD MEMBER NEAL: Or no position. Fine.

4 BOARD CHAIRMAN FROST: Okay. All right.

5 BOARD VICE CHAIRMAN CHESBRO: Second.

6 BOARD MEMBER NEAL: Same thing.

7 BOARD CHAIRMAN FROST: It's the same thing. Okay.

8 Call the roll.

9 ACTING BOARD SECRETARY WEBB: Board Members

10 Chesbro.

11 BOARD VICE CHAIRMAN CHESBRO: Aye.

12 ACTING BOARD SECRETARY WEBB: Huff, absent.

13 Egigian.

14 BOARD MEMBER EGIGIAN: X and Y would mean just

15 what we're talking about here?

16 BOARD MEMBER NEAL: Yes.

17 BOARD MEMBER EGIGIAN: Yes.

18 ACTING BOARD SECRETARY WEBB: Neal.

19 BOARD MEMBER NEAL: Aye.

20 ACTING BOARD SECRETARY WEBB: Relis.

21 BOARD MEMBER RELIS: Aye.

22 ACTING BOARD SECRETARY WEBB: Chairman Frost.

23 BOARD CHAIRMAN FROST: Aye.

24 MS. FETTIG: And it was no position on X and Y;

25 right?

1 BOARD CHAIRMAN FROST: No position on X and Y.
2 Right.
3 BOARD MEMBER NEAL: Or zero if we're playing
4 tic-tac-toe.
5 MS. FETTIG: I think next we have AB 1829, also by
6 Assemblyman Sher.
7 This has two specific elements that the board
8 requested, board authority to regulate asbestos disposal at
9 solid waste landfills and clarification of the steps that we
10 follow when we become the enforcement agency in a
11 jurisdiction.
12 In addition, however, the bill contains extensive
13 revision relating to permitting and enforcement.
14 BOARD MEMBER NEAL: May I interrupt? Excuse me.
15 This is another one where I was recommending bills
16 to go back to LPAC because now there is more complete
17 information to be analyzed. I should have included this one
18 in my list as well, so my recommendation is this be referred
19 back to committee.
20 BOARD CHAIRMAN FROST: Without objection it's
21 referred back to LPAC.
22 BOARD VICE CHAIRMAN CHESBRO: Which one, again?
23 BOARD CHAIRMAN FROST: 1829.
24 MS. FETTIG: Staff would ask would it be
25 appropriate at this point to send a letter from the board to

1 Assemblyman Sher at a minimum thanking him for the asbestos
2 language and for the work on the LEA issue on our behalf?
3 BOARD MEMBER NEAL: Yes.
4 BOARD CHAIRMAN FROST: Sure.
5 MS. FETTIG: Okay.
6 BOARD MEMBER NEAL: Great idea.
7 MS. FETTIG: Okay. I think we then come to SB
8 466, Boatwright.
9 There is again no recommendation from the LPAC.
10 This bill defines terms, beverage container and curbside
11 collection program for the purposes of our rigid plastic
12 packaging container program here at the board.
13 It also includes peat material in the 25 percent
14 recycling rate option in the law for all rigid plastic
15 packaging containers.
16 And it contains an exemption for the food and
17 cosmetics industry from compliance with this law.
18 BOARD MEMBER NEAL: If I might make a
19 recommendation to the board.
20 I think that on the face of it this bill sort of
21 flies in the face of some core issues that we're supposed to
22 be about.
23 But I would like to have the opportunity for us to
24 communicate with the author's office and although I know
25 that our report is not due until June I don't think we need

1 to wait that long to get the findings of the report. I'd
2 like to have an opportunity to do some communication to the
3 author's office to sort of provide information on just what
4 the impact is on our activities and hold the bill at the
5 board level, not necessarily refer it back to committee, and
6 reconsider it at the next board meeting. We would then --
7 BOARD MEMBER EGIGIAN: Stay neutral, is that what
8 you're saying, Kathy?
9 BOARD MEMBER NEAL: No. I'm saying we're not
10 going to take any position.
11 BOARD CHAIRMAN FROST: I'll be glad to go along
12 with that, but I would also be willing to support a straight
13 opposed position, too, if you would prefer that. I mean,
14 that's really -- but if you would rather -- if you rather
15 communicate with the author first that would be fine too,
16 but it's --
17 BOARD MEMBER NEAL: That's a surprise. Let me
18 ask -- I'd accept that. I mean, I'd welcome that.
19 BOARD CHAIRMAN FROST: I think we're probably
20 already pretty much on record as opposing it because we
21 supported the Hart bill.
22 BOARD MEMBER NEAL: Yes.
23 BOARD CHAIRMAN FROST: And we're implementing --
24 BOARD MEMBER NEAL: Discuss that.
25 BOARD CHAIRMAN FROST: We asked the Governor to

1 sign it and we're implementing it and this bill dramatically
2 changes that. So I think we're -- our record is pretty much
3 done for us.
4 I would --
5 BOARD MEMBER NEAL: I move we oppose the bill.
6 BOARD CHAIRMAN FROST: I would say, though, that
7 if you would like to communicate first --
8 BOARD MEMBER NEAL: I move we oppose the bill.
9 BOARD CHAIRMAN FROST: Okay. Moved.
10 BOARD MEMBER EGIGIAN: What was the motion?
11 BOARD CHAIRMAN FROST: To oppose.
12 BOARD MEMBER RELIS: I'll second.
13 BOARD CHAIRMAN FROST: Move and seconded to oppose
14 the bill.
15 Call the roll, please.
16 ACTING BOARD SECRETARY WEBB: Board Members
17 Chesbro.
18 BOARD VICE CHAIRMAN CHESBRO: Aye.
19 ACTING BOARD SECRETARY WEBB: Huff, absent.
20 Egigian.
21 BOARD MEMBER EGIGIAN: Abstain.
22 ACTING BOARD SECRETARY WEBB: Neal.
23 BOARD MEMBER NEAL: Aye.
24 ACTING BOARD SECRETARY WEBB: Relis.
25 BOARD MEMBER RELIS: Aye.

ACTING BOARD SECRETARY WEBB: Chairman Frost.

BOARD CHAIRMAN FROST: Aye.

Okay.

MS. FETTIG: I believe that concludes the item.

BOARD CHAIRMAN FROST: That it? All right.

Now, that concludes everything, except, Mr. Chesbro, you are recognized for open discussion.

BOARD MEMBER RELIS: You try it, you'll be killed.

BOARD VICE CHAIRMAN CHESBRO: No way. Open discussion of the trash bags. I'll discuss it with you at the trash bag.

BOARD CHAIRMAN FROST: We are adjourned.

(Thereupon the meeting was adjourned at 5:55 p.m.)

CERTIFICATE OF SHORTHAND REPORTER

I, JANET H. NICOL, a Certified Shorthand Reporter of the State of California, do hereby certify that I am a disinterested person herein; that I reported the foregoing meeting in shorthand writing; that I thereafter caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, or in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of May 1993.

Janet H. Nicol
Certified Shorthand Reporter
License Number 9764