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BOARD MEETING

STATE OF CALIFORNIA

INTEGRATED WASTE MANAGEMENT BOARD

JOE SERNA, JR., CALEPA BUILDING

1001 I STREET

2ND FLOOR

CENTRAL VALLEY AUDITORIUM

SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE 18, 2003

9:30 A.M.

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APPEARANCES

BOARD MEMBERS

Steven R. Jones

Jose Medina

Linda Moulton-Patterson

Cheryl Peace

Michael APPEARING

Carl Washington

STAFF

Mark Leary, Executive Director

Julie Nauman, Chief Deputy Director

Marie Carter, Acting Chief Counsel

Michael Bledsoe, Staff Counsel

Wendy Breckon

Mark de Bie

Nate Gauff

Suzanne Hambleton

Roger Ikemoto

Darryl Petker

Virginia Rosales

Scott Walker

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APPEARANCES CONTINUED

ALSO PRESENT

Allan Gordan, Senator Romero's Office

Joel Aranaz, Fire Chief, Fresno

Alan Autry, Mayor, City of Fresno

Curtis Batson, Director of Environmental Health,
San Luis Obispo County

Grace Chan, Sanitation District of La Puente

Charles Doerksen, Counsel for Archie Crippen

Tom Faust, Redwood Rubber, LLP

James Giannopoulos, this Resources Board

Chuck Helget, Allied Waste

Richard Herbert, Department of Finance

Daniel Hirsch, Committee to Bridge the Gap

Michael Hoover, Chicago Grade Landfill/Santa Maria
Transfer

George Larson, Waste Management

Bill Magavern, Sierra Club

Patrick Mulderrig, CHP

Cyrus Sievers, Senator Kuehl's Office

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INDEX

		Page
	Roll Call And Declaration Of Quorum	1
23.	Consideration of the Grant Awards for the Farm and Ranch Solid Waste Cleanup and Abatement Grant Program Fy 2002/2003	11
	Motion	11
	Vote	12
25.	Consideration of Approval of the Archie Crippen Excavation Illegal Disposal Site for the Solid Waste Disposal and Codisposal Site Cleanup Program and Emergency Augmentation for the Environmental Services Contract for Landfill and Disposal Site Remediation	143
	Motion	161
	Vote	162
	Motion	162
	Vote	163
27.	Discussion of and Request for Direction on Landfill Operation Tranining Certification Program	12
36.	Consideration of a Revised Full Solid Waste Facilities Permit for the Chicago Grade Landfill San Luis Obispo County	166
	Motion	174
	Vote	174
37.	Consideration of a Revised Full Solid Waste Facilities Permit for the Santa Maria Transfer Station, San Luis Obispo County	174
	Motion	177
	Vote	177
38.	Consideration of a Revised Full Solid Waste Facilities Permit for the Puente Hills Landfill, Los Angeles County	2
	Motion	10
	Vote	10

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INDEX

		Page
39.	Consideration of the Contract Concept, Scope of Work, and the State this Resources Control Board as Contractor for the Characterization of Radionuclides in Landfill Leachates and Groundthis Contract	180
44.	Consideration of an Appeal by Redwood Rubber, LLC Concerning Disallowance of Costs for Tire Recycling Grant No. TR11-98-2762	23
45.	Consideration of Approval of New Sites for the Solid Waste Disposal and Codisposal Site Cleanup Grant Program	177
	Motion	179
	Vote	180
46.	Consideration of Augmentation for the Environmental Services Contract for Landfill and Disposal Site Remediation	164
	Motion	166
	Vote	166
47.	Adjourment	238
48.	Reporter's Certificate	239

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1 PROCEEDINGS

2 CHAIRPERSON MOULTON-PATTERSON: This is the June
3 18, 2003, Integrated Waste Management Board meeting.
4 Yesterday we covered items through 21, and I guess we
5 better call the roll first before I start in on having
6 people record votes. Would you please call the roll.
7 SECRETARY WADDELL: Jones?
8 BOARD MEMBER JONES: Here.
9 SECRETARY WADDELL: Paparian?
10 BOARD MEMBER PAPARIAN: Here.
11 SECRETARY WADDELL: Peace?
12 BOARD MEMBER PEACE: Here.
13 SECRETARY WADDELL: Washington?
14 BOARD MEMBER WASHINGTON: Here.
15 SECRETARY WADDELL: Moulton-Patterson?
16 CHAIRPERSON MOULTON-PATTERSON: Here.
17 So today we had a time certain for a hearing
18 at -- on Redwood Rubber, but I understand Mr. Faust is
19 caught in traffic, so I think we're going to go ahead and
20 as soon as we do the ex partes and start our agenda
21 because we don't know how long he'll be held up.
22 Mr. Jones, any ex partes?
23 BOARD MEMBER JONES: Thanks, Madam Chair. John
24 Cupps. Said hello to Steve Maguin, Mr. Hoover, and Evan
25 Edgar on some issues.

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CHAIRPERSON MOULTON-PATTERSON: Thank you.

Ms. Peace?

BOARD MEMBER PEACE: I'm up to date.

CHAIRPERSON MOULTON-PATTERSON: I'm up to date.

Mr. Paparian?

BOARD MEMBER PAPARIAN: I'm up to date.

CHAIRPERSON MOULTON-PATTERSON: Thank you.

Mr. Washington?

BOARD MEMBER WASHINGTON: I'm up to date.

CHAIRPERSON MOULTON-PATTERSON: Thank you.

And yesterday we held the roll open for Mr. Paparian on Item Number 21. Would you like to record the vote? It was 5-0.

BOARD MEMBER PAPARIAN: I'd like to vote aye on that. Thank you.

CHAIRPERSON MOULTON-PATTERSON: Okay. Mr. de Bie, would you like to just go ahead and start as we planned with Item 38, Puente landfill?

MR. De BIE: Yes, thank you. Mark de Bie with Permitting and Enforcement Division sitting in for Howard Levenson, who's in Yosemite showing his elderly mother the sights for the very first time. She's lived all her life in California so it will be the first time in Yosemite. So hopefully he's enjoying it up there.

CHAIRPERSON MOULTON-PATTERSON: I'm sure he is.

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1 MR. De BIE: Item 38 is the consideration of a
2 facilities permit disposal facility for the Puente Hills
3 Landfill in Los Angeles County. And Suzanne Hambleton
4 will make the staff presentation.
5 CHAIRPERSON MOULTON-PATTERSON: Before we start,
6 I wanted to report that Mr. Medina is on jury duty and
7 that's why he's not here.
8 MS. HAMBLETON: Good morning. I'm
9 Suzanne Hambleton for Bill Marciniak who could not be here
10 today. The Puente Hills Landfill is located in
11 non-incorporated Los Angeles County southeast of the
12 intersection of Pomona freeway and InterState 605. It is
13 owned and operated by the sanitation district of Los
14 Angeles County. The Los Angeles -- I'm sorry --
15 Los Angeles Regional Planning Commission approved a new
16 CUP for the Puente Hills landfill on December 18th, 2002.
17 The existing landfill remains -- sorry the existing permit
18 will remain effective until October 31st, 2003.
19 At this time, the proposed solid waste facility
20 permit will coincide with the effective date with the new
21 CUP. Proposed landfill will allow the following changes
22 at the landfill. The continued waste acceptance of a
23 maximum of 13,200 tons per day. The permit limits
24 acceptance of clean soil to 11,700 tons per day and
25 beneficial use materials to 33,000 tons per week. It

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1 provides for 74 million cubic yards of capacity, a
2 disposal acreage of 330 acres. It provides an increase in
3 elevation in the main canyon and eastern canyon. It
4 provides an extension of the closure date from November of
5 2003 to October 31, 2013. And provides for minor changes
6 in the hours of operation as noted in the agenda item.
7 The Los Angeles County LEA has certified that the
8 application package is complete and correct and the report
9 of facility information meets the requirements of the
10 California Code of Regulations.
11 The LEA and Board Staff have determined that the
12 permit revision is in compliance with the California
13 Environmental Quality Act. Board Staff have also reviewed
14 the proposed permit and supporting documentation and found
15 them to be acceptable. A pre-permit inspection was
16 conducted on May 8th with the LEA and no violation of
17 State minimum standards were observed.
18 In conclusion, staff recommends that the Board
19 adopt the solid waste facility permit number 2003-326
20 concurring in the issuance of solid waste facility permit
21 19AA-0053. Thank you.
22 CHAIRPERSON MOULTON-PATTERSON: Thank you.
23 Ms. Peace?
24 BOARD MEMBER PEACE: I'd just like to say the P&E
25 Committee meeting -- I don't think Mike or I -- either one

of us had any objection at all to putting this forward on consent. But because it is the largest landfill in California, we decided we would put it up to the full Board. I just want to reiterate what I said at the Committee meeting that this was a well-run operation. This is the largest landfill in California, if not the United States. They come before the Board with a full, complete report, with no violations of State minimum standards. They've kept a -- did a very good job of keeping the public informed. And I just have to say the County Sanitation District of Los Angeles should be commended for a job well done.

CHAIRPERSON MOULTON-PATTERSON: Thank you, Ms. Peace.

Mr. Paparian was next and then Mr. Washington.

BOARD MEMBER PAPARIAN: Ms. Peace covered much of what I was going to cover. I was going to report what happened on the P&E Committee on this.

CHAIRPERSON MOULTON-PATTERSON: I apologize, I was supposed to call on you as Chair first. Sorry.

BOARD MEMBER PAPARIAN: That's okay. We did put it out on a 2-0 vote, but decided not to put it on the consent calendar because of the largess of the facility. It's the biggest landfill in California. If not, I think it's still the biggest landfill in the country. And the

full Board would want the opportunity to at least hear about what's going on before voting on it.

As Ms. Peace mentioned, there are a number of positives associated with what's going on with this landfill. They do have a very clear closure date that's provided some satisfaction to the community that's been concerned in the past about the facility. They have been working very closely with the community to address a number of concerns and be responsive to concerns as they pop up over time. And then they have also put together a fund to help address community concerns and that fund, as I understand it, is going to be about $38 million over the next few years. Thirty-eight million to help address community concerns and the impacts associated with the facility. So with all those things I'm certainly very comfortable voting for this facility.

CHAIRPERSON MOULTON-PATTERSON: Thank you.

Mr. Washington.

BOARD MEMBER WASHINGTON: Thank you, Madam Chair.

Again, Mr. Paparian and Ms. Peace have certainly echoed when this first came about when I got to this Board I talked about the La Puente landfill as a poster child for landfills across the State of California.

One of the things I talked about was community involvement. And this landfill they put about 38 million,

Mr. Paparian a year. They do a dollar per ton to the community and I think they do about 38 million tons of something of that nature per year and it goes -- dollar goes back to the community. If you talking about really keeping the community -- let me mention one more thing I'll be finished. Not only that, but to get 78 to 80 elected officials as a coalition to join you is a tough, tough job.

And they have -- that many I counted so far 70 to 80 elected officials, community associations and other folks who have joined in their effort to move forward and I tell you certainly for our Board, Madam Chair, that should be a poster child for landfills across the State of California and I would again echo my congratulations as Ms. Peace did to La Puente and the County Sanitation District. You guys keep up the good work -- keep moving forward. I'm prepared to move this if there's no other --

CHAIRPERSON MOULTON-PATTERSON: We did have a speaker slip.

BOARD MEMBER WASHINGTON: Okay.

CHAIRPERSON MOULTON-PATTERSON: I'll call on you to move it, though.

I would just concur. I think we've all voted -- I mean, all visited Puente Hills and have been very, very impressed. And I am particularly impressed with Ms. Chan

1 and Mr. Maguin's commitment to the community, the
2 surrounding neighbors, and it is refreshing to see
3 something come forward like this. And with that, I'll
4 call on --
5 BOARD MEMBER WASHINGTON: Madam Chair, Grace
6 Chan, let me just tell you guys she is something else.
7 She don't give up. She wants to make sure she covers
8 every end of the spectrum on this. I really appreciate
9 that, too.
10 CHAIRPERSON MOULTON-PATTERSON: That's great.
11 Thank you, Ms. Chan, Mr. Maguin. Okay.
12 CHAIRPERSON MOULTON-PATTERSON: Welcome.
13 MS. CHAN: Madam Chair, Board Members. Grace
14 Chan with the L.A. County Sanitation District. I'd just
15 like to take the opportunity to thank you for your remarks
16 and your consideration of the permit and also to thank the
17 LEA and the Waste Board staff. They were very accessible
18 and helpful to us every step of the way. And we'd be
19 happy to answer any questions.
20 CHAIRPERSON MOULTON-PATTERSON: Thank you. I
21 appreciate you acknowledging the LEA, too.
22 Did you have your light on? Mr. Jones and then
23 Ms. Peace.
24 BOARD MEMBER JONES: I don't have a question for
25 Grace. I just want to point out a couple of things.

1 There are times every day at certain times of the year
2 when a flag goes up and Puente has met its capacity at
3 10:30, 11:00. I don't know if that's still happening.
4 But people need to be aware that at 10:30 in the morning
5 when that flag goes up, trucks are scrambling to find
6 other disposal options in L.A. That's a critical piece
7 that we need to always keep in mind as we go through our
8 work here.
9 I do want to acknowledge Steve Maguin and
10 John Gulledge and Grace, but especially John Gulledge and
11 Steve Maguin's work on landfill operator certification.
12 And I know all the Board members have been to Puente
13 Hills. But when training is held down in Southern
14 California, there is always a half-day session at a site
15 so that the people going through that can actually test,
16 learn how to test, learn to do an awful lot of things that
17 are common to good landfill operations. That's just part
18 of MOLO training. The San District has always been the
19 host in Southern California for that training. And I want
20 you to think for a second of the person that's running a
21 75-ton-a-day facility and probably overwhelmed at the 75
22 tons -- is about seven or eight trucks -- when he gets to
23 Puente Hills and sees that activity. That's the beauty of
24 the MOLO training is to be able to bring expertise to all
25 of our operators in the State of California.

1 So I want to -- while I echo what everybody else
2 says, I know that I'm going speak on behalf of the Board
3 that we appreciate your participation in our SWANA
4 California MOLO Program. The on-site training that
5 happens in that third day is critical to success, and you
6 guys have made a lot of people a lot smarter over the
7 years. And we appreciate that. So --
8 CHAIRPERSON MOULTON-PATTERSON: Thank you very
9 much. We all appreciate it. Ms. Chan, thank you.
10 Mr. Washington would like to make a motion.
11 BOARD MEMBER WASHINGTON: Thank you, Madam Chair,
12 I'd like to move adoption of Resolution 2003-326,
13 consideration of a revised full solid waste facility
14 permit, facility, disposal facility for Puente Hills
15 Landfill, Los Angeles County.
16 BOARD MEMBER PEACE: Second.
17 CHAIRPERSON MOULTON-PATTERSON: We have a motion
18 by Mr. Washington, second by Ms. Peace to approve
19 Resolution 2003-326. Please call the roll.
20 SECRETARY WADDELL: Jones?
21 BOARD MEMBER JONES: Aye.
22 SECRETARY WADDELL: Medina?
23 Paparian?
24 BOARD MEMBER PAPARIAN: Aye.
25 SECRETARY WADDELL: Peace?

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BOARD MEMBER PEACE: Aye.

SECRETARY WADDELL: Washington?

BOARD MEMBER WASHINGTON: Aye.

SECRETARY WADDELL: Moulton-Patterson?

CHAIRPERSON MOULTON-PATTERSON: Aye.

Now we're going to resume with our agenda and go to Item 23.

Mr. de Bie.

MR. De BIE: I'll let Scott Walker introduce this particular item.

CHAIRPERSON MOULTON-PATTERSON: This was on fiscal consent.

MR. WALKER: Item 23 is consideration of the grant awards for the farm and ranch Solid Waste Cleanup and Abatement Grant Program fiscal year 2002-2003. The item again passed fiscal consent in the P&E Committee and the Budget Admin Committee. Total grant award to the four applicants would be $89,707.

In conclusion, staff recommends adoption of Resolution 2003-314, approving grants to Lake County, Mendocino County, Yuba County and Nevada County pursuant to the Farm and Ranch Solid Waste Cleanup and Abatement Grant Program.

CHAIRPERSON MOULTON-PATTERSON: Thank you.

Mr. Paparian?

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BOARD MEMBER PAPARIAN: Yeah, Madam Chair. This was on fiscal consent. If there's no other comments, I'll go ahead and move the item. I would like to move Resolution 2003-314, consideration of the grant awards for the Farm and Ranch Solid Waste Cleanup and Abatement Grant Program FY 2002/2003.

BOARD MEMBER WASHINGTON: Second.

CHAIRPERSON MOULTON-PATTERSON: We have a motion by Mr. Paparian, second by Mr. Washington to approve Resolution 2003-314 without objection. Please substitute the previous roll call.

As you know, Item 25 is time certain for 1:30 today, and Item 46 needs to be heard with Item 25. So we will go to Number 27. This is the full Board discussion.

MR. de BIE: Yes, Madam Chair. Item 27 will be presented by Darryl Petker. It's a discussion of and a request for direction on the Landfill Operation and Training Certification Program.

MR. PETKER: All right. Thank you. Sorry for that little walkin, but I needed to talk to Mr. Gulledge about this real quickly.

We've come before you several times on updates, and I just want to provide another because we're moving along pretty well and make sure you understand what we're doing. I've got a few slides here. This won't be a long

presentation. So we'll move pretty quickly.

(Thereupon, an overhead presentation was presented as follows.)

MR. PETKER: A little bit of the background on -- this is back in 1997, members from the Board, different agencies got together and started discussing a recognized need for statewide training of landfill. As Mr. Jones said earlier, it was recognized that there's a big variance in the size of landfills and the knowledge that operators have. Some have more resources for training. Some don't. We're trying to overcome that and make it a more stable training environment for the whole state. So back in '97 meetings were held, discussions were held, realized there's a need for this. The Board then got together, talked about it, and implemented a four-year pilot program. They voted on it in November of '99. The pilot program itself started in November of 2000 and is expected to run through October of 2004.

--o0o--

MR. PETKER: The goals of the project were to improve public health and safety by helping landfill operators become better at what they do as well as inspectors. So not only public health and safety but operations cost and capacity are some of the goals. We're seeing that, too. And I have a slide later that helps

with that. And it gives you a view of how we've improved statewide.

Part of this goal, too, is not only just to get them certified with MOLO and their basic training, but to encourage and promote continued knowledge and update. As new issues come into -- as new issues come up that we know are necessary to be trained on, we then work that into our training schedule.

Part of this idea was a consideration also of whether we should certify landfill operators statewide. That's something that will need to be addressed. I just wanted to throw that out. That's been a gist on this for the entire program as to whether or not we need to certify landfill operators, both State and LEA as we proceed.

--o0o--

MR. PETKER: Milestones for this project, as I mentioned earlier, there was a Board meeting in 1999 where we set up a Resolution for the pilot project. And the Resolution went into effect in October of 2000. So far, since that Resolution there's been four certification classes with the next one scheduled in September. Prior to that there were many -- several trial classes involving California-specific information. Let me back up just a little bit on that. As MOLO has a set standard of training. We realize in California we have many

1 requirements that aren't met by MOLO's training. While
2 it's a very good course, our standards and our regulations
3 and some of the things that we require needed to be worked
4 into it. That's what we've done. We've worked those
5 specifics into their current training. Our LEA section
6 and the P&E with Sharon Anderson and Mindy Fox have
7 offered some great training that helps with providing
8 continuing education units for those. There's an
9 attachment in your package which shows some of those
10 trainings.
11 This is a display of some of the data that we've
12 collected and what it shows in red is the number of
13 violations from 1996 to 2002. Actually, it's violations
14 and areas of concerns from LEA inspections for 164
15 landfills for that period of time. Blue are the number of
16 certified operators in the state. As you can see, the
17 violations have gone down. The number of certified
18 operators have gone up. While it isn't a direct
19 correlation, I think it is encouraging in that people
20 realize that training is important and realize that
21 training is important the number of violations are coming
22 down.
23 CHAIRPERSON MOULTON-PATTERSON: A dramatic
24 decrease. That's great.
25 MR. PETKER: It is. Yes. So I can say the

number of violations and areas of concern are combined in there. So it isn't just violations.

--o0o--

MR. PETKER: A little bit about the education efforts we're making. The specific training comes from the SWANA course, and there's numerous and continuing courses out there that SWANA offers that we partner with. In addition to that, I mentioned earlier about Sharon Anderson's group in P&E which has done an outstanding job of offering trainings for LEA's operators and state staff in areas such as load checking odor control, ADC illegal dumping, and we have some plan for waste tires now for next year.

--o0o--

MR. PETKER: Actions that have been suggested -- and this is my last slide. But actions that have been suggested as we go and have meetings on this and we attend classes are two as the pilot project is drawing closer to the end is to reconvene meetings with the original group, the original group that decided this was a good thing to do and reevaluate the progress to see where it might want to go. Review results of the pilot project classes and the training we've held. Requires statewide training and certification or a mandatory program statewide to continue this regular and remote or world training that we're going

1 to do, extend the current pilot project or take no action.
2 That's a summation of a lot of the comments I've gotten.
3 So I can take questions or whatever you'd like.
4 CHAIRPERSON MOULTON-PATTERSON: Thank you.
5 Mr. Jones?
6 BOARD MEMBER JONES: Thank you, Madam Chair. And
7 thank you, Darryl. I think one thing is important to
8 state, because I don't want to overstate MOLO. I think
9 the LEA support staff and the Board. When we go back and
10 we look at that slide that shows violations and areas of
11 concerns going down, I think that's a direct result of the
12 work of the P&E group and the work with the LEA's. But I
13 do think that MOLO has an impact in that. And I think
14 it's very clear that I think credit needs to go to the P&E
15 staff which Darryl did give credit to tell them -- to say
16 that in fact this state is doing a lot better than we were
17 in '96 with LEA's understanding.
18 What's been really gratifying through these
19 training programs is that LEA's are showing up and they're
20 starting to understand a little more than what's just
21 written in the book. They're starting to understand a
22 little bit more about the operations for landfills. And
23 what's more important than that is that operators are
24 starting to understand what LEAs need and what they see.
25 And when all the parties, including our state staff

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1 understand what all three parties are responsible for and
2 what they need to do, we're going to have a more
3 collaborative and a more professional way of making sure
4 that we are insuring the health and safety. So I think
5 it's been great.
6 You know, I'm hoping that this Board sees value
7 in this program, that they would allow us to continue our
8 discussions, to come back with a plan for mandatory
9 certification. I think it would probably have to look
10 something like one mandatory person at every site. And if
11 they've got an ongoing training program, if they're not on
12 site, it's okay, as long as they're training the people,
13 you know. Because it's pretty tough when you've got three
14 people at a landfill, one has to be certified and be there
15 all the time. You know, I mean -- so I think we can work
16 through that. We can't make it so burdensome that people
17 can't, but we landfill 39 million tons of waste a year in
18 164 landfills. And we need to make sure that the people
19 that are operating those understand better, because that's
20 going to end up savings the taxpayers' dollars when they
21 don't have to deal with the failures.
22 But I'm going to leave that up to the Board. You
23 know, I'm an advocate to make this a certification
24 program. And to continue to work I think it's going to be
25 one of our brightest moments, this program at this Board.

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1 CHAIRPERSON MOULTON-PATTERSON: I absolutely
2 agree. I'm always in favor of continuing education in
3 every area. But this is very great program and I would be
4 very supportive. I don't know if you need any more
5 direction than that. I think everyone on the Board feels
6 it's important. I don't hear any objections. So, do you
7 need anything more specific?
8 MR. PETKER: Maybe a little direction, if you'd
9 like, as to come back to you with specifics and a
10 recommendation, if that -- if that would be all right.
11 CHAIRPERSON MOULTON-PATTERSON: Mr. Paparian?
12 BOARD MEMBER PAPARIAN: I mean, I agree it's a
13 fabulous program. And I really commend everybody and
14 Mr. Jones for really pushing this along. And the staff
15 did a great job in implementing it. I think the only
16 concern that we'll have as we move forward is whether the
17 budget-related problems that we're facing might affect
18 this in some way. I think I would suggest going forward
19 doing what you want to do, but recognize that when you
20 come back, you know, who knows what's going to happen.
21 CHAIRPERSON MOULTON-PATTERSON: Absolutely.
22 Ms. Peace?
23 COMMITTEE MEMBER PEACE: Yes. This sounds like a
24 very good program. I'm in favor of it. California
25 requires certification in everything from X-ray

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1 technicians to manicurists, so why not landfill operators?
2 But what I want to know, who pays for the course? Does
3 the landfill pay for their person to take this course or
4 does the Board provide the course or who is --
5 MR. PETKER: It depends on the source of where
6 the students or attendees come from when the Board -- the
7 state staff have gone the Board has paid for it. The
8 LEA's, their organization usually pays for it. Some
9 consultants who attend are self-funded. And the
10 operators, it is usually their organizations that pay.
11 Whether it be the landfill, such as San districts, a lot
12 of their people are certified. They see the value of
13 this. They end up paying for their people.
14 BOARD MEMBER PEACE: So the SWANA MOLO
15 organization will continue to provide the classes?
16 MR. PETKER: They provide the instruction
17 material and through their chapters help provide the
18 instructors the structure and coordinated the activities.
19 COMMITTEE MEMBER PEACE: They will provide like
20 an additional class or additional stuff for
21 California-specific requirements?
22 MR. PETKER: What we've done is we've worked
23 within their structure. They have a four-day program.
24 They've worked with us, we've worked with the Water Board.
25 We've developed some materials, some slides, some other

1 information and we've inserted that into each chapter.
2 One of the handouts I gave you has a list of the chapters
3 in the SWANA manual, which is about four inches thick, and
4 I put a star by each one of the chapters where we inserted
5 California-specific information. It takes a little more
6 information in the class but it takes the California
7 information that we have, ties it right into the SWANA
8 category, which helps the students, the inspector
9 understand how the national works and how California is
10 just a little bit different in those areas.
11 BOARD MEMBER PEACE: Okay. Thank you.
12 CHAIRPERSON MOULTON-PATTERSON: Mr. Jones.
13 BOARD MEMBER JONES: Thank you. Just to follow
14 up on Ms. Peace's question. The training is paid for
15 usually by whoever is sending the people. It's expensive,
16 because you're going to have to stay in a hotel for four
17 days. You've got to get there. You've got to pay for the
18 class. What we did with SWANA when we negotiated this
19 thing, because you have to do continually updated
20 education, is we made sure that courses that the Waste
21 Board offers for free would be available to those
22 participants as part of their continuing education. So
23 that when they completed those courses at no cost, those
24 credits would get attached to their files, so they would
25 go towards their recertification every three years, which

1 helps minimize cost. We're going to still keep
2 negotiating that.
3 One of the grants that was approved and sent out
4 on the waste tire landfilling issues, Mr. Pitner is
5 actually now a certified MOLO trainer and he'll be
6 conducting a lot of those classes. So that's going to,
7 you know, spare the expense on certain things. And we're
8 going to do those in remote locations where jurisdictions
9 don't have the ability or the financials to get out, to
10 send somebody to Los Angeles or Sacramento or Fresno. So
11 Mr. Pitner and somebody from the Water Board and I think
12 somebody from Wendy's group will actually go on site for
13 two days at a landfill with some regional people to be
14 able to give the same training, but use their equipment,
15 their circumstances to make it more real.
16 And that's the beauty of this program is that we
17 have the flexibility to not only offer the structured
18 class twice a year, but to go out when the funds are
19 available to offer it to those that need it the most. And
20 they're the ones that need it. The ones that can't afford
21 to get out. It may not be the money. They may not have
22 the personnel to be able to afford to have somebody leave
23 for four days. I hope that answers the question.
24 CHAIRPERSON MOULTON-PATTERSON: Thank you very
25 much. And I think you've heard we're all very supportive

1 to continue on. And we hope that this horrible budget
2 crisis doesn't get in the way. But we're all very
3 supportive of it.
4 MR. PETKER: I'll plan on coming back in three or
5 four months with some thoughts and ideas that you can
6 discuss.
7 CHAIRPERSON MOULTON-PATTERSON: Thank you.
8 We had four items in P&E, but I believe Mr. Faust
9 is here and is ready. And so we will -- does anybody --
10 let's just take a five-minute break to kind of change from
11 the agenda over to this item this hearing.
12 (Thereupon, a recess was taken.)
13 CHAIRPERSON MOULTON-PATTERSON: I'd like to call
14 our meeting back to order.
15 Ex partes, Mr. Jones?
16 BOARD MEMBER JONES: A brief discussion with John
17 Cupps.
18 CHAIRPERSON MOULTON-PATTERSON: Ms. Peace?
19 BOARD MEMBER PEACE: None to report.
20 CHAIRPERSON MOULTON-PATTERSON: I have none.
21 Mr. Paparian?
22 BOARD MEMBER PAPARIAN: None.
23 CHAIRPERSON MOULTON-PATTERSON: Mr. Washington?
24 BOARD MEMBER WASHINGTON: I have none.
25 CHAIRPERSON MOULTON-PATTERSON: Okay. I'd like

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1 the -- we're considering Item 44, which is a consideration
2 of an appeal by Redwood Rubber, LLC, concerning
3 disallowance of cost for tire recycling grant number
4 TR-11982762. And I'd like to open this hearing, and I'd
5 like the parties to identify themselves at this time.
6 MS. BRECKON: My name is Wendy Breckon. I'm
7 staff counsel for the California Integrated Waste
8 Management Board.
9 CHAIRPERSON MOULTON-PATTERSON: Thank you.
10 MR. FAUST: Tom Faust on behalf of Redwood
11 Rubber.
12 CHAIRPERSON MOULTON-PATTERSON: Thank you,
13 Mr. Faust.
14 I'd like to now introduce Michael Bledsoe, who
15 will be serving as counsel to the Board in this hearing.
16 Mr. Bledsoe.
17 MR. BLEDSOE: Thank you, Madam Chairman. Our
18 object here today is to provide a fair hearing for Redwood
19 Rubber's appeal of staff's decision regarding this claim.
20 The Board will be sitting in a slightly different role
21 than they usually do. Typically Board hearings are
22 legislative matters. In this case, the hearing is an
23 adjudicative hearing not subject to the formal
24 Administrative Procedures Act requirement so we'll be
25 proceeding under the informal procedures. The Board is to

1 act as a neutral decision maker today. It will be the
2 trier-of-fact like a jury in a civil case. The Board will
3 apply the law to the facts as produced in this hearing.
4 The decision will be based only on the evidence presented
5 at the hearing and on matters that are officially noticed.
6 After the hearing the Board will deliberate in
7 closed session. The Board, if it reaches a decision
8 shortly, may elect to announce a tentative decision
9 subject to being memorialized in writing later. The Board
10 may elect to deliberate in the future and make a decision
11 at a future time in order to give full consideration to
12 the oral arguments presented today and any written
13 evidence. The decision will be in writing. And if
14 testimony concludes today, the decision will be provided
15 published within 30 days.
16 For Mr. Faust's benefit, just so that you know,
17 sir, I'm senior staff counsel here at the Waste Board.
18 I've been an attorney for 17 years, the last five of which
19 have been here at the Waste Board. I'll be the presiding
20 officer, Chairwoman Moulton-Patterson regarding legal and
21 procedural issues. I will not be one of the participants
22 in the deliberations except for as a lawyer advising them
23 regarding procedure.
24 I've had no involvement in this matter and have
25 no knowledge of the facts from which the appeal arose. In

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1 particular, I've had no role in the matter as an
2 investigator, prosecutor, advocate. I have discussed
3 procedures for this hearing with Wendy Brecken who's
4 acting as prosecutor for the Board today and with other
5 attorneys and the legal office.
6 I've received three telephone calls from
7 Mr. Faust in which we discussed a couple of procedural
8 matters. But I did not discuss with him any of the merits
9 of the case. And Mr. Faust to raised some concerns he had
10 with process as well as substance at this hearing today.
11 Except as noted, I've not communicated with any
12 Board member or staff member or other person regarding
13 this matter. And I'm expecting any involvement to be
14 quite limited. It is an informal hearing. The rules of
15 evidence and procedure are relaxed. And as a mentioned
16 before, our goal is to have a fair hearing for Redwood
17 Rubber's appeal.
18 As for procedures, the parties have agreed to
19 basic procedures as specified in Ms. Breckon's memo to the
20 Board dated June 9th, 2003, which was copied to Mr. Faust.
21 We will be following informal procedures intended to give
22 Redwood Rubber full opportunity and Board opportunity full
23 opportunity to present their arguments and for the Board
24 to receive the information it needs to make an informed
25 decision.

1 If the Board feels it has not had time to digest
2 and understand all the material presented this morning
3 orally and in writing, it may elect to continue this
4 matter into the future for further testimony. It may
5 continue its deliberations over a period of time that it
6 finds necessary. And, of course, it may continue this
7 hearing entirely if it so choses.
8 Thank you.
9 CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr.
10 Bledsoe.
11 We have a preliminary matter at this time.
12 Redwood Rubber's Board has requested to recuse Board
13 member Steven R. Jones from participating in a hearing on
14 Redwood's appeal based on Redwood Rubbers allegation that
15 member Jones is biased. And we'll start out by after I
16 swear in Mr. Faust by a presentation by Redwood Rubber.
17 And this is based on affidavits submitted by Mr. Tom
18 Faust.
19 Would you stand, sir, and let me swear you in.
20 (Thereupon Mr. Faust was sworn in by the Chair.)
21 MR. FAUST: To the best my knowledge, yes.
22 CHAIRPERSON MOULTON-PATTERSON: Thank you.
23 MR. FAUST: I have a --
24 CHAIRPERSON MOULTON-PATTERSON: We have about ten
25 minutes. Was that sufficient for this part of the agenda?

1 MR. FAUST: Do you want me to start?
2 CHAIRPERSON MOULTON-PATTERSON: Yes.
3 MR. FAUST: Do you want me --
4 CHAIRPERSON MOULTON-PATTERSON: You can sit if
5 you'd like so we can hear you.
6 MR. FAUST: Do you want me to -- I have an
7 objection. This is a contract dispute between myself and
8 Redwood Rubber brought upon by Mr. Leary's actions on not
9 making a reasonable interpretation. So anyway, because
10 it's a contract dispute, I'm asking that this thing --
11 that outside parties not be allowed to interfere on a
12 basic contract dispute between myself and the Board.
13 I'd like to point out that the editor of Scrap
14 Tire News has written an article and publicized and in
15 order to turn this into kind of a yellow journalism
16 circus -- and you know, this is a contract dispute. You
17 don't see people from the Senate, the Assembly people.
18 You don't see people from the -- all the environmental
19 organizations here. But this is a contract dispute.
20 Outside parties who are not intimately involved in this
21 particular contract should be excluded. And I -- it's a
22 basic tenet of -- and I wasn't provided any witness list
23 beforehand. I wasn't provided any of this, you know, and
24 common courtesy and in all courts people are given lists
25 so that they can prepare. Here you're subjecting me to

1 just wild attacks from, I know, from the readers of Mr.
2 Levelle's Scrap Tire News. I'm just --
3 MR. BLEDSOE: Mr. Faust -- excuse me, Madam
4 Chair. If there are persons that Ms. Breckon introduces
5 as witnesses that you don't feel are appropriate, you can
6 object at that time.
7 MS. BRECKON: If I could say something.
8 Mr. Faust's objection to this being an open meeting, it
9 flies in the face of the Administrative Procedure Act,
10 which we're using as guidelines in this hearing, which is
11 Section -- Government Code Section 114 -- excuse me.
12 11425.20, and also the open meeting the Bagley-Keene Open
13 Meeting Act. This isn't any kind of issue that would
14 be -- meet the closed session requirements. Also,
15 Mr. Faust didn't ask for a witness -- he didn't ask for a
16 witness list, so none was provided to him.
17 MR. BLEDSOE: Thank you, Mr. Faust. Is your
18 concern that meeting is open to the public?
19 MR. FAUST: My -- it can be open to the public --
20 MR. BLEDSOE: Okay.
21 MR. FAUST: -- I have no objection to that. But
22 what I have is objection as to being -- to have other
23 people testify and enter statements that I have no -- that
24 I know are not involved in this particular contract
25 dispute.

1 MR. BLEDSOE: Please raise those objections when
2 those witnesses are introduced. And I would note that
3 this is your opportunity to explain why you feel Mr. Jones
4 should be disqualified from the hearing.
5 MR. FAUST: Right. You know, also Mr. -- as a
6 another procedural matter, I faxed a complete set of
7 documents to Ms. Breckon that I wanted used, and today I
8 was given a copy and only one of them is there and the
9 rest of them were -- you know, the attachments that are
10 listed on the thing I understand were excluded. So
11 anyway, I have tried to reconcile that, but I'm still
12 missing some. So what I'm trying to do is document a
13 history of bias against following Public Resource Code
14 4001, Category A. And that's the case that I wish to
15 make. So do you want me to start now?
16 CHAIRPERSON MOULTON-PATTERSON: Yes, I do. And
17 this is on the disqualification of Mr. Jones -- I'd like
18 you to stick to that right now, please.
19 MR. FAUST: I've known Mr. Jones since 1997, I
20 think, when he joined the Board. He served as the
21 Chairman of the Market Development Committee. And he's
22 overseen tire grants for -- until December of this year, I
23 believe. I believe he has used his office to block
24 introduction of new technology and he's used his office in
25 influence. Those are two items to financially damage

1 Redwood Rubber on at least four occasions.
2 Attached is a letter to this letter that was sent
3 to him accusing him of mismanagement of tire grants
4 program. And I refer to April 10th letter that you should
5 have in front of you. And I applied for a grant and we
6 were given 60 points out of 100. And I confronted
7 Mr. Jones individually down at the resort in Southern
8 California where we had the tire recycling thing. And he
9 gave me excuses like, "The reason you were excluded was
10 because an extruder wears out over time. And so
11 consequently because it wears out, it's not a good
12 investment." Anyway, it's all documented in the letter
13 right here. You know, garbage trucks wear out over time
14 and yet we make investments in garbage trucks.
15 Mr. Jones is a great person in the
16 refuse-collecting industry, but he is anti-technology and
17 he has blocked new innovative ideas consistently through
18 using his office and influence as Chairman. I realize
19 he's no longer -- he resigned or they changed the
20 chairman, but he has used that. And he set up a gender
21 gendrauer within the office that if you want to get ahead
22 in Integrated Waste Management Board, you support tire
23 burning.
24 For example, on the third paragraph of my
25 letter -- my admitted letter I say he has -- on the August

1 2002-2003 tire commercialization grant there were 36
2 applicants for only 2 million in molded rubber grants.
3 And a grading scheme was developed for making molded parts
4 out of -- you're supposed to submit a grant proposal to
5 make molded parts. However, they only gave a five- to
6 ten-point differential. So if you are a tire burner, you
7 know, and you were well connected politically within the
8 office, you could come up with winning the points.
9 So the low point differential -- these are called
10 rigged rating schemes. And what they do is they nullify
11 prioritizing tire recycling in its highest form. The law
12 says under PR 4051 there must be a priority. Giving a
13 priority of five to ten points, especially when there's so
14 much subjectivity, does not give any priority at all.
15 Throughout the grading of that grant there was all kinds
16 of you get one point here, one point here, when there
17 should have been -- in almost all the categories there
18 should have been five's.
19 One of the terms of the grant were that it would
20 also be independently graded by a separate group, you
21 know, unbiased by the Board. Again, under his
22 jurisdiction he arbitrarily canceled the second review
23 because he probably feared, you know, people under -- not
24 under his influence he wouldn't be able to control the
25 output.

1 Look, it's been five years and there has been no
2 new tire recycling technologies introduced. If you call
3 new conveyor belts new tire technologies, we're not on the
4 same page. If you call putting polymers and mixing them
5 in with crumb rubber, we're not on the same page, because
6 those are binders and that's been going on for 15,
7 20 years. He has seen grants going to Lakin Tire. Lakin
8 Tire has had -- has increased their market share from nine
9 million in tires collected in 1997 to almost 15, 16
10 million right now. In Northern California if you go to
11 almost any of the stores, you know, what used to be a very
12 competitive tire collection market has turned into a
13 monopolistic situation. So what his actions have done, he
14 has benefited the rich tire companies that are making
15 millions and this has worked to the consumer's detriment
16 by restricting the introduction of new technology
17 throughout the -- you know, the last five years when he
18 was running -- when he was running the office.
19 So 65 percent of California tires are either
20 burned or buried. And I say the fact -- that fact is
21 proof. That is proof he has failed and he has a bias.
22 Now established law, when there is just an indication of
23 bias the parties should automatically recuse him. This
24 man knows that he -- his whole prior training before
25 coming to the Waste Board was burning and burying in the

1 garbage business. When a person deliberately circumvents
2 the law and the proof -- and the evidence is that he has
3 not introduced any new technologies since he's been on it,
4 tried to block them, you know, he shouldn't be on the
5 Board adjudicating a contract dispute that was probably
6 precipitated by his influence with the tire group.
7 CHAIRPERSON MOULTON-PATTERSON: You have two
8 minutes to summarize, Mr. Faust.
9 MR. FAUST: Okay. I have an April 11th letter
10 that needs to be reviewed by the Board, you know, I have.
11 And what it does it discusses what I believe are examples
12 of onerous grading schemes and answers and positions that
13 Mr. Jones has influenced while he was Chair of the Board.
14 Look, he's the Board with the longest tenure right here.
15 He's had the most influence over every single one.
16 Six months ago he boasted that he had come and seen 22
17 other Board members come and go during his tenure. And so
18 he has the most influence with the Staff and he's used
19 that to block. My company has been blocked by four to
20 five -- probably five grants that he's been successful in
21 using his influence to block.
22 Once again, I'll leave the parting ten seconds.
23 If there is just casebook law -- is if there is just an
24 indication of bias, the party should automatically recuse
25 themselves. So that there's not just an indication. I've

1 made any case.

2 CHAIRPERSON MOULTON-PATTERSON: Thank you. Now

3 just for clarification, you mentioned an April 11th

4 letter. I have an April 10th letter. Is that the one you

5 meant?

6 MR. FAUST: No. It says Redwood memorandum,

7 April 11th, 2002. I asked Wendy to include this and she

8 didn't.

9 MS. BRECKON: Well, there's been a number of

10 letters sent and Mr. Faust asked to take out the --

11 yesterday in a conversation with Marie Carter about 7:00

12 at night or something asked you to take out the letters

13 that we had put in the binder previously and put in the

14 April 11th, 2003, amended version. So I assumed that was

15 done. But in a subsequent conversation with Mr. Faust

16 this morning, I discovered that he also wanted attachment

17 to that letter, which is, I think, the April 10th, 2002,

18 by his attachment; is that correct?

19 CHAIRPERSON MOULTON-PATTERSON: Well, if there's

20 a letter that can be copied, we can have it.

21 MS. BRECKON: He has the copies of the April 10th

22 letter that is -- indicates it was revised.

23 MR. FAUST: You know, it's a long letter, April

24 11th. It goes category by category over the review and I

25 would really request the Board review this. You can't do

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it --

CHAIRPERSON MOULTON-PATTERSON: I'll accept that. Could someone quickly make copies?

MR. BLEDSOE: Is -- Mr. Faust, is that the only letter that failed to get included in this packet?

MR. FAUST: She has -- yes. I gave that to be passed -- did the Board get a copy of this one?

CHAIRPERSON MOULTON-PATTERSON: Just now.

MR. BLEDSOE: Let's take a moment and make sure that the copies of materials you wanted submitted have been submitted.

MS. BRECKON: There's -- Tab B is the motion to recuse section of the binder, and that should include the April 11th amended letter that Mr. Faust wanted. And then Mr. Faust is again handing out the April 10, 2002, revised letter and attachment.

MR. FAUST: That's attached to a November 15th --

CHAIRPERSON MOULTON-PATTERSON: I see it. We have it.

MS. BRECKON: Okay.

CHAIRPERSON MOULTON-PATTERSON: Let's take a moment to look at it. No. I have it.

MR. BLEDSOE: This packet has an April 11th, 2003, amended letter from Redwood Rubber. That's all.

MR. FAUST: This whole snafu on last minute

1 paperwork, at the last minute -- they started 5:00 and
2 6:00 last night. They were faxing papers. This should
3 have been done --
4 CHAIRPERSON MOULTON-PATTERSON: Do you have the
5 April 11th letter that you'd like us to see?
6 MR. FAUST: Yes, I do.
7 CHAIRPERSON MOULTON-PATTERSON: Somebody will
8 make copies. I have an April 11th amended letter, but if
9 that's not the correct one we can quickly make copies and
10 have that. We'll take a moment.
11 MS. BRECKON: Are we taking a break now?
12 CHAIRPERSON MOULTON-PATTERSON: We'll take a
13 short five-minute break.
14 (Thereupon a recess was taken.)
15 CHAIRPERSON MOULTON-PATTERSON: I'd like to open
16 the hearing back up. Mr. Faust, we did receive the
17 April 11th, 2002, letter that you were referring to.
18 We'll take just a short moment to review it. Did you wish
19 to say something at this time?
20 MR. FAUST: Yes. You want me to start on each of
21 these items to show how --
22 CHAIRPERSON MOULTON-PATTERSON: No. We can read
23 it. You were allowed ten minutes and then there will be a
24 15-minute rebuttal by our counsel -- staff's counsel, and
25 then you'll have five minutes to rebut that. So we are

1 reading it.

2 CHAIRPERSON MOULTON-PATTERSON: Thank you. At

3 this time, I'll turn it over to Ms. Breckon for her

4 rebuttal on this section.

5 MS. BRECKON: Thank you. Wendy Breckon, staff

6 counsel.

7 Mr. Faust's motion does not make a prima facie

8 case of bias alleged -- whose allegations will result in

9 disqualification. This means that Mr. Faust alleged

10 nothing that meets the standards stated in case law and

11 statute for requiring disqualification of Board Member

12 Jones. Mr. Faust alleges that the law is that if there's

13 any indication of bias that Mr. Jones should recuse

14 himself. That would be the standard for a Superior Court.

15 For administrative law hearings the standard is different.

16 That standard is set forth at Government Code 11425.40 at

17 the Administrative Procedure Act. And that states that as

18 a matter of law no bias is stated for allegations based on

19 public policy, prior decisions on policy decisions,

20 decisions on issues relating to laws or regulations. So

21 Mr. Faust's allegations all are geared towards those sort

22 of items like policy decisions.

23 Mr. Faust allegations that Mr. Jones has a -- is

24 pro tire burying and pro tire burning and against new

25 technology like devulcanization and these are all policy

1 issues which do not amount to bias. So without addressing
2 the truth of these allegations that Mr. Faust is claiming
3 the Board can look to the allegations and see that even if
4 they are true, do they amount to a claim for
5 disqualification for bias? And in this case we assert
6 that as a matter of law none of his allegations amount to
7 the standard of disqualification for bias.
8 Specifically, Mr. Faust alleges in his letter
9 that Mr. Jones used his office to block the introduction
10 of new technology. Again, this is a policy decision. If
11 it's true, which we dispute that this would be true,
12 because it's a matter of official regard that the
13 decisions such as this are Board decisions and everybody
14 has a vote, but even if this allegation were true it
15 amounts to a policy decision, which does not amount to
16 disqualification.
17 In addition, Mr. Faust alleges that the scoring
18 criteria was somehow influenced by Board Member Jones, so
19 that it favored certain kinds of technology, the waste
20 tire grant cycles. And again, this amounts to a policy
21 decision on scoring criteria about which types of
22 technology would be favored that all the Board votes on.
23 And does not amount to a case of bias against Mr. Faust in
24 particular.
25 He also alleges that the 5-year plan, which he

1 alleges cancels the $250,000 allocated to tire
2 devulcanization projects and instead alotted 100,000 to
3 existing devulcanization processes -- he alleges that is
4 another cause to show bias by Mr. Jones. Again, these are
5 policy decisions.
6 And finally, he alleges that Mr. Jones has the
7 support of industry. And this would be a cause for
8 disqualifying him for bias. The fact that Mr. Jones is
9 appointed by the governor for his experience in this
10 industry would be irrelevant to any claim for bias.
11 Again, it goes to policy decisions. Under California law
12 the right to an impartial trier-of-fact does not extend as
13 far as to require that each hearing officer be completely
14 indifferent to the subject matter of the claim before him.
15 The word bias refers to the mental attitude or disposition
16 of the judge towards a party to the litigation, not to any
17 views he may entertain regarding the subject matter
18 involved. This is particularly important in
19 administrative cases such as this where the hearing
20 officers also regularly perform non-judicial function in
21 the carrying out of their Board duties. Significantly,
22 Redwood Rubber is devoid of any allegations that Mr. Jones
23 has any negative mental attitude or disposition against
24 the company or Mr. Faust as principal personally, which is
25 the very definition of bias as established by the above

1 case law.

2 At this point, I'd like to have Mr. Jones testify

3 on his own behalf as to whether he believes he is biased.

4 CHAIRPERSON MOULTON-PATTERSON: Okay. Thank you.

5 Before you do, I'd like to swear in Mr. Jones.

6 (Thereupon Board Member Jones was sworn in by the

7 Chair.)

8 BOARD MEMBER JONES: I do.

9 CHAIRPERSON MOULTON-PATTERSON: Thank you.

10 Mr. Jones.

11 BOARD MEMBER JONES: Thanks, Madam Chair. Just a

12 couple of things. One, I want to state on the record that

13 I don't have a bias. I think my record over a seven-year

14 shows I've tried awfully hard to move markets and to move

15 different technologies.

16 I think that Mr. Faust has given me a little bit

17 too much credit for having too much influence at this

18 Board. I have been here a long time and I have been

19 active in a lot of programs, so I obviously am in the

20 middle of the lot of things. But every criteria this

21 Board has ever established has been collaborative

22 through -- by the Board members, debated by the Board

23 members and ultimately voted on by the Board members.

24 Every grant, with the exception of one, that has come to

25 this Board has been scored by the staff. The only time

1 the two Board members sat on a hearing or on a scoring
2 panel was as a result of a grant that had gone out that
3 the Board members as a whole felt did not mirror what the
4 Board's direction was and that there was too much
5 influence towards TDF, pulled that back and put out
6 another grant -- another grant offering excluding TDF,
7 basically, and asking for these technologies. As a result
8 to that extra workload on the Staff, it was suggested by
9 Senator Roberti that Board members sit on this to figure
10 out what the Staff goes through. Senator Roberti and
11 myself sat on that hearing panel.
12 And in fact, that would have been the only
13 scoring panel -- that would have been the scoring panel
14 that I have sat on to establish -- or to score grants. I
15 think Mr. Faust's letter -- I think two things happened as
16 a result. Mr. Faust was one of, I don't know, probably 15
17 that didn't get a grant through that process. He and I
18 had conversations on the phone. We met at the tire
19 conference. I spent over an hour with him explaining what
20 I thought were some issues with his technology. And if
21 you look at his own letter dated on April 10th revised,
22 second to last paragraph states that he says, "The
23 Integrated Waste Management Board as you discussed would
24 and could be releasing an R&D proposal in the near
25 future." I don't think that shows bias. I think that

1 shows an opportunity to fully develop an idea that could
2 someday be commercialized.
3 So if I'm guilty of anything, I'm guilty of doing
4 what every one of us is sworn to do. I have no bias
5 towards Redwood Lumber. I have no bias towards any of
6 these outfits. And by the way, the grants that we did not
7 allow included a lot of tire haulers that I've been
8 accused of helping that actually didn't get grants. So I
9 appreciate that Mr. Faust thinks I have that much power
10 around here, but I actually don't. I'm one of six and I'm
11 proud to be one of the six and I'm proud to be doing my
12 job. And I will not show bias. I will have an opinion
13 and I will do my job. But I will not show bias. The
14 thing we're going to hear is a contract dispute. And that
15 that's what I have to make a ruling on was whether it was
16 successfully completed or not. And I'm prepared to do
17 that Thanks, Madam Chair.
18 CHAIRPERSON MOULTON-PATTERSON: Thank you,
19 Mr. Jones.
20 Ms. Breckon, do you have any further remarks?
21 MS. BRECKON: I just have a couple remarks after
22 that just to point out as a matter of law Mr. Faust has
23 not alleged a case for disqualification for bias. And the
24 disagreement regarding policy that Mr. Faust has does not
25 constitute personal prejudice and is basically irrelevant

1 to the hearing. But even if you do find that he had
2 alleged a case for bias, Mr. Jones has credibly testified
3 that he is not biased. So therefore, he should not be
4 disqualified.
5 CHAIRPERSON MOULTON-PATTERSON: Thank you.
6 Questions?
7 Ms. Peace?
8 BOARD MEMBER PEACE: Excuse me. You know, I just
9 want to say I personally do not think Mr. Jones is biased
10 in this case. And I surely don't think that he has
11 mismanaged the tire grants, as Mr. Faust has indicated.
12 But if Mr. Faust thinks that Mr. Jones is biased in any
13 way, I want to assure him that Mr. Jones has his opinions
14 and he does not have a stranglehold on the rest of us. We
15 all have our own opinions.
16 CHAIRPERSON MOULTON-PATTERSON: Thank you,
17 Ms. Peace.
18 We'll now have five minutes to rebut. Oh, before
19 we do, we have a question from Mr. Paparian
20 BOARD MEMBER PAPARIAN: I'm not sure who this --
21 this is more of a procedural question. I think what I
22 heard Mr. Bledsoe say at the beginning in this matter and
23 what we're going to hear in a few minutes, we're supposed
24 to base our view on what's on the record here and not what
25 we might know previously, not what we might know from

1 outside this room, but from what's on the record here;
2 right?
3 MR. BLEDSOE: Correct. You have to base your
4 decision on evidence presented, written and oral, at this
5 hearing. You are -- in making your decision, you are
6 entitled to rely on, you know, your education, your
7 experience in the field, that sort of thing. But as to
8 the facts of this matter, those have to be shown here.
9 BOARD MEMBER PAPARIAN: Thank you.
10 CHAIRPERSON MOULTON-PATTERSON: Thank you. So
11 you have five minutes to rebut strictly on the allegations
12 that member Jones is biased. Did you wish to take that
13 five minutes?
14 MR. FAUST: Absolutely.
15 CHAIRPERSON MOULTON-PATTERSON: Thank you.
16 MR. FAUST: I've listened to Ms. Breckon's
17 argument. I've listened to the sworn testimony of Steve
18 Jones and I find them non-persuasive 100 percent. The
19 facts are still this: In five years he's blocked and used
20 his influence to block the new -- introduction of new
21 technology. Public Resource Code says 4051A says that
22 there should be a priority arrangement, in other words,
23 you shall be following the law. He's consistently broken
24 the law, not followed the law and in seeing that it hasn't
25 been followed. His record stands -- flies in the face of

1 what -- he says he's not biased and is doing -- so here's
2 a man that has consistently broken the law and thinks he
3 doesn't have to follow it and then he's saying, you know,
4 I can adjudicate you. I don't think that's really fair.
5 There's the bias grading scheme, the results, and not
6 following the Public Resource Code and that's the law.
7 That's his Bible he's supposed to be following. I just --
8 that's my rebuttal.
9 CHAIRPERSON MOULTON-PATTERSON: Thank you,
10 Mr. Faust.
11 Okay. At this time the Board can deliberate on
12 what we've just heard and I believe we can do it in
13 public.
14 Who would like to start this off? Any statements
15 or concerns -- while my fellow Board members are
16 collecting their thoughts on this, I'd just like to say
17 that Mr. Jones and I disagree routinely. And I think
18 other members disagree. And as Ms. Peace said, we
19 certainly have our own opinions on things, so I think
20 you'll find that this Board will be very fair.
21 Any other comments?
22 Mr. Washington?
23 BOARD MEMBER WASHINGTON: Thank you, Madam Chair.
24 I, too, have sat here and I have listened to both
25 sides of this argument. And I've read the documents that

1 have been presented to us and the argument that Mr. Faust
2 has put forward is that Mr. Jones has influenced this
3 Board. I want to tell you, Mr. Faust, as a Board member
4 that I find it -- and I'm hard pressed to believe that
5 Mr. Jones can influence any staff because it is the staff
6 who have put together these documents. They've done the
7 process of reviewing for these contracts and things of
8 that nature.
9 And I sit and I listen to you, and I'm trying to
10 find a situation to where perhaps maybe there was some
11 bias. And I have to tell you, sir, in all the
12 documents -- based on your testimony and reading your
13 documents, I see absolutely nothing other than words that
14 Mr. Jones as a Board member and a tenured Board member has
15 influenced. And I can't base my objections or my position
16 on that based on the fact that Mr. Jones has been on this
17 Board for seven years.
18 I'm just not there in terms of finding anything
19 that was substantiating your allegations merely on the
20 fact he's been a Board member for six years and you feel
21 he's had some influence. We can't do that. A part of
22 politics and a part of society is that some people have
23 influence. You go to Congress, they have been members of
24 Congress for 50 years. Do they recuse themselves from
25 making decisions that affect people now when new members

1 come aboard? Absolutely not. When I went to the
2 legislature, I was one of the new members of the
3 Legislature. People didn't recuse members of the
4 Legislature who had been there for 20 years. We just
5 can't operate in a vacuum like that, sir.
6 And it's an unfortunate situation -- and
7 certainly you might have had some words with Mr. Jones.
8 And I believe that all of us have had some comments we
9 made toward individuals and said things we don't
10 necessarily agree with, but we can't base that on the fact
11 that he can't make a judgment regarding this situation.
12 And so I'm not convinced. And certainly I
13 believe that Mr. Jones is an honorable Board member of
14 this place. He and I haven't agreed on everything, but I
15 do believe he's an honorable member of this Board. And,
16 you know, I'm just not convinced, sir, that it's been
17 proved.
18 CHAIRPERSON MOULTON-PATTERSON: Thank you.
19 Mr. Paparian, did you have some questions?
20 BOARD MEMBER PAPARIAN: Yeah. Thank you, Madam
21 Chair. You know, I'm certainly -- it's no secret I've
22 disagreed with Mr. Jones on policy-related issues
23 regarding the tire program. And it's put me -- in terms
24 of policy disagreements, it's -- for me, it's been the
25 most severe disagreement I've had with anybody since I've

1 been on the Board and has probably served to sever what
2 was a good relationship I had with Mr. Jones because of
3 our policy disagreements on tires. And I think that's,
4 you know -- personally, it's been very unfortunate to me
5 that we've -- our policy disagreements have been so
6 strong.
7 But what I'm hearing in terms of the legal matter
8 is that it's not policy-related issues that drive our
9 decision about whether he needs to be recused based on
10 bias. It's the mental attitude or disposition, the
11 negative mental attitude or disposition towards Mr. Faust.
12 And in addition to that, we need to make that decision
13 based on what we know in this room, not based on what we
14 might or might not know from previous experience related
15 to that.
16 So, based on what I've heard here today, I don't
17 hear the evidence that he's got a specific bias towards
18 Mr. Faust. Certainly he does have his opinions on
19 policy-related issues related to tires. And those
20 positions are much different than my positions, but as I'm
21 hearing and I'm not supposed to base this decision, this
22 immediate decision, on those policy disagreements, but
23 rather on whether the evidence is presented today that he
24 has some bias towards Mr. Faust, specifically. And I
25 haven't yet heard that he has -- there is any evidence on

1 the record today he has some bias towards Mr. Faust.
2 CHAIRPERSON MOULTON-PATTERSON: Thank you.
3 Mr. Bledsoe tells me we need to take a vote on this. So
4 could somebody make a motion? Or I can. I'd like to have
5 a vote taken. I will move that Mr. Jones not be recused
6 from this hearing.
7 BOARD MEMBER WASHINGTON: Second.
8 CHAIRPERSON MOULTON-PATTERSON: Please call the
9 roll.
10 SECRETARY WADDELL: Paparian?
11 BOARD MEMBER PAPARIAN: I'm trying -- you're
12 asking for an aye vote on the resolution. Aye.
13 CHAIRPERSON MOULTON-PATTERSON: Yes. Thank you.
14 SECRETARY WADDELL: Peace?
15 BOARD MEMBER PEACE: Aye.
16 SECRETARY WADDELL: Washington?
17 BOARD MEMBER WASHINGTON: Aye.
18 SECRETARY WADDELL: Moulton-Patterson?
19 CHAIRPERSON MOULTON-PATTERSON: Aye.
20 Okay. Mr. Jones is not recused from this
21 message -- from this hearing. And at this point we will
22 move on to the hearing of the merits of Redwood Rubber's
23 appeal.
24 BOARD MEMBER WASHINGTON: Madam Chair, if someone
25 can get Mr. Jones --

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1 CHAIRPERSON MOULTON-PATTERSON: Yes. We'll just
2 take a second until Mr. Jones re-enters.
3 MR. FAUST: If I could raise an issue on the
4 next --
5 CHAIRPERSON MOULTON-PATTERSON: No. The
6 procedure is that the staff will have a presentation of 15
7 minutes, approximately 30 minutes, if needed, for
8 witnesses, then you will have a chance to present your
9 case.
10 MR. FAUST: I understand. That wasn't the way
11 the original arrangement was made. This was a last minute
12 switch in the thing.
13 CHAIRPERSON MOULTON-PATTERSON: What do you mean
14 last minute switch in the thing?
15 MR. FAUST: It was initially proposed that they
16 would put on their case for 10 or 15 minutes, then I would
17 put on my case for 15 minutes. Then we'd each get to
18 rebut the others.
19 CHAIRPERSON MOULTON-PATTERSON: That's what I
20 said.
21 MR. FAUST: Okay. Well, I thought it was
22 continuous. I can't talk. I'm outgunned. I'm
23 out-manned. It's like David in the lion's den here.
24 CHAIRPERSON MOULTON-PATTERSON: We're listening,
25 Mr. Faust, and I'll give you every opportunity to speak.

1 But I've been told that the procedure is to have the staff
2 make their presentation. Then you'll make your
3 presentation. There will be plenty of time for rebuttal.
4 We want to be very fair on this.
5 MR. FAUST: Okay. On one other thing. So all
6 their witnesses will be on initially, then; is that
7 correct?
8 CHAIRPERSON MOULTON-PATTERSONs: The staff will
9 bring their witnesses. Then when you get a chance for
10 your presentation, you can bring any witnesses you want.
11 MR. FAUST: Well, I don't have any witnesses.
12 All I have is declarations.
13 CHAIRPERSON MOULTON-PATTERSON: Okay. That's
14 fine. Thank you. Ms. Breckon, you'll have approximately
15 15 minutes for your presentation, up to 15 minutes.
16 MS. BRECKON: Okay. Prior to getting into an
17 opening statement, I just want to point out the binder
18 that I had handed out to the Board members, which includes
19 a table of contents and Tab A, which includes the -- just
20 jurisdictional matters, it's not evidence. Includes, you
21 know, the agenda item. It includes requests for hearing,
22 letter from Staff that we got his request for a hearing,
23 the notice of the May hearing, the request for
24 continuance, the letter granting continuance, and sending
25 a subpoena in response to Mr. Faust's request to subpoena

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1 witnesses, notice of the -- two notices, actually, of the
2 June 18th Board meeting. In addition, Tab B contains,
3 like I said before, the motion to recuse Board Member
4 Jones and the staff brief on that. And C includes
5 procedures for the audit appeal hearings, which if you
6 like you could also include Michael Bledsoe's last memo on
7 the order of presentation and that's Tab C.
8 So the actual evidence in this case would begin
9 with Tab D. This is a case about a grantee failing to
10 document his expenses. And I will present that case.
11 However, if you hear that Mr. Faust presents evidence
12 which would substantiate the costs that were questioned,
13 then it is up to you to make a determination on whether or
14 not the executive director's decision should be modified.
15 Just for a little background. The appellant here
16 is Redwood Rubber, LLC, and it is run by Tom Faust, who's
17 the CEO. He applied for a grant, a tire production, a
18 tire products promotion and processing grant in the 1998,
19 1999 grant cycle. The Board awarded the grant to Redwood
20 Rubber and the grant agreement was signed in June of 1999.
21 So you'll hear testimony on this and how little work was
22 performed until the last two months of the grant term,
23 starting in February of 2001.
24 At that point in April 2001, Mr. Faust submitted
25 invoices and a final payment request asking for pretty

1 much the entire grant award, I think, of 76,500. You'll
2 hear Mr. Nate Gauff, who's the grant -- who was the grant
3 manager at the time of this grant, testify that he
4 basically disallowed 4,500 of those costs for reasons
5 because the invoices were dated after the grant term, so
6 the cost would be ineligible and the project was only
7 partially completed.
8 After that point, you'll hear testimony of how
9 Mr. Faust disagreed with the grant manager's
10 determination. And after discussions with staff,
11 Mr. Faust agreed to a Department of Financial audit. So
12 you'll hear testimony how the Department of Finance
13 auditor, Mr. Richard Hebert, inspected the site with Nate
14 Gauff, reviewed, you know, documents, asked for
15 substantiating documents and basically the finding
16 relevant to this case -- to this appeal here is that
17 the -- Mr. Faust failed to substantiate the cost for the
18 28,885 that was paid to him. This means that Mr. Faust
19 failed to prove that what Redwood Rubber said it purchased
20 in labor and materials it actually did purchase.
21 The auditor will testify that Redwood Rubber had
22 an inadequate internal accounting system and didn't have
23 receipts, timesheets, ledgers, et cetera, needed to
24 document costs. This despite a grant agreement that is
25 conditioned on supporting documentation being submitted

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1 with the final payment request.
2 Nate Gauff, the grant manager, will also testify
3 that Mr. Faust failed to inform the subcontractor -- I
4 believe it's Pacific Roller Dye -- about the audit
5 requirement. That is a standard condition of the grant
6 agreement, and the subcontractor didn't agree that he
7 needed to be audited. He just refused to be audited.
8 So, as I said, the audit questioned 28,885 in
9 costs, which is an issue in this appeal, because without
10 the document supporting the cost claim the auditor cannot
11 verify the cost spent on the grant activities were
12 actually spent to that extent on grant activities.
13 Redwood Rubber had a number of chances to submit
14 substantiating documentation. Both the auditor requested
15 documentation numerous times as well as staff. And in
16 fact, the Executive Director issued a letter on April 17th
17 that you will see where he asked for any new documentation
18 that may be relevant to substantiating the costs. And so
19 you will hear how Mr. Faust submitted documentation, but
20 it was augmented and it didn't substantiate the costs in
21 question.
22 For these reasons staff is recommending the
23 disallowance of the 28,885 in cost. At this time, I'd
24 like to call Mr. Nate Gauff, who is the grant manager for
25 this grant, and he's sitting over here in the director's

1 Chair.

2 CHAIRPERSON MOULTON-PATTERSON: Thank you.

3 Mr. Gauff, may I swear you in?

4 (Thereupon Mr. Gauff was sworn in by the

5 Chair.)

6 THE WITNESS: Yes, to the best my recollection.

7 CHAIRPERSON MOULTON-PATTERSON: Thank you.

8 BY MS. BRECKON:

9 Q Good morning, Mr. Gauff.

10 A Morning.

11 Q First of all, I'd just like to ask you a little bit

12 about your background. What is your current job title?

13 A I'm a waste management engineer in the Special Waste

14 Division.

15 Q What are the duties that you have right now?

16 A I deal a lot with the contract and grant management.

17 Also do investigation of the various technologies that

18 come up within the course of looking at diverting waste

19 tires from landfill disposal.

20 Q How long have you been at this job?

21 A I've actually been with the Waste Board 13 and a half

22 years. I've dealt with grants for about nine years.

23 Q Okay. And previous to this job what job did you have?

24 A I worked in industry with Proctor and Gamble

25 manufacturing for about three and a half years.

1 Q Thank you. And what is your education?
2 A Bachelor of Science in mechanical engineering.
3 Q Okay. Now we're going to be talking about Mr. Faust's
4 knowledge of the grant process prior to the 1998-1999
5 grant cycle. Do you know whether Mr. Faust had any
6 knowledge about the grant process at the Board?
7 A I believe so. Mr. Faust received -- or actually
8 Redwood Rubber received a grant in the 1994-95 grant
9 cycle, in which case we had a number of issues around
10 grant processing, specifically around payments and
11 reporting. Basically the grants are on a three-year
12 cycle -- three-year spending cycle we have for moneys.
13 And typically by the time they're awarded by the Board, it
14 typically ends up with about a two-year term for the
15 grant -- for the grantee to actually complete the project.
16 Q So did Mr. Faust know about the process of submitting
17 invoices and other documents to support payment requests?
18 A Yes. Definitely.
19 Q Okay. So he understood that you would be making a
20 determination as to what was eligible and ineligible?
21 A Yes.
22 Q So getting to the 1998-1999 grant cycle, what is the
23 purpose of these grants, the, I guess -- what are they
24 called? Tire product promotion and processing grants?
25 A The basic objectives of the grant program were to look

1 at processes that would either involve processing tire
2 material that could be utilized in an end product or
3 looking at projects that would involve developing a
4 product itself. So it was both looking at the processing
5 side and the product side of utilizing tire rubber.
6 Q And what did you do with regard to this grant cycle,
7 just briefly?
8 A My involvement started with bringing the criteria
9 before the Board which was approved. We sent out a NOVA.
10 We sent out an application subsequent to that to those
11 that responded. Took the agenda item before the Board.
12 Actually, before that it was involvement in the scoring.
13 Brought the item before the Board for award. And then
14 acted as the grant manager in executing the agreements
15 after the Board awarded the grants.
16 Q Okay. Was Redwood Rubber one of the grants awarded
17 for the'98-'99 cycle?
18 A Yes, it was.
19 Q And what's the structure of Redwood Rubber, to the
20 best your knowledge?
21 A As far as I understand, it's a limited liability
22 corporation. However, I have only dealt with Mr. Faust
23 almost in a sole proprietorship, I guess you call it. I
24 haven't dealt with anybody else.
25 Q The only dealings you had with Redwood Rubber was with

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1 Mr. Faust?
2 A Correct.
3 Q So going to -- do you have a binder there the -- going
4 to Exhibit D, which is the grant agreement. It says
5 "grant agreement" at the top. Do you recognize that
6 document?
7 A Yes.
8 Q And how have you seen it before?
9 A It looks like a copy of the original grant agreement
10 document.
11 Q Does it look like a true and accurate copy?
12 A Yes.
13 Q You've had a chance to look at it?
14 A Yes.
15 Q And the agreement was signed in June '99 then?
16 A Yes.
17 Q Okay. And what was the grant term?
18 A The grant term was from June 15th, '99, to April 30th
19 of 2001.
20 Q Okay. Just because this grant agreement is an
21 important document, I'd like to quickly review just the
22 different sections of it. If you can just tell us what
23 Attachment A is about?
24 A Attachment A lays out the tasks for the project and
25 work statement. Task one is to develop a product scale

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1 ultrasonic devulcanization system which included a system
2 that would produce a minimum of 400 pounds per hour. And
3 task two of that work statement was to actually perform
4 testing of devulcanized material once it was produced.
5 Q Okay. And looking at part B, which is, I guess, the
6 third page into the grant agreement, what is that?
7 A Exhibit B is the budget. Basically all the grant
8 funds were going to be utilized in task one which was the
9 development of the system. Mr. -- Redwood Rubber was
10 going to provide the funds for the testing which was task
11 two through his match.
12 Q And Exhibit C, what is was your involvement in the
13 terms and conditions -- it's the next page in.
14 A Typically with most grant cycles we send forth the
15 terms and conditions for that grant cycle to be reviewed
16 by our legal and administrative staff contained primarily
17 most of the standard clauses for the grant agreements.
18 Q Okay. And Attachment D?
19 A Attachment D is the procedures and requirements.
20 Typically program staff puts that together. It has the
21 reporting requirements for the grant cycle, not only the
22 quarterly reports but also the final report. It also lays
23 out the process for grant payment.
24 Q Okay. And what is the -- is there a requirement in
25 this procedures and requirements -- let me just do this.

1 Can you read B3 in the procedures and requirements?
2 A Under the grant payments?
3 Q Yes. Payment request?
4 A B3 says that "payment request must included, copies of
5 document supporting, the claim expenses, i.e., receipts,
6 invoices, canceled checks, et cetera. Supporting
7 documents must contain sufficient information to establish
8 purchases made or cost incurred or costs incurred are
9 eligible for payment. At a minimum, the documentation
10 should include the name, amount and date of purchase for
11 the expense."
12 Q Thank you. Looking at Exhibit E, what are these?
13 There's --
14 A Exhibit E is the project completion schedule.
15 Q Oh, I'm sorry. Looking at Tab E of the binder.
16 A Okay.
17 Q There is -- there appears to be three quarterly
18 reports -- or two quarterly reports and one final report
19 here.
20 A Correct.
21 Q And what was your understanding from the final report
22 as far as what -- if you can summarize what was said in
23 the final report -- your understanding of it.
24 A Basically, if you look at -- hold on a second. Let me
25 look here. Basically in the middle of the paragraph there

1 for the executive summary it talks about how the project
2 was delayed until February of 2001. So basically the
3 first 20 months of the 22-month term Redwood Rubber was
4 looking for additional funding for the project.
5 Apparently secured that funding in February of 2001. And
6 then tried to complete the entire project in two months.
7 Q Okay. Did you have any conversations or any
8 communications with Mr. Faust about his ability to
9 complete the project with the $80,000 grant award?
10 A We had a number of communications, including some
11 letters that went back and forth and a number of telephone
12 conversations starting from before the grant was actually
13 signed. Mr. Faust -- and I believe -- I don't know if the
14 letter is in the packet here, but I know there was a
15 letter in the file that he stated initially, I think back
16 in May of '99 that the Board should not have funded one of
17 the other awarded grants and that money should have gone
18 to him because he needed -- his project needed more money.
19 Q I'm sorry, we only have so much time. What I'm
20 getting at is, was it made clear to Mr. Faust that his
21 project needed to be completed with the $80,000 grant
22 award?
23 A Yes, it was.
24 Q Okay.
25 A There was a subsequent letter to his original letter

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1 that we answered that specifically said that he was
2 required to complete the project with the awarded amount,
3 which was 80,000, and he agreed to do that by signing the
4 grant agreement.
5 Q Okay. Looking at Exhibit F in the binder, can you
6 tell us what this is?
7 A This is a copy of his final payment request for the
8 grant.
9 Q Okay. And it seems to be a true and accurate copy?
10 A Yes.
11 Q Okay. When you saw the invoices and the checks, did
12 anything surprise you about those?
13 A I can't say I was surprised.
14 Q Okay. By -- when you saw that PRD was the
15 subcontractor, did that surprise you?
16 A Yes, it had. Yes, it did. I'm sorry.
17 Q Why is that?
18 A Because up to that point I had not -- I was not made
19 aware of any subcontractors being involved in the project.
20 Q Was that a determined condition of the grant
21 agreement?
22 A Yes, it is.
23 Q To make you aware?
24 A It's actually in the procedures and requirements.
25 Q Okay.

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1 A And also in the work statement on Exhibit A of the
2 grant agreement. It also mentions that any contractual
3 obligations entered into by the grantee, a copies is
4 supposed to be submitted to the grant manager for record.
5 Q Without looking at the paperwork if you don't need to,
6 how much did Mr. Faust request for the final payment and
7 how much did you allow?
8 A He requested 76,500, which was basically the remaining
9 balance, give or take a few hundred, I believe. It was
10 basically the remaining balance of the 80,000 original
11 grant award. I approved 32,000 after much effort of
12 checking with PRD and getting -- trying to get an idea
13 from them of what they had accomplished. And looking at
14 the invoices I felt that 32,000 was probably more than I
15 should have paid. But I felt it was adequate, more than
16 adequate compensation for what at that time I knew had
17 been done or had been accomplished in the project.
18 Q Okay. And at that time you had just looked at the
19 attached, I guess, invoices and checks to make that
20 determination?
21 A And like I said, had contacted PRD directly and talked
22 with them about what they had done or what they had
23 accomplished.
24 Q Okay. Going to Exhibit H, we're skipping over --
25 let's see. Going to Exhibit G, I'm sorry, do you

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1 recognize this document?
2 A Yes.
3 Q What is it?
4 A It's a letter that I sent to Mr. Faust letting him
5 know that we approved his final report and that we had
6 processed his final payment request in the amount of
7 32,000.
8 Q That's a true and accurate copy?
9 A Yes.
10 Q Going to Exhibit H or binder Tab H, do you recognize
11 these documents?
12 A Yes.
13 Q And what -- the June 9th letter, what is that?
14 A That's a letter from Redwood Rubber and Mr. Faust
15 basically saying that there was an error, a clerical error
16 apparently on some of his documentation that he submitted
17 and that he should be reimbursed for the additional amount
18 that I originally denied.
19 Q Okay. So what about Exhibit I? Do you recognize that
20 document?
21 A Yes.
22 Q And what is that?
23 A That's a letter from Greg Miller of Pacific Roller Dye
24 to me regarding invoices once again trying to clarify that
25 there was an error made.

1 Q Okay. What was your response to these letters that
2 there was a clerical error made and you should change your
3 determination?
4 A I did not change my determination. Once again, after
5 talking with the folks at PRD, I did not feel that
6 sufficient progress had been made on the project to
7 warrant full payment.
8 Q Okay. So did Mr. Faust come to the office here at the
9 Board?
10 A I believe so. I was not in the office at that time.
11 Q Okay. Well, basically what happened after Mr. Faust
12 submitted these letters?
13 A From what I understand, he -- like I said, he did come
14 to the office and drop off some additional documentation
15 which I believe -- Lynn Lindart and also talked to Martha
16 Gildart. We took that information in. We looked at it.
17 And like I said, there was a letter actually -- I think
18 that is the next tab. That's a result of what we did. We
19 looked at the information and we made a determination
20 which we communicated in the --
21 Q Going to Tab J --
22 CHAIRPERSON MOULTON-PATTERSON: Ms. Breckon, I
23 just want to let you know, you have about 15 more minutes
24 for your witnesses.
25 MS. BRECKON: Okay.

1 THE WITNESS: Basically told him we couldn't go
2 any further unless we had another level of investigation
3 at that the point, which would be an audit --
4 BY MS. BRECKON:
5 Q Okay. So going to Tab K -- well, first of all, did
6 Mr. Faust agree to an audit?
7 A I believe so, after talking with our administrative
8 staff and doing some negotiations about not having board
9 staff conduct the audit, I believe they agreed to have the
10 Department of Finance do the audit. And that was
11 basically the end of my involvement, other than the visit
12 with Rich Hebert when we went down to Pacific Roller Dye
13 on the initial audit meeting.
14 Q Look at Exhibit K. What are these documents?
15 A I believe these are letters from Pacific Roller Dye,
16 one to Tom Faust, and one to Martha Gildart basically
17 saying they weren't going to allow anybody to look at
18 their books.
19 Q Okay. So they weren't going to allow the auditor to
20 look at their books.
21 So if you could just tell us briefly what occurred
22 when you did go to the inspection site with the auditor
23 and view Mr. Faust's machinery.
24 A We went down to Pacific Roller Dye on August 2nd,
25 2001. Mr. Faust showed us what he had set up at that

1 point. Mind you, this is four months after the end of the
2 grant term. He did show us the extruder, which I had no
3 problem believing that he had that since I paid for the
4 freight to have it shipped out. I reimbursed in the
5 grant. He showed us some of the work that PRD had done,
6 apparently putting a hopper, connecting the hopper to the
7 extruder. And also he showed us a cooling apparatus that
8 was supposed to cool the rubber after it was processed.
9 However, a key piece to the whole system that was missing
10 was the ultrasonic reactor apparatus. He told us he did
11 not have that at that time. He did operate the equipment.
12 He started the extruder. He fed some rubber through which
13 shot out at the end of the process -- kind of scared us
14 pretty bad.
15 But basically what we saw was the extruder with a
16 few pieces added to it. There was not a system. There
17 was no devulcanization of any rubber was passed through
18 that system.
19 Q And the extruder -- wasn't that supposed to be
20 provided by another company for free?
21 A Yes, the extruder was -- as far as I understood, was
22 donated to Redwood Rubber for their project.
23 Q No further questions.
24 If the Board doesn't have any questions, I'd like to
25 call the auditor, Richard Hebert.

1 CHAIRPERSON MOULTON-PATTERSON: Just a moment.
2 Do you have a question now?
3 BOARD MEMBER PAPARIAN: Yeah. So it sounds like,
4 you know, one of the basic issues is, did some of the
5 equipment get purchased after the end of the grant term.
6 And that seems to be one of the basic issues for now. Is
7 this the only grant we've ever had where this has happened
8 where somebody's tried to purchase something after the end
9 of the grant term and has sought reimbursement for that?
10 MS. BRECKON: I had intended to call -- are you
11 asking --
12 BOARD MEMBER PAPARIAN: I guess I'm asking
13 Mr. Gauff from his experience, but if anybody else knows.
14 THE WITNESS: If my experience -- I cannot
15 remember a grantee that's sought reimbursement for costs
16 that were incurred after the grant term, whether it was
17 equipment labor or anything else. I cannot remember one
18 grantee I've been involved with that we've done that for.
19 BOARD MEMBER PAPARIAN: Have we ever extended the
20 grant terms for anybody?
21 THE WITNESS: Not in my term of grant management,
22 no. I have not personally been involved in any extended
23 term grants. I think it's occurred at the Board in some
24 other program, but as far as the tire grants I don't think
25 it's ever happened.

1 BOARD MEMBER PAPARIAN: Okay.
2 CHAIRPERSON MOULTON-PATTERSON: Mr. Washington.
3 BOARD MEMBER WASHINGTON: Mr. Gauff, in terms of
4 this invoice process, I'm trying to be clear as to when
5 was the first time you received a request from Mr. Faust
6 for this 76,500?
7 THE WITNESS: That came in with the final report.
8 BOARD MEMBER WASHINGTON: So this was at the very
9 end?
10 THE WITNESS: Correct.
11 BOARD MEMBER WASHINGTON: Was the part of the
12 grant agreement he submitted invoices to be paid or was
13 there ever a decision that the invoice had to be paid in
14 monthly installments -- was he to submit invoices on a
15 monthly basis or could he have waited to the end to send
16 invoices?
17 THE WITNESS: You certainly have the right to
18 delay payment. Typically, invoices are submitted no
19 frequently than quarterly.
20 BOARD MEMBER WASHINGTON: But he was not required
21 to do that?
22 THE WITNESS: Correct.
23 BOARD MEMBER WASHINGTON: And also, in terms of
24 the equipment that was purchased, you received the
25 equipment that you just mentioned, you paid for and they

1 shipped it to him?

2 THE WITNESS: No. What happened -- what I said

3 on the extruder -- what happened is that he arranged with

4 a company to -- for the company to provide him -- to

5 provide his company with an extruder. And basically

6 through the grant agreement we paid for the shipping to

7 move that piece of equipment from where it was located out

8 to his facility which at that time was in Alameda.

9 BOARD MEMBER WASHINGTON: Did any of the staff

10 ever go out to see that piece of equipment once you

11 purchased and paid for the shipment of it, other than the

12 time when you started the audit his situation where you

13 went out before it -- had anyone ever went out to see --

14 THE WITNESS: Yes. Actually, I went to his

15 facility in Alameda, and that was actually prior to us

16 signing the grant agreement with Redwood Rubber. I went

17 down there with a gentleman from the Energy Commission to

18 meet with Mr. Faust and look at his facility down in

19 Alameda. At that time I do believe he had extruder on

20 site.

21 BOARD MEMBER WASHINGTON: I apologize. I'm

22 actually talking about at the time that you paid for the

23 shipment of the equipment. Did you go afterwards to see

24 what the equipment was like, where it was placed, if it

25 was in his premises --

1 THE WITNESS: Not at this point, no.
2 BOARD MEMBER WASHINGTON: You didn't?
3 THE WITNESS: No.
4 BOARD MEMBER WASHINGTON: Why not?
5 THE WITNESS: At this time I can't recall.
6 Typically, we try to do that if we can -- if we can work
7 it into our schedule with staff. Sometimes that's not
8 possible. As a matter of fact, on another grant project I
9 just went down the -- a grantee that I have now just to
10 verify that before we process the final payment somewhat
11 as a result of this situation we're dealing with today.
12 BOARD MEMBER WASHINGTON: So is there any
13 document -- this will be my final question, Madam Chair.
14 Is there any documnet that would suggest the equipment
15 Mr. Faust had received, that he acknowledged he received
16 that document? And is there a date on that document that
17 he -- of which he said he received it?
18 THE WITNESS: For the extruder, yes, because I
19 actually got a freight bill from the company that moved
20 the equipment. From some of the other equipment on --
21 that was submitted at the end with the final payment
22 request, no, there was not documentation there.
23 BOARD MEMBER WASHINGTON: Okay. Thank you.
24 CHAIRPERSON MOULTON-PATTERSON: Thank you,
25 Mr. Washington.

1 Ms. Peace?
2 BOARD MEMBER PEACE: I just want to get this
3 clear. You're saying the invoices were not acceptable for
4 payment because they occurred after the end of the term
5 which was April 1st?
6 THE WITNESS: Correct.
7 BOARD MEMBER PEACE: And you did not receive the
8 invoices until April 6th and April 16th?
9 THE WITNESS: Actually, I have to go back to look
10 at that. Yeah. I don't know if the original is in the --
11 the original is in the file. I'm not sure. I don't think
12 I got this payment request on April 1st, to tell you the
13 truth. If you look at the document from -- the
14 documentation from PRD -- it was faxed on 6/1. So at that
15 point I was still fishing for documentation to
16 substantiate the request that came in earlier. And that
17 has happened before with grants where typically a payment
18 request is made and we'll look at the documentation that
19 exists at the time and subsequently ask for additional
20 documentation which will typically take a little time to
21 get back and forth, going back and forth with mailing or
22 faxing or phone calls and contacts and things.
23 BOARD MEMBER PEACE: It says in item G that these
24 invoices were dated the 6th and the 16th of April and that
25 was after the end of the term which was the 1st of April.

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1 THE WITNESS: Correct.
2 BOARD MEMBER PEACE: You're telling me they're
3 five days late and 15 days late. There not like months
4 late, they're 5 days late and 15 days late.
5 THE WITNESS: Correct.
6 BOARD MEMBER PEACE: And also you told me also
7 that you had seen the extruder, but you had not seen any
8 actual ultrasonic equipment. Have you to date seen any
9 ultrasonic equipment? Have you been out there --
10 THE WITNESS: No. Like I said, my last
11 involvement was in August of 2001 where we actually went
12 to the facility. The extruder was there. There was some
13 equipment added to the extruder, which once again was
14 originally covered by the 32,000 in payment. But there
15 was no ultrasonic equipment at that time. I don't know if
16 there's been any ultrasonic equipment added since then.
17 But it's been almost two years -- there might have been.
18 BOARD MEMBER PEACE: For two years nobody's been
19 out to his place to see if he's made any progress on
20 his --
21 THE WITNESS: You've got to understand.
22 BOARD MEMBER PEACE: -- actually has ultrasonic
23 equipment. Nobody's even interested in that?
24 THE WITNESS: I don't know if anybody's
25 interested in it. I know for me personally I've had a

1 number of other grant projects I have been involved with
2 and contracts. And typically -- you've got to understand,
3 this grant was -- the term was until April 30th of 2001.
4 Typically we don't follow grant projects beyond the term
5 of the grant. If there is any subsequent follow-up,
6 typically the grant awardee will submit another grant or
7 submit some other reporting to us. But if you're looking
8 for any additional involvement with the Waste Board,
9 typically it's another grant and they will submit another
10 application for a separate project.
11 BOARD MEMBER PEACE: I think this Board would
12 have been interested to see if he ever got the equipment
13 and if anything might ever work, since that last month we
14 gave a $100,000 grant to do a study to see if
15 devulcanization could possibly work, but yet we haven't
16 even been out to his place to see if maybe he had gotten
17 his equipment, maybe it was working, if maybe he had some
18 problems that might -- other grant that we gave could
19 relate to --
20 MS. BRECKON: If I can ask a clarify question
21 real quick. Are expenses incurred after the grant term --
22 eligible expenses --
23 THE WITNESS: Not for reimbursement. Can I
24 interject a little history here? I think this is relevant
25 to the proceeding.

1 CHAIRPERSON MOULTON-PATTERSON: Excuse me. Just
2 a moment.
3 Mr. Washington, did you --
4 BOARD MEMBER WASHINGTON: Yeah, Madam Chair.
5 Just a brief follow-up.
6 CHAIRPERSON MOULTON-PATTERSON: We can't hear
7 you.
8 BOARD MEMBER WASHINGTON: Sorry. Apologize.
9 Just a brief follow-up.
10 In terms of this invoice -- I want to speak for a
11 second on the invoice process -- you just told me that he
12 was not required to submit the invoices in order to be
13 paid, is that correct?
14 THE WITNESS: No. That's incorrect. You have to
15 have some documentation to support your request for
16 reimbursement.
17 BOARD MEMBER WASHINGTON: Not to be paid, but in
18 order for him -- he did not have to submit the invoices
19 for the work that he submitted. They could have happened
20 after the grant process. I mean, if you do the work and
21 he's granted a certain amount of money -- if I do the work
22 for that amount of money, it doesn't matter when I submit
23 for it as long as I have the invoices to show that I did
24 this work for you; is that correct?
25 THE WITNESS: Typically you have to show that you

1 completed the work within the grant term and by having
2 these invoices outside the grant term I didn't feel he had
3 completed that. In addition, having to --
4 BOARD MEMBER WASHINGTON: I apologize. Did he
5 give you any reason for that, other than the document? I
6 mean, did he have any prior discussion --
7 THE WITNESS: Yes, I had a number of discussions
8 with him over the previous two years of the grant period,
9 and primarily he spent most of the time of the grant
10 looking for additional investment capital for his project.
11 MS. BRECKON: If I can just make a quick
12 statement. I was introducing Nate Gauff's testimony as
13 background and that is not the reason why the auditor
14 disallowed the costs. So if that's a way we can move on
15 to have the auditor testify next for why the costs he
16 disallowed --
17 BOARD MEMBER WASHINGTON: Madam Chair, I think
18 it's interesting here, and I know why -- Mr. Gauff was the
19 manager on this case and he's a credible witness in this
20 whole process. And everything I've seen don't say auditor
21 on it. It says Mr. Gauff and his communication with
22 Mr. Faust, and that's why I had my line of questioning
23 going that route, not to put Mr. Gauff on the stand, but
24 certainly he was the staff manager on this case.
25 THE WITNESS: One other point I'd like to add

1 just for Ms. Peace and Mr. Washington is that one of the
2 reasons why, even though the invoices were dated after the
3 grant term, that I did not allow the costs was because in
4 talking about Pacific Roller Dye they had not completed
5 some of the work that was alleged to have been completed
6 by the invoice. Okay. So, I mean, I didn't want to say
7 that in my letter alleging that there was some fraud going
8 on here, but I could stick to the fact these were
9 completed outside the grant term.
10 CHAIRPERSON MOULTON-PATTERSON: Thank you.
11 Mr. Paparian and then we'll go to your next witness. I'm
12 not counting the time now.
13 BOARD MEMBER PAPARIAN: I just want to clarify
14 something on the dates. In thumbing through here, the
15 checks are dated in March, yet the -- which was within the
16 grant term. But I guess the assertion is that the
17 invoices were dated after the checks were written? I'm
18 confused about -- the copies of the checks in here are
19 dated like March 10th and March 16th.
20 THE WITNESS: Correct.
21 BOARD MEMBER PAPARIAN: Were they pre-dated? I'm
22 confused about what's going on with those checks.
23 MS. BRECKON: Which tab are you looking at?
24 BOARD MEMBER PAPARIAN: I'm looking at Tab F. If
25 you go in a few pages, there's copies of the checks which

1 were supposedly to pay the invoices that came in April,
2 outside the grant term, but the checks are dated in March.
3 So is it that these checks were predated somehow or --
4 THE WITNESS: If you look at the bottom of the
5 check in the memo section it refers to some purchase
6 orders that were originally -- I believe they were
7 originally submitted to me in handwritten form, which were
8 later typed and presented to the Board, actually not to me
9 personally, but I think that was some of the information
10 that Ms. Gildart and Ms. Lindert received from Ms. Faust
11 when he came and visited our offices.
12 So in response to your question, I think the way
13 the process went was that there was a purchase order.
14 There was a check. And then there was an invoice
15 subsequent to that.
16 BOARD MEMBER PAPARIAN: There's no disagreement
17 that he spent the money in March. That he wrote the check
18 in March.
19 THE WITNESS: The check was written in March.
20 When the money was spent is in question, and once again in
21 talking with PRD, some of the equipment and materials that
22 this money was supposed to go to in March was never
23 purchased or was not at the facility in June. So it
24 called into question whether these checks were legitimate
25 which kind of precipitated the whole need for an audit.

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1 And I think Mr. Hebert can speak more to the actual trail
2 of things financially. I went on the information that I
3 had at the time. And that's -- once again, my result was
4 that I paid him $32,000.
5 CHAIRPERSON MOULTON-PATTERSON: Thank you.
6 BOARD MEMBER PAPARIAN: If you had the canceled
7 checks at the time, would you done things differently?
8 THE WITNESS: I can't say, because once again, in
9 checking with the company that was supposed to have the
10 equipment that was bought with these checks, it wasn't
11 there. So I don't think I would have done things
12 differently.
13 CHAIRPERSON MOULTON-PATTERSON: Thank you.
14 Ms. Breckon, would you like to move on?
15 Oh, Mr. Jones.
16 BOARD MEMBER JONES: Just a quick question and
17 I'm sorry to cut in. What I'm hearing you say is that
18 these handwritten invoices, supposedly for delivery of
19 parts or the delivery of services, those services didn't
20 exist and the parts will not been delivered.
21 THE WITNESS: As far as I could ascertain from
22 talking about PRD, the subcontractor, some of it did not.
23 Some of it did. I felt what I tried to do was pay based
24 on what I could gather from the information I had that I
25 felt they had done the work.

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1 BOARD MEMBER JONES: Okay. Do you guys have
2 the -- and I'm sure it's one of the reasons you did the
3 audit. Do you have the originals of these canceled checks
4 because all of my copies don't show when the checks got
5 processed? The problem is if you look at the check the
6 first one dated February 22nd, it didn't get processed by
7 until March 29th. That's a month and seven days. That's
8 a lot of money, $10,000 check to be sitting around and not
9 getting cleared. But all the other copies don't show --
10 there's nothing in there to say when the check actually
11 got processed by the bank. And I don't know if you got
12 photocopies from Mr. Faust or if you had the originals and
13 it may have been one of the reasons for the audit. But I
14 find it a little disturbing that it took 37 days to catch
15 a $10,000 check. Maybe it did. Maybe they got money
16 laying around. But you know, I can see where it would
17 lead to some problems.
18 THE WITNESS: And in the original submittal that
19 I received from Mr. Faust, the only -- the one check
20 showed up also. I mean, you know, the other three are not
21 legible.
22 BOARD MEMBER JONES: So it could be -- okay.
23 THE WITNESS: Which called into some question
24 what needs to be paid and further investigate with PRD as
25 to what they this done. And like I said, I was told there

1 some of the equipment -- some of the instrumentation
2 wasn't there. But they had in fact constructed some sheet
3 metal parts, a hopper system, a cooling system. They had
4 done some work, you know, in support of the project.
5 BOARD MEMBER JONES: And my last question, Madam
6 Chair. The grant was for an Ultrasonic devulcanization
7 system that would produce 400 tons per day or hour.
8 THE WITNESS: 400 pounds per hour. It was a
9 pilot scale system.
10 BOARD MEMBER JONES: Per hour. So it wasn't --
11 you know, the grant wasn't get a quarter of the way there,
12 get a third of the way there. It was to produce a bench
13 model that could do the whole thing.
14 THE WITNESS: Correct.
15 BOARD MEMBER JONES: So payment of any contract
16 is on the completion of what the achieved goal was. It
17 would be like if you buy a car, you buy a car that's going
18 to drive out of the show room. Not one that's got a frame
19 and a few parts attached.
20 THE WITNESS: Correct.
21 CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr.
22 Jones. Thank you, Mr. Gauff.
23 Ms. Breckon, would you call your next witness,
24 please.
25 MS. BRECKON: First I'd like to, I guess, dispute

1 the procedures that Michael Bledsoe issued yesterday. I
2 think it was yesterday. Where originally the procedures
3 that Mr. Faust and I agreed to, I wasn't really limited in
4 time that I could spend on witnesses. And I could
5 understand why Mr. Bledsoe would limit me the same amount
6 of time he limited Mr. Faust. But in preparing for this
7 case, I did not have a 30-minute yardstick in preparation.
8 So I still have to ask questions of the auditor. And I
9 was going to ask questions of Roger Ikemoto, who's the
10 section manager, I think, of the grants and audits
11 section. That would be a quick -- I assume Roger
12 Ikemoto's testimony would be very quick. Maybe five
13 minutes. But the auditor might take up to 20 minutes.
14 CHAIRPERSON MOULTON-PATTERSON: Okay.
15 MS. BRECKON: It's hard to judge.
16 MR. BLEDSOE: The Chair has the discretion to
17 increase the times for presentation. The point is get the
18 information that you have to present just as to get the
19 information that Mr. Faust has to present. So 30 minutes
20 can be extended by the Chair in her discretion.
21 CHAIRPERSON MOULTON-PATTERSON: Just try to be
22 concise, and I will give the same amount of time to
23 Mr. Faust.
24 MS. BRECKON: Okay. Thank you. Calling
25 Mr. Richard Hebert.

1 CHAIRPERSON MOULTON-PATTERSON: Hello,
2 Mr. Hebert.
3 (Thereupon Mr. Hebert was sworn in by the
4 Chair.)
5 MR. HEBERT: I do, to the best of my knowledge.
6 CHAIRPERSON MOULTON-PATTERSON: Thank you.
7 Please state your name for the record.
8 THE WITNESS: My name is Richard Hebert.
9 BY MS. BRECKON:
10 Q Mr. Hebert, what's your current job title?
11 A I'm a senior auditor with the Department of Finance,
12 Office of State Audits and evaluation.
13 Q And how long have you worked there?
14 A I've worked in audits since 1992. I worked for the
15 Department of Finance since 1984.
16 Q Okay. And what was your job previous to being an
17 auditor?
18 A I was a data processing manager.
19 Q Okay. And just briefly, your duties as an auditor
20 right now, senior auditor?
21 A Currently, I'm engaged in information technology
22 audits having to do with computer systems. And I'm doing
23 workload studies for the data centers on some technology
24 that's being used there.
25 Q Okay. And at the time of the audit were those your

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1 duties?
2 A No. I was the supervisor of the Waste Board grant
3 staff that the Department of Finance was contracted for to
4 perform audits for the Waste Board.
5 Q Okay. And what is your education briefly?
6 A I have a Bachelor of Arts degree from the University
7 of California Berkeley. I have all the requirements for a
8 Master's Degree in accounting except a thesis and I have a
9 law degree from McGeorge University.
10 Q Okay. Looking at Tab L of the binder in front of you
11 it's -- not in front of you.
12 A Yes.
13 Q When you get to Tab L, do you recognize that document?
14 A Yes, I do.
15 Q What is it?
16 A It's the Department of Finance audit report for the
17 Redwood Rubber tire brand.
18 Q And does this appear to be a true and accurate copy of
19 that report?
20 A Yes, it does.
21 Q Okay. So who performed this audit?
22 A The audit was performed by myself and an assistant, an
23 auditor trainee, but the majority of the work was done by
24 me.
25 Q Okay. And can you just briefly tell us how you

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1 performed the audit?
2 A Yeah. Briefly, we were asked to perform the audit by
3 the Waste Board. We had done other audits. This was
4 something that they'd asked us to especially do. We
5 prepared an engagement letter an audit engagement letter
6 in which we asked Mr. Faust to provide any sort of
7 documentation or substantiation of claimed invoices or
8 claimed expenditures. We then went down there to Hayward
9 to Pacific Roller Dye and he gave us a demonstration of
10 his system on a computer. It was like a Power Point
11 demonstration. And then he proceeded to give us a
12 demonstration of the actual machine itself in the shop.
13 Q And what was your experience with the demonstration of
14 the actual machine?
15 A The machine ran for a couple of minutes and it started
16 to burn rubber and smoke and apparently it was
17 overheating. And so after a couple of minutes Mr. Faust
18 shut the thing down, and that was the end of the
19 demonstration.
20 Q Okay. Focusing on the record review in finding number
21 two of the audit, I think it's page 3 of the audit, where
22 the numbering starts -- it's not the third page in, it's
23 the --
24 A Finding three?
25 Q I think finding two, is it called inaccurate record

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1 keeping.
2 A Okay.
3 Q So what was your conclusion as far as Redwood Rubber's
4 record keeping?
5 A Our conclusion was that the records were inadequate.
6 They didn't provide a -- basically what he had provided
7 was handwritten invoices that were then duplicated into
8 formal typed invoices that were signed by Greg Miller, who
9 was the son of the president of Pacific Roller Dye and
10 Greg Miller had been the one that had actually done the
11 work. And then there was -- there were progress reports,
12 which were rather vague, didn't really describe what had
13 been accomplished, so our first concern was that we needed
14 substantiation to determine whether the expenditures had
15 actually been made, because we were unable to determine
16 what he had spent the money on.
17 Q What was your opinion about Redwood Rubber's internal
18 control system?
19 A Mr. Faust's claim that he did no accounting, did no
20 record keeping of his own. He did not keep any of the
21 financial records, that the expenditures were kept by
22 Pacific Roller Dye. And therefore, you know, he had no
23 internal control over the records and Pacific Roller Dye
24 had all the records. And, of course, Pacific Roller Dye
25 wouldn't allow us to see the records.

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1 Q Okay. So what was your opinion on the audit trail on
2 this case?
3 A My opinion was that there was no audit trail. There
4 was nothing, no underlying detail to substantiate what he
5 had claimed under the invoices that he had presented.
6 Q Okay. And I believe in the audit you talk about a
7 turnkey system, or I'm not sure if that's in the audit.
8 But can you describe --
9 A Yeah.
10 Q What this is?
11 A He said -- he indicated that what he had bargained for
12 with Pacific Roller Dye was a turnkey system that he was
13 in charge of the idea, the conceptual idea of managing the
14 grant and the administrative details and that Pacific
15 Roller Dye was to produce a turnkey devulcanization system
16 and that how they did it and how they spent the money to
17 obtain it. He had no control over. He was bargaining for
18 an end product which was this devulcanization system.
19 That's what he described as a turnkey system.
20 Q But it was your understanding that PRD wouldn't
21 provide you with their records to -- for audit purposes?
22 A No. One of the first documents we got was letter from
23 Bob Miller saying that -- the president of PRD -- saying
24 he wasn't going to allow an audit. I made a formal
25 request of Greg Miller, you know, and told him basically

1 if we can't look at the detail or substantiate that you
2 made these expenses, we can't really recommend
3 reimbursement for the expenses. And they never did allow
4 us to look at the records.
5 Q Okay. So can you give us examples of what you mean by
6 the documentation you needed to substantiate the costs?
7 A Well, as we -- as I had understood what Pacific Roller
8 Dye had done was that he claimed -- Mr. Faust claimed that
9 Greg Miller and associates had spent a number of hours
10 assembling this machine at Pacific Roller Dye
11 headquarters, so there was some time that was allocated to
12 that, but there was -- for instance, there was no
13 timesheet. There was no recording of hours spent. There
14 was no timecards, anything like that to substantiate.
15 What we were given were those handwritten invoices
16 that one of the invoices indicated that there had been 400
17 hours expended and there was 250 hours that had been
18 crossed out and substituted with the 400 hours. There was
19 no underlying detail to be able to determine what who had
20 worked on it, how much they had been paid per hour, what
21 sort of overhead had been applied. You know, things you
22 would normally expect in an environment where there's a
23 regular transaction going on for a bargained exchange. We
24 couldn't determine that this was -- this was what had
25 actually been taking place. We observed -- I observed

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1 this system at PRD and it looked like they spent some
2 time doing it, but we couldn't tell how much time they had
3 done.
4 In addition, Mr. Faust indicated that there was
5 some software that he was developing and that there was
6 some computer hardware and software associated with that
7 was associated with some monitoring of the environmental
8 factors taking place within the transducer and he paid
9 this software firm. He had this software firm do this
10 work and he was going to reimburse them. But the way the
11 records were set up, there were three payments of there --
12 was a payment for 32,000.
13 Q Let's look at those. Is that part of your audit
14 report, the payment for 32,000?
15 A Yes.
16 Q Is there a page number on that or -- look at the final
17 payment request. Perhaps that would help you out.
18 A Where are you? Can you give me a -- where you're
19 talking?
20 Q That's at Tab F. The fifth page back from Tab F,
21 there's a purchase order for $32,000. Is that what you're
22 referring to?
23 A Yes.
24 There were three invoices -- March 15th for 32,000,
25 April 6th for 25,000, and April 16th for 19,500.

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1 Q Well, for purposes of today's appeal and because of
2 the time limit, let's just look at the $32,000 invoice,
3 because I'm going represent that is what was used to
4 question the 28,000 in costs.
5 A Okay.
6 Q What can you tell us about this invoice and the
7 supporting -- the documentation that Mr. Faust did submit?
8 A What he was actually able to substantiate was a $1,000
9 cost for transporting the extruder from the east coast to
10 the west coast and about $2,115 for expenses incurred to
11 bring a Russian scientist over to confer on the project.
12 And those were mainly hotel and meal expenses.
13 Everything else fell into this category of either
14 Pacific Roller Dye labor or possibly computer equipment.
15 Those sorts of things which couldn't be substantiated that
16 he actually purchased at that point. So the only thing we
17 could actually verify was the $3,115.
18 Q And looking at the confidential purchase orders
19 attached to these invoices, I think in Exhibit A-1 of
20 Mr. Faust's final payment request where it says at the
21 bottom "total budget 32,000." What about this invoice was
22 lacking so that you felt you needed more documentation?
23 A Can you tell me --
24 Q The third page from the back.
25 A From the back. The section F?

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1 Q Yes.
2 A Exhibit -- are you on Exhibit A-1?
3 Q Exhibit A-1 of Mr. Faust's final payment request.
4 A Yes. Well, you know, this is a list -- this is a
5 listing of the contents of the system. All right?
6 That's -- and it's a listing or description of electrical
7 system and some material that went into the system. What
8 we would be looking for is proof that he had actually
9 purchased the components or expended the labor that went
10 into this exhibit.
11 Q Okay.
12 A Merely stating that these things exist doesn't prove
13 he actually paid for him and when he paid for them and
14 whether he paid for them.
15 Q Looking at the same final payment request you'll see
16 towards the middle there's some canceled -- there's some
17 checks that appear to be canceled on the back -- made out
18 to PRD.
19 A Yes.
20 Q Do these checks substantiate that Mr. Faust actually
21 purchased this equipment or that the time and materials
22 claimed were substantiated by these checks?
23 A No. The best we could say was that PRD had cashed
24 these checks. I mean, he had given these checks and they
25 apparently had cleared and they went into PRD accounts.

1 But why they were there or what happened to the money
2 subsequent to that we couldn't determine, because we
3 couldn't determine them from the invoices themselves
4 because they didn't exist. And we couldn't get into the
5 records to, for instance, trace the bank statements or
6 verify that the money had been paid and those sorts of
7 things. So there was -- yes, the money. Had written
8 checks he had given to PRD. They had cashed them. But
9 that was all we knew.
10 Q Okay. So how much did you question as a result of not
11 seeing enough supporting documentation?
12 A We questioned the remaining $28,885.
13 Q Okay. And is that reflected in Attachment B of the
14 audit report, which is Tab L, I think?
15 A Yes.
16 Q Can you tell us where that is your Attachment B in the
17 audit report?
18 A Auditor question costs of 28,885. Auditor accepted
19 costs of $3,115 comprised of the $1,000 shipping and the
20 $2,100 in entertainment.
21 Q Is that page 7 of the audit report?
22 A Yes.
23 Q Okay. So can you tell us about the timing of the
24 grant activities in this case and how that related to the
25 payments in your opinion?

1 A Well, what we observed is that there had been about 20
2 months from the time that the grant had been awarded where
3 there was no activities taking place. There was no
4 reimbursement. He didn't seek reimbursement for many
5 expenditures other than the $3,100 during that period of
6 time. And then from the period of February 1st until
7 approximately March 29th or 30th there was this flurry of
8 activity where supposedly PRD staff had worked on this
9 thing and he had incurred all these expenditures. And so
10 from that standpoint it was -- it was questionable to us
11 whether this activity had really taken place, since there
12 was no records of it. He didn't substantiate it and so
13 that seemed peculiar to us.
14 Then there was the question of he had handwritten
15 invoices and he told me that he had -- him and Greg
16 Miller, he had helped Greg Miller prepare these
17 handwritten invoices and they were dated in March of 2000,
18 which would have been within the grant period.
19 Q 2001 you mean?
20 A 2001, yes. And that seemed to be us to be unusual,
21 too, because someone doesn't normally prepare invoices for
22 the person that's going to be charging them the money, you
23 know. But if we could have substantiated that we would
24 have accepted it. But we couldn't substantiate it so we
25 questioned those.

1 Q So is it true you basically couldn't tell what was
2 performed and what was not performed based on the
3 documents you had, the invoices and inspection that you
4 made?
5 A That's correct.
6 Q Okay. So I'm just making sure we reviewed -- have we
7 reviewed everything that you've looked at -- the documents
8 that were given to you to make the determination of
9 questioning the 28,000 in costs. We've reviewed the
10 invoices --
11 A Yes. I believe so.
12 Q So what is your opinion about the reliability of --
13 before I get to that. So do you believe that the checks
14 that were drafted were for an estimate of the services to
15 be performed in the future or do you have an opinion on
16 that?
17 A I believe that -- you know, since I didn't observe the
18 system and it was at PRD headquarters, Greg Miller and his
19 assistant had done some work on it. But we couldn't
20 tell -- there appeared to be in the case of the computer
21 hardware and the software and the software development we
22 couldn't tell if that had been done or not, if that had
23 been purchased or not. We couldn't tell if, for instance,
24 there were laptops that had been purchased and we couldn't
25 tell when they had been purchased or that sort of thing.

1 So, yes, there was a lot of questions about whether things
2 had actually been purchased or not, when they had been
3 purchased and how much they were worth.
4 Q Okay. For reimbursement grants such as this, is the
5 state supposed to reimburse when costs are not yet
6 incurred?
7 A No.
8 Q By the documents submitted can you tell if the costs
9 were incurred for grant-related expenses or could you
10 tell -- first of all, were they related for grant-related
11 expenses and can you also tell whether costs were actually
12 incurred at all?
13 A No.
14 Q No to both questions?
15 A No to both questions, yes.
16 Q What opportunities did you give Mr. Faust to submit
17 substantiating documentation?
18 A At the time that we went down to Hayward I was
19 expecting to go down there to inspect financial records
20 because that was pretty much our -- what we were involved
21 in. And what he gave me there were no substantiating
22 financial records. So I said, "Well, you know, you're
23 going to have to produce more substantiation to this."
24 So I arranged that he would -- first of all, I offered
25 to go down to Marin County where he was located and go

1 through his records. And that's when I discovered that he
2 didn't have any records there. And so he said, "No, I'll
3 come up here." And he was going to bring his records and
4 we were going to get this settled out. This was in
5 September of 2001.
6 Well, he didn't bring any records. And I said,
7 "Look," -- I said -- what he basically did was try to give
8 me a sales job on how good this was and how he was being
9 biased -- the Board was being biased and I was being
10 biased against him and he wasn't getting any justice. And
11 I said well, "Look." I said, "I don't even know you and
12 all I'm trying to do is evaluate these expenditures." He
13 was there for ten minutes and he just walked out. He said
14 I have nothing more to say to you and he walked out. And
15 he was mad. And a couple of weeks later we talked again
16 and I said, "Well, look," you know, "give me everything
17 you've got. If I can make a case for the expenditures,
18 I'll do it." And he came up again. And again, there was
19 no real -- nothing new that he, you know, had to say.
20 And so I figured at that point after giving him two
21 opportunities to present his case that he wasn't going to
22 do it, so that's when I decided to just close it out
23 before -- I was convinced he had no records.
24 Q So what risk -- what risk would we be taking without
25 supporting documents paying for this 28,000 in costs?

1 A Well, the state resources would be spent for non-grant
2 purposes, that it would be essentially a waste of public
3 resources and possibility of fraudulently obtaining state
4 moneys, and of purporting to accomplish something that, in
5 fact, couldn't be accomplished.
6 Q No further questions.
7 MR. FAUST: I'd like the last comment struck.
8 It's all speculative.
9 CHAIRPERSON MOULTON-PATTERSON: Just a minute.
10 Mr. Bledsoe.
11 MS. BRECKON: We were just -- the question was
12 about the risk involved and why payment shouldn't be made.
13 So I don't believe the risk is speculative.
14 MR. BLEDSOE: We're providing a lot of leeway,
15 Mr. Faust, to both sides here. Your witnesses are not
16 going to be present apparently. You're going to be
17 proceeding on declarations. Your comment is noted. You
18 know, it's simply the opinion of the state employee doing
19 his job. Whether it's accurate the Board will have to
20 judge for itself.
21 CHAIRPERSON MOULTON-PATTERSON: Thank you,
22 Mr. Hebert.
23 Did you have another witness that you wish to
24 call?
25 MS. BRECKON: Yes. If you have no questions of

1 the auditor.

2 BOARD MEMBER WASHINGTON: Yeah, I do.

3 CHAIRPERSON MOULTON-PATTERSON: Okay. Thank you.

4 Mr. Washington.

5 BOARD MEMBER WASHINGTON: Thank you, Madam Chair.

6 Just a few questions for the auditor. Sir, in terms -- I

7 want to go to one of your findings. Finding number 4 in

8 Tab L of the auditor's report. I want to talk briefly

9 about this matching fund. When you were asked to do this

10 audit, what did you know in terms of this matching funds

11 based on your findings as to showing this $130,000 that

12 Mr. Faust -- was he supposed to have or at some point

13 through the grant process or through this whole grant

14 should have this money in place. What was your knowledge

15 of knowing about this grant process?

16 THE WITNESS: My understanding was that he was to

17 have $130,000 in matched funds in some fashion. It could

18 be in the form of equipment. It could be in the form of

19 contributed labor. It would be in a multitude of forms.

20 But certainly it had to be a match. He was going to put

21 in a substantial amount of money, so that at risk -- he

22 would be at risk or he would have an investment in the

23 project.

24 BOARD MEMBER WASHINGTON: Did you get a copy of

25 the actual grant itself prior to starting your audit?

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1 THE WITNESS: Yes, I did.
2 BOARD MEMBER WASHINGTON: And in the grant is
3 there anywhere that shows that the staff recognized and
4 verified that he had $130,000 available?
5 THE WITNESS: No.
6 BOARD MEMBER WASHINGTON: So based on the
7 findings then, if there was no knowledge of him having
8 $130,000 available, how did you come up with the
9 recommendation if you didn't know if he had the money or
10 not?
11 THE WITNESS: Because he put forth his match was
12 the cost of the extruder. And first of all, the extruder
13 itself was eight or nine years old. It was an outmoded
14 piece of equipment and there was a big question about what
15 the market value of it actually was. We can't determine.
16 He claimed it was 110,000. And we couldn't determine
17 whether it was or not. It was a piece of equipment that
18 this company apparently didn't care about and it was
19 willing to give to him because it had no value. It was a
20 high-energy consumption piece of equipment and it was nine
21 years old and therefore didn't appear to us to be worth
22 much of anything. And second of all, it was not -- he --
23 that was not his money. He was not -- those were not
24 resources that he was putting up. He had just convinced
25 this company to part with this extruder and what he had

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1 into it was $1,000.
2 BOARD MEMBER WASHINGTON: So would it be
3 sufficient to say that Staff accepted those -- the
4 extruder and the other things you're talking about prior
5 to you going out? Is it then your understanding that
6 based on giving this grant to Mr. Faust and his company
7 that staff accepted the fact that these items were equal
8 to $110,000?
9 THE WITNESS: I couldn't say what they actually
10 thought at the time.
11 BOARD MEMBER WASHINGTON: I mean, based on doing
12 the audit you can come to some conclusion, because he was
13 given the grant. And I was just wondering -- the
14 auditor -- did you come to some conclusion that they must
15 have accepted the fact that these items that you went to
16 check out to see if they were worth 150,000 and staff had
17 accepted those items?
18 THE WITNESS: Yes. That would be a fair --
19 BOARD MEMBER WASHINGTON: Thank you very much.
20 CHAIRPERSON MOULTON-PATTERSON: Thank you.
21 Mr. Jones.
22 BOARD MEMBER JONES: Just a follow-up on
23 Mr. Washington's questions. As I understand it -- and I
24 think I understand it, Mr. Faust purported in his grant
25 request that he would provide $130,000 match and it would

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be in the form of this $110,000 extruder. Is that right? So you have a reliance -- the state, the Waste Board has a reliance that what Mr. Faust has said in his grant proposal would, in fact, be a piece of equipment that is worth $110,000. And when you as the auditor went out there, I guess, along with our staff, found out that in fact that extruder wasn't worth $130,000, it did not belong --

MR. FAUST: I object.

BOARD MEMBER JONES: I'm asking a question.

CHAIRPERSON MOULTON-PATTERSON: Excuse me. You're out of order.

BOARD MEMBER JONES: Thank you, Madam Chair. That you went out to check -- he didn't own it. It wasn't worth $130,000. So therefore, part of his -- part of the state's reliance on him being a participant in this grant was that he would provide this $130,000 and failed to do so? Is that what this is about, I mean, what that piece is about?

THE WITNESS: Yes.

BOARD MEMBER JONES: So that's in a better perspective for me. Staff relied on it, didn't see it and you confirmed it didn't meet that part of the match for the 130,000. Thanks. I think that's a follow-up to what you were saying.

1 BOARD MEMBER WASHINGTON: Just a follow-up
2 briefly, Ms. Chair.
3 CHAIRPERSON MOULTON-PATTERSON: Mr. Washington.
4 BOARD MEMBER WASHINGTON: I'm back to the fact
5 that staff -- on the reliance issued this grant and based
6 on his testimony. And it sounds like to me that Mr. Faust
7 is in a situation where, based on his testimony, staff
8 doesn't believe him now. So what -- we're in a situation
9 where we're trying to determine do we accept the fact that
10 he gave a reliance commitment and now we're saying that we
11 don't believe you any more, because you didn't meet this
12 reliance. Should the grant have been given based on
13 reliance and not having equipment? And that's what I'm
14 trying as one of the members here to determine.
15 CHAIRPERSON MOULTON-PATTERSON: Mr. Hebert, we're
16 going to be taking a lunch break. Can you be available?
17 THE WITNESS: Yeah.
18 CHAIRPERSON MOULTON-PATTERSON: At this time
19 Mr. Hebert has agreed to be available for any questions.
20 We will return at 1:30. Thank you.
21 (Thereupon a lunch recess was taken.)
22 CHAIRPERSON MOULTON-PATTERSON: I'd like to begin
23 our hearing again.
24 And for the record, Mr. Jones, any ex partes
25 after lunch?

1 BOARD MEMBER JONES: No, Madam Chair.
2 CHAIRPERSON MOULTON-PATTERSON: Ms. Peace?
3 BOARD MEMBER PEACE: No.
4 CHAIRPERSON MOULTON-PATTERSON: I have none.
5 Mr. Paparian?
6 BOARD MEMBER PAPARIAN: None.
7 CHAIRPERSON MOULTON-PATTERSON: You said you had
8 a very short witness or had you finished with Mr. Hebert.
9 MS. BRECKON: I just had a clarifying question
10 for Mr. Hebert. I just had a clarifying question for
11 Mr. Hebert and that is if there were no matching grant
12 issue in your audit report, how would that affect the
13 issue of the substantiation of documentation of the
14 $28,000 which is the subject of this appeal?
15 THE WITNESS: I would have no effect, because the
16 matching is a separate issue than the substantiation of
17 the funds. So it's irrelevant, but in fact he did not
18 meet the match requirement but that's a separate issue
19 from the $28,000.
20 Q Okay. So no further questions for Mr. Hebert.
21 CHAIRPERSON MOULTON-PATTERSON: Thank you.
22 Please call your next witness.
23 MS. BRECKON: Calling Roger Ikemoto.
24 (Thereupon Mr. Ikemoto was sworn in by the
25 Chair.)

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1 THE WITNESS: Yes. To the best my ability.
2 CHAIRPERSON MOULTON-PATTERSON: Thank you.
3 BY MS. BRECKON:
4 Q Good afternoon.
5 A Good afternoon.
6 Q Mr. Ikemoto, what's your current job title?
7 A I'm the supervisor over the grants and audits unit
8 here at the Board.
9 Q And how long have you held that position?
10 A A little over two years.
11 Q And what are your duties?
12 A Do the administration for all grant programs and do
13 the audit work for the Board and coordinate audits with
14 the Department of Finance.
15 Q Okay. So are you saying there's Board audits as well
16 as Department of Finance audits?
17 A Yes, there can be.
18 Q And what is your previous experience prior to this
19 job?
20 A Prior to this job I worked as an auditor for
21 approximately eight years. I've worked for -- in state
22 services for about 13 years. The last -- before this job
23 I worked eight years as an auditor at the Department of
24 Insurance and the Department of Conservation division over
25 cycling.

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1 Q And what is your education?
2 A I have a Bachelor of Science from the Sacramento State
3 University in business administration with a concentration
4 in finance and a minor in economics.
5 Q Okay. Do you recall the Redwood Rubber Department of
6 Finance audit?
7 A Yes.
8 Q Okay. How did Redwood Rubber initially come to your
9 attention?
10 A It was brought to the audits unit by program staff.
11 They were concerned about conducting an audit and we said
12 that we could do one.
13 Q Okay. So you suggested the internal audit?
14 A Yes. Yes. We said -- they asked if -- program staff
15 asked if we would be able to do an internal audit within
16 the Board and we said yes, we could do that.
17 Q And did you propose that to Mr. Faust or did staff in
18 general propose that idea to Mr. Faust?
19 A Um, we contacted Mr. Faust saying that we can do the
20 audit, what Board staff -- he was a little bit reluctant
21 to do that and asked that we consider a third party to do
22 the audit. And we chose the Department of Finance.
23 Q So did Mr. Faust agree that was an independent third
24 party then?
25 A Yes. He said that would be fine.

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1 Q Okay. So what was -- skip that. Going to Tab J, do
2 you have a binder there?
3 A Yes.
4 Q Okay. Can you tell us what -- if you recognize that
5 first document?
6 A Yes, I do.
7 Q What is it?
8 A This is the letter sent to Mr. Faust from Martha
9 Gildart explaining that we would go ahead and conduct an
10 audit of his grant.
11 Q Okay. And what about the next document dated July 13,
12 2001. Do you recognize that document?
13 A Yes. This one, I think it was Tom's response back
14 saying that he was okay with the audit and that -- but he
15 didn't want to pay for the audit, that he thought the
16 Board should pay for it.
17 Q And the July 25th, 2001, letter. Do you recognize
18 that?
19 A Yes.
20 Q And what is this?
21 A This is a letter that we agreed to do the audit and
22 also we agreed to, I think, pick up the costs for the
23 audit, the Board to pick up the costs for the audit.
24 Q And this last document in Section J, Tab J, do you
25 know what this document is? It says "documents needed" on

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it.
A Yes.
Q What is that?
A This is a document that is usually sent out by the Department of Finance to anybody that's -- we do a grant audit of. It's a list of things that we may need to look at. It's not an all-inclusive list, but it kind of lists out what the grantee should have on hand before the audit starts, the field work of the audit. I'm sorry.
Q Okay. Going to after the audit report, what communication did staff have with Mr. Faust regarding the audit?
A After conducting the audit we sent him invoices saying how much he owed. And this was after Mr. Faust had met with DOF and knew the dollar amount of the audit, we went ahead and billed our invoice.
Q Can you go to Tab M?
A Yes.
Q Looking at this document dated February 27th 2002, can you tell us what this is?
A Yes. This is, I believe this is the first -- I think this might be the first time that we contacted Mr. Faust about owing the money, the actual invoice.
Q Okay. And that's -- the original was signed by you?
A Yes.

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1 Q It looks to be a true and accurate copy?
2 A Yes.
3 Q And the second document dated March 21 of 2002, can
4 you tell us what that is?
5 A This is the second or the final notice, since we
6 didn't get any response from Mr. Faust -- or we never
7 received payment for our initial letter, we went ahead and
8 followed it up with a second letter asking for payment.
9 Q Okay. Going to Tab N, this letter dated April 17th,
10 2002, can you tell us what this document is?
11 A Yes. This is a letter after Mr. Faust met with Mark
12 Leary and Martha Gildart and at that meeting Mark had
13 asked for some additional information. At that time or
14 later, pursuant to this letter --
15 Q If I could just ask a quick question in between. So
16 this letter -- it basically -- did it basically let
17 Mr. Faust know that the eligibility determination of
18 the -- audit staff was going to uphold that unless new
19 documentation was submitted substantiating the cost?
20 A Yes.
21 Q Okay. Okay. Subsequent to this letter was more
22 documentation submitted by Mr. Faust?
23 A Yes. More documentation was submitted.
24 Unfortunately, it wasn't new information. It just was
25 some information that we haven't seen in the past. We had

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1 branch manager, my manager, Susan Johns, and she works in
2 the financial and administration branch. She reviewed the
3 documentation, and I agreed with her that there was no new
4 additional information. And there was no way that we can
5 authorize not collecting on that invoice.
6 Q Okay. So looking at Tab O, it's a letter from Redwood
7 Rubber dated April 23rd, 2002. Was this the information
8 that was alleged to be the new information submitted by
9 Mr. Faust?
10 A I think so. This along with -- he gave a whole bunch
11 of pictures and other material. But we looked at
12 everything.
13 Q Okay. Looking at Tab P, can you tell us what the
14 October 9, 2002, letter is?
15 A Yeah. This is a letter to Tom saying that after
16 reviewing all the documentation that we still felt we
17 should collect on the 28,885.
18 Q So what does the third and final request mean? I'm
19 looking in the second paragraph, last sentence.
20 A Usually we give people three notices to collect a
21 payment of what they owe.
22 Q Before taking further collection?
23 A Yeah. Then we'll take the next further collection
24 action, exactly what I'm not quite sure.
25 Q Okay. Going to -- a question arose --

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1 CHAIRPERSON MOULTON-PATTERSON: Ms. Breckon,
2 you've had an additional 25 minutes. Will you be
3 finishing soon?
4 MS. BRECKON: Yes, I will.
5 Q I just wanted to ask -- are grant applications signed
6 under penalty of perjury?
7 A Yes.
8 Q Okay. No further questions.
9 A If I could -- there were some questions that were
10 brought up by various Board members. I think I can shed a
11 little more light on it. There was a question about have
12 we extended grant agreements and we have in the past. But
13 for this particular grant the --
14 MR. BLEDSOE: Excuse me, Mr. Ikemoto.
15 Do you have any objections to this unsolicited
16 testimony?
17 MR. FAUST: I do. They've -- it's gone on and
18 on.
19 MR. BLEDSOE: Let's -- thanks very much for that
20 information, anyway. If there's additional questions to
21 be answered the parties or the Board --
22 THE WITNESS: All right.
23 CHAIRPERSON MOULTON-PATTERSON: Thank you.
24 BOARD MEMBER PAPARIAN: Madam Chair, I actually
25 wanted to ask him a question or two if that's all right.

1 CHAIRPERSON MOULTON-PATTERSON: Mr. Bledsoe.
2 MR. BLEDSOE: Mr. Paparian, you may certainly ask
3 questions. The focus of the hearing is on this grant
4 agreement, the contract, and whether or not Redwood Rubber
5 is required to repay $28,885.
6 MR. APPEARING: I'd like to -- there's a time
7 period I want to try to understand. On June 4th, 2001,
8 Mr. Gauff agreed to pay the $32,000. And then a month
9 later we decided in writing to do an audit. It almost
10 seems to me that was a switch. At one point the program
11 staff agrees to pay $32,000. And then somehow after that
12 in a few weeks after that we decide to do an audit.
13 THE WITNESS: What had happened is Mr. Faust
14 submitted the payment request for 44,500, and staff was
15 concerned about that. So we offered -- the Board offered
16 to go ahead and audit and say whether we should pay that
17 payment request or not.
18 Mr. Faust put -- argued that we would be biased
19 and asked that we had a third party -- independent party.
20 We offered to use the Department of Finance and he said
21 that would be fine.
22 The Department of Finance went in and said if
23 they're going to do an audit -- since this is a closed
24 audit they look at the whole audit, not just a portion of
25 it. We said that's appropriate so we wouldn't have to go

1 look at 44,000 and maybe later on do a complete audit of
2 the entire grant. So they were going to be more efficient
3 by doing one audit rather than going out and doing two.
4 BOARD MEMBER PAPARIAN: The program staff
5 initially came to you and said we need to audit the 44,000
6 that was denied. But subsequently the Department of
7 Finance said if they're going to do an audit, they're
8 going to audit everything. And so not only was the 44,000
9 denied, then they found an additional 28 something.
10 THE WITNESS: Yes. The reason being is when we
11 approve it, we just look at invoice and some supporting
12 documentation. But during the course of an audit you go
13 ahead and look at all the details behind all the invoices.
14 DOF did that and we tried the Board along with the
15 Department of Finance several times to get the
16 subcontractor, Pacific Roller Dye, to open up their
17 records to help Mr. Faust to support some of the
18 questionable costs. Every time we asked both the
19 Department of Finance and the Board, the answer was no,
20 that they weren't going to -- now, that was kind of
21 interesting.
22 During the Department of Finance audit, the
23 actual field work was done at Pacific Roller Dye. So it
24 was just a matter of walking from where the machinery was
25 into their office to look at that supporting

1 documentation. And all they would have to do is just open
2 up their files and we would have been able to look at it.
3 Now, we weren't able to.
4 And one of the things, like I was going to add --
5 Board Member Jones asked about why, you know, about the
6 check following. That's what we probably would have done
7 because of the relationship between Pacific Roller Dye and
8 Redwood Rubber at the time. The prudent thing to do
9 during the course of the audit was to track all the money
10 and where it went to. When we got the photocopies of the
11 checks, yeah, we can see that the front end there was an
12 issue, a check issued, but we don't know if it was
13 deposited, where was deposited, if there was any checks
14 that were possibly mailed back or what's going on. So
15 that would have been one of the things we'd have looked
16 at. We would have tracked all the dollars of the grant,
17 either if the Board did the audit or Department of Finance
18 did the audit.
19 BOARD MEMBER PAPARIAN: You already started
20 answering this question, but what -- as I understood what
21 you were saying a few minutes ago, there have been other
22 situations where somebody has spent money after the grant
23 term where we've allowed those expenses to be recovered.
24 THE WITNESS: That would be only if the grantee
25 requests a time extension to a grant and if the money is

1 available. In this particular case there was no request
2 made by the grantee. And even if we would have been able
3 to extend the grant, the grant could have only been
4 extended for two months. And apparently from the things
5 that I saw and heard, there was a lot of work that was
6 done after even June 30.
7 CHAIRPERSON MOULTON-PATTERSON: Mr. Jones has a
8 question.
9 BOARD MEMBER JONES: Madam Chair, thank you.
10 Just a follow-up to Mr. Paparian. So as I understand your
11 testimony in answering Mr. Paparian's question, it was
12 the -- because of this timeline it was actually the
13 details of the invoices that initiated part of the reason
14 for the audit. I mean we -- staff paid in good faith and
15 then as they followed up on it -- is that what was one of
16 the triggers?
17 THE WITNESS: Yeah. Staff paid in good faith
18 based on what they thought were good invoices. When we
19 looked, the Department of Finance looked at the details
20 behind the invoices, the details weren't there to support
21 the payment.
22 BOARD MEMBER JONES: So my question is, program
23 staff did that, had a problem verifying the support of
24 that invoice that they had already paid, asked you to do
25 an internal audit, and Mr. Faust had a problem with that

1 and then you did the DOF audit, which he was okay with.
2 That's just a follow-up. I wanted to get that straight.
3 CHAIRPERSON MOULTON-PATTERSON: Thank you,
4 Mr. Jones.
5 Thank you, Mr. Ikemoto.
6 At this time, we will turn it over to Mr. Faust.
7 And you will have the same amount of time that's needed
8 and you would have a chance to call witnesses or call
9 these witnesses.
10 MS. BRECKON: Before Mr. Faust goes forward, can
11 I move my documents into evidence, at least the documents
12 Tab D through P.
13 MR. BLEDSOE: Done.
14 (Thereupon, the above-referenced document was
15 marked by the reporter as Board's
16 Exhibit Q for identification and were admitted
17 into evidence.)
18 CHAIRPERSON MOULTON-PATTERSON: Thank you. Okay,
19 Mr. Faust. Your oral presentation.
20 MR. FAUST: Well, my recommendation is that the
21 Staff --
22 MR. BLEDSOE: Mr. Faust, we're not quite hearing
23 you. Is your microphone on? You can slide around so --
24 MR. FAUST: My recommendation is that the staff
25 accept option three. That option is to reject Executive

1 Director's decision as based on misleading and inaccurate
2 facts. As the state has built their case, they've picked
3 and choosed whether the facts that support their
4 conclusion.
5 Instead, I'm urging the Board to pay the full
6 $80,000 grant, less the 32,000 already disbursed, based on
7 full evidence that the Executive Director's disallowance
8 of 28,000 is incorrect.
9 In spring 1999 Redwood applied for two recycling
10 grants. Redwood applied for two grants. Because monetary
11 limitation of each grant of only 80,000 maximum made it
12 physically impossible to accomplish under a single grant.
13 The 1999 grant cycle had no restrictions as to the number
14 of grants a party could apply for.
15 Redwood formed two commercial partnerships for
16 the purposes of this project. One partnership was with
17 Lockheed Martin Corporation. Lockheed Martin manufactures
18 military-grade ultrasonic transducers and electronics that
19 are used for submarine sonar systems. Lockheed was to
20 supply a transducer and ultrasonic generators for the
21 ultrasonic devulcanization system.
22 The second partnership that Redwood formed was
23 with Bandag. Bandag is the world's largest recycler of
24 truck tires. And Bandag pledged to supply a
25 three-and-a-half inch coal feet extruder that would supply

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1 400 pounds an hour. Each grant proposal was separate and
2 not dependent upon the other. Unfortunately, the
3 California Integrated Waste Board only awarded Redwood
4 Rubber one grant for the tire rubber processing system
5 which would attach to an extruder. The rubber processing
6 was to be designed so it could facilitate attachment of an
7 ultrasonic system.
8 And here is the Grant Application that was
9 submitted for the work. I direct you to --
10 CHAIRPERSON MOULTON-PATTERSON: In order for the
11 court reporter to hear you, you must speak into the mic.
12 Sorry.
13 MR. FAUST: I direct you to -- I have a list of
14 exhibits here. And I direct you to Exhibit 1. And if you
15 look at Exhibit 1, you'll see the work statement on here.
16 It's on -- it says 19 on the bottom of that page, I
17 believe. It has grant $80,000 and the budget. And
18 time -- Redwood and Bandag at asset in Alameda. Does
19 everybody see that what I'm looking at? That's this item
20 right here. If you look at -- now we'll flip over to
21 Exhibit 2, which is the Lockheed Martin. I just pulled
22 out the three pages that are relevant to the thing. And
23 you see and the Lockheed Martin, which is in Exhibit 2,
24 page 9, you'll see all the electronics that were supposed
25 to be -- that were supposed to be attached to the thing.

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1 You know, this is normally done in other -- for
2 example, Department of Energy Commission, if you apply for
3 a pure grant, you can apply for as many grants as you want
4 and they'll accept whatever ones they want and they only
5 fund those ones they want. In this particular case, they
6 wanted only the rubber processing system and not the
7 other.
8 So in order to clarify the issue on Exhibit 3
9 before the grants were in the formative stage, I had
10 written letters to Chairman Dan Eaton here and asked them
11 to extend the grant deadline on February 11th, 1999. I
12 said this -- "The 80,000 grant limit is unrealistic. It
13 will not bring any meaningful research. Upwards of
14 $600,000 is required to accomplish change."
15 I put the Board on notice that they needed a much
16 more substantial grant to accomplish change. This 80,000
17 is -- with new technology wasn't going to do anything.
18 Again, on Exhibit 3B, turn the page, please, another
19 letter to Dan Eaton, Chairman. Future R&D funding
20 requirements. Where I said, "Thank you, thank you, Board,
21 for awarding us an 80,000 market development grant. As
22 you can see by the attached pro forma budget analysis,
23 80,000 is only the tip of solving the thing." And I said,
24 "Hopefully the state will award us in the last thing at
25 least a million and thank you for the consideration."

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1 Now, I want to point out this is a sheet that I
2 was hailed to Sacramento by my grant manager, Nate Gauff,
3 and it was some -- middle summer, and I was told to come
4 to Sacramento, that they had something for me to sign. So
5 I came to Sacramento and I was given a single piece of
6 paper to sign. I signed this one single piece of paper.
7 It -- attached is my signature. You'll note that the
8 grant had already started 15 days earlier and expired on
9 April 30th.
10 CHAIRPERSON MOULTON-PATTERSON: Please stay on
11 the mic. It's impossible to get it.
12 MR. FAUST: Okay. So I -- so I said, "Where are
13 the rest of the pages of the grant?" They said, "Well
14 program staff -- the attorneys still haven't created the
15 rest of the terms of the grant. When they finish the rest
16 of the terms of the grant, they'll be mailed to you."
17 So what I was asked to sign is a single page. I
18 had no idea what the terms or the writing or anything that
19 would be attached to it. Would any of you sign a
20 mortgage? I was told either take it, Tom, or you don't
21 get anything. It was on a take it or leave it basis that
22 I took this grant. Obviously, the State of California is
23 a lot more powerful than myself. No bargaining power.
24 And so I took this one piece of paper, signed it, and a
25 month later the rest of the terms of the grant arrived.

1 And that was a surprise, because on the first
2 page of the thing, Exhibit B --
3 MS. BRECKON: Before we go to B, I have to object
4 to the evidence offered on Exhibit 1, because it doesn't
5 appear to match up with -- it doesn't appear to be the
6 true and complete copy of that application.
7 MR. BLEDSOE: Well, let me ask a couple of
8 questions. In your Exhibit 1, Mr. Faust, is that one of
9 the charts that you're showing on the -- or is that the
10 cover page -- okay. Thanks. Let me just find that in the
11 record.
12 MR. FAUST: I would ask that she hold her
13 objections until I finish. I let her put on her whole
14 case. If she's going needle me, show me some courtesy so
15 I can put on my case first.
16 MR. BLEDSOE: I just haven't been able to find it
17 yet.
18 CHAIRPERSON MOULTON-PATTERSON: Where is it in
19 the exhibits?
20 BOARD MEMBER JONES: Tab 1.
21 MR. FAUST: Tab 1 is on the book I gave you is
22 the Bandag Redwood Rubber work statement.
23 MR. BLEDSOE: Do you have, by chance, another
24 copy of your package of materials, because we're not
25 finding that page in this copy here?

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1 MR. FAUST: Yes, I do.
2 MR. BLEDSOE: Thank you.
3 MR. FAUST: It may very well be that whoever
4 assembled them left them out.
5 CHAIRPERSON MOULTON-PATTERSON: Ms. Waddell can
6 bring it up.
7 MR. BLEDSOE: Thank you.
8 MR. FAUST: It's here.
9 MR. BLEDSOE: Thanks a lot.
10 MS. BRECKON: I believe the copy of the work
11 statement that Mr. Faust is putting into evidence is a
12 draft and was not the final application by virtue of the
13 number 19 that's handwritten at the bottom. I actually
14 have a copy of, I think, a later version of this where the
15 number 19 is typed and there's a different task
16 descriptions.
17 MR. BLEDSOE: So when you have a second,
18 Mr. Faust, let me understand what you're testifying to.
19 You're claiming that at your Exhibit 1 the third sheet in
20 there which is labeled number 19 in handwriting on the
21 bottom of the page, what is that document? I mean, it's
22 obviously, Ms. Breckon, not a complete copy of the grant
23 agreement. I'm showing this as excerpts of something.
24 I'd like to know what they're excerpts of.
25 MS. BRECKON: I think it's a draft.

1 MR. FAUST: I have no --

2 MR. BLEDSOE: I mean, it's sufficient for you to

3 tell us what you believe it is.

4 MR. FAUST: Well, you know, I'd like to go with

5 my exhibit, please.

6 CHAIRPERSON MOULTON-PATTERSON: Okay.

7 MR. FAUST: There appears to be a slight

8 difference.

9 CHAIRPERSON MOULTON-PATTERSON: While you're

10 looking, Mr. Jones -- just a moment, Mr. Paparian.

11 Mr. Jones.

12 BOARD MEMBER JONES: Mr. Bledsoe, I understand --

13 I just want to get clarification on what you said. He can

14 present it and say, you know, I think it's part of this.

15 If the other counsel says, you know, we don't think it is,

16 that's where it ends -- I mean, not ends, but then he can

17 keep going that. Is what you're saying?

18 MR. BLEDSOE: Yes.

19 BOARD MEMBER JONES: I just want to get that

20 straight. Thanks.

21 CHAIRPERSON MOULTON-PATTERSON: Mr. Paparian.

22 BOARD MEMBER PAPARIAN: It appears Mr. Faust may

23 be looking at the actual full application. Maybe, I don't

24 know, someone can help by making copies of that available.

25 You know, it seems like we're getting hung up on what this

1 thing is.

2 CHAIRPERSON MOULTON-PATTERSON: Can you continue

3 your presentation?

4 BOARD MEMBER PAPARIAN: Or if staff has a full

5 copy of it and compare them. I don't know.

6 MR. FAUST: So to continue -- so continue, the

7 only Grant Application that was actually accepted was with

8 the Bandag partnership. The Lockheed Martin one was not

9 accepted.

10 I wrote a letter and I met with Nate Gauff. I

11 was told by Nate Gauff that I could either take it or walk

12 away, that there was going to be no bargaining. At the

13 beginning of the contract I was having problems with my

14 partner Bandag. Bandag had promised me a three-and-a-half

15 inch extruder, but reneged on the promise and only wanted

16 to supply a larger one that was four and a half larger

17 size extruder, because I know that there would be

18 additional problems of getting additional ultrasonics rays

19 to coordinate with it.

20 I -- I changed partners. And the new partner was

21 Technor Apex. I notified Nate Gauff by phone and I also

22 sent a letter. And I also included it in my first

23 month -- quarterly report that was due in September. The

24 state accepted Technor Apex, which is another tire

25 manufacturer 100, percent and they reimbursed me for the

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1 partnership that Technor Apex and I formed.
2 As a result of the partnership, Technor Apex is
3 being given information. We supplied the equipment and
4 they're entitled to information on development of
5 ultrasonic devulcanization. So it's a two-way street.
6 On the second and third quarterly reports, I
7 reported that there was a physical crisis in the
8 environmental capital markets, as the dot com markets were
9 collapsing. And that is reported in my second and third
10 quarter reports. And I was unable to substantially make
11 any progress with the project on the second and third
12 quarter. Finally, on the start of the fourth quarter, I
13 located National Science Foundation CRDF and I was told
14 that the application would be favorably treated, because I
15 had put together a good team.
16 So I was told -- I was told that I would receive
17 imminent approval for a 362,000 grant versus the $80,000
18 grant I had from the state. Only because of the approval
19 from the CRDF grant did I decide to proceed and not
20 abandon it. And in February I signed a contract -- I
21 mean, what I did is I gave two purchase orders to the
22 people at PRD. And on the basis of negotiations, I gave
23 them a purchase order. And that purchase order is what
24 governed our relationship. On page 4 -- I mean Exhibit 4
25 in my book you'll see I gave them two purchase orders.

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1 One was for the rubber system and one is for attaching the
2 electronics measurement system to the rubber flow system.
3 One purchase order is for $32,000. Exhibit 5 is for
4 44,000.
5 MS. BRECKON: Objection in regards to Exhibit 5.
6 It's irrelevant to the appeal at hand.
7 MR. FAUST: I'm giving -- I'm carrying out my
8 case.
9 MR. BLEDSOE: Counsel, we're going to give
10 Mr. Faust a lot of leeway to get the information that he
11 feels is appropriate in. So objection is overruled.
12 MR. FAUST: So Part B consisted of the
13 computerized monitoring system and under the terms of the
14 contract I reported to my manager in March that I had
15 subcontracted the rubber processing system to PRD.
16 Redwood heard no objection from the state. The state had
17 30 days to object. They never objected to my transfer of
18 the subcontract to PRD, either verbally or written or in
19 any other way.
20 And early May I had seen sufficient progress from
21 PRD, I think the first week, and they had already had
22 installed a 400-pound-an-hour crumb rubber hopper delivery
23 system and had furnished myself with a new computer to
24 start working on it. And they had purchased another
25 computer to be programmed, and they had installed the

1 first sensors in the extruder under -- that's on the
2 second purchase order. And my situation and relationship
3 with PRD, I was an invited guest and they had a closed
4 shop. I had -- so I was there as a guest on their
5 premises.
6 In June 2001 the grant manager had only
7 authorized payment of $32,000 and said that Redwood would
8 only be reimbursed if they submitted to an audit. Redwood
9 agreed to -- submitted to a DOF audit on August 2nd. On
10 August 2nd Redwood supplied all original checks paid PRD
11 to DOF. And those are in as Exhibit 6 in the book.
12 The checks were dated on the day they were given
13 to PRD. What PRD does with them is not my business. But
14 they were given to PRD within the terms of the grant. The
15 checks match the purchase orders and fully paid for the
16 purchase orders. The reason they were -- I had to pre-pay
17 is under -- I knew the grant was ending and so I had to
18 take a lot of chance with -- that PRD would perform.
19 PRD contract controlled the situation as Redwood
20 had prepaid for the work to be done. The checks were all
21 timely paid to PRD within the scope of the contract.
22 Redwood, however, stated -- PRD, however, stated their
23 attorneys refused to let DOF audit their books, saying PRD
24 was not a signatory to the state contract and therefore
25 the state's contract with Redwood was not binding on them.

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1 The principal of PRD is Mr. Miller, Bob Miller,
2 and he's in his mid 70s or 80s and he has run his business
3 his whole life and he's just -- said, "No one has ever
4 audited my company's books and I'm not going to break my
5 rules now." So he was adamant of non-cooperation.
6 On the day of the audit, August 2nd, to test the
7 400-pound-per-hour system an exothermic reaction happened
8 prior to the people arriving from -- Nate Gauff and
9 Mr. Hebert. They tested the extruder system and -- to see
10 that everything was operating fine. And they had
11 operated, I don't know how many minutes, but they had
12 filled up all the channels with rubber, and they had
13 processed rubber. And then they showed up and it was run
14 an hour in time before, you know, we went out and actually
15 started the tests. And the ensuing hour the rubber had
16 totally set up. And this is what happens. This is the
17 rubber that is -- there's free sulfur radicals in here and
18 the free sulfur radicals, they link with -- so you have --
19 so it's almost like a vulcanization press within the
20 extruder. So when we wanted the extruder for the test
21 within about four minutes or three minutes, you know,
22 pressure kept on building, building, building up. And
23 what happened is all of a sudden it built up so high that
24 it could only go one place. And it just was probably, you
25 know, 4-or 5,000 pounds pressure and it blew -- it all

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1 blew -- all the rubber out of the end of extruder and it
2 started an exothermic reaction and filled the warehouse
3 with smoke.
4 And so everyone left for lunch with the
5 smoldering rubber there, and then after lunch we came back
6 and nobody had done anything. It was the employee's day
7 off there for the test. And so everyone had left the
8 rubber smoldering. So all the rooms that we were meeting
9 in were filled with rancid smoke. So they went back to
10 Sacramento and everything concluded.
11 But anyway, it wasn't -- the system was -- would
12 have proved that it was 400 pounds an hour, but we
13 concluded the day with not having it tested before anyone,
14 so --
15 So next exhibits are three photos. Exhibit 7 --
16 Exhibit 7 is the way the equipment looked on the day that
17 the audit was actually happened. And this was taken about
18 an hour before the auditors arrived. So you see the
19 hopper, the motors, the controllers in the back is a
20 cooling system for the rubber as it comes out of the
21 extruder.
22 You flip the page and you will see that there's
23 one of their PRD workers there and you see an extension is
24 built on the rubber and on the die head of the extruder.
25 And there's some electrical sensing devices there that

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1 were designed to measure temperature and pressure. And
2 they were to be used for part two of -- they were
3 purchased by PRD for use and the second phase of the
4 contract.
5 Those photos demonstrate full compliance with the
6 terms and conditions of the contract. However, as
7 Mr. Hebert and Mr. Nate Gauff have alleged, they still
8 didn't get to test it.
9 Well, I'm not -- as I said, I was a guest on the
10 PRD premises. I tried to argue them into cooperating with
11 the audit and I was unsuccessful. I was finally ended up
12 firing PRD after I was unable to reach any compromise. So
13 my subcontractor was fired by myself. When I fired them,
14 then they became more impossible to work with and they
15 banned me from the premises and blocked me from access.
16 So anyway -- so here we had a situation that was
17 a force majeure situation. I was blocked. They wouldn't
18 cooperation. There was nothing I could do. They wouldn't
19 release the information. I thought they had done it.
20 They had purchased -- I saw elements -- they had furnished
21 me with the computer, then software. They had done a lot
22 other purchases. So it seemed to me that they were -- at
23 the time I submitted the invoices to be reimbursed I had
24 in good faith -- I thought they were doing everything that
25 they were supposed to be doing. I had no reason to doubt

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1 otherwise.
2 9/11 happened and my relations even got worse
3 with PRD. Finally on January 2002, I negotiated a release
4 of the extruder and PRD released some of the manufacturing
5 parts but withheld others. And the reason they withheld
6 parts is they said that they had purchased parts for me
7 under part two of the agreement and they said that because
8 I was canceling the contract that, you know -- anyway,
9 they were just -- they had said I had cost overruns and
10 other things that they were now trying to nail me on. So
11 after I had the extruder in my possession, I sued PRD in
12 January for -- as a setoff trying to liquidate and solve
13 the situation. I sued them for monetary damages.
14 In March 25th there was a trial in Alameda County
15 Court, and the judge ruled in PRD's favor and established
16 that PRD had completed the contract, and not only had they
17 completed the contract, but they didn't have to. They
18 didn't sign the contract with the state and they weren't
19 obligated to -- to appease the state.
20 MS. BRECKON: I'm going to object to this line of
21 testimony is irrelevant to the issue at hand.
22 MR. FAUST: It is relevant.
23 CHAIRPERSON MOULTON-PATTERSON: Thank you.
24 Continue.
25 MR. FAUST: Redwood appealed this decision. I

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1 met with Director Leary and -- in his office in April. I
2 believe in the mid-April and I said, "I have had an
3 unfortunate situation with my subcontractor, that the
4 judge has ruled against us that they don't have to supply
5 their books and their evidence because they didn't sign
6 the state's contract." So I said, "Look, I'm going to
7 appeal this and you're welcome to attend if you want to
8 come."
9 On January 21, a second de novo trial was held in
10 Alameda County, where all the prior trial evidence was
11 introduced. I introduced obviously, of course,
12 Mr. Hebert's state audit report as my primary evidence
13 saying I had been damaged by $28,000 the state wanted back
14 because they wouldn't open up their books. So that audit
15 report was -- the judge had it on their desk. That was my
16 primary evidence. I said -- here is supposedly an
17 independent third party. I had an attorney and he has a
18 declaration I'll read later on. Again, the Court, after
19 deliberating on it for a week or so, sent a ruling saying
20 that -- which manifest itself at the state's contract did
21 not bind PRD.
22 So I would like to read in for the record what my
23 trial attorney who witnessed -- who was there as a witness
24 to the trial, and it was over an hour's trial. His name
25 is Exhibit 8A, declaration of David R. Shane.

1 MR. BLEDSOE: Excuse me, Mr. Faust. Since we
2 have the entire transcript from declaration in the record,
3 do you mind just hitting -- tell us what the highlights
4 are, just giving us the key parts you wanted to point out
5 to us.
6 MR. FAUST: Okay.
7 MS. BRECKON: I'd like a standing objection this
8 is irrelevant. And I understand that you're giving the
9 witness -- or Mr. Faust latitude, but I feel that I must
10 for the record register objections.
11 MR. BLEDSOE: Noted.
12 MR. FAUST: Okay. I may --
13 CHAIRPERSON MOULTON-PATTERSON: Mr. Faust, are
14 you intending to call any witnesses?
15 MR. FAUST: I didn't bring any witnesses. All I
16 can do is by declarations. And so they have all their
17 litany of witnesses. All I have is --
18 CHAIRPERSON MOULTON-PATTERSON: I said I would
19 give you equal time and I will. But I just wanted to make
20 sure that you weren't planning on after this calling
21 witnesses, because you will run out of time.
22 MR. FAUST: No, I don't.
23 CHAIRPERSON MOULTON-PATTERSON: Thank you.
24 MR. FAUST: The state audit reported that the
25 subcontractor refused to have its books audited. Redwood

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1 Rubber was liable for penalty of $28,000. PRD argued that
2 it had not signed a state contract and was not liable.
3 The Court heard all the testimony and ruled on June 24th
4 that PRD the completed the contract for Redwood Rubber and
5 owed no funds to Redwood Rubber. Instead, Redwood Rubber
6 owed $5,000 in damages. Here's a situation that makes a
7 person sick where you have the state demanding that I meet
8 these terms. They're onerous. You have courts ruling
9 that they've completed the contract, don't have to comply,
10 and I'm stuck in the middle.
11 Mr. Shane went on -- anyway copies of both
12 Alameda County support matched as Exhibit A and B attached
13 to his declaration. Mr. Shane went on the -- he says,
14 "I represent a large number of large
15 companies which include Federal Express, Blue
16 Shield, commercial unions, et cetera. These are
17 all my published opinions. I consider myself an
18 expert in contract litigation. It is my expert
19 testimony that Redwood Rubber's contract with the
20 state in bargaining was effected. It was given
21 on a take it or leave it basis. Mr. Faust had no
22 bargaining power and the state had total control.
23 "As I understand the facts, Mr. Faust it was
24 given a sheet to sign. He was told that to enter
25 that -- to enter into a contract with the State

1 of California he had to sign the document. He
2 was told he was not allowed to negotiate or
3 change any of the contract terms. He had no
4 power to negotiate any of the terms. There is a
5 great disparity in bargaining power. If
6 Mr. Faust wanted to get the bid, he had to accept
7 the contract because he needed the funds to
8 operation."
9 And the State's contract is attached. We are
10 claiming -- as you will see we will be claiming force
11 majeure under this contract with the State and other -- on
12 other defenses.
13 Now, I continued to hear I had -- now I had the
14 state that wouldn't pay me for the rest of the items. I
15 had my CRDF grant in place, and now I owed another $5,000
16 to Pacific Roller Dye. So Pacific Roller Dye agreed to
17 settle the thing if I wouldn't take it on appeal and again
18 on appeal. So we settled on appeal. We settled the case
19 and I agreed not to say them any more because I was
20 getting no place.
21 Now under my contract --
22 MR. BLEDSOE: Mr. Faust, excuse me, please.
23 We're trying to focus on your contract with the Waste
24 Board in the form of the grant agreement. Let's talk
25 about that, not your contract with PRD.

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1 MR. FAUST: I'm focusing right now on my contract
2 with the State.
3 CHAIRPERSON MOULTON-PATTERSON: Mr. Jones, did
4 you have a question?
5 BOARD MEMBER JONES: I have a -- I didn't want to
6 lose it because it's something you had said. You made a
7 comment that during the trial and all this with PRD that
8 you had -- the state's onerous conditions on the contract
9 is what I heard. And I don't want to lose this until the
10 end of your testimony. Was it -- what part was onerous,
11 the substantiation of the invoices?
12 MR. FAUST: That my subcontractor -- that my
13 subcontractor has to -- I can't be responsible for what my
14 subcontractor can do or not do. In good faith I signed a
15 contract with them in hope that they would do exactly as I
16 wanted them. I have every intent to do everything -- I
17 cannot -- this is out of my control.
18 BOARD MEMBER JONES: That's the part that's
19 onerous. I just want to get it.
20 MR. FAUST: There is a clause in the contract.
21 It says force majeure, clause 8. And it has to do with
22 contingencies unforeseen by the grantee beyond the
23 reasonable control of the party.
24 CHAIRPERSON MOULTON-PATTERSON: Please speak into
25 the mic. We have that right in front of us.

1 MR. FAUST: Okay. So anyway, I settled the thing
2 with them. I also met previously with Directory Leary and
3 I directed you to page 5 on Exhibit 10 in my booklet that
4 I submitted. As PRD was testing the various crumb rubbers
5 on the through -- put through the hopper, we had detected
6 all kinds of heating problems and cooling --
7 MS. BRECKON: Excuse me, I need to object because
8 I don't understand where this is from. It says April 1st,
9 2001, amended. Does this mean this was written? What
10 does that mean? Where did you get this from?
11 MR. FAUST: I had submitted it into the State.
12 This is part -- this was part of your records.
13 MS. BRECKON: As part of what? After the audit
14 or before the audit or --
15 MR. BLEDSOE: Excuse me, parties. I'm not clear
16 which document you're talking about either.
17 MR. FAUST: If we could move to my Exhibit 10 --
18 my Exhibit 10, and this supplemental report, I believe,
19 was given to Director Leary along with all the photos
20 attached.
21 MR. BLEDSOE: We are on Exhibit 10.
22 MR. FAUST: It says supplement on it. It says
23 Exhibit 10. We are looking at the same thing, it's in
24 this block Exhibit 10.
25 CHAIRPERSON MOULTON-PATTERSON: Yes. I'm --

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1 MR. FAUST: It says amended October 4th, 2001.
2 So we turned in the final report, then we amended it, and
3 we turned it in. Okay. So if we go to page 5 of this,
4 you see results from the test at PRD. And I'm working on
5 the second paragraph on the top of page 5. Results from
6 the test at PRD demonstrated that California-produced
7 crumb rubber may not be perfectly suited for this project.
8 That's ultrasonic devulcanization, an infrared
9 temperatures monitored test the BAS cryogenic 40 mesh
10 crumb rubber exited the temperatures at temperatures of
11 290 degrees.
12 Well, this is a very critical element because you
13 start experiencing thermal degradation at around 310. So
14 inasmuch as we were -- we were sonicating, that puts more
15 energy into the crumb rubber and raises it up around 80.
16 So essentially what we're saying is that the cryogenic
17 rubber, maybe it had additional nitrogen in it, but it
18 was -- I thought it would be a good candidate, but it's
19 not a good candidate for use in scaling up.
20 And then we also tried several other batches and
21 they were all giving me problems with the temperature. So
22 we tried a new batch that we imported from out of state
23 and it was manufactured by the this jet method.
24 CHAIRPERSON MOULTON-PATTERSON: Excuse me.
25 MR. BLEDSOE: I'm sorry, Mr. Faust. How does

1 this relate to whether or not --

2 MR. FAUST: This related to my contract clause 5,

3 failure to perform.

4 MR. BLEDSOE: Well, is the contract in evidence

5 here -- where is it? Can we turn to that --

6 MR. FAUST: The state contract is in evidence

7 under Dave Shane's declaration, Exhibit 8B. In your

8 little booklet you have Exhibit 8 --

9 MR. BLEDSOE: Correct.

10 MR. FAUST: And it says Plaintiff's Exhibit A,

11 this was the actual document that was used in the Alameda

12 County courts to argue the actual situation that PRD was

13 negligent.

14 MR. BLEDSOE: Could we take one second and ask

15 Ms. Breckon if -- does this look to you like the same

16 grant agreement you have in your exhibit? The reason I'm

17 asking is you have as one of plaintiff's or the Board's

18 exhibits a copy of the complete grant agreement, do you

19 not?

20 MS. BRECKON: Yes, I do.

21 MR. BLEDSOE: So if we have a question, we could

22 use that copy.

23 MS. BRECKON: Yes, we do.

24 MR. FAUST: I have no problems with the Board's

25 copy. They're identical. The Board's copy and this copy

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are the same.

Under clause 5, failure to perform as required by this agreement. It says, "The Board will benefit from the grantee's full compliance with the terms of this agreement only by the grantees a.) investigation and application of technologies, processes and devices which support reduction, reuse and recycling of waste; b.) cleanup of environment; c.) enforcement of solid waste statutes and regulations as applicable. Therefore, if the grantee fails to perform as required by this agreement the Board shall consider reimbursing the grantee for work performed under the grant which result in a.) information process usable data or partial product which can be used to aid in reduction, reuse and recycling of waste."

Okay. Now let's go back to my Exhibit 10 in my letter. The State of California funded this jet technology study, and I believe it was 1994, 1995 and they left that and nothing ever happened from that. It went into your archives. Well, the reason that particular technology works out really well is because it allows for the actual recycling by ultrasonic process. It allows for a 50, 60 degree lower processing temperature, which means that you have an avenue of window that you're able to ultrasonically devulcanize rubber without chemicals or anything. So it gives you a safety margin that heretofore

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1 you didn't have a safety margin. Are you -- okay.
2 So that is -- that is very, very important
3 information. And they learned that problem -- Dr. Isaiah
4 had all kinds of problems when they did the grant for the
5 Army tank tests and they used a different ultrasonic
6 reactor. They had overheating. They had significant
7 amount of -- okay. What I'm saying is the results of
8 their prior experience are probably negative. Ours has
9 been positive, because we persevered and found a solution
10 that would make the process succeed.
11 CHAIRPERSON MOULTON-PATTERSON: Mr. Faust, I'm
12 going to give you about five minutes to summarize and then
13 we're going to -- if it's okay with Mr. Bledsoe, we had a
14 time certain at 1:30, and we're going to have to maybe
15 take a break from this and do that. Is that --
16 MR. BLEDSOE: Yeah.
17 CHAIRPERSON MOULTON-PATTERSON: Are we able to do
18 that? These people have traveled a long ways and it's
19 from -- it was at 1:30. So we really stretched. Could
20 you please summarize in five minutes and then we'll take a
21 break, hear them, and come back to you.
22 MR. BLEDSOE: You would want to -- when he's
23 completed, you want to continue this hearing to a time
24 certain later today?
25 CHAIRPERSON MOULTON-PATTERSON: Either later

today or -- yes.

MR. FAUST: Do you want to continue to another date?

CHAIRPERSON MOULTON-PATTERSON: No. thank you.

MR. FAUST: Just wanted to know.

CHAIRPERSON MOULTON-PATTERSON: If you could just kind of summarize in the next few minutes, then we'll give the court reporter a quick break and then we'll go to our 1:30 time certain. I apologize, Mr. Faust, but everything is running over the time that had really been allotted both sides.

MR. FAUST: Well, under clause 5 of the state, if in the development of your project you learn additional things, this is a consideration factor for payment. In this particular case we learned that.

Redwood fully completed this contract and now requests a full reimbursement. On a scale of one to ten this grant was a ten in difficulty. Redwood was operating at a fraction of the $600,000 budget required. Both state grants are required to pay for tire recycling machinery or they pay for shredder or a new conveyer belt system or payments to pour binders into molds they can mix with crumb rubber. Redwood had to develop new and proven engineering to totally succeed on this grant project. Redwood currently has pending a request to scale up from

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1 the 400-pound-an-hour unit a scale to 4,000 pounds an hour
2 and is asking three point two million. The larger unit
3 will create up to 1,000 manufacturing jobs and will not
4 create any subsidy.
5 Now I'd like to direct you to Exhibit 10. I see
6 your problem on this. Some of these books were -- the
7 people at Kinko's didn't have the pages out of order. So
8 Exhibit 11 shows a manufacturing devulcanized rubber unit.
9 That's this one right here. Does everybody see this one?
10 So through my other grant -- this is the first time
11 anybody has ever seen this -- but this shows it actually
12 working. And if you'll take your CD -- I gave you a CD
13 that has quick time. You can put it in your computer and
14 you can actually see the -- right. You can see it pulsing
15 out.
16 I then ask you to -- and then we go over to
17 Exhibit 12 and it's called the world's first pilot scale
18 ultrasonic plant for sustainable tire recycling, and the
19 United States government agreed that this thing was -- had
20 technology better than anybody else and gave us a patent
21 and -- so we have developed superior technology. Here is
22 the scientists that I worked with on developing it.
23 Here's what the machine looks like. Here is the
24 equipment. It was paid for by the National Science
25 Foundation.

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1 CHAIRPERSON MOULTON-PATTERSON: You've got one
2 minute to summarize.
3 MS. BRECKON: I have objection to the CD Redwood
4 Rubber. I haven't seen this before, and he hasn't laid a
5 foundation or authenticated it.
6 MR. FAUST: You can have a look at it during
7 break.
8 I have assembled a few other exhibits here --
9 could I finish now or later?
10 CHAIRPERSON MOULTON-PATTERSON: I think you
11 better finish later if it's more than one minute.
12 MR. FAUST: I'll finish later. And that will be
13 about five, I mean really try and summarize in the time.
14 Thank you.
15 BOARD MEMBER PAPARIAN: Madam Chair?
16 CHAIRPERSON MOULTON-PATTERSON: Yes,
17 Mr. Paparian.
18 BOARD MEMBER PAPARIAN: I wonder if a couple of
19 documents that might be helpful. There was some
20 disagreement over what was the actual Grant Application.
21 If someone can produce the full Grant Application, that
22 might be helpful. And I don't know if it's proper for me
23 to ask for it, but I'll just go ahead and ask. And if
24 it's not, you can let me know.
25 At some point the Board voted on -- there was an

1 agenda item where the Board voted on granting of this,
2 probably along with other grants. I wouldn't mind seeing
3 the agenda item to see if there's anything in there that's
4 of value that might elucidate what's going on here. So if
5 those could be produced over the break, I'd appreciate it.
6 CHAIRPERSON MOULTON-PATTERSON: Thank you,
7 Mr. Paparian.
8 We will reconvene this hearing at approximately
9 4:00. And we'll now take a ten-minute break for the court
10 reporter and then we'll hear item, I believe it's 25,
11 Fresno, the Crippen site.
12 (Thereupon a recess was taken.)
13 CHAIRPERSON MOULTON-PATTERSON: I'd like -- we
14 appreciate everybody's patient. We've had a different
15 day, but we're going to make it.
16 Anyway, ex partes, Mr. Jones?
17 BOARD MEMBER JONES: No, Ma'am. Up to date.
18 CHAIRPERSON MOULTON-PATTERSON: Ms. Peace?
19 BOARD MEMBER PEACE: I want to waive to
20 Mr. Layman.
21 CHAIRPERSON MOULTON-PATTERSON: Okay. I have
22 none. I said hello to Mr. Layman.
23 Mr. Paparian?
24 BOARD MEMBER PAPARIAN: Yeah. Rick Layman
25 regarding the Crippen item and then also John Cupps and

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Mike Hoover regarding the Chicago grade item.

CHAIRPERSON MOULTON-PATTERSON: Mr. Washington.

BOARD MEMBER WASHINGTON: I also say hello to Rich Layman.

CHAIRPERSON MOULTON-PATTERSON: Thank you.

So now we're going into Item Number 25, consideration of approval of the Archie Crippen Excavation Illegal Disposal Site for the Solid Waste Disposal and Codisposal Site Program and Emergency Augmentation for the Environmental Services Contract for Landfill and Disposal Site Remediation.

Mr. Walker.

(Thereupon an overhead presentation was presented as follows.)

MR. WALKER: Thank you. Scott Walker, Permitting and Enforcement Division. I'll make this as brief as possible. This item considers options to complete the cleanup of residual debris piles at the Crippen site pursuant to the Solid Waste Cleanup Program.

Very brief recap. The Crippen site, City of Fresno, is an extremely large unregulated waste pile consisting of primarily construction and demolition wood debris. It caught fire in earlier January of this year. The fire resulted in a major public health crisis due to the smoke. Initial emergency response effort was

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coordinated by the Office of Emergency Services. That was completed after the fire was put out and the site was stabilized. However, a local declaration of emergency still remains in effect due to the potential for fire from the residual debris. Very complicated fire. The Board was directly involved with our contractors. We spent approximately $681,000 on that effort out of a total of about 2.8 million reported.

Additional costs reported were EPA at $1.5 million and for fire suppression and the City of Fresno at $600,000. The cost recovery action against the property owner is ongoing and any additional expenditures of the Board as a result of this item will be added onto the pursuit of cost recovery.

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MR. WALKER: Current site conditions. Site remains as it was stabilized. There's three separate debris piles separated by access roads. There's approximately 74,000 cubic yards mainly unburned and partially burned wood, ash, soil, metal, also significant moisture in some places added during the initial fire. This site is being monitored very frequently the LEA, the local enforcement agency, who has been inspecting and monitoring very shallow temperature probes to see how the pile is reacting. The temperatures in the shallow have

1 increased into the composting range and the 120 to 130
2 degree range. Not at a point of being imminent ignition
3 or spontaneous combustion concern, but we continue to
4 look, especially if it gets up near 160 degrees. One
5 thing to point out is the consensus of environmental
6 agencies is that residual debris pile will remain a
7 significant risk for a catastrophic fire until such time
8 it is removed and properly disposed.
9 Because of the remaining risk posed by this site,
10 the County of Fresno LEA has requested the consideration
11 of the Board managed cleanup of the residual debris.
12 --o0o--
13 MR. WALKER: Staff has worked quite extensively
14 with our contractor and other agencies to determine
15 cleanup options and price quotes. Just a brief run
16 through some of key assumptions, basically the conversion
17 of the factor would be about 75,000 tons. It's
18 nonhazardous waste. We characterized it with our other
19 contractor and agencies reviewed that and concurred. The
20 Regional Board requires management of this material
21 composite line landfill, and the other thing is for the
22 assumptions here. We've -- to minimize cost we assume no
23 additional emergency fire suppression assistance would be
24 required from the Board's contractors.
25 I do want to note that it is possible that a

surface fire could reignite as the pile is excavated and exposed to oxygen. We spent quite a bit of time on a alternative daily cover option, but because of the uncertainty of the material the landfill operator conditions on the use and the high processing costs, this option we feel is really not favorable.

--o0o--

MR. WALKER: We also, since the Board is required to consider maximizing the use of funds pursuant to this program, we may request for contributions from participating agencies to a final cleanup project. Responses are as follows: The City of Fresno committed to in kind services. We estimated the value at $64,000. This is -- they laid this out in the June 12th letter from the City Manager which we circulate to the Board offices. Additional, they feel the contribution of their support for the tipping fee waiver for ADC and then also they noted that they budged additional $354,000 fiscal year 04 for a City Code enforcement strike force against non-compliant waste recyclers.

Indirectly related, they're refocusing efforts on preventing potential new Crippens from popping up.

The County of Fresno as landfill -- excuse me -- sorry -- as landfill operator approved the ADC tipping fee waiver of which the City is a 65 percent of the JPA.

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In addition the LEA has provided extensive in-kind services that basically coordinating in the field on site, the added monitoring and coordination with all the public health agencies.

In the final commitment USEPA has indicated $3,000 indicated commitment, depending on funds available at the time of cleanup begins. That's what they've indicated to us.

--o0o--

MR. WALKER: The options that we put together for the Board, option one is to approve a Board-managed complete site remediation with the current contributions for the most cost effective remediation alternative. The most cost effective and straightforward alternative is removal and transport for disposal at a private composite lined disposal facility. We prefer not to name due to our contractors' bidding process. This project would also be the most timely. It would take approximately one month to complete.

The recommended emergency augmentation for this project of the Guinn contract for this option is $2,641,000. This estimate does not include additional contingency fund, emergency fire suppression should a major subsurface fire reignite. The Board may decide to increase the augmentation to provide this added

contingency. We can certainly provide you feedback and suggest ideas on the cost estimates.

--o0o--

MR. WALKER: Option 2 is to approve a Board-managed complete remediation under Option 1 for a not to exceed amounts of Board funding as determined by the Board and direct Staff to negotiate within a specified time frame additional contribution required to complete the project from participating agencies. Basically, this is if the Board decides they want to make one last pitch, it's a tremendous impact to us for additional contributions. This will give the opportunity. We did suggest a 45-day time frame but the Board may consider shortening that in order get the project started and completed in a more timely manner.

The recommended emergency augmentation for this option would be based on the not to exceed amount of Board-managed funding as determined by the Board.

--o0o--

MR. WALKER: I'm not going to talk about the -- if Board desires to talk about other options, we did have four other options. But these options would not result in a timely remediation and are not recommended for further consideration.

CHAIRPERSON MOULTON-PATTERSON: That's fine.

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--o0o--

MR. WALKER: In conclusion, staff recommend the Board approve the following: Option 1, if the Board accepts the current level of contributions or option two if the Board specifies an additional required level of contribution. Resolution 316 approves the option and 2003-378 approves the emergency augmentation and again the Board may decide, may also decide to modify these Resolutions to include a contingency for additional fire suppression, emergency fire suppression. If Option 2 is favored, the Board may decide to modify the resolution to shorten the time frame for agencies to report back.

This concludes staff's presentation. We'd be happy to answer any questions. In addition, the Fresno County LEA is also here to answer questions.

CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr. Walker. We do have speakers and I'd like to go to them, unless there's any urgent questions from the Board.

Mayor Alan Autry, City of Fresno. Thank you for being here. I'm sorry that you had to wait. It was unavoidable.

MAYOR AUTRY: That's okay. Do I go right here?

CHAIRPERSON MOULTON-PATTERSON: Yeah.

MAYOR AUTRY: Thank you very much for allowing me this time to speak. I'm here to, first of all, thank the

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1 State for the quick swift response. It was a very
2 traumatic thing for our community to have something like
3 this thing happen in our most challenged area, southwest
4 Fresno. Something we had never seen before. We had never
5 had a fire like that before. I want to commend our Chief
6 Aranaz here who was rather new on the job, came right in,
7 pardon the pun, right into the fire. But no pun intended,
8 really. But I want to thank the State of California in
9 all respects, because it was a great team effort between
10 the city, county, the state and the federal government I
11 think it's a textbook in how people have to work together
12 in a crisis situation.
13 The second -- the other reason I'm here is -- and
14 I had to stand up a meeting with the Fresno Bee on their
15 excellence of business awards and if you're a politician
16 that's not a very bright move -- don't stand up a
17 newspaper if there's only one in the town, but that's how
18 important this issue is.
19 I really want to strongly encourage the Board for
20 option -- the first option. Although the numbers that we
21 are talking about in the whole scheme of things may not
22 seem a lot in certain context, to us they're just awesome.
23 In between two vibrant economic states in this state
24 called Northern and Southern California sits the San
25 Joaquin Valley and a city of our size around the country

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last 20 years would have more resources. But we have not. We have 17 percent unemployment. We have a myriad of problems that we face in education because of a single sector economy agriculture. We're working like the dickens to get diversity in that economy. We're having some success with it. It's going to take some time. But the numbers we're talking any more significant additional funds from the city would hurt us very very badly. And quickly I know the numbers have already been mentioned here, but I would like quickly to go over what we've already done and I will be very brief on it.

We've already put up 600,000 of overtime, fire department and such accrued. We have instituted to make sure this does not happen again, accept the accountability on that with a $354,000 investment and a strike team to make sure there are not any more Crippen fires. We will give you our word on that. We are going to be proactive and do everything we can within our jurisdiction and want to work with you to find other ways to make sure that we have the proper regulation, so this does not only happen in Fresno or any other community. And we are investing in that. I hope that you will take that into consideration.

Also the 1.8 million in waivers from the county we think is very significant. And also the taxes that are collected almost tipping fees. I'm not here to say, "Hey,

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that's our tax money, give it all back." I'm not going to play that card, but we do feel we've invested in some type of insurance in this regard if we met the qualifications. And this being a spontaneous combustion fire. It wasn't something that was predictable. We feel that should be considered.

And we also know that there is a precedent, although it was funded from another fund that at the Tracy fire and the Wesley fire there was significant help in those two fires as we feel there should have been and we supported that. And again, although we know it's from a different fund, it was a policy decision, that we hope that you will continue here to help this community that's trying desperately and committed to helping itself. But I can't stress -- everybody's having budget problems up and down the state. But we are really looking under the cushions for every penny and dime to keep the essential services to the people of Fresno and keep our education to our children going forward with some City initiatives.

So again I would like to encourage you to adopt Option 1 with the assurance that we're going to be an active partner and make sure that nothing like this happens again in the City of Fresno. Thank you.

CHAIRPERSON MOULTON-PATTERSON: Thank you. Thank you very much for being here.

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Mr. Jones has a question.

BOARD MEMBER JONES: Yeah, Mr. Mayor.

MAYOR AUTRY: Yes, sir.

BOARD MEMBER JONES: Just a couple of things. The City is committing a truck and a driver for the duration of the transfer. And I'm hoping -- because I don't agree with our staff on 45 days. I think we're looking at 14 days to get answers from everybody to see what -- finalize this thing. I mean, if the other Board members would go for that -- but having the truck available is one thing. Having the truck committed that it's going to be running with an operator and moving is critical, because that's the less dollars we have to spend in the management of having to hire another truck. So when you go back to your City Council, we really need a commitment that this suppression as well as that truck and trailer have an operator that are ready to kick it and go. Because it doesn't do us any good to have them sitting on the site. Whoever's driving those things have got to be able to operate during the duration of, you know, whatever rules and regulations you've got on your labor contracts. But, I mean, they've got to be able to move.

MAYOR AUTRY: You've got my word.

BOARD MEMBER JONES: Because that would be critical, I think. And I think that the trailers and the

generators and the laborers. When it says labor to volunteer Saturday overtime laborers -- is that two volunteers on Saturday or --

MAYOR AUTRY: Joel. You have fire chief Joel Aranaz.

MR. ARANAZ: That will come from Solid Waste Division, I believe, they will supply two laborers -- when they say "volunteer," it's not like a mandatory overtime -- they will be out there being paid overtime.

BOARD MEMBER JONES: Okay. They'll be there when they need them and all that.

MR. ARANAZ: Correct.

BOARD MEMBER JONES: Thanks, Madam Chair.

CHAIRPERSON MOULTON-PATTERSON: Thank you. Thank you.

MAYOR AUTRY: Thank you.

CHAIRPERSON MOULTON-PATTERSON: Now we have Charles Doerksen, counsel for Crippen.

MR. DOERKSEN: Thank you very much. My name is Charles Doerksen. I represent Archie Crippen. He is, as you may know, a gentleman of 80 years old. He's been in the recycling business in Fresno for quite some number of years. Just to preface my comments, I don't think there's any question on behalf of any of the various governmental agencies involved that from the get go Mr. Crippen has

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been cooperative and has tried to help and has been willing to help in both the fire suppression and remediation efforts in anyway he could.

That said, I want to make three brief comments. First of all, the staff report indicates and has been articulated just moments ago that any moneys that the Board advances -- recovery action will be sought against Mr. Crippen, of course, is a current recovery action pending. Mr. Crippen, therefore, obviously has an interest just the 2.6 million we're talking about is many times the net worth of Mr. Crippen or the property, not to mention the 600,000 the City wants, the 800,000 the County or Air Pollution wants, the three quarters of a million the State wants, and the million and a half that the EPA wants. So what Mr. Crippen is obviously looking for is remediation effort that doesn't bankrupt him ten times over.

And Mr. Crippen is willing -- has previously expressed his willingness to participate, whether it as providing labor, whether it's providing equipment. He obviously has a slew of trucks of loader and excavators. That's why I suggest that either Option 2 would be preferable and allow us to participate in providing in offer of help perhaps in return for some kind of a waiver or reduction in the recovery action sought.

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1 Secondly, the proposed action is based, I
2 presume -- I guess I presumed that from reading the
3 report -- it seems to be a little bit more obvious here in
4 staff's comments, but I presume it's based upon a
5 presumption that there is an immediate threat to public
6 health or safety or the environment. And the threat that
7 I presume is being put forward is a reigniting of the
8 debris file through spontaneous combustion. I didn't see
9 anything about that in the staff report. I saw an
10 indication about temperature reading being taken with no
11 indication whatsoever that there was, in fact, a threat of
12 reignition.
13 I hear here for the first time there is some kind
14 of a consensus that the temperatures are approaching
15 compost temperatures, and I guess there's, therefore,
16 consensus that a new fire is about to erupt. And I don't
17 think that the signs support that, so I really question
18 the premise. I don't disagree that something perhaps
19 needs to be done. But I think rushing in, spending 2.6
20 million without seeing how Mr. Crippen can help and then
21 coming back and suing my client for the 2.6 million in
22 addition to three-quarters of a million is perhaps a bit
23 rash. I heard an indication there was some kind of a
24 timeline for the remediation that needs to be met. I
25 haven't seen a timeline. I don't know what the rush is.

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And thirdly, and lastly, Mr. Crippen has been given a fair amount of bad press. I think to put it mildly, there have been a lot of things stated about the fact that the wood pile shouldn't have been there, that it was mismanaged. If, for example, a violation of conditional use permits -- if any of those things are of interest or of concern to the Board, I would welcome any questions and would appreciate the opportunity to address those concerns. If that's not a concern to the action being taken today, I'll save those comments for another time.

But that said, my preference would be Option 5, that the Board step back, reevaluate this, or alternatively Option 2, that there be a not-to-exceed cap put on this and allow us to participate and perhaps make some proposals as to how we can help.

CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr. Doerksen.

Mr. Jones?

BOARD MEMBER JONES: Thank you, Madam Chair. I appreciate it.

I'm not going to argue the sciences, but I'm the garbage man on this Board. When we talked about this pile and we talked about the heap and we talked about remediation, the very first thing that I asked staff is

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1 what are you going to do when you get air into that -- by
2 separating that pile, it will ignite. In all
3 likelihood -- I'm not saying it will positively. But in
4 all likelihood, the risk is real real high that those
5 temperatures are at a point that when oxygen gets into it,
6 we may have a problem. And that's -- that is
7 undisputable. And I'm not saying it will happen. But
8 we'd be idiots not to keep that as the very foremost piece
9 to these deliberations today, because the threat to the
10 people of not only Fresno, but the rest of the State of
11 California are there. And the longer that pile stays with
12 the heat -- there's moisture in that pile and that
13 moisture in that pile that resides and as that heat builds
14 up, there will be a tendency for that to ignite. It mean,
15 it's a system that has happened since people have made
16 wood piles.
17 So I don't want to debate it with you. But I
18 will tell you that it is of major concern to this Board.
19 And that would be the health and safety. And that's
20 probably the biggest reason why we've got to deal with
21 this thing right now.
22 MR. DOERKSEN: And I appreciate your comments and
23 I'm not going to argue the science either. My only
24 comment would be that based on what I've seen in the
25 report, I don't see that necessarily the fast track that

1 seems to be -- the necessity for the fast track -- this
2 thing to be taken care of in 30 days, I'm not necessarily
3 saying it shouldn't be taken care of it. I'm not saying
4 it's not a concern. I don't see it being something that's
5 going to happen in the next 30 to 60 days such that we
6 can't step back and see how Mr. Crippen can help -- the
7 Mayor of the City of Fresno is proposing to help -- that's
8 really all I'm saying. Thank you.
9 CHAIRPERSON MOULTON-PATTERSON: Okay. Thank you.
10 Board members? Did Staff have any --
11 MR. WALKER: No.
12 CHAIRPERSON MOULTON-PATTERSON: Mr. Jones?
13 BOARD MEMBER JONES: Madam Chair, this is a huge
14 concern. And I appreciate the City of Fresno. I
15 appreciate Mr. Casagrande from Fresno County has been
16 under a lot of heat through this thing. I think he did a
17 good job through this thing. I actually -- I think I met
18 the fire chief a couple of days after the fire started
19 when I was down there. I know a couple of us went down at
20 different times. It was truly a tragedy.
21 I'm not real happy that we've got to kick in more
22 state money to clean this up. But I think there is a
23 necessity, and I think the public health and safety is at
24 risk and I think it is incumbent on this Board. I do
25 think, though, that the health and safety issues dealing

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with the fire, potential for another fire, are an overriding concern of me and I think of other Board members. So I would like to see the 45 days, Scott, cut down to 14. I think the Fresno City Council meets in about a week or so. So maybe they can deliberate between now and those 14 days. I'm hoping that fits in your time frame. I think 45 days just takes that way too far for people to be thinking about what they want to do. And I think we've got to get some answers.

I would propose Option 2, we've got a revised Resolution that not only talks about the history of the fire and the fact that there's 74,000 cubic yards of residual waste, but it resolves that the Board would approve a Board-managed remediation project in the amount not to exceed 1,641,000. Further resolves that we ask the Executive Director or his designee within those 14 days to negotiate with and solicit written comments from local government and participating agencies for funding or in kind services in an amount sufficient to fully fund the remediation.

But then it also puts a million dollars -- we're going to make an emergency augmentation to the Guinn contract in the amount of $2,641,000. $1 million of that will be held back to help local -- to help in the event that a fire does happen because of that excavation it will

be there to assist the locals in the firefighting effort, meaning Guinn can do what they did when they put out the fire the first time. That million will be in reserve until we get to a position where it's determined that risk may not exist. That may be all the way to -- that may be a long way. We can't commit the whole 2,64- to cleaning up the pile, but we'll do a million six four and to a million to help in fire. If that million isn't spent on fire suppression, it can go to remediation under the Guinn contract.

But don't misunderstand that as saying that people are off the hook. We need people to help contribute. In that fire comes up and we have to help attack it, we're not going to have enough money to clean the thing up. So be clear that this is a message that we need you to continue to figure out what you can do to help as well as other agencies. I don't know if that fully expresses what the Board is thinking. I'll --

CHAIRPERSON MOULTON-PATTERSON: I think it certainly does as far as I'm concerned. And so you're moving Resolution 2003-316 revised?

BOARD MEMBER JONES: If all the members are happy with what I just said, I am. And, Madam Chair, I just moved --

CHAIRPERSON MOULTON-PATTERSON: I will second

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that. And before we vote on this, I do want to say that I'm very proud of this Board and what we did, we didn't hesitate. The public safety was our most important concern and the minute we heard about it we were there. And I'm just very proud of the work that our Staff has done on this and I think -- every single one of us public safety is the most important thing. So I will second that. And seeing no other comments, please call the roll.

SECRETARY WADDELL: Jones?

BOARD MEMBER JONES: Aye.

SECRETARY WADDELL: Paparian?

BOARD MEMBER PAPARIAN: Aye.

SECRETARY WADDELL: Peace?

BOARD MEMBER PEACE: Aye.

SECRETARY WADDELL: Washington?

BOARD MEMBER WASHINGTON: Aye.

SECRETARY WADDELL: Moulton-Patterson.

CHAIRPERSON MOULTON-PATTERSON: Aye. Now --

BOARD MEMBER JONES: Madam Chair, I'll move adoption of Resolution 2003-378, the consideration of the approval of the Archie Crippen Excavation Illegal Disposal Site for the Solid Waste Disposal and Co-disposal Site Cleanup Program and Emergency Augmentation for the Environmental Services Contract for Landfill and Disposal Site Remediation Contract Number IWM-C0106B.

CHAIRPERSON MOULTON-PATTERSON: Second. We have a motion by Jones, second by Moulton-Patterson to approve Resolution 2003-378 revised without objection. Please substitute the previous roll call.

BOARD MEMBER JONES: Madam Chair?

CHAIRPERSON MOULTON-PATTERSON: Thanks for being here.

BOARD MEMBER JONES: I appreciate that you thanked everybody, but before the Mayor and the Fire Chief, I know this guy drove you crazy. But today we've identified Todd in the past for the work that he did at that site. But I figured since the City of Fresno was here I'd give you guys an opportunity to know how much we appreciate --

BOARD MEMBER WASHINGTON: Todd, Mr. Jones still smells like that --

CHAIRPERSON MOULTON-PATTERSON: Let's give Todd a hand.

(Applause)

CHAIRPERSON MOULTON-PATTERSON: Yes.

MAYOR AUTRY: Very respectful of your time and I went through the whole litany of the team. But I do want to single out the waste management team, because it is universal that you folks did respond very quickly and not only them, but with an enthusiasm and a concern. It was

genuine. They became members of that community. And you're absolutely correct, I wanted to get that message to you and that everybody did a great job. But there's a special place in Fresno in our hearts for your group, for this Waste Management Board and the representatives, the Folks that came out there. It was obvious that they cared about this community. And that's something special in this day and time. So your words were right on target.

CHAIRPERSON MOULTON-PATTERSON: Thank you very much, Mayor. We appreciate that.

Now we need to go to 46. Mr. Walker?

MR. WALKER: Thank you. Item 46 is Consideration Of Augmentation For The Environmental Services Contract For Landfill And Disposal Site Remediation Contract IWM-C0106A. I'm going to go really brief on this. If you have questions, we'll answer them.

This is the other remediation contract where they do construction work for the cleanups. It's the A.J. Diani Construction Company.

--o0o--

MR. WALKER: This item -- basically what we're doing here is at the end of the fiscal year we're trying the maximize options for the Board to assist in completing previously approved Board-managed projects without delay this construction season. I want to quickly go over the

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trust fund status. You'll see the unreserved balance at the bottom, the proposed encumbrances. We have an Item 45 -- for the purpose of this item taking that encumbrance and also in this item to augment the contract by the 30 percent standard that we're allowed to do essentially and the Crippen. Our unreserved balance that carries over for new projects next year until we have the transfer will be $3,073,135. And I think this will be able to maintain service with that. And if we get Crippen done quick, we'll be able to disencumber money if we save money on it to add.

--o0o--

MR. WALKER: So again, we will be bringing forward new cleanup program remediation contracts by fall of '03 for consideration and approval -- Board-approved scope of work on those. They will take the place -- these contracts that we have now will be up in May of '04. The proposed augmentation in this item will assist the Board in completing previously approved projects without delay in this construction season.

Therefore, Staff recommended the Board approve the allocation and adopt Resolution 2003-377. I'd be happy to answer any questions.

CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr. Walker. I don't see any questions. May I have a

motion?

BOARD MEMBER JONES: Madam Chair.

CHAIRPERSON MOULTON-PATTERSON: Mr. Jones.

BOARD MEMBER JONES: Move a Resolution 2003, Consideration of Augmentation for the Environmental Services Contract for Landfill and Disposal Site Remediation IWM-C0106A.

BOARD MEMBER PEACE: Second.

CHAIRPERSON MOULTON-PATTERSON: We have a motion by Mr. Jones, second by Ms. Peace to approve Resolution 2003-377. Without objection, let's substitute the previous roll call.

And we're going to 36. Just so hopefully this is okay with my colleagues. My intention is to finish these four items before we go back into our hearing at 4:00. So we're now on 36.

Mr. De BIE.

MR. De BIE: Thank you, Madam Chair. 36 is a permit item. It's Consideration of Revised Full Solid Waste Disposal Facility for Chicago Grade Landfill in San Luis Obispo. Virginia Rosales will give you a very short presentation on that.

MS. ROSALES: Good afternoon. In consideration of time, I won't go through the changes since they're all identified in the permit. At the time the item was

1 prepared there was an outstanding violation of daily cover
2 that was noted in Staff's inspection on May 14th. On June
3 3rd, the LEA conducted an inspection of the facility and
4 found a violation of daily cover had been corrected.
5 During the LEA's June inspection the operator was using
6 only soil instead of soil and shredded tires. As the
7 permit process was running concurrently with a CEQA
8 process, a mitigated negative declaration was circulated
9 for a public review period. April 29th through May 28th
10 the Planning Department acting as a lead agency adopted
11 the mitigated negative declaration on June 13th.
12 This morning you received a revised agenda item
13 and a resolution and those items were updated to reflect
14 the correction of the daily cover and the completion of
15 the CEQA. Copies are on the back table for those that are
16 interested if the Board's website has been updated.
17 In conclusion, staff has determined that all the
18 requirements for Board concurrence has been satisfied.
19 Therefore, staff recommends the Board adopt Resolution
20 number 2003-324, concurring with the issuance of solid
21 waste facilities permit 40AA00. The operator, Michael
22 Hoover, and his consultant, John Cupps, Jenny McCarthy and
23 Scott Millen are all here today and available to answer
24 questions you may have.
25 CHAIRPERSON MOULTON-PATTERSON: Thank you very

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much. I see no questions. So Ms. Peace?

We have Michael Hoover to answer questions.

BOARD MEMBER PEACE: I guess it just kind of concerned me that we have a permit revision coming up before the Board, yet in January they had a Statement of Minimum Standard Violation for adequacy of the daily cover, then in February and April the LEA noted an area of concern for adequate daily cover. And then in May the Board staff revisited the landfill and conducted inspection and noted that violation of daily cover was there again. And I was just thinking with a permit revision before the Board I would have thought that the landfill would be on very best behavior. I'm wondering how do we just keep letting this go on and on and on. I guess I understand all these daily cover violations were for different types of daily cover violations, but I just wanted to make sure this doesn't keep happening again.

MR. HOOVER: May I respond to that, Ms. Peace?

BOARD MEMBER PEACE: Yes.

MR. HOOVER: In a more global view, we've had five violations in five and a half years. This state of the recent occurrences are troubling, but when you look at it over the long term, it hasn't been the issue it might appear when one just looks at the daily dimension.

Now what are we doing to solve that? We put

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about a million and a half dollars in new equipment for a 200-ton-a-day landfill. That's a tough pill to swallow. That's a lot of money for us. We've got a new supervisor, who's there every day, since I can't be there every day, because we have three facilities. There is a guy there that is there every day. Randy has been there for a year. He's made a lot improvements. I think, if you talk to staff they'll tell you we are probably doing a better job than we have in the past and all I can say to that is I think your staff is looking at things a lot harder than they did in the past. I think they're taking direction from the Board in that regard. It may not appear from the record you're looking at we are doing better, but if you're in the field up your boots in garbage you can see the changes.

But I think the unfortunate truth here is we have a 19-year veteran, a very good man who's probably going to be let go because he can't keep up with the changes that your staff has been asking for. And if he can't do it, then we'll get someone else that can. We have a nationwide search going on for a new lead operator. That's where the rubber meets the road. The guy that runs the dozer -- I can jump up and down my 25-year man can jump up and down and tell this lead operator do better but it's the guy the drives the dozer that does it and we're

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1 going to have to make a change. As hard as that it is for
2 me to deal with it, I need to do it.
3 And I think we've installed what I think is
4 leading technology. We have a web cam. I can look at
5 that working face every night. I looked at it two nights
6 ago. The picture's here in my file. I know where we need
7 to improve and I can stay on those guys better, because
8 obviously this question was going to come up and I didn't
9 want to come back to you without an answer. So we are
10 implementing things. We understand those changes need to
11 be made. I think we're dealing with what I would consider
12 to be smaller, not health-threatening violations. But
13 you're the regulatory agency, we'll do whatever you want
14 us to do.
15 Keep in mind, though, the downside to all this is
16 we use up a lot more dirt when we try to comply. That
17 means more landfill space used up. So we'll do whatever
18 you want to us to do, but there's a balancing act here
19 between me staying on them about using less cover soil and
20 getting the violations. We're trying to meet that happy
21 point, that medium point. I would like to point out I've
22 been managing things for ten years. I don't have any
23 written violations. I think I've had one or two verbal.
24 We have good neighbors we have happy neighbors. The
25 picture is better I think when you look at the whole.

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1 CHAIRPERSON MOULTON-PATTERSON: Mr. Jones?
2 MR. HOOVER: Madam Chair, I said violation, I
3 meant complaints. We had two neighbor complaints in the
4 last ten years and they were verbal, not written, and one
5 was about a security light.
6 BOARD MEMBER PEACE: I wasn't trying to pick on
7 you specifically. But I do think, you know, I would like
8 to address some of the concerns I have and other Board
9 members have that when we see a site that has the same
10 violations over and over and over again we just don't say,
11 "Okay, you have a violation, fix it." And we never fine
12 them and we never do anything else. Put them on
13 restriction or look at them more carefully. That was just
14 my concern.
15 CHAIRPERSON MOULTON-PATTERSON: Thank you, Ms.
16 Peace.
17 Mr. Jones, then Mr. Washington, then
18 Mr. Paparian.
19 BOARD MEMBER JONES: Thank you, Madam Chair. I
20 appreciated Ms. Peace's concerns. One thing about
21 inspections, they're very arbitrary. I was on that site.
22 Hoover is the type of guy that is going to question,
23 probably a lot like me, when an LEA would say something,
24 I'd question. It was -- he took me to an area that was --
25 I think it's a test -- he said, "What do you think of this

area?" And I told him, you know, "It's marginal. I think if I was you I'd put a little more dirt on it." But it is marginal. There was a little bit of plastic coming through. It's the kind of thing that could have gone either way.

I saw that facility once a long time ago. I saw it two months ago. It -- it is a well run facility. And I think that these issues of cover are going to come up from time to time, but they are in the eye of the beholder. At the same time, I went to the other two facilities in the county, as well as I guess it's a 2136 cleanup project now. And there was -- there wasn't any difference between the three. But one of them had a violation. So it's arbitrary. So I just thought I would let you. That's one of the reasons MOLO training is so important. Nobody looks at anybody with the same set of eyes.

BOARD MEMBER PEACE: If your operator had been to one of your MOLO training classes, maybe that's a good idea.

MR. HOOVER: Well, I'm a MOLO certified operator and I guess we're bucking the trend. We -- one of the landfills that has certified operators, but we seem to be getting more violations. And you're right, when we get our new lead operator he'll be MOLO trained. Also, it

1 won't be just me. Although I'm the manager, he will be
2 also. But you're correct, we need to do better in that
3 regard. And it's tough when you have a gentleman that's
4 been there 19 years to have him affect those changes
5 because he has to do it. I can't do it. And the lead
6 operator, the manager can't do it. It's the guys that
7 runs the dozer.
8 CHAIRPERSON MOULTON-PATTERSON: Thank you,
9 Mr. Washington was next. Did you waive?
10 Mr. Paparian.
11 BOARD MEMBER PAPARIAN: Thank you, Madam Chair.
12 I think Ms. Peace did bring up some good points
13 and I -- one thing to be -- one thing to keep in mind --
14 and this was clear when we developed the strategic plan is
15 that we need to be consistent throughout the state in how
16 we treat enforcement. So we need to be sure that we don't
17 single out poor Mr. Hoover, who just happened to be here,
18 but rather look towards if we want to improve enforcement
19 throughout the state, improve it in a way that's
20 consistent for everybody. And I think that we've talked
21 in the past about things like fines for, you know, some
22 number of violations or state minimum standards, perhaps
23 even a schedule of fines like we have in some of our other
24 areas that we regulate. So I think that those are things
25 we ought to be looking at and we ought to be looking at in

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1 a way that would be applied consistently throughout the
2 state and would hopefully give the LEA some more backbone
3 throughout the state to deal with some of the
4 enforcement-related issues. But again, poor Mr. Hoover
5 should not be singled out just because he had some issues
6 with some of the cover, I think that we need to look at
7 consistency throughout the state.
8 CHAIRPERSON MOULTON-PATTERSON: Thank you,
9 Mr. Paparian.
10 Mr. Washington?
11 BOARD MEMBER WASHINGTON: Just very briefly,
12 Madam Chair. I just wanted to say that it's exciting just
13 to hear him admit that there's some catching up to be
14 done. I think that's the first time I heard an operator
15 actually say at least five times since you've been
16 standing here that there are some issues you need to
17 address. And it's certainly commendable for you to
18 recognize that and being brought up to date in terms of
19 the direction this Board is going in and making sure --
20 it's not easy going to someone who's been on the job 19
21 years and say, "Hey, you got to look at things a little
22 differently now" because that's a long time to be in
23 business. And I really do appreciate hearing that you
24 guys are moving forward to come up today. You ought to be
25 commended for that.

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1 With that, Madam Chair, I'm prepared to move this
2 item.
3 CHAIRPERSON MOULTON-PATTERSON: Thank you.
4 BOARD MEMBER WASHINGTON: I'd like to move
5 adoption of Resolution 2003-324 revised, Consideration of
6 the Revised Full Solid Waste Facility Permit Disposal
7 Facility for Chicago Grade Landfill St. Luis Obispo
8 County.
9 BOARD MEMBER JONES: Second.
10 CHAIRPERSON MOULTON-PATTERSON: We have a motion
11 by Mr. Washington, second by Mr. Jones to approve
12 Resolution 2003-324. Without objection, substitute the
13 previous roll call.
14 CHAIRPERSON MOULTON-PATTERSON: 37.
15 MR. de BIE: Thank you, Madam Chair, Mark de Bie
16 again. Real quick on the last item before Mr. Hoover
17 leaves the room after this item. The Board is sponsoring
18 ADC training this month throughout the state of
19 California. So he may want to go on our website and see
20 if that's a possibility for him, as well as staff is in
21 preparation in bringing some discussion items back to the
22 Board. And imbedded in those discussion items is this
23 issue about enforcement. And much of what the Board has
24 indicated just now, these issues were generated from the
25 workshop that the Board participated in, as well as some

of the issues that Member Peace brought up relative to changes to C&D regs. So there will be opportunities in the very near future to have further discussion on those issues.

BOARD MEMBER JONES: Madam Chair?

CHAIRPERSON MOULTON-PATTERSON: Mr. Jones?

BOARD MEMBER JONES: The ADC, workshop Mr. Hoover's operation was actually the pilot that we used when we were figuring out how to use tires as ADC. It was his operation that was used, and it was the violation that he got for cover was actually because some of the rubber was longer than 12 inches within the standard. I think it's ironic that the actual facility that this Board -- that was the operator that took care of a million-tire pile in San Luis Obispo County at the same time we asked him to helping us in figuring out placement of tire shreds for ADC. And the violation he got was because there was some teeth on the grinder that weren't right and they were longer than 12 inches. That's what the violation was for. Just so people know.

CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr. Jones. Okay.

MR. de BIE: Item 37 is Consideration of A Revised Full Solid Waste Permit Transfer Processing Station for Santa Maria Transfer Station San Luis Obispo

1 County. And Virginia Rosales will present this item.
2 MS. ROSALES: You just received the revised
3 proposal permit. There's a minor change in this permit.
4 At the operator's request, the LEA changed permit four to
5 read "load checks are to be submitted to the LEA on
6 request instead of on a monthly basis." The change is now
7 consistent with the reporting frequency in self monitoring
8 program on page 3 of the permit. Since the operations of
9 Chicago Grade Landfill in Santa Maria transfer station are
10 related and both have requested changes, one environmental
11 document was developed and circulated. The lead agency
12 adopted the mitigated negative declaration on June 13th.
13 The revised agenda item that you just
14 received and Resolution that you also just received
15 reflects the update of the CEQA completion. Board staff
16 have determined that all the requirements have been
17 satisfied and recommends that the Board adopt Resolution
18 Number 2003-325 concurring in the issuance of solid waste
19 facilities permit number 40AA0022.
20 And this concludes staff's presentation. And
21 again, Mr. Hoover and the LEA are present.
22 CHAIRPERSON MOULTON-PATTERSON: Thank you very
23 much. Board, any questions?
24 BOARD MEMBER JONES: Madam Chair?
25 CHAIRPERSON MOULTON-PATTERSON: Mr. Jones.

BOARD MEMBER JONES: I'd like to move adoption of Resolution 2003-325 revised Consideration of Revised Full Solid Waste Facility Permit and Transfer Processing Station to the Santa Maria Transfer Station San Luis Obispo County.

BOARD MEMBER WASHINGTON: Second.

CHAIRPERSON MOULTON-PATTERSON: We have a motion by Mr. Jones, second by Mr. Washington to approve Resolution 2003-325. Without objection, please substitute the previous roll call.

I've been asked to -- I believe someone from the this Board wants to speak on 39. And so we'll go ahead and take 45 and then go back to 39.

MR. WALKER: Thank you. Item 45 is Consideration of Approval of New Sites for Solid Waste Disposal Co-disposal Site Cleanup Program.

Staff received one matching Grant Application from the County of Orange that was submitted in time for consideration by the Board this month. So that grant funding could be encumbered this fiscal year. Review of the Application could not be completed in time to be considered before the Committee meeting so it was submitted as a Board-only item which is the item before you. Trash removal of five previous Board-approved projects in Southern California to clean up public beach

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and urban stream storm water outfall sites where the accumulation of trash and related pollutants constitutes a significant threat to public health and safety and the environment.

This is a major cross media issue the Board has directed staff to collaborate on with other agencies including the State Regional Water Boards. The outfall site for this project is Preima Deshecha Beach located in San Clemente. It is a public beach owned by Orange County that has over 112,000 visitors each year, but unfortunately has significant storm and trash accumulation and postings for beach and bacteria contamination.

The source of the trash and pollutants is the Preima Deshecha Channel. This shed of 4400 acres as a mix of land uses including the active Preima Deshecha landfill which is at the head. Essentially this term is concentrated at this outfall site from storm events. The proposed project will remove solid waste and treat leachate that accumulates at the site. Project includes a waste removal system, which is a trash net and boom system, and treatment plan in the public right-of-way and an additional pollution source tracking monitoring and response to confirm the performance of the system.

The County will be responsible for all aspects of the project, including long-term operation and

1 maintenance. Total cost is approximately $2 million, of
2 which the Board would fund 50 percent up to match limit of
3 $624,020 and the cap for matching grants is 750,000.
4 Based on staff's review of the application, all program
5 criteria have been met and cost recovery would not apply
6 in this type of project.
7 In conclusion, staff recommends adoption of
8 Resolution 2003-376 approving the Proposed Preima Deshecha
9 Trash Removal Project pursuant to the Solid Waste Cleanup
10 Program.
11 That concludes Staff's presentation.
12 CHAIRPERSON MOULTON-PATTERSON: Thank you,
13 Mr. Walker. I see no questions, so I would like to move
14 approval of Resolution 2003-376. I think this is a really
15 good cross media thing -- what we're all about here at
16 Cal EPA.
17 BOARD MEMBER JONES: I'll second.
18 CHAIRPERSON MOULTON-PATTERSON: We have a motion
19 by Moulton-Patterson, second by Jones to approve
20 Resolution 2003-376. Without objection, please substitute
21 the previous roll call. Okay.
22 That takes us to item 39.
23 MR. WALKER: We do have representatives from the
24 State Water Board here in the audience, so I'd like add
25 that.

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1 Item 39 is Consideration of the Contract Concepts
2 Scope of Work and the State Water Resources Control Board
3 as Contractor for the Characterization of Radionuclides in
4 Landfill Leachates and Groundthis Contract. IWMA FY
5 2002/200 -- sorry -- 2002/2003.
6 The Permitting Enforcement and Budget Admin
7 Committee forwarded this item to the full Board because of
8 the letters of opposition dated June 6th from the Sierra
9 Club and Committee to Bridge the Gap.
10 The State this Resources Control Board has
11 requested the Board contribute $100,000 to the study. The
12 State Board would be lead on this study and fund the
13 remaining cost of $200,000. The total cost would be
14 $300,000. At the April 9th Board meeting for the Bradley
15 Landfill Permit Revision, the State Water Board presented
16 preliminary findings of their initial sampling efforts.
17 Radionuclides are not typical constituents monitored at
18 landfills but they've had a recent heightened concern from
19 the public and legislature.
20 The State Board -- State Water Board has
21 concluded that the result of the initial sampling warrants
22 further sampling and that expertise is need from an
23 outside contractor to conduct the required tasks to
24 evaluate the data and to recommend and assist in
25 additional sampling and to identify the source of these

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1 radionuclide in landfills. The State Board would be
2 responsible for all the contracting required, which brings
3 me to the letter which -- the letter takes issue with the
4 intent of the State Water Resources Control Board to
5 contract with Lawrence Livermore National Laboratories,
6 which is an entity of the University of California.
7 One thing that I'd like to point out is our scope
8 of work is with the State Water Resources Control Board.
9 The State Water Board is responsible for all contracting
10 and subcontracting. Our scope of work does not specify a
11 contractor. That's the duty of the State Board. And I
12 can also add -- and the State Board is here to answer
13 question and further discuss that. Their contract, while
14 they will be contract, their intent is to contract with
15 Lawrence Livermore National Laboratories. They have also
16 indicated they're adding an additional subcontractor, an
17 additional subcontractor that would provide a third-party
18 peer review-type situation to ensure this contract
19 addresses some of the concerns that the State Board has
20 received.
21 So therefore, in conclusion, staff recommends the
22 Board adopt Resolution 2003-374 approving the contract
23 concept and scope of work and Resolution 2003-375
24 approving the State Resources Control Board as contractor
25 for the Characterization of Radionuclides Landfill

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1 Leachates and Groundwater Contract. I'd be happy to
2 answer any questions. Again, the State Water Resources
3 Control Board is also present. Thank you.
4 CHAIRPERSON MOULTON-PATTERSON: Thank you,
5 Mr. Walker.
6 Any questions before we go to the speakers?
7 BOARD MEMBER WASHINGTON: Mr. Walker -- and I
8 apologize. Help me real quickly here. We're given -- the
9 State Water Board is requesting $100,000 from us to do
10 what?
11 MR. WALKER: They're asking money to assist their
12 study, to basically add money to assist them in this
13 study. They have $200,000. They need another $100,000.
14 And so this would provide an interagency agreement to do
15 that, but that the State Board would be responsible for
16 all the specific contracting required with the parties.
17 BOARD MEMBER WASHINGTON: Thank you.
18 CHAIRPERSON MOULTON-PATTERSON: Thank you. Any
19 other questions? Ms. Peace.
20 MS. PEACE: The only comment I had was that if it
21 is determined by the study that the radioactivity is not a
22 problem in landfill leachate or groundwater, would anyone
23 with confidence believe these are good results knowing
24 that the Department of Energy's Livermore Nuclear Weapons
25 Laboratory was the one who actually performed contract

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work. But from what I understand, you said now there is going to be a third party will do like an analysis?

MR. WALKER: I think with that, I'd like to ask the State Water Board rep to elaborate further. But yes, essentially there would be additional third party.

CHAIRPERSON MOULTON-PATTERSON: Is this James Giannopoulos?

MR. GIANNOPOULOS: Giannopoulos.

CHAIRPERSON MOULTON-PATTERSON: Welcome.

MR. GIANNOPOULOS: Thank you. Do you want me to respond to the specific question or should I just --

CHAIRPERSON MOULTON-PATTERSON: You can give us a little background, but yes, to Ms. Peace's question.

MR. GIANNOPOULOS: Ms. Peace, could you repeat your question?

BOARD MEMBER PEACE: I was just -- if you do the study and it's determined by the study that radioactivity is not a problem in landfill leachate, would people see this as a credible study, knowing that it was the Department of Energy's Livermore Nuclear Laboratories that actually --

MR. GIANNOPOULOS: Lawrence Livermore?

BOARD MEMBER PEACE: Okay.

MR. GIANNOPOULOS: The people I deal with don't deal with weapons.

BOARD MEMBER PEACE: -- was the one actually performing the contract work?

MR. GIANNOPOULOS: We've been in rather intensive discussions to look at the scope of work and try to address the specific question that actually I think you're asking. And what we've tried to do is move the interpretation of the results, interpretation of the data to a subcontractor separate from Lawrence Livermore. In other words, Lawrence Livermore National Laboratories we would contract with would have an interagency agreement with, would in turn contract with a subcontractor that would not be associated with the Department of Energy and the subcontractor would actually take the data -- that the lab data, the radiochemistry data, take all of the data and write a report on data re-evaluation interpretation.

We've also made an effort to ensure that the State Water Resources Control Board is a party that selects the sampling location in terms of which landfills and where -- surrounding those landfills groundwater downgradient, groundwater leachate where the samples should be taken.

Lawrence Livermore National Laboratories would be involved in identifying which test methods would be appropriate. That would be concurred to by the subcontractor. Any disputes would be resolved by the

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1 State Water Resources Control Board. So that's how we're
2 trying to respond to the specific concern that you
3 mentioned -- you captured the concern.
4 So we what we've done over the last half hour
5 with the accommodations of your office upstairs on the
6 24th floor, actually your office, Ms. Peace, in fact, is
7 retype a scope of work which reflects what I've just said,
8 where the Lawrence Livermore National Laboratories would
9 first select a subcontractor from a list which is approved
10 by the State Water Resources Control Board that would be
11 first. The State Water Resources Control Board would
12 identify which landfills and where to sample. The
13 Lawrence Livermore National Laboratory -- and I think
14 Mr. Dunn is handing out the scope of work I'm reading
15 from, and I'm now at task two. Livermore would draft
16 sampling protocols which would be approved by the State
17 Water Resources Control Board. The Lawrence Livermore
18 National Laboratories would be recommending the test
19 measurements. And this is where the subcontractor
20 would -- we would resolve disputes I just discussed that.
21 And then the actual discussion of the sampling
22 photo would be done by Lawrence Livermore National
23 Laboratory. In other words, they would get the samples
24 from the waste industry. That's important. Neither we,
25 the State Water Resources Control Board, Regional Board

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staff, Lawrence Livermore would actually going out and doing the sampling. The waste industry would be collecting the samples and delivering them to Lawrence Livermore. And the lab would be conducting tests on those samples. The results of that sampling would be provided to the subcontractor. The subcontractor would write a report.

CHAIRPERSON MOULTON-PATTERSON: Thank you.

Mr. Walker, has our staff seen this scope of work?

MR. WALKER: We've seen -- I'm not sure I've seen that. I know they worked on this up to the last minute. We've seen probably a version that's very very close.

CHAIRPERSON MOULTON-PATTERSON: Because I'd certainly like our Staff to see it.

MR. WALKER: Right absolutely.

MR. GIANNOPOULOS: They're just about to see it. We've made it short. So it's very possible to see this in a very short period of time.

MR. WALKER: And again, this is really -- I mean, just skimming this, you know, it's pretty consistent with what we've seen before. And again, I'd add our contracts -- our scope of work would be with the State Water Resources Control Board. So we still would contend that our scope of work would still be covered, and this

1 provided more details of the State Board's scope of work
2 with their contractor. But what it does is it does
3 reflect the direct involvement and the arrangement that
4 the State Board has with the Lawrence Livermore National
5 Laboratory Group, and it does include the third-party
6 subcontractor. So basically this is consistent.
7 CHAIRPERSON MOULTON-PATTERSON: So you're okay
8 with it is what I'm asking.
9 MR. WALKER: I'm sorry.
10 CHAIRPERSON MOULTON-PATTERSON: Thank you very
11 much. Always want our staff to see things.
12 We have more speakers. Thank you for being here.
13 Daniel Hirsch, Committee to Bridge the Gap.
14 Mr. Hirsch, welcome.
15 MR. HIRSCH: Thank you. I'm in a bit of an
16 awkward situation. I'm shooting at a moving target. I
17 was just as you asked whether your staff has seen
18 something, and you've just been handed something which is
19 missing two paragraphs which we hope may be closure can be
20 reached on but hasn't yet.
21 The last version that I seen until this one was
22 drafted a few minutes ago I got it mailed to me late
23 yesterday. So I'm going to tell you the concerns that we
24 have about what were submitted as of late yesterday. Tell
25 you that there are some discussions to try to resolve some

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1 concerns, but you're dealing with something that is not
2 concrete and be asked to make a yes or no decision, which
3 I find problematic.
4 The proposal has been basically this for several
5 months now, the issue of whether or not the past dumping
6 of radioactive waste in municipal landfills should be
7 assessed by some additional measurement and analysis that
8 would be performed -- primary proposal by the Lawrence
9 Livermore Nuclear Weapons Laboratory operated by, owned by
10 DOE and we are greatly troubled by that. DOE -- the whole
11 issue came to your Board, in fact, because a couple of
12 years ago DOE revealed that its other nuclear facility in
13 California, the Santa Susanna Field Lab, had sent 6,000
14 tons of reactive debris to the Bradly Landfill and
15 apparently also some to Sunshine Canyon and Calabasa. So
16 measurements were made and of the 50 landfills tested 22
17 came back with signs of excessive radioactivity.
18 The Water Board now wants to have follow-up to
19 those tests, but the follow-up is to be done by the DOE's
20 Livermore Laboratory, which has also been dumping
21 radioactive waste in municipal landfills. And the
22 Department of Energy formal policy is that practice is
23 their policy that certain kinds of radioactive waste from
24 DOE facility shall go to local landfills without the
25 landfill knowing it's coming. We can't conceive of how

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1 Livermore can produce a credible, believable study on
2 whether its own practices and that of the agency that owns
3 it have caused safety problems, and we are perplexed
4 there's been such pressure to give this no bid, no
5 competition, sole source contract to Livermore.
6 We understand there's some reasons, that this is
7 a fiscal year and there are some funds that are
8 potentially available at the Water Board. We're very
9 troubled by that. The negotiations of the last several
10 weeks have been to try to do one very simple thing, which
11 is restrict Livermore, if it's going to have a role, to
12 solely being a laboratory function. Send them the
13 measurements, have them report back with what's in the
14 sample, but not interpret the first set of data, not come
15 up with the protocols for the second set of tests and have
16 nothing to do with the interpretation of the second set of
17 measurements.
18 We have not yet reached full agreement on that.
19 There's some discussions, but we -- and I have some
20 hopefulness that maybe we can, but so far that's not the
21 proposal before you. It's not restricting Livermore to
22 simply a laboratory function. It would have major roles
23 on establishing the protocols, establishing the
24 interpretation of the first phase data and a role in
25 interpreting the second phase. And we think that this

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1 Board has obviously a fiscal reason to conserve its
2 resources. If you can spend the money, you should spend
3 it on something that will give you the answer at the end
4 of the day that will not be a source of controversy
5 because of who did it.
6 So as the proposal was given to me last night, we
7 just find it unacceptable and we don't think anyone would
8 believe the results at the end of the day. Maybe a
9 revised scope of work that may be written after this along
10 the lines of the draft that you've been given that's
11 missing parts, maybe closure could be reached that would
12 be acceptable. So I don't know what to tell you or what
13 your options are. But if you have to vote today based on
14 what was proposed as of last night, I think it has an
15 overly conflicted contractor. Livermore itself is a site
16 for handling its own radioactive materials. It has dumped
17 radioactive waste in landfills. It has been caught
18 dumping other radioactive materials in facilities not
19 permitted to receive it, and it's just the wrong place to
20 go if you want an answer to the question that people will
21 accept.
22 So maybe a resolution can occur. I commend
23 people for working on it, Senator Romero's office, Senator
24 Kuehl's office and the agencies. Hopefully maybe there
25 will be a resolution. We aren't quite there yet.

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1 CHAIRPERSON MOULTON-PATTERSON: Thank you. Do we
2 have any representatives from Senator Kuehl or Senator
3 Romero's office? Would you like to come up now and state
4 your name and get on the record on how you see this? I'd
5 appreciate that.
6 MR. SIEVERS: Cyrus Sievers. I'm staff to
7 Senator Kuehl.
8 What you have before is missing two items, one of
9 which is not contentious, which is still under discussion.
10 The item that is not contentious is that the third-party
11 contractor, which is mentioned in that draft, will be the
12 party which writes up a report on the interpretation of
13 the data. We simply ran out of time to type.
14 The part which is until under discussion is what
15 happens after that point. One thought is that standard
16 procedure and scientific literature is to put it out for
17 review and comment and that can be reflected in a final
18 report. The concern is that Lawrence Livermore can
19 influence the final report at that stage. And so we are
20 negotiating over ways to mitigate that risk. That is
21 what's under discussion. With those two pieces we would
22 have a complete scope of work to place before you. I --
23 based on where we've gotten so far, I'll give it a 75
24 percent chance with one more hour of work we can have a
25 successful scope of work.

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1 CHAIRPERSON MOULTON-PATTERSON: We have to finish
2 a hearing. Can you come back after our hearing? I know
3 we have other speakers here, but that is an option. I
4 mean, I understand the fiscal year and -- but I certainly
5 have a great respect for Senator Kuehl and I'd like to see
6 this worked out before we vote this money.
7 MR. SIEVERS: You give me 30 to 40 more minutes,
8 I think we can finish it.
9 CHAIRPERSON MOULTON-PATTERSON: Okay. Does
10 anybody have any objection to that?
11 Mr. Jones.
12 BOARD MEMBER JONES: I don't have an objection.
13 I had a question for the previous speaker.
14 CHAIRPERSON MOULTON-PATTERSON: Okay. Come on
15 up.
16 BOARD MEMBER JONES: We are area talking about
17 the credibility of Lawrence Livermore Lab in your review,
18 but yet you've talked about the dumping of radioactive
19 waste. Is it decommissioned radioactive waste? Is it, I
20 mean--
21 MR. HIRSCH: Livermore has disposed of several
22 kinds of waste. Some were decommissioned waste, some were
23 barrels of curium that were not from decommissioning.
24 Plutonium that ended up in a park in the town of
25 Livermore. It's a mixture of different kinds.

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1 BOARD MEMBER JONES: You talked about the stuff
2 that went to Bradley and you testified during the Bradley
3 hearing, but I keep hearing you talk about this as
4 radioactive waste without defining it as decommissioned.
5 And I'm wondering if there's a reason for that and if it
6 isn't the same reason why I should be suspect as to why
7 you don't want Lawrence Livermore Lab, because you're
8 selective in your adjectives.
9 MR. HIRSCH: If I can answer your question. It
10 wasn't Livermore that sent to Bradley. It was the Santa
11 Susanna Field Laboratory and what they had sent was
12 decommissioned waste. In addition, the policy of concern
13 here is waste in addition to decommissioning. The
14 Department of Health Services policy is to give waivers
15 for operational waste as well. And so the issue has been
16 that waste has been disposed of from operating nuclear
17 facilities from decommissioning nuclear facilities. And
18 also there has been some illegal disposal as well of
19 laboratory branches that had tritium and carbon 14
20 disposof. So if I didn't use the word "decommissioning"
21 it's because, in fact, that's not the sole kind of
22 material that's been disposed of in these landfills.
23 BOARD MEMBER JONES: I guess for a layperson like
24 me when I hear radioactive waste being delivered, I'm
25 thinking it's hot and it's outside of the realms of the

existing regulatory scheme as far as the parameters. And while that might be a debate, it's still the standard.

MR. HIRSCH: Actually not. The standard was struck down by the Superior Court here in Sacramento a year ago as illegal.

BOARD MEMBER JONES: I'm talking about up to that point.

MR. HIRSCH: It wasn't legal until that point either. The Court found that it was illegal -- adopted -- I'm sorry, I mean, if you're asking whether it was legal, it was not. And whether there was a standard or not, that's the whole point. That they would -- permitting waste with radioactivity at what I view as quite high level, the equivalent for you, if you received doses of 300 additional chest X-rays over your lifetime. A risk that they -- all agencies admit would kill approximately a one in a thousand people.

So we can debate whether it was a good policy or not. It's really off the point as to whether we want to have a credible study done, how much has stuff has gotten in already and what the effect would be if you opened landfills in the future to receive large amounts of waste. If a moratorium in place was lifted.

CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr. Hirsch.

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I'm going to, as I said, continue this item because we have speakers. I don't know if they can come back. I'm going to call your name. You can either speak now or wait until after maybe this item has been worked out.

George Larson.

MR. LARSON: I'd like to speak now.

CHAIRPERSON MOULTON-PATTERSON: Okay.

MR. LARSON: Madam Chair, Members. George Larson on behalf of Waste Management. I'd like to endorse the staff's recommendation today. I feel like the State Water Board has done some excellent preliminary work, James Giannopoulos and his staff, on the initial phase of studies. But one thing that it really did indicate, which this agenda item and this contract interagency agreement seeks to rectify, is an agreement on all parts that there is a significant need for additional information.

Waste Management participated in the first phase and we are committed to participate in any constructive manner in the execution of this contract if we can help in that regard, because we feel that the information to be developed out of it will give this Board and the Water Board and other appropriate agencies the tools to be able to make some determinations without the generalization that nuclear wastes or radioactive wastes are being dumped

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in landfills.

It needs some science, and I think this is a good step towards that. I encourage you today to encumber the funds to enable this interagency agreement to move forward, even though as has been testified in previous speakers, there is not total unanimity on what that scope of work may say.

I was afforded the opportunity with very little time, as the previous speakers noted, to look at the scope of work as was revised in the last hour or so and that will be worked on. I think it embodies the fundamental goals that the contract tasks should be directed towards if we are -- the Board is in agreement to move forward with the encumbering these funds, then I'm confident Waste Management is fully committed to work on the scope of work to get it to the proper focus and to deliver the most quality product with the best scientific results. So I feel it's critical, the scientific analysis is vital.

The Lawrence Livermore National Lab, I believe, is a fully qualified subcontractor. I did notice in the revised scope of work that the role of the State Water Resources Control Board has been elevated somewhat and that seems to address what I heard about concerns about Lawrence Livermore. So I urge you to move forward.

I also will pass on that Evan Edgar with the

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1 California Refuse Removal Council had to leave to a
2 meeting would endorse the comment that Waste Management
3 submits today too.
4 CHAIRPERSON MOULTON-PATTERSON: Thank you,
5 Mr. Larson.
6 Bill Magavern from the Sierra Club. Did you wish
7 to speak now or wait until the later time?
8 MR. MAGAVERN: I'll speak now. Thank you, Madam
9 Chair. Bill Magavern.
10 CHAIRPERSON MOULTON-PATTERSON: Magavern, I'm
11 sorry.
12 MR. MAGAVERN: I'll start with what for us is the
13 most important principle is that radioactive waste from
14 nuclear weapons facility and nuclear power plants should
15 not be going to solid waste landfills. They're not
16 permitted to take it. They're not licensed to take it.
17 The landfill operators don't want it. The Legislature
18 last year emphatically pronounced it doesn't want that
19 happening, and I'm quite convinced that the people of
20 California do not want that. Whether the waste is from an
21 operating facility or decommissioned facility is actually
22 not a vital distinction. What's important is the hazard
23 from that waste. It is hazardous. It needs to go to a
24 facility that is actually designed and licensed to take
25 it.

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1 Now, we know that radioactive waste had been
2 dumped both legally and illegally in solid waste landfills
3 and as Mr. Hirsch said, the biggest shipments came from
4 the Department of Energy facility. The State Water Board
5 tested some landfills, found not surprisingly that many of
6 them did have elevated levels of radiation.
7 Unfortunately, the Water Board's response, rather than
8 taking action to prevent future dumping was to want to
9 study it more and to want to contract with a nuclear
10 weapons facility, a Department of Energy facility, to do
11 the studying and as Board Member Peace asked exactly the
12 right question how would that finding have any
13 credibility, and we have said all along that findings
14 would not have any credibility if it came from Lawrence
15 Livermore.
16 I recognize that the Water Board has moved
17 somewhat in our direction by including a role for an
18 independent contractor. And that's important. However,
19 at this point it still looks like Livermore would have a
20 role in interpreting the data. It's okay with us if
21 Livermore does the lab work, but not put its own spin on
22 it. Not do its interpretation.
23 So that's where it is now. I know it's important
24 to have these funds. Well, actually, I don't know it's --
25 it's important to the Water Board to have the funds used.

It's important to have landfill operators and I agree they shouldn't be burden with this. They never asked to receive the waste. What's important to us actually is to stop the dumping, not to study it more. But we are willing to collaborate in this effort as long as the Lawrence Livermore Lab is not in a role of doing its interpretation. Thank you.

CHAIRPERSON MOULTON-PATTERSON: Thank you. And Mr. Helget very briefly or wait until after, because we're really getting behind here. We're supposed to resume our hearing at 4:00 and I'm not going to be pushed on this item, so I am going to continue it.

MR. HELGET: Madam Chair, I'm often brief anyway.

CHAIRPERSON MOULTON-PATTERSON: Thank you, we appreciate that.

MR. HELGET: Chuck Helget representing Allied Waste. We believe that further science-based testing is going to be important both for the public and for the landfills. Something we do need is additional information. We support the transfer of the $100,000 because we think it is important to get this money moving now. And with that, I'll defer my other comments.

I just would like to add one real quick thing. When we talk about elevated levels of contamination in the first round of testing, you should remember those levels

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of contamination were compared to drinking water standards. That's, I think, a very important factor to keep in mind.

CHAIRPERSON MOULTON-PATTERSON: Item 39 will be continued until the conclusion, until after we conclude the hearing.

Item 44. I'm sure our court reporter needs ten minutes. So we'll take a ten-minute break while everybody is setting up to resume the hearing, the Redwood Rubber issue.

(Thereupon a recess was taken.)

CHAIRPERSON MOULTON-PATTERSON: I'd like to resume our hearing at this point. And this is Item 44, consideration of an appeal by Redwood Rubber concerning disallowance of cost for tire recycling grant TR11-98-2762.

And I would just like to remind you, you're still under oath, Mr. Faust, and you had -- if you would wrap up your final comments in about five minutes, we'd appreciate it. Do you think you can do that or do you need ten?

MR. FAUST: Probably at least ten.

CHAIRPERSON MOULTON-PATTERSON: Okay, I'll give you ten. And then you're going to have time to rebut then. So this will not be your final word.

MR. FAUST: Okay. I'd like to start out with --

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1 BOARD MEMBER WASHINGTON: Do you want to do ex
2 partes?
3 CHAIRPERSON MOULTON-PATTERSON: Mr. Jones, do you
4 have any ex partes?
5 BOARD MEMBER JONES: John Cupps.
6 CHAIRPERSON MOULTON-PATTERSON: Ms. Peace.
7 BOARD MEMBER PEACE: That's ditto for me.
8 John Cupps.
9 CHAIRPERSON MOULTON-PATTERSON: Thank you. I
10 have none. Mr. Paparian.
11 BOARD MEMBER PAPARIAN: Yes, John Cupps and also
12 George Larson. George Larson regarding the item on radio
13 that's come up.
14 CHAIRPERSON MOULTON-PATTERSON: Mr. Washington.
15 BOARD MEMBER WASHINGTON: Same. George Larson
16 and John Cupps.
17 CHAIRPERSON MOULTON-PATTERSON: I did say I have
18 none. I think I did.
19 Okay, Mr. Faust. I hadn't started your time, so
20 go right ahead.
21 MR. FAUST: Okay. As I previously testified, the
22 state auditors left PRD and no test had been done because
23 of an unfortunate exothermic reaction. Their reaction and
24 audit was extremely negative. And my extruder was held in
25 hostage, and I didn't get it until the following year.

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1 It was hauled to another location in Stockton. One of
2 the -- and as part of my CRDF grant we had to do timing of
3 production flows because ultrasonics -- the reaction we're
4 counting nanoseconds of time for exposure and we needed to
5 know the amount of exposure time for -- to -- for the
6 productivity issues of the ultrasonic devulcanization.
7 So under this particular context we had to do a
8 lot of tests to find out what was actually a result. What
9 we found out is that PRD actually did make a hopper device
10 that produced 400 pounds an hour, but they had screwed up
11 the -- on the back flow it had jammed and so consequently
12 it wasn't putting out. But it actually -- when it was
13 reinstalled at the Stockton location that was noted and on
14 the first test it came out at 400 pounds. So anyway,
15 here's a declaration from Russell Beggs, an employee
16 there.
17 MR. BLEDSOE: Excuse me, Mr. Faust, which exhibit
18 is that?
19 MR. FAUST: That's Exhibit 13 in my file. He
20 said, "I participated in a productivity test of crumb
21 rubber at my place of employment. I'm employed at M.J.
22 McCutchen in Stockton, California. I performed
23 productivity tests using different lots of rubber to
24 determine the pumping rate through the cold heat extruder.
25 The extruder is a three and a half cold feet extruder with

1 a hopper assembly furnished by Redwood Rubber. The test
2 was an March 26th, 2003. The result of that test was 400
3 pounds an hour. I tried several lots of crumb rubber. On
4 April 3rd, 2003, a second test was conducted. The
5 productivity rate of crumb rubber was 475 pounds an hour.
6 I personally weighed a steel barrel used in the test. I
7 furnished the scales and we docketed a 28 pound weight of
8 the steel test barrel and the determine the extruder
9 productivity rate was 448 pounds an hour. Mr. Tom Faust
10 was present at all the tests. Attached is the photo of
11 output going into a drum. I declare under penalty of
12 perjury that all the foregoing is true and correct,
13 May 7th, 2003."
14 So in the following page is a photo that was
15 actually taken at that particular time of his tests.
16 Now I'd like to you compare that photo with
17 Exhibit -- Exhibit 11. Exhibit 11 shows a picture of the
18 extruder and the rubber coming out of it. And I'd also
19 like you to compare -- you see it's kind of dark. But
20 there's a huge hunk. It's a black solid mass of partially
21 devulcanized rubber that's coming out the extruder opening
22 with four ultrasonic horns around it.
23 So if you can compare that you'll see there's a
24 difference in the rubber flow. One, obviously the Russell
25 Beggs is not sonicated. It's just shooting out solid

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1 stream. And this other one shows devulcanization -- a
2 white -- a black mass coming out of the center about, it
3 comes out about 8 inches then breaks.
4 Now, I also want you to compare Exhibit 20 as a
5 quick time movie -- quick 10 seconds, only take 10 seconds
6 to look on your extruder, I mean on your computer, so you
7 can compare that and that's -- you can see it in real time
8 Exhibit 11. Okay.
9 So the next item, the rubber was tested by Holtz
10 Rubber, another California company. And they -- and they
11 found these particular characteristic. This is -- this is
12 early pilot scale. There was a test. It's not great.
13 Not everything was working. But what it shows is we did
14 conduct the test. There was no guarantees. And --
15 anyway, so we have tested two different lots of crumb
16 rubber.
17 Exhibit 19 is a sample size in your hand right
18 here of ultrasonic devulcanized rubber. Again, it's one
19 of the sample lots. And it was produced under our
20 recently awarded patent 6545060.
21 Exhibit 16 -- this is the equipment that
22 Mr. Hebert requested to see the invoices from PRD, but PRD
23 wouldn't show the invoices. And some of the equipment was
24 purchased by PRD and then the -- they negotiated return of
25 equipment. But when we severed our relations. So anyway,

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these are additional equipment that you can see it's made out U.S. Civilian CRDF and they purchase this equipment -- additional $36,000 of equipment -- they purchased a lot more, the total purchase was over 362, but this is -- this is the instrumentation aspect of -- that was -- part two of my purchase order to PRD. And that's Exhibit 5 was work clause Exhibit B, PRD contract with Redwood Rubber, clause B. And this is part of -- that's a $40,000 contract. This is 36,000 --

Exhibit 17.

MR. BLEDSOE: Excuse me, Mr. Faust, before we leave that Exhibit 16. How did those invoices relate to U.S. Rubber and this grant agreement?

MR. FAUST: How do these -- these items because they were directly related to -- they were part of the initial work clause that was supposed to be accomplished by PRD, but PRD refused to cooperate in giving the data exam documentation. So anyway, so what I'm showing is that there is perseverance here. And we eventually got the things purchased and because we were able to, then we were able to collect data for temperatures and pressures, and we know how to scale it up again on the basis of this -- without this pilot scale we would never have been able to put together another grant proposal to scale us up to commercial scale, which is around 4,000 pounds an hour.

1 MR. BLEDSOE: Did U.S. Rubber pay these invoices
2 out of grant moneys?
3 MR. FAUST: Yes. Yes.
4 MR. BLEDSOE: And sometime after --
5 MR. FAUST: Their name is on here.
6 MR. BLEDSOE: Sometime after May 2002?
7 MR. FAUST: These were all paid -- they weren't
8 paid -- they disbursed the funds.
9 MR. BLEDSOE: Sorry, who's they --
10 MR. FAUST: CRDF foundation for this particular
11 project so we could -- it's all part of the things. So
12 whether I'm having -- you know, I lost money on PRD, but
13 we continued to prove it. You know, my whole concept was
14 I have to develop a system. So I'm showing the rest of
15 the elements of the system were actually purchased and
16 installed and used to collect data. So I complied with my
17 contract, not only, you know, partially, but 100 percent.
18 And I believe under the contract that I'm owed additional
19 sums of funds reimbursement on the thing.
20 Look, we worked on this thing for three years and
21 didn't receive -- we've received zero compensation. I
22 don't know how -- you know, you wouldn't work for the
23 Board for three years and not receive any compensation.
24 But I worked on this just out of the labor of love to
25 develop something that would have a profound environmental

1 impact for the State of California and the world and that
2 was my only motivating factor was to do something
3 environmentally good and prove that it could be done. I
4 got no compensation.
5 MR. BLEDSOE: Thank you.
6 CHAIRPERSON MOULTON-PATTERSON: You have about a
7 minute left.
8 MR. FAUST: Okay. Fine. Exhibit 17 on here is
9 the patent that was awarded April 18th, 2003, on our
10 system. We initially applied for that in the year 1996,
11 '97, I believe. And after a tremendous amount of analysis
12 by the patent office found it was a superior technology to
13 the existing technologies. And so finally we get a little
14 recognition.
15 Exhibit 18 is preamble that has been filed on the
16 basis of the knowledge that was learned on the pilot scale
17 unit we put together a proposal and we're not requesting
18 80,000 of course. We know better. We're requesting 3.2
19 million to scale it up to commercial scale and that's the
20 amount that's actually required. But the 3.2 million will
21 create thousands of jobs, cut down global CO2 emissions.
22 And it won't require subsidy.
23 So, you know, that the whole purpose of the
24 project was to move in that particular goal. And we think
25 we have succeeded.

1 CHAIRPERSON MOULTON-PATTERSON: Thank you,
2 Mr. Faust.
3 How long do you need for rebuttal?
4 MS. BRECKON: My guess is ten minutes, but I
5 haven't been too good at guessing.
6 CHAIRPERSON MOULTON-PATTERSON: How much? Ten
7 minutes?
8 MS. BRECKON: Ten minutes.
9 CHAIRPERSON MOULTON-PATTERSON: That will be
10 fine.
11 MS. BRECKON: First of all, we passed out the
12 agenda item in the Grant Application Mr. Paparian asked
13 for. And, Mr. Gauff, thank you for returning.
14 The adhesion contract statements that Mr. Faust
15 was making, what is your response to the allegation that
16 you sent out the first page of the grant agreement and
17 then did not send out the terms and conditions and
18 procedures and requirements until a month later?
19 THE WITNESS: Typically.
20 CHAIRPERSON MOULTON-PATTERSON: Just as I
21 reminded, Mr. Faust, I want to be fair -- you're still
22 under oath.
23 THE WITNESS: Yes. Nate Gauff with Special Waste
24 Division.
25 Typically when staff sends out a grant agreement

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1 for signature, we do include all exhibits, whether it's a
2 grant or contract we include all exhibits which have a
3 standard clauses which have the procedures and requirement
4 and the schedules for the grant.
5 BY MS. BRECKON:
6 Q Is there any particular reason to hurry the grantees
7 to sign it for end of fiscal year purposes since it was a
8 June '99 --
9 A No.
10 Q -- '99 --
11 A No.
12 Q -- signing?
13 A Because the Board action encumbers the funds. When
14 the Board approves the award of the grants, as far as I
15 know, that encumbers the funds for the program so the end
16 of the fiscal year as you can see on the grant agreement,
17 at the bottom of the grant agreement page, the funds were
18 encumbered by Susan Johns on June 14th, '99, which is two
19 months before the end of the fiscal year. So there was no
20 rush and actually within that same grant cycle there was
21 one grant agreement that was signed late in August. So
22 there's no rush as far as any end of the fiscal year
23 deadline.
24 Q Okay. The typical -- just to sort of educate us, the
25 terms and conditions are they typically standard or are

1 they something that can be negotiated.
2 A They're typically are standard terms set by the Board.
3 In the nine years that I've been in grant management, I
4 have not had one awarded grantee turn down a grant award
5 based on the terms and conditions or the procedures and
6 requirements.
7 Q Okay. And is it possible to negotiate any of the
8 tasks in the procedures and requirements?
9 A The tasks of the work statement? Yes, they are
10 negotiable. And as a matter of fact, I have met with
11 Mr. Faust down in Alameda on May 24th and we did talk
12 about this project. We -- like I said earlier, I went
13 down there and talked with him and then there was also a
14 gentleman from the Energy Commission with me and we talked
15 about what he was trying to do and talked about what he
16 was going to produce through the project.
17 Q So you negotiated the task in the grant agreement
18 based on that conversation?
19 A For the most part, yes. I would say subsequent to
20 that Mr. Faust did ask for additional funds which, I think
21 there was a letter from -- I don't know if it's in any of
22 the exhibits the Board Members have. But in the grant
23 file there is a letter from Caron Trgovcich, who at that
24 time was our deputy director, dated June 9th. There was
25 no additional funds towards her project and that we did

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1 expect him to complete his project based on the original
2 $80,000 grant award.
3 Q Showing you June 9th letter -- showing you the June
4 9th letter -- is that the letter you're referring to?
5 A Yes.
6 Q From Caron Trgovcich? In addition I'll be showing you
7 a May 29th letter. Can you discuss this, please?
8 A Actually, this is May 28th. This is from Redwood
9 Rubber to Caron Trgovcich. And once again, Mr. Faust is
10 requesting additional funding to supplement his project.
11 And once again, the June 9th letter was in response to his
12 original May 28th letter.
13 Q Okay. So bottom line, what the June 9th letter is
14 saying -- what is it saying, bottom line Mr. Faust needing
15 to complete the project?
16 A It says that at the bottom of the first paragraph
17 "Please be advised, however, that at the current $80,000
18 funding level you are still responsible for completing the
19 project described in the Grant Application tire product
20 promotion and processing Grant Application."
21 Q Okay. I'd like to mark those exhibits as Exhibit Q
22 and mark them for identification and move them into
23 evidence.
24 MR. BLEDSOE: Yes.
25 (Thereupon the above-referenced document was

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1 marked by the reporter as Board's
2 Exhibit Q for identification and were admitted
3 into evidence.)
4 BY MS. BRECKON:
5 Q Did Mr. Faust or -- excuse me, did you ever make a
6 statement like "take it or walk away" referring to the
7 grant agreement?
8 A I do not believe I made any statement of that nature.
9 What I did reiterate to Mr. Faust when I did talk to him
10 was that there was no additional funding for his project
11 and that he could take the 80,000 or he could not do the
12 grant, but I couldn't give him any more money. He didn't
13 have to sign -- I mean, didn't to have sign the grant
14 agreement.
15 Q Okay. Did Mr. Faust ever indicate to you that he was
16 surprised about the terms and conditions?
17 A Not that I'm aware of. And be reminded that this was
18 Mr. Faust's Redwood Rubber second grant so he was very
19 familiar with terms and conditions and procedures and
20 requirements from the first grant.
21 Q Thank you. Going to terms, the terms and conditions
22 of the five of the grant agreement.
23 CHAIRPERSON MOULTON-PATTERSON: Excuse me,
24 Mr. Jones -- I'm stopping the clock. Mr. Jones has a
25 question.

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1 BOARD MEMBER JONES: Just a follow-up on that.
2 If in '99 when Mr. Faust was asking for more money, he had
3 gotten the grant. He hasn't submitted any -- he hadn't
4 submitted any invoices. So according to the testimony
5 we've already -- he hasn't really encumbered anything, he
6 was looking to partner. Was there a penalty for him
7 giving up that grant after he had signed it, other than
8 the fact he would lose the ability to grant? But if he
9 hasn't spent any money and was needing another grant,
10 would there have been a penalty the giving up the first
11 grant?
12 THE WITNESS: Not that I'm aware of.
13 CHAIRPERSON MOULTON-PATTERSON: Mr. Paparian.
14 BOARD MEMBER PAPARIAN: As long as we're
15 clarifying a couple things. Mr. Faust, I listened to you
16 carefully about this document. Mr. Faust said he signed
17 the cover page on, but didn't have the attachments for a
18 while after that.
19 MS. BRECKON: That's the grant agreement.
20 BOARD MEMBER PAPARIAN: Right, and what I heard
21 you say is that typically you wouldn't have somebody sign
22 this without all the attachments there. But I didn't, I
23 don't think I heard you say specific to this agreement
24 that you don't think you --
25 THE WITNESS: I don't remember four years ago

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1 exactly if I gave him the grant agreement, I mean all the
2 exhibits at the same time. I think it would stand out in
3 my mind if I had because I never done it any other time.
4 So I can't say -- I'm saying to the best of my
5 recollection I believe all the grant agreement and all the
6 exhibits were together for him to review before signing.
7 BOARD MEMBER PAPARIAN: Okay. Thank you.
8 CHAIRPERSON MOULTON-PATTERSON: Okay.
9 BY MS. BRECKON:
10 Q Going to the terms and condition number five of the
11 grant agreement, Exhibit D, Mr. Faust indicated he was
12 giving testimony relating to partial payment for the value
13 of the process. Did you have any response to that? Did
14 you -- have you made an estimate of the value of the
15 process?
16 A At the time that I received the final payment request
17 the final report and the information I had it at that
18 time, I felt that he completed a partial project. I think
19 I agree with him in that. I think where the problem came
20 in and where the subsequent repayment is of issue today is
21 that through the audit process he couldn't prove he had
22 spent any of that money. But I agree he did some work. I
23 agree with talking with PRD that some work was performed,
24 and I felt I had compensated him more than appropriately
25 in my estimation looking at it now, but at the time, based

1 on the information I had, I thought I had compensated him
2 appropriately for the work that he had accomplished up to
3 that point.
4 Q Okay.
5 A I just want to reiterate one statement he made also.
6 He did say he prepaid for some grant expenses, which that
7 is definitely not a reimbursable item in any of our
8 procedures that you pay for grant expenses, at least not
9 in my term of grant management. We do give advances, but
10 that's usually requested up front. It's not when you get
11 a payment request intimating that you had expended money
12 and then ask for reimbursement. He said he prepaid for
13 some of the grant expenses.
14 THE WITNESS: You heard Mr. Faust talk about
15 CRDF.
16 CHAIRPERSON MOULTON-PATTERSON: Excuse me. We
17 had a question. I've stopped the clock again.
18 Mr. Washington?
19 BOARD MEMBER WASHINGTON: In terms of -- the what
20 is this company PD --
21 THE WITNESS: PRD.
22 BOARD MEMBER WASHINGTON: PRD. The checks he has
23 shown he paid off to those folks, did you ever verify
24 those checks were actually cashed by PRD?
25 THE WITNESS: No. Once again, I did inquire to

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1 PRD. They did state that he had given them some money.
2 They never told me how much. And I left it at that point.
3 As Mr. Jones pointed out some of the, you know, I did
4 notice that the canceled dates were quite a bit of time
5 after the checks were written. And then, like I said, on
6 two of the checks I can't read the canceled date at all.
7 So at the time I kind of went -- like I said, I went with
8 what information I had and what seemed appropriate. And
9 then subsequently I figured -- I figured it would be taken
10 care of in the audit process, since I'm not an auditor. I
11 felt they would be better equipped to handle it once we
12 got to that step of the process.
13 CHAIRPERSON MOULTON-PATTERSON: Okay. Thank you.
14 Continue, please.
15 BY MS. BRECKON:
16 Q You heard Mr. Faust talking about CRDF. Can you tell
17 us what that is?
18 A I can't tell you exactly what it is. All I can say is
19 I know he secured a grant with this CRDF which is, I
20 think, a foundation or student National Science Foundation
21 or something of that nature. However, I do remember
22 Mr. Faust telling me directly at the August 2nd meeting
23 that the reason he needed the $44,000, which at that time
24 was the big dispute, was that he needed some money to up
25 front or to front some money to receive the CRDF grant.

1 Okay? And he said it was somewhere in the nature of 10
2 percent. And I didn't pursue that any further, because I
3 at this point, like I said, the auditor was really the one
4 that was calling the shots.
5 Q So the invoices that Mr. Faust was referring to, I'll
6 just represent to you they were dated in May of 2002.
7 Would those be eligible for purposes of our grant cycle?
8 A No. Anything dated after April 1st is typically not
9 eligible. Once again, that's the date the final report is
10 due. If your final report is due, you can't keep working
11 and trying to complete something, unless you get a
12 preapproved extension from the grant manager, which I
13 never received anything from Mr. Faust. So no. Those
14 grant expenses would not be eligible for reimbursement.
15 I'm sorry, I wouldn't call them grant expenses. Those
16 expenses would not be eligible for reimbursement under the
17 grant.
18 CHAIRPERSON MOULTON-PATTERSON: Ms. Breckon, can
19 you conclude your rebuttal?
20 MS. BRECKON: Yeah, no further questions.
21 CHAIRPERSON MOULTON-PATTERSON: You have ten
22 minutes, Mr. Faust.
23 MR. FAUST: Mr. Washington keeps on bringing up
24 the checks. The checks were given to Mr. Hebert. He
25 examined them in person. All the checks were individually

1 given to him. He has his own -- he photocopied them. He
2 examined them for about I don't know how long. They're
3 authentic checks. There was absolutely no issues raised
4 on any of the checks. They were -- and I have those
5 checks to this date, if there's any question on the
6 checks. You know, I have no control of when PRD is going
7 to cash them.
8 Now, this contract is a legal -- is a legal issue
9 as a contract of adhesion. Your witness over there has
10 testified that he doesn't recall giving me all the
11 documents, but he thinks he did. The matter of the fact
12 is he did not, because he only had the face page that he
13 gave me. So -- and we joked about it. Under the original
14 contract terms, the contract only calls for 400 pounds an
15 hour rubber processing system for devulcanization.
16 Redwood easily completed this aspect of the contract. The
17 contract states Redwood shall develop a system, it says
18 system, and we developed that system.
19 Force Majeure, clause 1. Clause 8 allows Redwood
20 Rubber to claim Force Majeure. Force Majeure is a
21 situation encountered when the situation is out of control
22 of a contract holder or the contract. It says right here
23 grantee shall not be responsible. It says shall. It
24 doesn't say may, it says shall. And PRD's refusal to
25 cooperate with the state audit is clearly a Force Majeure

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1 situation. It stops the clock and allows Redwood time to
2 complete the contract.
3 Redwood's delays in getting the NSD CRDF funding
4 completed was unforeseen in February 2001. Nevertheless,
5 the NSF CRDF grant was complete. Force Majeure clause
6 claimed in January 2000, clause 8 allows Redwood to claim
7 Force Majeure again.
8 Environmental financing is in dire straights in
9 California. As evidence of that, the California
10 Integrated Waste Board hired Millikan Institute in 2002,
11 to find new capital sources for tire recycling.
12 Unfortunately, the Millikan Institute submitted a report
13 claiming low income housing was the same as tire recycling
14 investments.
15 I personally called all 20 new sources alleged in
16 the Millikan resources that you paid $100,000 for, and all
17 stated to me that low income housing was not the same as
18 tire recycling and none of them would consider any equity
19 investment in tire recycling.
20 Contract clause 5 allows the state to give
21 financial credit for all facets of a contract that import
22 knowledge earned. We learned under this contract that we
23 can use ultrasonic devulcanization to be an effective
24 environmental tool to recycle tires. We learned that we
25 have the technology in California and learned how to do

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it. We developed -- we learned what kind of crumb rubbers work, what kinds of crumb rubbers don't work. We learned that it is technologically feasible, and I have attached as a photo of a completed system right here with my physicist -- fellow physicist partners on here. That picture is included in as, I believe, Exhibit 12 in your book.

Exhibits 6 are bills of material paid for under the contract by the CRDF foundation which is roughly approximate to Exhibit B under the CRDF contract bill of materials. Redwood asked to be reimbursed $40,000 for this amount. These funds are badly needed so Redwood can continue to expand its tire recycling program. Res judicata controls here. Redwood Rubber sued PRD for non-compliance and used the State audit as prima facia evidence that PRD did not comply. Two courts had independently reviewed the State's audit. Two Alameda courts have ruled in 2001 that PRD does not have to comply with the Redwood State Integrated Waste Board contract. Two courts have ruled that PRD has complied with and completed the Redwood contract. Two courts have ruled that the Department of Finance audit has no applicability over the PRD Redwood dispute.

The audit has been argued repeatedly before the courts. Certainly there has been a legal precedent

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established. I'm being caught in a bureaucratic jam by the courts saying one thing and the staff here are trying to argue, trying to make me do something that is physically impossible.

In conclusion, I'd like to add this. On the way over, driving over, I was listening to the radio NPR and they had a segment that told how they -- scientists had just recently completed a test on global warming along the coast of California and what they did is they supersaturated the land with CO2 and raised the temperature and increased the water from that. And the result was they said that one-third of the plant species and this treated area were -- died -- died. And so this whole project is designed to reduce CO2 emissions in our state. And, you know, I tried to comply with everything I possibly could on this contract. I told the Board repeatedly that we needed more capital. I went out and secured the capital. We're recognized by the patent offices as having front and leading technology.

It is incumbent for this Board to follow the law and stimulate tire recycling to introduce new technologies under PRC 40051. Our technology is novel and superior to any of the other tire recycling technologies. I'm asking that you not punish this project. I'm asking that you allow this new technology to grow. Redwood should be paid

the remainder amount of the $80,000 that is requested to be reimbursed.

Thank you.

CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr. Faust. At this time, we have any final questions from Board members.

Mr. Jones.

BOARD MEMBER JONES: Thanks, Madam Chair. I'll make this quick. Staff delivered the Grant Application. It's the same application that -- I mean, the number is the same. This Grant Application was with Redwood Lumber in partnership with Bandag as you testified.

MR. FAUST: Yes.

BOARD MEMBER JONES: And that fell apart. And you found this DPRBCD, whatever the heck the name of these guys are --

MR. FAUST: The name of company is called Technor Apex and they make --

BOARD MEMBER JONES: I'm not talking about the -- your machinist, your pipe company is who you ended up doing this work through.

MR. BLEDSOE: PRD.

BOARD MEMBER JONES: PRD, thank you. I can understand why the courts would say that the Board has no right to look at PRD's books on this audit, because our

1 contract is with you. It's not with them. And you know,
2 I mean, the fact that Bandag isn't your partner, I don't
3 know that the courts -- if we would have had to look at
4 Bandag's books regarding this thing, I don't know if the
5 courts would have said you couldn't look at their books,
6 because they were part of the Grant Application. PRD
7 wasn't.
8 I'm looking at this as a contract. You said you
9 never got any money. What's in dispute here is that
10 $33,000 or $32,000 got paid. And the auditor and our --
11 the auditor has said that there were no invoices or
12 nothing to substantiate that expenditure and that we are
13 here and should be getting 28,000 of that $32,000 back.
14 MR. FAUST: I gave a purchase order to PRD and I
15 told them to do the work. I prepaid for the work. And as
16 the evidence shows, they actually did do the work. It
17 wasn't tested out until later on because of -- because of
18 circumstances beyond my control. But they actually did
19 the work -- they actually did correct engineering. Was it
20 a class A job? No. Was it was it a class B job? No.
21 Was it a class C? Probably -- it probably was a class C.
22 Was I totally happy with the work? No. But they did do
23 the job. They did fulfill the minimum terms of the
24 purchase order and the contract. They did.
25 BOARD MEMBER JONES: But the Grant Application.

MR. FAUST: I hate to admit it, but they did.

BOARD MEMBER JONES: The Grant Application was to develop something that would do 400 tons -- pounds.

MR. FAUST: It does. You have a sworn declaration that it actually exceeds that. And if you look -- I want you to look at that quick time movie and you'll see that stuff pulsating out of the machine. You're hear what an extruder sounds like. You're hear all the noises. If you will listen carefully you can hear the squeaks of the dolphins. So --

CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr. Faust. I see no other questions from Board members. At this time, we will ask for public comments, but I must note that comments by members of the public are not considered evidence unless the person qualifies as a witness and has been called as a witness by a party. I see no public comments, so I'd like to close the hearing on appeal. The Board can go into closed session at the this time to deliberate. If we come to a decision, we will come back out in public and announce that.

MS. BRECKON: Chair Linda Moulton-Patterson, my understanding was we get closing argument.

CHAIRPERSON MOULTON-PATTERSON: That's not in my notes.

MR. BLEDSOE: We didn't put that in the schedule.

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1 And I don't recall it in your original documents.
2 MS. BRECKON: Closing comments --
3 MR. BLEDSOE: In light of all that's happened
4 today, do you think closing argument is necessary?
5 MS. BRECKON: Yes. And if you look Tab C, the
6 last page of it 10E it says closing comments by staff,
7 questions by Board members.
8 CHAIRPERSON MOULTON-PATTERSON: You know, I gave
9 lots more time. If it's absolutely -- how long? A
10 minute. I really --
11 MS. BRECKON: Five minutes.
12 CHAIRPERSON MOULTON-PATTERSON: I think
13 everything, unless I hear an objection from my Board, we
14 have heard everything and we've close with Mr. Faust and
15 we'll close with you, Ms. Breckon.
16 MS. BRECKON: Can I just point out the couple
17 terms and conditions that are controlling in this matter,
18 because no witness has testified. I was just going to
19 point it out in closing comments.
20 MR. BLEDSOE: You do have those in the written
21 materials you submitted to the Board, do you not?
22 MS. BRECKON: Well, if I could just say six, nine
23 and ten. Those terms and conditions.
24 CHAIRPERSON MOULTON-PATTERSON: Thank you. We
25 have the information.

1 MR. BLEDSOE: Thank you.
2 CHAIRPERSON MOULTON-PATTERSON: Let's --
3 MR. FAUST: Excuse me I, I have one more item.
4 One more item that didn't -- that didn't somehow get in.
5 CHAIRPERSON MOULTON-PATTERSON: I closed the
6 hearing.
7 MR. FAUST: But she -- she passed out this
8 last-minute stuff at the last minute and I'm asking. I
9 have appraisal --
10 CHAIRPERSON MOULTON-PATTERSON: It's something
11 you want to hand us?
12 MR. FAUST: Yes.
13 CHAIRPERSON MOULTON-PATTERSON: We'll accept
14 that. The hearing is closed and the Board will go into
15 closed session for possible deliberations or make a date
16 when we will deliberate.
17 MS. BRECKON: Also, I want to object as waiting
18 to hold my objections off at that time to Exhibits 11, 13,
19 the CD and 16 for relevance and I could talk more about
20 that --
21 CHAIRPERSON MOULTON-PATTERSON: Thank you.
22 That's noted.
23 MS. BRECKON: Okay.
24 CHAIRPERSON MOULTON-PATTERSON: Thank you.
25 (Thereupon the Board recessed into deliberation)

CHAIRPERSON MOULTON-PATTERSON: I'd like to call our meeting back to order.

On Item 44, the Redwood Rubber hearing, the Board has not reached a decision this time. And -- thank you. Now we're going to quickly go to -- a lot of us are going to miss planes.

Number 39. Mr. Leary -- where's Mr. Leary? Is he here? Or Mr. Walker, either one. Is there a way -- I don't want to lose this money. Is there a way if -- after we hear briefly what was -- what happened during the break that we could encumber the money, is that the word, and then adopt the scope of work next month?

MR. WALKER: We do have that ability, but I believe we do have some consensus from the parties and --

CHAIRPERSON MOULTON-PATTERSON: Okay.

MR. WALKER: I defer to the State Water Board and the other commenters to --

CHAIRPERSON MOULTON-PATTERSON: Have you seen it, Scott?

MR. WALKER: Yes, I have. I have looked at it it's consistent with our scope of work.

CHAIRPERSON MOULTON-PATTERSON: Is it something that everybody's agreed to or -- you want to each come up and speak very quickly, because we are going to miss some planes here.

1 MR. GIANNOPOULOS: James Giannopoulos from the
2 State Water Resources Control Board, and although I, of
3 course, can't speak for my Board. I participated in this.
4 I've been the responsible staff in charge, and I've
5 concurred with the scope of work that we drafted that
6 Scott has in front of him. Is that clear?
7 CHAIRPERSON MOULTON-PATTERSON: Okay. Thank you.
8 And did Senator Kuehl's representative -- I'd like to hear
9 what you had to say. Come on up. State your name for the
10 record, please.
11 MR. SIEVERS: Cyrus Sievers, from the staff of
12 State Senator Sheila Kuehl. Agreement might be too strong
13 of a word, but I think we have a proposal that everybody
14 can at least live with, at least satisfies the major
15 objections. Everyone would like to change it, but I think
16 we can live with it -- I think that's where we're at. It
17 is a complete document.
18 CHAIRPERSON MOULTON-PATTERSON: Okay. I
19 understand -- is Mr. Gordan from Senator Romero's
20 office -- you're in agreement?
21 MR. GORDAN: I'm neutral at this point.
22 CHAIRPERSON MOULTON-PATTERSON: Mr. Helget and
23 Mr. Larson, did you want to speak again, very, very
24 briefly?
25 MR. LARSON: George Larson for Waste Management.

If I heard the Chair's comment earlier that you could encumber the funds today and we can work out the scope of work at a later date, that's what I would support today. I'm not comfortable with the five or ten minutes I've had to review this language as to how the final report will be managed.

CHAIRPERSON MOULTON-PATTERSON: Thank you.

Mr. Helget?

MR. HELGET: Very briefly. Chuck Helget representing Allied Waste. The same comments as George, concern about where the final report would be handled. With that being worked out, I think the other elements of the proposal are acceptable. Thank you.

CHAIRPERSON MOULTON-PATTERSON: Okay. Thank you.

MR. GORDAN: Alan Gordan with Senator Romero's office. If it is possible for the Board to do as you suggested, encumber the funds and finish the document later, not adopt the document, I think my boss, who has been conferring with Senator Shear all afternoon, who is Chair of the Environmental Quality Committee, would be much more comfortable with that path. Otherwise, with regard to the existing document, I have to say we're completely neutral on it, but with the idea we recognize the need to go forward and do the further testing. If you can encumber the funds today, allow some time for people

1 to actually review this document, rather than rush to
2 judgment right now, I think we'd be much more comfortable
3 with that, if that is possible for the Board to do.
4 CHAIRPERSON MOULTON-PATTERSON: Thank you,
5 Mr. Gordon.
6 I'd like to open it up to my -- Mr. Leary.
7 EXECUTIVE DIRECTOR LEARY: Madam Chair, just to
8 confirm your understanding of your proposal. The Board
9 can pass the resolution making the award to the State
10 Water Resources Control Board and in that mechanism
11 encumber the funds for next year with the caveat that we
12 take the scope of work back to the Board for approval in a
13 coming month when it's ready for it.
14 CHAIRPERSON MOULTON-PATTERSON: They would not
15 have the money if we didn't -- if the scope of work wasn't
16 worked out to the Board's satisfaction?
17 EXECUTIVE DIRECTOR LEARY: That's right.
18 CHAIRPERSON MOULTON-PATTERSON: Is that what the
19 Board would like to do?
20 It's very late. Would somebody like to make a
21 motion? Some of us are already packed up, but I'd like
22 some help here, please.
23 BOARD MEMBER PEACE: I will, but I want to make
24 sure I word this right --
25 CHAIRPERSON MOULTON-PATTERSON: Staff will help

1 you.

2 BOARD MEMBER PEACE: Okay. I'd like to move

3 Resolution Number 2003-374, Consideration for the Concept,

4 Contract Scope of Work for Characterization of Radio

5 Nuclides and Landfill Leachates and Groundwater Contract

6 Integrated Waste Management Board Fiscal Year 2002-2003

7 with --

8 MR. WALKER: With the modification that the funds

9 be incurred and award the contracted subject to the scope

10 of work being brought back before the Board for approval

11 in a subsequent Board meeting.

12 BOARD MEMBER PEACE: Okay. Sounds good to me.

13 CHAIRPERSON MOULTON-PATTERSON: We have a motion

14 on the floor by Ms. Peace. We have a second?

15 BOARD MEMBER WASHINGTON: Second.

16 CHAIRPERSON MOULTON-PATTERSON: Mr. Washington

17 will second that motion.

18 BOARD MEMBER JONES: Madam Chair, can I just ask

19 one question before take the vote? The Water Board's

20 testimony was that while everybody wasn't completely happy

21 that, this was something that you guys do manage and work

22 with, because the contract's through you, is that --

23 MR. GIANNOPOULOS: I think Cyrus said we could

24 live with --

25 BOARD MEMBER JONES: Something you could live

with?

MR. GIANNOPOULOS: That's probably closer.

BOARD MEMBER JONES: I'm a little worried that the scope could get real different.

MR. GIANNOPOULOS: First of all, just a point of clarification. We have to encumber before the end of the fiscal year. So once we encumber and you've put a little caveat at here that says well, you're going to encumber, but there isn't going to be any money until you approve a scope of work into the next fiscal year.

MR. WALKER: I think we wouldn't -- Scott Walker, Permit Enforcement Division. We wouldn't pay on the contract until such time that the scope of work is brought. We'd encumber the money, we'd award the contract --

MR. GIANNOPOULOS: You wouldn't process an invoice?

MR. WALKER: We wouldn't pay you --

MR. GIANNOPOULOS: We're not going to be sending you an invoice.

EXECUTIVE DIRECTOR LEARY: Until the scope of work is finished.

CHAIRPERSON MOULTON-PATTERSON: Thank you. I just want to say thank you to all of the parties that have worked really hard on this. I'm sorry this came up so

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1 late. I don't know what happened, but I wish we had had
2 more time, and I think that Ms. Peace's motion is the best
3 way to go. And would you please call the roll on the
4 motion?
5 SECRETARY WADDELL: Jones?
6 BOARD MEMBER JONES: Aye.
7 SECRETARY WADDELL: Paparian?
8 BOARD MEMBER PAPARIAN: Aye.
9 SECRETARY WADDELL: Peace?
10 BOARD MEMBER PEACE: Aye.
11 SECRETARY WADDELL: Washington?
12 BOARD MEMBER WASHINGTON: Aye.
13 SECRETARY WADDELL: Moulton-Patterson?
14 CHAIRPERSON MOULTON-PATTERSON: Aye.
15 Any public comments before we adjourn?
16 Ms. Peace.
17 BOARD MEMBER PEACE: Do we not need to do the
18 other resolution?
19 EXECUTIVE DIRECTOR LEARY: The other resolution
20 is approving the scope of work, which is not before us at
21 this point.
22 BOARD MEMBER PEACE: Okay. We'll do that at the
23 next meeting.
24 CHAIRPERSON MOULTON-PATTERSON: Thank you,
25 everyone, for a real intense meeting.

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1 (Thereupon the California Integrated Waste
2 Managment Board, Board of Administration
3 adjourned at 6:07 p.m.)
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1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:
5 That I am a disinterested person herein; that the
6 foregoing hearing was reported in shorthand by me,
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the
8 State of California, and thereafter transcribed into
9 typewriting.
10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.
13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 2nd day of July, 2003.
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