

STATE LANDS COMMISSION

TRANSCRIPTS

MARCH 6, 1991

AND

APRIL 2, 1991

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MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

Resources Agency Auditorium
1416 9th Street
Sacramento, California

Wednesday, March 6, 1991
1:00 p.m.

Janet H. Nicol
Shorthand Reporter

APPEARANCES1
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25**COMMISSION MEMBERS PRESENT:**

Honorable Leo T. McCarthy
Lieutenant Governor
Represented by Mr. Ed Manning,
Acting Chairman

Mr. Gray Davis
State Controller
Represented by Mr. James Tucker,
Chief Deputy Controller

Mr. Thomas W. Hayes
Director of Finance
Represented by Mr. LaFenus Stancell,
Assistant Director

STAFF PRESENT:

Mr. Charles Warren, Executive Officer

Mr. James Trout, Assistant Executive Officer

Mr. Robert C. Hight, Chief Counsel

Ms. Patsy Tomasello, Executive Secretary

Ms. Debbie DeMello, Executive Secretary

ALSO PRESENT:

Mr. Jan Stevens, Supervising Deputy Attorney General

Mr. Dwight Sanders, Chief, Environmental and Planning
Division

Mr. Lance Kiley, Chief, Land Management and Conservation
Division

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ACTING CHAIRMAN MANNING: Why don't we begin.

CHIEF COUNSEL HIGHT: Mr. Chairman, as I understand it, for the record, you will be sitting in a voting capacity for the Lieutenant Governor; and Jim Tucker will be sitting in a non-voting capacity for the State Controller.

ACTING CHAIRMAN MANNING: That's correct. Thank you.

My name is Ed Manning. I represent Lieutenant Governor Leo McCarthy, who is currently Chairman of the State Lands Commission.

To my left is Stan Stancell, representing Tom Hayes from the Department of Finance.

We're waiting on Mr. Tucker, who should be here shortly.

Why don't we begin. The first order of business is adoption of the minutes from the February 6th meeting.

ACTING COMMISSIONER STANCELL: Move the minutes, Mr. Chairman.

ACTING CHAIRMAN MANNING: The minutes are adopted of the February 6th meeting.

Let's move on to the consent calendar.

ASSISTANT EXECUTIVE OFFICER TROUT: Mr. Chairman, maybe you'd like to announce that Items 12, 14, 16, 18, 23,

1 29, and 30 have been taken off the calendar for today's
2 meeting in case anyone is here on those items.

3 ACTING CHAIRMAN MANNING: Is anyone here on those
4 items?

5 Those items will be taken off calendar.

6 Also, Item No. 5 on the consent calendar will be
7 moved onto the regular calendar because there are some
8 people here to speak on that item. So we will move Item No.
9 5 to the end of the regular calendar.

10 Is anyone here on any of the items on the consent
11 calendar that wants to be heard before we move those items?

12 Hearing no one.

13 ACTING COMMISSIONER STANCELL: I move the consent
14 calendar.

15 ACTING CHAIRMAN MANNING: The consent calendar has
16 been moved. I second that, and the consent calendar is
17 unanimously adopted.

18 Okay. Let's move on to the regular calendar.
19 Starting with calendar Item No. 21.

20 I'm pleased to have Senator Marks here today.

21 Thank you for coming down, Senator Marks, to speak
22 on this calendar item.

23 I'd like to please have Mr. Warren first describe
24 the item.

25 ASSISTANT EXECUTIVE OFFICER TROUT: Mr. Chairman,

1 Mr. Sanders with our planning and environmental unit will
2 present the item.

3 MR. SANDERS: Thank you, Mr. Chairman. I will do
4 so very briefly.

5 In January of 1990, Highway 1 in Muir Beach and
6 Stinson Beach in Marin County was closed due to a landslide
7 which apparently was accelerated by the Loma Prieta
8 earthquake on October 17th, 1989. Since January 1 of 1990,
9 the road has been closed.

10 The item before the Commission is a general permit
11 to the State Department of Transportation for authorization
12 to place on tide and submerged lands approximately
13 75 000-plus-or-minus cubic yards of material that will be
14 used as an erodible support for fill associated with the
15 reconstruction of the highway upland.

16 Let me explain erodible fill. This fill material
17 is designed to protect the upland fill over the course of
18 time that it needs to be stabilized. And it is with that
19 design that we were most concerned as staff.

20 The erosion -- there were two forms of impact
21 staff believed would occur from the proposed project.

22 The first being the direct burial of approximately
23 2.5 acres of tide and submerged lands as a result of the
24 fill. And then subsequent potential effects of scour and
25 sediment transport from the erodible fill on both up coast

1 and down coast areas of State tide and submerged lands as
 2 well as potential effects to the north coast area of the
 3 Farallone Islands Marine Sanctuary and the down coast area
 4 of the GGNRA, or Golden Gate National Recreation Area,
 5 administered by the National Park Service.

6 In conjunction with those concerns, staff
 7 consulted with other responsible Federal and State agencies
 8 and has developed Special Conditions which are attached to
 9 your calendar item as Exhibit C.

10 These Special Conditions are meant to complement
 11 the permit conditions of other agencies and to address
 12 potential environmental impacts to lands under the
 13 Commission's jurisdiction.

14 The Department of Transportation has accepted
 15 these Special Conditions and has signed a general permit as
 16 an expression of that acceptance.

17 With that, Mr. Chairman, I would close staff's
 18 presentation. And we're obviously here to answer any
 19 questions or respond to comments as necessary.

20 ACTING CHAIRMAN MANNING: Thank you, Mr. Sanders.
 21 Senator Marks, thank you for being here.

22 SENATOR MARKS: Good afternoon.

23 First I want to thank you, Charlie Warren, for the
 24 expeditious consideration of this very important permit
 25 application.

1 Approval of the Caltrans permit application is
2 especially urgent because of the public safety problems
3 created by re-routing traffic over Panoramic Highway and the
4 hardships created for Stinson Beach residents by continued
5 closure of Highway 1 between Stinson Beach and Muir Beach.

6 I'm here to urge you to approve this permit with
7 conditions that will provide the best possible enhancement
8 of Marin County's coastal environment and to ensure the
9 mitigation project Caltrans ultimately selected is properly
10 completed.

11 It is very common for a plan development by staff
12 to be changed in the field as a contractor proceeds with the
13 work to complete the project. Therefore, I strongly support
14 requiring mitigation for whatever area may be covered by the
15 fill this project necessitates as opposed to mitigating away
16 for the 2.5 acres of project it is designed to cover.

17 I also support an inter-agency environmental team
18 to oversee the mitigation project and the post-project
19 monitoring as a condition of the permits issued by the
20 Coastal Commission, the Army Corps of Engineers.

21 Thank you in advance for responding favorably to
22 the need of my constituents in Marin County. Thank you.

23 ACTING CHAIRMAN MANNING: Thank you very much,
24 Senator Marks.

25 Is anyone else interested in speaking? I have a

1 slip here, request to speak, from Edward Ueber -- I think
2 that's the proper pronunciation -- from the Gulf of the
3 Farallones and Cordell Bank National Marine Sanctuaries.

4 If anyone else would like to speak on this item or
5 any other item, these forms are available, and you can fill
6 them out.

7 MR. UEBER: Thank you. I can't see you with my
8 glasses on, and I can't see the paper with them off. Thank
9 you for allowing me to come to speak to you at this time.

10 I'm the Sanctuary Manager for the Gulf of the
11 Farallones and Cordell Bank National Marine Sanctuary,
12 roughly an area of one million acres, which is half the size
13 of Yellowstone. Of this one million acres, less than
14 one-tenth of one percent is coastal intertidal habitat such
15 as found in the slide area.

16 The sanctuary has all along been very vociferous
17 in wanting this rare and unique area protected. And both
18 the Secretary of Commerce, U.S. Senator Seymour, Senator
19 Marks, and the head of NOAA, and the head of the Sanctuary
20 and Reserve Division have attempted to make sure that the
21 project is not only speedily done, but safe and sound to the
22 environment. It's one of the reason why they have so many
23 criterion on the permit.

24 We still would like to see -- we're missing
25 wonderful opportunities to get the type of information that

1 we need because Caltrans hasn't placed the type of
2 monitoring equipment which should go in prior to disposal.

3 We lost a wonderful opportunity during this last
4 week. I was out on the Farallones when we had a storm which
5 kept me out there for three more days. And this was the
6 perfect type of storm that we needed to evaluate to see what
7 would happen to the material once it's placed. But as to
8 date, no material placement devices discern where the
9 sediment goes, the damage that may occur, have been placed.

10 There is a study monitoring scour by the Moss
11 Landing Marine Laboratory which is limited in scope and does
12 not address the process of movement of material or the
13 impacts up or down the coast.

14 And we believe that Caltrans should be instructed
15 or encouraged to put out monitoring equipment now. That
16 monitoring equipment should be agreed to by a committee
17 that's mentioned in the permit by the Corps of Engineers.

18 We'd also like to see some way of measuring and
19 guaranteeing that 75,000-plus-or-minus yards doesn't become
20 120,000 or 80 or 90,000. We would like to see some bound on
21 that 75,000, rather than just a free and open access.

22 We'd also like to see the permit things about
23 meeting and deciding if they could reduce the total amounts
24 of material and the total amounts placed in the ocean in
25 some fashion. Right now we are not aware of any meetings

1 that Caltrans has about that, prior to the implementation of
2 their bids, and we would like to see that occur prior to the
3 awarding of the contract, because if there was some way to
4 do less damage, we would like to see that.

5 And that's one of the reasons we'd like the
6 transport model in the ocean at the same time, because there
7 may be some placement techniques that could be used if we
8 know how the currents are moving, which could lessen
9 impact in certain ways.

10 And to address the six or eight points that are in
11 the Corps permit, we'd also like to know if the funds have
12 been made available for the long-term monitoring and how
13 much they would be and if that's part of the \$7,000,000
14 appropriated.

15 We'd also like to know if in the statement on
16 three -- in the Corps permit they say large boulders.
17 Previously, people have mentioned large boulders in the
18 area. But armoring the tow may require more large boulders
19 than are presently available in the area. And if that's to
20 be done in a satisfactory way to protect that tow, we feel
21 that large boulders should be brought in.

22 Item No. 5 is very similar to Item No. 4, which is
23 the total placement of material. We also feel that
24 mitigation should be not only for the two and a half acres
25 that are believed will be covered, but for the actual

1 covering material, covered as stated by Mr. Sanders, also by
2 the material which will scour and inundate areas which are
3 outside that very very small area. This mitigation cost
4 should be funded and also included in Caltrans' budget for
5 the future.

6 That's on the eight points, if anybody has any
7 questions.

8 I thank you for allowing me to speak.

9 ACTING CHAIRMAN MANNING: Thank you.

10 Mr. Sanders, could you respond to some of the
11 concerns that were raised? My reading of the conditions and
12 our permit seems to address some of those concerns.

13 MR. SANDERS: I believe they do, Mr. Chairman.

14 Specifically, Special Condition 4 requires
15 Caltrans to conduct post-construction physical and
16 biological monitoring, which will, among other things, track
17 sediment transport from the fill.

18 There is also a time table specified for the first
19 meeting of the inter-agency working group to assist Caltrans
20 in the development of required mitigation plan, both
21 required by the Commission and by the Coastal Commission in
22 their permit. That is stated within 15 business days of the
23 issuance of this permit.

24 As to some of the items that Mr. Ueber recited.
25 The availability of funds to Caltrans on the necessary

1 studies and so forth, Mr. Tom McDonald, from the California
2 Department of Transportation, is in the audience, and he may
3 be able to speak to the items specifically in reference to
4 the Department of Transportation.

5 But I believe, Mr. Chairman, that the other issues
6 that were addressed by Mr. Ueber are indeed covered within
7 the Special Conditions that Caltrans has accepted as a part
8 of this general permit.

9 ACTING COMMISSIONER STANCELL: Before you respond
10 to the issue, there was one point that was raised about the
11 limitation on the cubic yards. He said that it appears to
12 him it would be more than 75,000 cubic yards. Is there some
13 way that you can address that to limit it?

14 MR. SANDERS: Mr. Stancell, in Item 4-A of the
15 Corps permit that Caltrans has received is -- I guess you
16 can best characterize it as an admonition to reduce the
17 total amount of fill requiring that amount of material
18 requiring disposal. And B, more important, reduction in the
19 amount of material disposed in the shoreline or in the
20 ocean.

21 Caltrans has indicated to us that -- and again,
22 perhaps Mr. McDonald can speak to this -- that the contract
23 to be let, as far as the engineering specifications, is
24 specific to the proposed contractor as to the amount of
25 fill.

1 We have, however, tried to anticipate the
2 eventuality of more than 75,000 cubic yards being deposited
3 in the ocean in two ways.

4 Number one, we are requiring what I would call an
5 as-built survey which will give the Commission the exact
6 area covered by the fill at the conclusion of construction
7 activities.

8 And secondly, we have required that the mitigation
9 to be supplied be in direct relationship to that as-built
10 survey.

11 So there will be direct mitigation for all
12 material placed on tide and submerged lands in addition to
13 subsequent mitigation as determined by the monitoring plan
14 that is included in the Special Conditions.

15 ACTING COMMISSIONER STANCELL: Thank you.

16 MR. MCDONALD: Yes. Good afternoon. My name is
17 Tom McDonald. I'm with Caltrans; I'm in the environmental
18 unit in San Francisco.

19 I'd like to just briefly respond to a couple of
20 issues that Mr. Ueber brought up.

21 As to our monitoring program, we had committed to
22 a monitoring program at the very onset of the studies for
23 this project back about a year ago. We have a three-phase
24 program with the Moss Landing Marine Laboratories.

25 The first two phases were the preliminary

1 investigation and some baseline investigations so that we
2 know what is there. Those phases have been completed.

3 The monitoring phase focuses on the sediment
4 transport and its effects. The sediment transport studies
5 and monitoring can't begin until we place the material in
6 there and then we start tracking it.

7 We have -- our consultant has constructed wave
8 refraction diagrams and has done some analysis of the
9 probable direction and volumes of the sediment transport,
10 and the conclusions were that they would have very little
11 risk to the sanctuary.

12 And based on other monitoring studies Moss Landing
13 has done for us on other locations, that the sediment
14 transport tends to be limited to a very short distance, half
15 a kilometer to a kilometer.

16 As to the funding, as I mentioned at the beginning
17 here, the contract was signed and is in place to conduct
18 this monitoring. And I think the estimates will range from
19 a half million to a million dollars.

20 In addition, we're proposing to provide off-site
21 mitigation that could run another half a million dollars,
22 away from the project site, as a coastal enhancement
23 program.

24 In addition to that mitigation, we have built into
25 the project a number of mitigation elements, among which was

1 mentioned was the placement and selection of the larger
2 rocks and boulders to, so to speak, armor the buttress.

3 The point here is that we're not trying to make
4 that buttress so that it doesn't erode. It is, by design,
5 an erodible buttress. We cannot stop the mountain from
6 coming into the ocean. All we can do is try to duplicate
7 what's there now. And by armoring it during the initial
8 period, we hope that the rate of erosion will be slowed and
9 then eventually it will just resume what nature is now
10 doing.

11 Thank you. I'm available for any other questions.

12 ACTING CHAIRMAN MANNING: I have one question. So
13 I take it to mean that from your comments that the earlier
14 cap on the dollar amount that you would be spending on
15 mitigation and on monitoring has been lifted?

16 MR. MCDONALD: That was lifted as a condition of
17 the Coastal Commission permit, and our District Director
18 made a commitment that we would comply with all the
19 conditions of the Coastal permit.

20 ACTING CHAIRMAN MANNING: Okay. Thank you very
21 much.

22 Is there anyone else in the audience who would
23 like to speak on this item?

24 ACTING COMMISSIONER STANCELL: Mr. Chairman, it
25 appears that the staff has done a reasonably good job in

1 attending to this issue. In closing, I would move staff
2 recommendation.

3 ACTING CHAIRMAN MANNING: I second that. Item No.
4 21 is adopted.

5 And I'd like to thank staff and recognize the
6 efforts of Mr. Warren and Mr. Sanders, in particular, in
7 doing a fine job on this item. Thank you very much.

8 Thank you, Senator Marks.

9 Item No. 22.

10 ASSISTANT EXECUTIVE OFFICER TROUT: Mr. Chairman,
11 Item No. 22 involves the construction of a gas pipeline from
12 Arizona and Wyoming into the southern San Joaquin Valley.
13 Mr. Sanders will also present this item.

14 MR. SANDERS: Thank you, Mr. Chairman.

15 As much as I would love to, I think the honor of
16 presenting this item to the Commission should go to an
17 individual who has lived with it for six years. By that
18 means of introduction, I would like to ask Mary Griggs, of
19 my staff, who has served as the project officer for this
20 monumental effort, to present her portion of the staff
21 report, which will then be followed by Mr. Ron Small, a
22 staff counsel, who will address the items more related to
23 the use of the school lands in the project.

24 MS. GRIGGS: The project before you today are
25 pipelines from Wyoming and Arizona to serve the enhanced oil

1 recovery fields near Bakersfield in Kern County.

2 The oil producers in the San Joaquin Valley would
3 use this gas as boiler fuel to create steam which will be
4 injected into the oil fields to produce crude which is
5 otherwise unrecoverable by primary methods.

6 The Kern River Transmission Company project
7 encompasses 676 miles of pipeline from Wyoming to Daggett.

8 The Mohave Pipeline Company encompasses 159 miles
9 of pipe from Arizona to Daggett, California.

10 And then the joint venture of the two companies
11 will transport the gas over a 225-mile joint pipeline from
12 Daggett into the Bakersfield area.

13 These projects cross three parcels of school land
14 and two parcels of sovereign lands.

15 In 1985, applications were filed with Federal
16 Energy Regulatory Commission and the State Lands Commission.
17 This was a precedent setting move for FERC, who had never
18 done a joint project with the State of California.

19 And the State Lands Commission entered into a
20 memorandum of understanding to do a joint environmental
21 impact report, environmental impact statement.

22 A notice of preparation was circulated in 1985
23 through the clearing house. Draft and final documents were
24 prepared. Scoping meetings were held. And subsequent to
25 that, a supplement to the final EIR was also prepared. And

1 just recently an amendment to the documents was prepared.

2 The entire deed of this document is before the
3 Commission today for certification.

4 Staff has received several letters of comment on
5 this recent amendment. You have them before you in your
6 packets.

7 Late Monday afternoon we received extensive
8 comments from counsel for Mr. and Mrs. Robert Sutton,
9 landowners in the Tehachapi Mountains.

10 On Tuesday morning, we received a second letter
11 from Mr. Sutton's attorney, which indicates that the Suttons
12 and the applicants have resolved their differences.

13 In any event, staff feels that all environmental
14 issues discussed in these latest comments have been
15 adequately addressed within the documentation before you.

16 As part of the project consideration, the
17 necessary CEQA findings have also been prepared for
18 adoption. For each impact identified as significant, one or
19 more findings are made.

20 In spite of the substantial mitigation required of
21 this project, there remains significant impacts. Therefore,
22 a statement of overriding consideration has also been
23 prepared for your consideration.

24 Within the statement, the Commission must weigh
25 the unavoidable adverse impacts against the benefits of the

1 project. Staff believes that the benefits of the project
2 exceeds its negative impacts.

3 For example, the benefits include reduction in the
4 air quality impacts in Kern County, and the economic
5 benefits to San Bernardino County realized during
6 construction.

7 The largest benefit is with regard to availability
8 of natural gas in California. The California Energy
9 Commission, in its recent publication, California Energy
10 Outlook, said that its key policy goal is to increase
11 competition by allowing the first interstate pipeline into
12 California -- interstate gas pipeline, that is.

13 The CPUC has as both a near-term and a
14 long-term -- I'm sorry. California has both a near-term and
15 long-term need for additional natural gas capacity. They
16 have found that the Mohave-Kern River Projects address these
17 needs with minimal adverse environmental effects.

18 Lastly, recent legislation requires that the
19 Commission, as lead agency, adopt a reporting and monitoring
20 program to ensure the implementation of all required changes
21 to mitigate or avoid a project significant environmental
22 effect.

23 The California Department of Fish and Game, the
24 Federal Energy Regulatory Commission, and the Bureau of Land
25 Management have requested that the Commission monitor this

1 project in its entirety to ensure continuity and consistent
2 protection of the varied natural resources along the
3 pipeline route, both in California and in the states of
4 Wyoming, Utah, Nevada, and Arizona.

5 The proposed monitoring program presented for your
6 consideration as Exhibit H will ensure compliance with
7 requirements of law.

8 Ron Small now has some additional points that
9 he'll make regarding the lease.

10 ACTING CHAIRMAN MANNING: Thank you.

11 MR. SMALL: Ron Small, staff counsel with the
12 Commission.

13 One of most significant items in this project was
14 that habitat mitigation was found for desert tortoise. Fish
15 and Game and Fish and Wildlife Service has required that the
16 companies provide about 10,000 acres of habitat mitigation
17 for those endangered species.

18 As part of this lease we're going to enter into
19 with the companies, we're going to require first
20 consideration for fire and school lands that are tortoise
21 habitat for transfer to the Department of Fish and Game for
22 habitat mitigation. And we are currently working on that
23 agreement right now with Fish and Game and the companies.

24 ACTING CHAIRMAN MANNING: Thank you. Mr. Small,
25 there's a question.

1 ACTING COMMISSIONER TUCKER: What's the amount of
2 money you think it will cost them?

3 MR. SMALL: Between four and six million dollars.

4 ACTING COMMISSIONER TUCKER: 10,000 acres?

5 MR. SMALL: Right.

6 ACTING CHAIRMAN MANNING: Thank you.

7 ASSISTANT EXECUTIVE OFFICER TROUT: Mr. Chairman,
8 we also have received a letter from the Paragon Companies on
9 March 5th indicating that more environmental assessment is
10 needed before approval. Mr. Sanders can respond to that if
11 you have any questions, but I think the presentation covers
12 that.

13 There's also Scott Doksansky, who asked to speak
14 on this item.

15 ACTING CHAIRMAN MANNING: Mr. Doksansky.

16 MR. DOKSANSKY: Scott Doksansky. That's
17 D-o-k-s-a-n-s-k-y. I'm the Executive Director of the
18 Barstow Area Chamber of Commerce.

19 And I am here today to read into the record a
20 letter from the city manager of the City of Barstow, Eric
21 Ziegler.

22 "Honorable Commission:

23 "It is with a sense of deep
24 frustration that the following letter is
25 written.

1 "The City of Barstow has been
2 commenting on and following this project
3 since February of 1986, when the first
4 scoping meeting was conducted in Barstow
5 on what was then referred to as the
6 Mohave-Kern River-El Dorado
7 Environmental Impact Report. We
8 submitted comments at that time on
9 issues that should be addressed in the
10 EIR.

11 "Since that time, the following has
12 occurred:

13 "April 15, 1987 - Written comments
14 submitted to the Federal Energy
15 Regulatory Commission on the EIR/EIS.
16 FERC is the lead agency.

17 "January, 1988 - Received Final
18 EIR/EIS. Barstow's comments were not
19 addressed.

20 "January 26, 1988 - Spoke with
21 Robert Arvedlund, Federal Energy
22 Regulatory Commission, about the failure
23 of the EIR/EIS to address Barstow's
24 comments. He suggested I send another
25 copy to his attention and he would make

1 then part of the record.

2 "January 26, 1988 - Mailed another
3 copy of the comments to FERC. No
4 response.

5 "February, 1990 - A representative
6 of Mohave Pipeline Company came to
7 Barstow with a preliminary pipeline
8 route. This particular route did not
9 coincide with previous proposals to
10 place the pipeline in the BLM utility
11 corridor north of Barstow. Mohave
12 Pipeline was advised in writing (copy
13 attached).

14 "March, 1990 - Same comments
15 reiterated to the Fluor Daniel Company.
16 Copies sent to State Lands Commission
17 and the Federal Energy Regulatory
18 Commission. No response.

19 "January 24, 1991 - Mohave Pipeline
20 Company graciously delivers a copy of
21 Mohave-Kern River Pipeline Projects -
22 Environmental Impact Report Amendment.
23 (State Lands Commission). Unfortunately
24 the final date for comments was January
25 18, 1991. Why was Barstow not in the

1 distribution list for this revised EIR?

2 "February 11, 1991 - Comments sent
3 to Al Powers (Mohave Pipeline) and the
4 State Lands Commission.

5 "February 21, 1991 - Final EIR
6 amendment received. Barstow's comments
7 not addressed.

8 "As I think you can see, this whole
9 EIR process has been fatally defective
10 from beginning to end, both in process
11 and in substance.

12 "The Mohave Pipeline route crosses
13 an active fault (Lenwood), which is on
14 the Alquist-Priolo Special Studies Zone
15 Maps of the State Division of Mines and
16 geology. There is a considerable amount
17 of residential development, both
18 existing and planned, in the area of
19 West Main Street where the pipeline will
20 be constructed. These impacts are not
21 addressed in the EIR.

22 "Given the foregoing, we urge the
23 Commission to deny certification of EIR
24 400, Mohave-Kern River Pipeline
25 Projects.

1 "The City of Barstow remains ready
2 and willing to discuss the impacts and
3 alternatives of this project.

4 "Signed, Eric Ziegler. City
5 Manager, City of Barstow."

6 I have copies of all that correspondence.

7 ACTING CHAIRMAN MANNING: Thank you. Do you want
8 to wait a minute.

9 Could someone from the staff respond to those
10 concerns?

11 ASSISTANT EXECUTIVE OFFICER TROUT: Mr. Chairman,
12 perhaps Michael Ferguson, with Mohave Pipeline Company,
13 could initially respond, and then staff would be available.

14 ACTING CHAIRMAN MANNING: That would be fine.

15 MR. FERGUSON: Mr. Chairman, I'm Michael Ferguson,
16 an attorney representing Mohave Pipeline Company.

17 We have had a number of discussions with the City
18 of Barstow and have explained to them on numerous occasions
19 that the reason that the route selection was made to the
20 south of the City of Barstow, rather than north, is because
21 Mohave is required to do that by one of the specific
22 mitigation measures required by the FERC.

23 One of the specific mitigation measures required
24 the Federal EIS and the State EIR promulgated back in 1986.

25 I cannot explain to you the relationship or the

1 lack of relationship between the FERC and the City of
2 Barstow. But we have been very forthcoming about that
3 requirement. And I'm not sure if I can elaborate on that
4 any more at this point in time.

5 ACTING COMMISSIONER TUCKER: On the issue of
6 whether or not the impact of having the pipeline going
7 through the proposed residential area, has that been
8 addressed?

9 MR. FERGUSON: My understanding is that the
10 pipeline does not go through a residential area that exists
11 now. It goes south of the city, which is an area that the
12 city is growing in and where there may be development in the
13 future. The impact of the pipeline on development has been
14 addressed generally in the EIS and EIR. And the findings
15 there was that it did not have a significant effect in the
16 aggregate on future development in the State of California.

17 ACTING COMMISSIONER TUCKER: What about the issue
18 of the earthquake fault zone?

19 MR. FERGUSON: There are specific mitigation
20 measures we are required to follow to mitigate the fault
21 process. There are a number of them in the State of
22 California. These involve special engineering designs for
23 the pipeline and other geological hazards mitigation
24 measures that we intend to comply with.

25 ACTING CHAIRMAN MANNING: One question. Can you

1 give a little bit of insight into why FERC chose the
2 location it chose as mitigation?

3 MR. FERGUSON: I'm sorry, I was not prepared to
4 discuss this particular issue here today. But my
5 recollection -- and I have to go back and check the
6 documents -- but my recollection is that the Bureau of Land
7 Management and their comments on the original EIS/EIR
8 recommended that we follow a utility corridor to the south
9 of the city rather than the north of the city. The route we
10 are following is also a utility corridor. That
11 recommendation was adopted by the FERC.

12 ASSISTANT EXECUTIVE OFFICER TROUT: I think
13 Ms. Griggs can maybe answer that question, too. She seems
14 to have the answer.

15 MS. GRIGGS: If I could add to that. Mr. Ferguson
16 is correct. The original Mohave application was north of
17 the city and FERC required them to move south of the city to
18 be in the established utility corridor.

19 And I'd also like to add as far as the Lenwood
20 Fault issue is concerned, because that also was an issue in
21 the Paragon letter that Mr. Trout mentioned, the Lenwood
22 Fault does not cross, it comes close, but it does not cross
23 the pipeline route.

24 ACTING COMMISSIONER TUCKER: Well, it's pretty
25 hard, I take it, to build a pipeline across California that

1 doesn't cross some earthquake fault, I would think.

2 MS. GRIGGS: That's correct.

3 And there are many mitigation measures that have
4 been imposed and adopted and will be part of our extensive
5 monitoring plan that I discussed earlier that will assure
6 that the pipeline is built in conformance with all the
7 regulations and codes.

8 ACTING COMMISSIONER TUCKER: Do you know if the
9 corridor that's going south of the city, one, do you know if
10 that's zoned residential now? And two, do you know if there
11 are other pipelines that go through that corridor?

12 MS. GRIGGS: Ken Lord has been project manager for
13 Chambers Group, who are the consultants that prepared the
14 document, and perhaps he can answer some of those questions,
15 too.

16 MR. LORD: I believe that the PG&E --

17 ACTING CHAIRMAN MANNING: Excuse me. Could you
18 please state your name for the record.

19 MR. LORD: Kenneth Lord, with Chambers Group.

20 ACTING CHAIRMAN MANNING: Thank you.

21 MR. LORD: I believe that the PG&E pipeline goes
22 through that established corridor at this point in time.
23 And the main reason -- what FERC was trying to do is to keep
24 all the pipelines in one place instead of starting a new
25 corridor to the north of town. Although I think that

1 All American goes through the north.

2 ACTING COMMISSIONER TUCKER: Do you know if
3 there's an area that crosses that that is now zoned
4 residential?

5 MR. LORD: No. I'm not aware of that.

6 ACTING CHAIRMAN MANNING: Thank you.

7 MS. GRIGGS: I'd like to make one other point
8 regarding circulation of the environmental document for the
9 City of Barstow. The City of Barstow has always been on our
10 mailing list. I'm anxious to see the information that the
11 gentleman from the City has placed in the record so I can
12 check it out. But they are on our mailing list. They're on
13 our mailing list for each document that was circulated. And
14 I'm not sure -- I'm having a hard time understanding what
15 the problem could be.

16 ACTING CHAIRMAN MANNING: Mr. Sanders?

17 MR. SANDERS: That was the point I wanted to bring
18 into the record, Mr. Chairman, is the fact that Ms. Griggs
19 has stated as to the City of Barstow's involvement in the
20 entirety of this process which has extended from 1985.

21 ACTING CHAIRMAN MANNING: Thank you.

22 I don't have any other slips to speak on this
23 item. Does anyone else want to speak on this item?

24 Nothing?

25 ACTING COMMISSIONER STANCELL: Move staff

1 recommendation.

2 ACTING CHAIRMAN MANNING: Second staff

3 recommendation, and the item is adopted.

4 Item No. 24.

5 ASSISTANT EXECUTIVE OFFICER TROUT: Mr. Chairman,

6 Item No. 24 involves a recreation pier permit at Lake Tahoe.

7 Mr. Kiley of the Land Management Division will present that

8 item.

9 MR. KILEY: Mr. Chairman, this is a proposal to

10 expand a pier over near Rubicon Bay about 20 feet farther

11 out into the Lake and to create a boat hoist adjacent to the

12 pier. This is a modest expansion.

13 ACTING CHAIRMAN MANNING: Anyone want to be heard

14 on Item No. 24?

15 ACTING COMMISSIONER STANCELL: Move.

16 ACTING CHAIRMAN MANNING: Second. Item No. 24 is

17 adopted.

18 Item No. 25.

19 ASSISTANT EXECUTIVE OFFICER TROUT: Item No. 25 is

20 an informational report regarding the First Seven Months

21 Status of the Long Beach Unit. Mr. Thompson will present

22 that item.

23 MR. THOMPSON: This is an informational calendar

24 item on the first seven months of activity on the Long Beach

25 Unit. I'll summarize this by referring to the first four

1 exhibits that are attached to this.

2 Exhibit No. 2 is the oil production rate in the
3 unit. And I think you can see that we have an increase in
4 production in this period of time. This reflects additional
5 building activity and increased oil price to put back in
6 production.

7 The oil price scenario for this period has been
8 rather erratic. You can see that in Exhibit 3 where crude
9 oil prices were almost \$28 and then ended somewhere below
10 \$12. That's also reflected in the total revenue that you'll
11 see on Exhibit 3 -- sorry, on Exhibit 4 -- which peaks along
12 with the oil price and then declines.

13 Exhibit 1 shows the monthly expenditures in the
14 unit, and they are slightly above last year.

15 This is an information item only.

16 ACTING CHAIRMAN MANNING: Thank you very much,
17 Mr. Thompson.

18 ASSISTANT EXECUTIVE OFFICER TROUT: Item No. 26 is
19 a similar report involving just the three months, and it is
20 a revision of the operations, plant, and development for the
21 Long Beach Unit, and basically reflects the information that
22 Mr. Thompson just covered. And if there's any other
23 questions on this one, which does require action, he'd be
24 ready to answer them.

25 ACTING CHAIRMAN MANNING: Any questions?

1 ACTING COMMISSIONER STANCELL: I'll move that.

2 ACTING CHAIRMAN MANNING: Item is seconded. Item
3 is adopted.

4 ASSISTANT EXECUTIVE OFFICER TROUT: Item No. 27 is
5 the Seventh Modification of the plan and budget to fund
6 water injection well conversion work through June 30th of
7 1991. Again, Mr. Thompson is available if there are any
8 questions.

9 MR. THOMPSON: This is merely an internal transfer
10 of monies.

11 ACTING COMMISSIONER STANCELL: Move that.

12 ACTING CHAIRMAN MANNING: Second. Item is
13 adopted.

14 Next item.

15 ASSISTANT EXECUTIVE OFFICER TROUT: Item 28 is the
16 award of a royalty oil sales contract.

17 Mr. Thompson will present that item.

18 MR. THOMPSON: This is for two leases in the Santa
19 Barbara Channel area, PRC 208 and 3120. The State has taken
20 their royalty oil in kind and putting it up for sale. The
21 State put 25.1 cents above closing price.

22 We recommend approval of that also.

23 ACTING COMMISSIONER TUCKER: So once again posted
24 price was wrong.

25 ACTING COMMISSIONER STANCELL: Move.

1 **ACTING CHAIRMAN MANNING:** Second that. Item is
2 adopted.

3 That puts us back to consent calendar Item No. 5,
4 I believe.

5 **ASSISTANT EXECUTIVE OFFICER TROUT:** Yes. Item No.
6 5 is the consideration and approval of an environmental
7 impact report and lease for US Sprint Communications for a
8 fiber optic cable.

9 You have before you slips from people who want to
10 testify.

11 And Mr. Sanders will summarize the project for
12 you.

13 **MR. SANDERS:** Mr. Chairman, as Mr. Trout has
14 indicated, this is an application to construct an
15 approximately 45-mile three-quarter-inch fiber optic cable
16 line between Oakland and Stockton. The application is by US
17 Sprint.

18 A portion of the route goes through the City of
19 Lafayette, from which you will hear later in this
20 proceeding.

21 Staff has prepared and circulated under the
22 provisions of the California Environmental Quality Act the
23 Proposed Negative Declaration. That Negative Declaration
24 was commented upon by all responsible agencies to this
25 project, a list of which is shown on calendar page 42.

1 We received no negative comments on staff's
2 proposal to adopt -- for the Commission to adopt a Proposed
3 Negative Declaration for the project.

4 We have also indicated or also received a no
5 jeopardy opinion from the Department of Fish and Game as to
6 consultation under the Endangered Species Act for the
7 entirety of the project.

8 You also have before you a packet of information
9 which contains letters dated, I believe, January 13th and
10 January 21st from the City of Lafayette, which expressed
11 concerns with the project. The responses to those concerns
12 and proposed monitoring program for the project are also
13 contained within the packet of information before you.

14 Staff has just today, just prior to the meeting,
15 received a copy of a letter dated March 6th from the City of
16 Lafayette. And I'm sure that the City will address that
17 letter specifically.

18 I have been handed a letter dated March 6th from
19 Senator Petris indicating his hope that the Commission will
20 support the City of Lafayette and quote, "Reject the EIR,"
21 unquote.

22 While we are in sympathy with the City's position
23 on the project, we do not feel and we do not agree with
24 their conclusions that the Proposed Negative Declaration is
25 inadequate. And we believe we have responded cogently to

1 and thoroughly to the concerns that have been expressed thus
2 far by the City.

3 Thus, I would conclude that the staff -- I believe
4 the Commission should certify or adopt the Negative
5 Declaration before it and proceed with the consideration of
6 the project.

7 ACTING CHAIRMAN MANNING: Thank you, Mr. Sanders.

8 ACTING COMMISSIONER TUCKER: What portion of the
9 route goes through Lafayette?

10 MR. SANDERS: Mr. Tucker, I can't answer that
11 question. Perhaps Mr. Wilmar, who is here today
12 representing US Sprint, can give an indication of the 45
13 miles, what portion of the project does pass through the
14 City of Lafayette.

15 MR. WILMAR: Mr. Chairman, members of the
16 Commission, my name is Michael Wilmar. I'm an attorney with
17 Nossaman, Guthner, Knox and Elliott. I'm representing
18 Sprint here today.

19 My understanding, for the record, is that of
20 the -- how many miles -- 93 miles, 2.5 is under the City of
21 Lafayette. Approximately 2.5, roughly somewhere between two
22 and a half and three percent.

23 ACTING COMMISSIONER TUCKER: What I'm really
24 trying to get at is it goes through other cities?

25 MR. WILMAR: Yes. And counties.

1 **ACTING COMMISSIONER TUCKER:** Under other roadways
2 through other cities?

3 **MR. WILMAR:** Yes; that's correct. All the way
4 from Oakland to Stockton.

5 **ACTING COMMISSIONER TUCKER:** Have any other cities
6 filed any complaints, raised any kinds of issues regarding
7 the EIR?

8 **MR. SANDERS:** Not to my knowledge, Mr. Tucker.
9 The City of Lafayette is the only city.

10 **ACTING COMMISSIONER TUCKER:** The other cities are
11 similarly situated: is that correct to say? I mean, it
12 would have similar impacts on them as Lafayette would have?

13 **MR. SANDERS:** Yes, sir. With perhaps the
14 exception of the issue raised as to soils stability that is
15 specific to the City of Lafayette. That issue, we feel, has
16 been eliminated through geologic reports by Dames and Moore.

17 **ACTING CHAIRMAN MANNING:** I have a couple of
18 questions.

19 According to the comments of the EIR, there would
20 be some lane closures during construction. Do you know how
21 big an area we're talking about?

22 **MR. WILMAR:** For the record, there have been a
23 couple of references to EIR. The documents you have before
24 you for certification is a Negative Declaration.

25 **ACTING CHAIRMAN MANNING:** Right.

1 MR. WILMAR: My understanding from the
2 construction personnel is that no more than 500 feet of the
3 trench will be open at any one point in time.

4 What exactly -- how much -- how that would affect
5 lane closures, I can't tell you right now. I'm not prepared
6 to answer that question, although there are representatives
7 of Sprint here who can answer that question.

8 It is clear that from time to time there will
9 be -- they will have to have traffic running in one lane,
10 one lane only. In other words, they'll have to have lane
11 controls in order to allow the construction to take place.

12 MR. SANDERS: One addition to that information,
13 Mr. Chairman. Within your packet is information that
14 indicates that within the City of Lafayette there will be (no
15 lane closures before 8:00 a.m. or after 4:30 p.m.)
16 Presumably those times having been arrived at on the basis
17 of prime commute traffic.

18 MR. WILMAR: Mr. Chairman, it had been my
19 contention to defer to the City of Lafayette to making any
20 further comments, because I think that what I have to say
21 would be in response. In fact, in response to what
22 Mr. Sanders just said, we're prepared to be even more
23 flexible in our construction to accommodate what we believe
24 to be legitimate traffic concerns to the City of Lafayette,
25 including (constructing entirely on weekends) if that's what

1 the City requires, or (in seven working days) along the
2 most -- limiting our construction and getting out of the
3 most congested portion within seven working days, working
4 during non-commute hours.) We could start later if
5 necessary.

6 ACTING COMMISSIONER TUCKER: The City has to give
7 them some kind of permit?

8 MR. WILMAR: Yes; that's correct. And we still
9 require an encroachment permit from the City of Lafayette,
10 and therefore we will be subject to whatever reasonable --

11 ACTING COMMISSIONER TUCKER: They could set
12 conditions on that?

13 MR. WILMAR: Yes; that's correct.

14 ACTING CHAIRMAN MANNING: Thank you.

15 I have a request to --

16 ACTING COMMISSIONER STANCELL: In answer to the
17 question of how many miles of construction we're talking
18 about, did you say 93 miles?

19 MR. WILMAR: The total fiber optic line is 93
20 miles.

21 ACTING COMMISSIONER STANCELL: I am confused. I'm
22 reading something here that says 45 miles. Am I reading
23 wrong?

24 MR. WILMAR: I believe it's to be constructed in
25 two phases. Is that correct. And the one phase is 45 miles

1 and the remainder would be the 48 miles.

2 ACTING COMMISSIONER STANCELL: 45 miles is what
3 affects Lafayette?

4 MR. WILMAR: Lafayette has a portion of the 45
5 miles.

6 ACTING COMMISSIONER STANCELL: Thank you.

7 ACTING CHAIRMAN MANNING: I have a request to
8 speak from Avon Wilson, City Councilmember from the City of
9 Lafayette.

10 Welcome.

11 COUNCILWOMAN WILSON: Thank you very much. Thank
12 you for the opportunity to address you.

13 As you had indicated, I am Avon Wilson. I am a
14 member of the Lafayette City Council, and I have been
15 authorized to speak on the Council's behalf.

16 Staff has indicated that there has been no
17 opposition to the issuance of a Negative Declaration. That
18 is quite untrue. Our city engineer's communication to you
19 of February the 13th clearly stated our opposition to a
20 Negative Declaration of environmental impact.

21 ACTING COMMISSIONER TUCKER: They just said that
22 opposition from other cities.

23 COUNCILWOMAN WILSON: Excuse me. I misunderstood
24 from his comments.

25 Our reason for asking that a focused EIR be

1 prepared on this rather than issuing a Negative Declaration
2 is as follows.

3 We have two major concerns, one of which is
4 traffic impact, the other is soils stability.

5 And staff has indicated that they're satisfied
6 with the reports which have been prepared on behalf of US
7 Sprint. And we would like to speak to that.

8 You have received our communication of March 6th.
9 I do have additional copies of that. I will not be reading
10 that into the record. I will summarize it. But I would
11 like it entered into the record as official testimony on
12 behalf of the City Council.

13 The corridor that is being proposed by US Sprint
14 and which is being opposed by the City of Lafayette to this
15 point -- we have suggested an alternate -- is a very narrow,
16 winding road. It is an old cart road that used to haul logs
17 from the redwood logging fields in Moraga. It was aligned
18 along the old cart road. It follows Las Trampas Creek. It
19 has a known history of slope failure.

20 We have had a lot of expense as a City to repair
21 slides on this road. We have had slides during the winter
22 of 1972, '82, '83, and '86. Each slide repair costs our
23 City a quarter to a half a million dollars per each.

24 We have had several additional slide failures
25 compared to the two which the Dames and Moore report

1 indicates. And we feel that the Dames and Moore study is
2 less than exhaustive.

3 Quite frankly, a field study done by our City
4 during the recent rain indicated that in addition to the
5 cracks which Dames and Moore have identified, there are
6 additional perpendicular cracks; there is sloughing from the
7 hillside above St. Mary's Road onto the road, which is a
8 common occurrence on this road.

9 We have constant erosion of this road adjacent to
10 the creek. It is an ongoing process. And it is exacerbated
11 by the storms.

12 So Dames and Moore's very superficial study done
13 on a dry day really did not understand. If they had talked
14 to staff as they had indicated in their letter, they would
15 have found out a more complete history of this road.

16 So I really think that the Dames and Moore study
17 is not exhaustive and should not be used as a reason to say,
18 there have been two slides, they have been repaired,
19 everything is cool.

20 The transportation study which we received by fax
21 yesterday from the Lands Commission, Associated
22 Transportation Engineers. This is another study which
23 apparently the staff feels will mitigate the traffic
24 problems.

25 This study indicates that St. Mary's Road corridor

1 including Reliez Station Road, varies from four lanes with
2 left turn lanes to two lanes with 24 feet of pavement. At
3 its widest, this corridor is 22 feet wide. At its
4 narrowest, which is Snake Hill, which is the section where
5 the East Bay MUD water main broke, it is 19 feet wide. It
6 has sheer cliffs on one side and drop-offs on the other in
7 many locations.

8 That leads us to a problem of the trenching. The
9 negative dec indicates that trenching will take place along
10 the shoulders, and it indicates that clean fill may be used
11 if possible compaction to the greatest degree possible.

12 We assert that given the slope stability on this
13 road, that we need to have a high degree of compaction, the
14 standard of which should be articulated in an environmental
15 study.

16 As we have indicated, there has been a washout on
17 this road which closed the road for four weeks. This caused
18 diversion throughout the City, which placed a strain on our
19 very very small police force. We have two officers on duty
20 at any one time. We do not have the capability to handle
21 the anger; to handle the safety problems in schools, in
22 neighborhoods, et cetera, that will be caused by closure of
23 the road.

24 It has been indicated that the road would not be
25 closed probably until 8:00 o'clock. 8:00 o'clock is our

1 morning peak time on this commute route.

2 This commute route is also the major emergency
3 access to Moraga, to Rheem Valley, to Burton Valley. There
4 is no hospital in Moraga. The only way that ambulances can
5 get through to Moraga to service them to hospitals in the
6 central county is on this route.

7 We believe that we have raised several issues that
8 deserve attention. We believe that the studies which staff
9 has depended upon are inadequate and are not a replacement
10 for an appropriate focused EIR.

11 We are asking that you uphold the Environmental
12 Quality Act, that you allow the scrutiny of this project
13 with appropriate mitigations and alternatives considered to
14 be open to the light of day.

15 We do not want to be in a position where we have
16 to depend on trust. We want it articulated for everybody to
17 see exactly what the impacts are. And we are looking to you
18 to uphold the law in this regard.

19 Thank you very much.

20 ACTING CHAIRMAN MANNING: Any questions?

21 I have one question.

22 COUNCILWOMAN WILSON: Certainly.

23 ACTING CHAIRMAN MANNING: Through the issuance of
24 encroachment permits and through your City's health and
25 safety and police powers, you can condition, I believe --

1 and please tell me if I'm wrong -- the times of lane
2 closures and trying to mitigate the traffic impact within
3 certain framework. In other words, you don't lose all
4 ability to control what time the lane closures take place;
5 isn't that true?

6 COUNCILWOMAN WILSON: We can condition; yes. But
7 you need to be aware that we will still have a diversion
8 problem in the downtown adjacent to elementary schools,
9 along the bike trail. We are talking about conflicts with
10 school-oriented traffic, with neighborhood traffic. And we
11 do not have the staff to accommodate this.

12 ACTING CHAIRMAN MANNING: Okay. Thank you.

13 Mr. Sanders, one more question regarding the slide
14 information.

15 MR. SANDERS: Yes.

16 ACTING CHAIRMAN MANNING: Can you just speak to
17 some of the concerns that were raised on that?

18 MR. SANDERS: What I can refer to, Mr. Chairman,
19 is the material within the staff report between pages 87 and
20 89.

21 The Dames and Moore letter that addressed the
22 landslides recites the fact that the fiber optic cable is
23 planned to be on the east side of St. Mary's Road, where the
24 slides, I believe, occurred on the west side, quote, "a
25 relatively large distance from the previous landslide

1 areas," unquote.

2 The conclusions that the consultant reached are at
3 the bottom of page 89, and indicate that:

4 "Based on the results of our
5 assessment, we conclude that
6 installation of the fiber optic cable
7 using the planned route through the City
8 of Lafayette is feasible from a
9 geologic/slope stability standpoint."

10 And that last sentence, in that area:

11 "In our opinion, the effect of the
12 cable on slope stability along the
13 proposed route is negligible."

14 Beyond that, I believe it would be appropriate for
15 Mr. Wilmar and representatives from US Sprint to discuss
16 some of the other construction related and other issues
17 raised by the Councilwoman.

18 MR. WILMAR: Mr. Chairman, members of the
19 Commission, thank you, again, for allowing me to speak.

20 I also would like to thank the staff, particularly
21 Mr. Brown, for very able assistance in bringing this matter
22 to closure today.

23 First of all, just for the record, I would like to
24 interpose an objection to the comments that are being made
25 today. The comment period closed some time ago, as far as

1 we know. And without saying anything further about that,
2 I'll preserve that point in the event that we ultimately
3 come to legal blows over this. I just want to state that
4 for the record.

5 At the same time, however, I do want to reiterate
6 what we've said to the Lafayette City Council and to you, we
7 are committed -- and I mean that -- we are committed to
8 working with the City to resolve these issues.

9 As you notice, Lafayette is the only city that's
10 objected to the Negative Declaration. We take those
11 objections quite seriously. I would add, however, that
12 Lafayette did not want this Sprint fiber optics cable to go
13 through Lafayette at all. Only when the Public Utility
14 Commission advised them we had legal right to do it, that we
15 began to talk seriously about alternatives.

16 The only issue before you today is whether there
17 is any substantial evidence that this project will have a
18 significant effect on the environment. And we submit, in
19 fact, it will not.

20 Two issues have been raised.

21 One is the traffic issue. We acknowledge that
22 traffic is at issue in Lafayette. We acknowledge that there
23 is a segment of the route in Lafayette where traffic will
24 need to receive some special attention. It's the area that
25 Councilwoman Wilson mentioned.

1 In response to that, we have offered and are
2 prepared to commit to the City to complete all work in that
3 segment of the route (within seven working days, working not
4 from 8:00 a.m. to 5:00 p.m., but from 9:00 a.m. to 4:00 p.m.)
5 And, in fact, if necessary, we will do it all on weekends,
6 (over eight days, which I think is fairly reasonable.

7 I want to emphasize we're not building BART
8 through the City of Lafayette. We're talking about a trench
9 that's 12 inches wide with 48 inches deep and will be
10 located in an existing road right-of-way. So it's not a
11 major construction project.

12 The other issue that's been raised is slope
13 stability. We have two representative here today from Dames
14 and Moore, both of whom were responsible for portions of the
15 study referred to. And one of whom, Phil Mabry, is
16 personally familiar with the areas mentioned in question,
17 and has, in fact, done some soils engineering work and other
18 work in that area.

19 If it would be -- with your indulgence, I would
20 like to ask Mr. Mabry to make a few brief comments on the
21 level of specificity and the appropriateness of the
22 engineering information that has been submitted to staff.

23 ACTING CHAIRMAN MANNING: That would be fine.

24 MR. MABRY: My name is Phillip Mabry. I'm the
25 senior geotechnical engineer with Dames and Moore, and I

1 prepared the report that the staff has reviewed.

2 Let me just go over, briefly, the scope of work
3 that we did for our studies. We reviewed available geologic
4 information. We also had copies of US Sprint's plans and
5 profiles for their planned cable. I discussed it with their
6 engineering department regarding the trenching depth within
7 the backfill procedures.

8 East Bay MUD had a pipe break on Reliez Station
9 Road, which is part of the route, that the water coming out
10 of the pipe washed away a portion of the slope.

11 I talked to their geotechnical engineer. And,
12 basically, what they had found out from their studies is
13 that not slope stability, but rather corrosion of the pipe
14 caused their failure. And in their opinion, it had been
15 repaired properly and the slope was brought back to its
16 stable condition.

17 Myself and Ray Rice, an engineering geologist in
18 our firm, drove the route, and we walked portions of it and
19 observed the areas where we thought there could be a slope
20 stability problem, to see if there was.

21 In fact, upon doing that, we only found a very
22 minor crack near the Las Trampas Creek Bridge. And we did
23 not see evidence of any significant ongoing landslides.

24 With that in mind, we prepared a report which
25 described what we had done. And it's my opinion that the

1 level of effort that we put into this is adequate. And we
2 wouldn't do any more for any other client for a similar
3 project.

4 If we had found an area where there was an active
5 landslide or it appeared that there would be one in the near
6 future, we would have recommended additional studies.

7 But considering the very small width, shallow
8 depth of the trench, and the fact that it's only there for a
9 limited period of time, we didn't see reason to do any
10 additional investigation.

11 ACTING CHAIRMAN MANNING: Mr. Sanders?

12 MR. SANDERS: Mr. Chairman, I'd also like to ask
13 Mr. Mabry.

14 Are you, sir, a registered professional engineer?

15 MR. MABRY: Yes; I'm a registered civil engineer,
16 and also I have the title of geotechnical engineer in
17 California.

18 MR. SANDERS: And was the individual who prepared
19 the report with you of similar qualifications?

20 MR. MABRY: Yes. Ray Rice is a registered
21 engineering geologist and geologist in California.

22 MR. SANDERS: And that's the conclusions of your
23 report -- in effect, your license is subject to the accuracy
24 of the conclusions in this report?

25 MR. MABRY: Exactly. Yes, sir; they are.

1 MR. SANDERS: Thank you.

2 ACTING CHAIRMAN MANNING: Mr. Stancell has a
3 question.

4 ACTING COMMISSIONER STANCELL: Mr. Mabry, the
5 methodology that you just described to us, in your approach
6 in arriving at your conclusion, is this a standard practice
7 for those type of projects that are used throughout the
8 profession, or is this something that you developed for this
9 particular situation?

10 MR. MABRY: The investigation that we did was
11 standard practice. We would always, for this type of
12 project, start with a review of available information and
13 site reconnaissance. And then if there was an apparent need
14 for additional work, it would be based on that. And the
15 results of our studies were such that after we had completed
16 this initial phase, there was no reason to do additional
17 work.

18 ACTING CHAIRMAN MANNING: Thank you.

19 We're going to have some more questions for
20 Mr. Wilmar. Before we do that, I have another request to
21 speak from a representative from the City of Lafayette. I
22 think it's Mark Lander. I can't read the writing very well.

23 MR. LANDER: Good afternoon. My name is Mark
24 Lander. I apologize for the handwriting. I'm the City
25 Engineer of the City of Lafayette and also a registered

1 civil engineer in the State of California.

2 I did have some points I wanted to bring up, and I
3 will combine those points in response to a number of
4 statements made by Mr. Wilmar and Mr. Mabry.

5 There seems to be a -- Mr. Wilmar seems to be
6 implying that this is sort of a last-minute protest that,
7 you know, sort of an eleventh-hour concern being brought to
8 the State Lands Commission.

9 As Councilperson Wilson indicated, we did respond
10 two weeks ago, a memo of February 13th, and again a memo of
11 February 21st, outlining a number of concerns we have of the
12 project. I have copies of those memoranda right here.

13 But beyond that, I think it should be mentioned
14 that we have been dealing with US Sprint since April of last
15 year. US Sprint approached us in April suggesting a route
16 along Reliez Station Road, Glenside Drive, St. Mary's.

17 We responded in writing at the time that we had a
18 number of concerns regarding the route, geologic stability,
19 traffic problems and a road reconstruction project which
20 we're now beginning to design, which we believe will
21 conflict with the fiber optics line. We told them a year
22 ago, almost a year ago.

23 They asked again in April for permission. We
24 again told them that we had a number of concerns with that
25 route.

1 We suggested in July to them a number of alternate
2 routes through the City, which a staff person and I felt I
3 could recommend to my Council. They chose not to follow
4 those alternate routes that we suggested to them.

5 We are not denying them access through the town.
6 We have never denied them access through the town. They do
7 not want to consider alternate routes. There is absolutely
8 no consideration of alternate routes that I can see in the
9 proposed Negative Declaration.

10 What also concerns me is that we were not
11 contacted by the State Lands Commission staff. Recognizing
12 your staff is just as busy as our staff, but we were not
13 contacted by them regarding any concerns that we might have
14 with the route.

15 I think we've been making an effort for almost a
16 year now to try and bring this to your attention and to try
17 to bring this to Sprint's attention. And Sprint has not
18 cooperated with us.

19 Touching on the soils problems. I believe
20 Mr. Sanders indicated that the slides on St. Mary's Road
21 were on the west side of the road and the cable will be
22 going on the east side of the road. That's true for part of
23 the route.

24 On Reliez Station Road there is a slide, unstable
25 fill, on the easterly side of the road where the cable will

1 be going.

2 The gentleman from Dames and Moore indicated that
3 he could find no evidence of sliding in looking over the
4 route. He apparently missed a whole series of cracks which
5 are on Reliez Station Road immediately north of Richelle
6 Court, which I see daily, which shows exactly where the
7 unsupported fill is located at. And I can see those. They
8 are visible to the naked eye. I don't know why he missed
9 those.

10 There were no borings done by Dames and Moore.
11 And what really bothers me is there is apparently no
12 research of previous slide history in the property.

13 Reliez Station Road lies -- it's a material called
14 Orinda formation, which is sort of a geologic slag heap.
15 It's an unconsolidated -- it's a downhill creeping of
16 material, very unstable, and there's a history of slides in
17 Contra Costa County on the Orinda formation.

18 That is mapped very clearly on the geologic map
19 for Contra Costa County, which is prepared by the State
20 Division of Mines and Geology, which I believe is located in
21 this building. It's readily available information.

22 There is also a 40-year-old cast iron East Bay
23 Municipal Utility District water main in Reliez Station
24 Road. It's a 16-inch line. It serves the greater part of
25 the Town of Moraga. That line broke roughly a year ago,

1 February of 1990. It blew a hole in the road the size of
2 that podium and blocked the road for four weeks.

3 In addition to major traffic problems it caused us
4 while the road was closed, a slide and the erosion and the
5 water from that pipeline pulled one house below the roadway,
6 almost drowned a child who was sleeping on the ground floor
7 of the house, and severely damaged another house.

8 There's also an impact on the water supply to the
9 Town of Moraga.

10 Now, US Sprint maintains this project is supposed
11 to provide a backup line for their communications. I
12 question, is this the place to put a backup line in an
13 unstable area?

14 That brings me to the final point, and I'll try to
15 wrap this up as briefly as I can.

16 The City of Lafayette is proposing a rehab of the
17 roadway. We hope to begin the design work in the next month
18 or so. We believe it will be under construction in 1992.
19 That will involve two lines. One relocation of the
20 waterline, and also the addition of an underground storm
21 drain, as well as retaining walls, and fill reconstruction
22 to stabilize the roadway.

23 That fiber optics line would very much be in the
24 way of our construction. And we've requested that if US
25 Sprint cannot find an alternate route, that they defer

1 construction until 1992. At that time, we will be more than
2 happy to try and coordinate their project with our project.
3 I think that's prudent use of the City's funds, of US
4 Sprint's funds, and service to their customers, and to the
5 ratepayers for East Bay MUD, who has a facility that is
6 impacted by the construction.

7 I think that covers my comments. I think my three
8 minutes are about up. If there are no questions, I'll sit
9 down.

10 ACTING CHAIRMAN HANNING: I have a question. So
11 is that your main concern here that you have a plan for
12 significant roadwork there, and relocation of a waterline
13 that you have had problems with in the past?

14 MR. LANDER: There are really two equal concerns.
15 One would be the traffic along the route. It's a
16 very heavily-traveled route. Yes, there's a heavy p.m. and
17 a heavy p.m. commute time. The traffic really never really
18 slows down on the roadway. The traffic would be a problem
19 in any case.

20 Second concern is that, yes, we do have a major
21 reconstruction project planned in the near future. And the
22 placement of one more utility line, especially a very
23 sensitive utility line such as a fiber optics telephone
24 cable, which is difficult to relocate, would be in the way
25 of our project.

1 It will probably cause additional costs to the
2 City due to the need to relocate that line or work around
3 it. I expect any contractor bidding on the City's project
4 would have concern with that line being in our way. And I
5 can see our construction costs going up because of that.

6 And there's going to be additional delay to the
7 public if that line is damaged if it has to be relocated to
8 accommodate our facility.

9 ACTING CHAIRMAN MANNING: I believe that Sprint
10 has agreed, though, to pay for relocation and for your costs
11 for further improvements down the road.

12 MR. LANDER: Sprint has proposed a fee which they
13 maintain would offset any financial impact to us. We're not
14 convinced that, at this point, that fee is high enough. I'm
15 not sure there's a way you can quantify that feat.

16 And it doesn't take care of the non-monetary
17 problems such as delay to the public if that fiber optics
18 line has to be put in once and then put in a second time or
19 if we find that line is in conflict with our project during
20 construction.

21 It doesn't deal with the problems associated with
22 the 16-inch waterline.

23 We have three projects -- three lines that have to
24 be put in -- our storm drain, our retaining walls, that is
25 one project; their line; and the East Bay MUD line.

1 There's only so much room in that corridor to put
2 those three utility lines in place. And this is the time
3 for us all to sit down, agree where do those lines go in the
4 street. We need to do some advance planning, some advance
5 engineering. We may find that their line is very much in
6 the way later on.

7 If East Bay MUD ever had to come in and
8 reconstruct or repair that line, I think they would find the
9 fiber optics line to be in the way. Their fiber optics line
10 is proposed to go directly over the portion of the water
11 main that broke a year ago.

12 ACTING CHAIRMAN MANNING: Okay. Thank you.

13 Mr. Wilmar, will you come back up for a minute.

14 I believe Mr. Tucker has a question for you.

15 ACTING COMMISSIONER TUCKER: I wanted to reiterate
16 a couple of commitments and ask you about those.

17 As I understand it, now, you are committing that
18 construction would be between 9:00 and 4:00 or on weekends?

19 MR. WILMAR: On the most heavily congested portion
20 of the route; that's correct, which is Glenside Drive,
21 Reliez Station to Olympic Boulevard.

22 ACTING COMMISSIONER TUCKER: And that you will
23 complete this within eight days?

24 MR. WILMAR: Eight weekend working days or seven
25 regular working days.

1 ACTING COMMISSIONER TUCKER: Okay. And I
2 understand from the letter that the Lands Commission staff
3 wrote to Mr. Lander that also we're requiring, in effect,
4 that any of the ground fill --(any of the disturbed surfaces
5 will be returned to the preexisting condition.)

6 MR. WILMAR: That's correct.

7 ACTING COMMISSIONER TUCKER: Okay. And then I
8 would ask for your commitment on one other thing that's been
9 raised here and that is that Sprint will have enough
10 personnel present to direct traffic and monitor traffic so
11 that it doesn't require that the City of Lafayette have
12 whatever law enforcement they have there directing traffic,
13 et cetera.

14 MR. WILMAR: I can make that commitment to you,
15 and I can add that even if I were not prepared to make that
16 commitment to you, I can assure you that the City of
17 Lafayette will require it as a condition of whatever
18 encroachment permit they ultimately --

19 ACTING COMMISSIONER TUCKER: I'm concerned now
20 that your commitment involve -- that you be generous about
21 the number of people you have there so that there's no
22 question that there is sufficient --

23 MR. WILMAR: I think I can make that commitment.

24 I might add that not only have we agreed to
25 complete the construction within the time allowed, but we

1 will be prepared to commit and are prepared to commit to a
2 penalty provision of \$5,000 per day for every day that we
3 exceed that construction.) And I think that's evidence of
4 the generosity that you're talking about. I mean, we're
5 prepared to satisfy the City of Lafayette's reasonable and
6 legitimate concerns about traffic and traffic control.

7 ACTING COMMISSIONER TUCKER: The other point for
8 the people here from Lafayette, I'd just like to make the
9 point that the Lands Commission will have staff present, as
10 I understand, to work with Sprint to ensure that the
11 conditions are met.

12 Is that correct?

13 EXECUTIVE OFFICER WARREN: Yes, sir.

14 ACTING COMMISSIONER TUCKER: That's all I have.

15 ACTING CHAIRMAN MANNING: Thank you very much.

16 ACTING COMMISSIONER STANCELL: Mr. Chairman, after
17 hearing the various speakers, I've come to the conclusion
18 that the staff recommendation is appropriate on the Negative
19 Declaration. It appears that the issue that really is of
20 paramount with the City of Lafayette is the potential of
21 inconveniencing their morning and afternoon commutes more
22 than once in a short period of time. And I can appreciate
23 that, but I think the issue before us is the Negative
24 Declaration, and I haven't heard anything to convince me
25 that that's not appropriate. So I would move the staff

1 recommendation.

2 ACTING CHAIRMAN MANNING: Thank you. I would
3 second that motion, and also encourage US Sprint to keep the
4 promises that they made here today.

5 Mr. Stevens?

6 SUPERVISING DEPUTY ATTORNEY GENERAL STEVENS: Yes.
7 Mr. Chairman, if I could just ask for the clarification of
8 the record.

9 Are the conditions referred to by Mr. Tucker being
10 incorporated into the conditions imposed by the Commission
11 as mitigation for this negative dec? The completion within
12 eight days, for instance; the weekend only.

13 ACTING COMMISSIONER TUCKER: Is that your
14 recommendation?

15 SUPERVISING DEPUTY ATTORNEY GENERAL STEVENS:
16 Requirements as mitigation, it would be appropriate.

17 ACTING CHAIRMAN MANNING: Yes. I was going to add
18 that Mr. Tucker's suggestions, as you just stated, be
19 incorporated as mitigation measures.

20 MR. WILMAR: Could I just clarify? Mr. Stevens
21 only mentioned the eight weekend working days. We will
22 leave that to the City of Lafayette as to whether or not
23 seven. Just make sure the entire issue is incorporated.

24 SUPERVISING DEPUTY ATTORNEY GENERAL STEVENS: As
25 determined by the City.

1 ACTING COMMISSIONER TUCKER: We're talking about
2 the four things. Did you get all those pearls of wisdom?

3 ACTING CHAIRMAN MANNING: The other conditions
4 would be the assistance to the City in terms of personnel.

5 ACTING COMMISSIONER TUCKER: Hours of work
6 complete in the period of time and the return to existing
7 condition.

8 ACTING CHAIRMAN MANNING: That's right.

9 SUPERVISING DEPUTY ATTORNEY GENERAL STEVENS: And
10 the penalty for failure to complete, which I think is
11 already there.

12 ACTING CHAIRMAN MANNING: With those conditions, I
13 second Mr. Stancell's motion and the calendar item is
14 adopted.

15 And I believe that concludes the calendar for
16 today.

17 Thank you all for coming.

18 And we will move into executive session, closed
19 session, to discuss litigation.

20 (Thereupon the March 6th, 1991, meeting
21 of the State Lands Commission was
22 concluded at 2:25 p.m.)

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25

1 CERTIFICATE OF SHORTHAND REPORTER
2

3 I, JANET H. NICOL, a Shorthand Reporter, do hereby
4 certify that I am a disinterested person herein; that I
5 reported the foregoing State Lands Commission Meeting in
6 shorthand writing; that I thereafter caused my shorthand
7 writing to be transcribed into typewriting.

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

11 IN WITNESS WHEREOF, I have hereunto set my hand
12 this 12th day of March, 1991.

13
14
15 Janet H. Nicol

16 Janet H. Nicol
17 Shorthand Reporter
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