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MEETING OF THE
CALIFORNIA STATE LANDS COMMISSION

PORT OF SAN DIEGO
BOARD ROOM, FIRST FLOOR
3165 PACIFIC HIGHWAY
SAN DIEGO, CALIFORNIA 92101

CRUZ M. BUSTAMANTE, LIEUTENANT GOVERNOR, CHAIR
KATHLEEN CONNLELL, STATE CONTROLLER, MEMBER
B. TIMOTHY GAGE, DIRECTOR OF FINANCE, MEMBER

JANUARY 29, 1999

TRANSCRIPT OF PROCEEDINGS

REPORTED BY:
Kathleen Knowlton
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APPEARANCES

COMMISSIONERS PRESENT

Cruz M. Bustamante, Lt. Governor, Chair
Kathleen Connell, State Controller, Member
B. Timothy Gage, Director for Finance, Member

COMMISSION STAFF PRESENT

Robert C. Hight, Executive Officer
Paul Thayer, Assistant Executive Officer
Jack Rump, Chief Counsel
Curtis L. Fossum, Senior Counsel
Michael R. Valentine, Assistant Chief Counsel
Robert L. Lynch, Chief Land Management Division
Hap Anderson, MAI, Assistant Chief Land Management
Division
Dave Plummer, Regional Manager Bay, Delta and Central
Coast Region
Paul Ideker
Sharon Shaw, Administrative Assistant II

REPRESENTING THE ATTORNEY GENERAL'S OFFICE

Dennis Eagan, Deputy Attorney General

PUBLIC SPEAKERS

Paul Spear, Port Commissioner
Dan Wilkins, Senior Director, Port of San Diego
Dean Rundel, Refuge Manager, US Fish & Wildlife Services
Laura Hunter, Director Clean Bay Campaign, Environmental
Health Coalition
Nohelia Ramos, Student
Jim Peugh, San Diego Audubon Society
Letecia Ayala
Dr. Mike McCoy
Mrs. McCoy, City Councilwoman, Imperial Beach
H.L. Young
Wendel Gayman
William Claycomb
Dennis Bouey, Executive Director, Port of San Diego
Bruce Hollingsworth, Treasurer, Port of San Diego
Bruce Williams, SPG&E
David Chapman, Port Attorney, Port of San Diego

1 MR. BUSTAMANTE: We'll call the meeting of
2 the Lands Commission to order. All the representatives of
3 the Commission are here. My name is Cruz Bustamante, and
4 with me is the Director of Finance, Tim Gage, and
5 Controller, Kathleen Connell.

6 For the benefit of those in the audience,
7 the State Lands Commission was established to administer
8 the sovereign tide and submerged lands of the State,
9 consistent with the principals of the Public Trust
10 Doctrine. An element of the Commission's authority is an
11 oversight responsibility of the major ports of the State,
12 including San Diego, which have been the subject of
13 specific legislative statutes.

14 We are here to consider several proposals by
15 the Port of San Diego under the Lands Commission oversight
16 responsibility. It's a pleasure to be here in San Diego.
17 Thank you to the Port for allowing us the use of your
18 facilities. It seems like every time I'm in San Diego
19 it's always sunny, and today has not broken the string.

20 In fact, I was in Denver a couple of weeks
21 ago, it was sunny in Denver. I was in Saint Louis at the
22 beginning of this week, and it was sunny in Saint Louis.

23 MS. CONNELL: Is there something to be said
24 about sun and the environmental community?

25 MR. BUSTAMANTE: I do come from Fresno, so

1 I'm used to a lot of sun. I'd like to thank them for
2 their gracious hospitality. First item of business will
3 be the adoption of the minutes from the Commission's last
4 meeting.

5 MS. CONNELL: I move the adoption of the
6 minutes, Mr. Chair.

7 MR. GAGE: Second.

8 MR. BUSTAMANTE: If there are no concerns
9 or questions regarding the minutes, we will just assume
10 that the minutes are adopted unanimously. Next order of
11 business will be adoption of the consent calendar.
12 Mr. Hight, Executive Director, are there any concerns with
13 regard to the consent calendar?

14 MR. HIGHT: Thank you, Mr. Chairman. Item
15 number C33 and C35 have been pulled from this agenda and
16 will be taken up at a later date.

17 MR. BUSTAMANTE: There a time certain on
18 that?

19 MR. HIGHT: No.

20 MS. CONNELL: Mr. Chair, I move the consent
21 calendar, with the omission of C33 and C35.

22 MR. BUSTAMANTE: Second?

23 MR. GAGE: I would second.

24 MR. BUSTAMANTE: Assuming that there are no
25 other concerns -- are there any concerns by anyone in the

1 audience regarding any of the consent items? Seeing none,
2 no discussion or debate, we will deem the consent calendar
3 adopted by unanimous vote. Next order of business will be
4 the issue of, I believe, number 40.

5 MR. HIGHT: 5, Mr. Chairman.

6 MR. BUSTAMANTE: 45. Mr. Hight, would you
7 like to give us an overview?

8 MR. HIGHT: Yes. Thank you,
9 Mr. Chairman. Item 45 is the subject of one of the major
10 Commission actions here today. And Curtis Fossum, Senior
11 Staff Counsel from the Commission, has a presentation. As
12 he proceeds with his presentation, it will appear in the
13 monitors in front of you. The Port is very sophisticated.

14 MR. BUSTAMANTE: Wow, very high tech.

15 MR. FOSSUM: Chairman Bustamante,
16 Commissioner Connell, Commissioner Gage, good morning.
17 This item requests your approval of the settlement
18 agreement, including the proposed expenditure of Public
19 Trust funds by the Port of San Diego for the acquisition
20 of lands adjacent to south San Diego Bay from the Western
21 Salt Company.

22 Agenda Item 45 represents the culmination of
23 decades of dreams by citizens groups and public agencies.
24 With the years of public input and many months of
25 negotiations and analysis, there is considerable

1 excitement and anticipation surrounding this important
2 step in acquiring nearly all the privately-owned,
3 undeveloped property bordering south San Diego Bay.

4 On this photograph you'll notice the
5 northern tier of salt ponds that are presently owned by
6 the State. The southern salt ponds are presently under
7 the ownership of the Western Salt Company.

8 The proposal before you today involves the
9 acquisition of the ponds owned by Western Salt. The light
10 blue areas shown on this map are State owned, and the dark
11 area -- the dark blue area indicates the lands that will
12 be transferred to the State.

13 The goldenrod areas are lands that the Port
14 will acquire as part of this transaction. And the pale
15 yellow area is an area that will have any claims of the
16 State cleared in the transaction.

17 This transaction is considered by many to be
18 one of the largest and most significant steps ever taken
19 in the protection of wetlands and wildlife habitat in
20 Southern California. Serious interest in preserving the
21 habitat values in south San Diego Bay began in 1973.

22 In that year, the Commission staff began a
23 study of boundary issues and management options relating
24 to the salt ponds. However, funding to implement the
25 findings of those studies has not taken place.

1 The Commission has assisted several of
2 California's major ports in the critical need for
3 expansion of trade and transportation facilities and
4 infrastructure by facilitating mitigation projects.

5 The Port of Los Angeles funded acquisition
6 and enhancement of critically needed fish and wildlife
7 habitat in Batiquitos Lagoon in San Diego County. And the
8 Ports of Los Angeles and Long Beach also provided funding
9 for additional acquisition and enhancement at Bolsa Chica
10 in Orange County.

11 In each instance, the Commission facilitated
12 the acquisition and enhancement project by serving as the
13 trustee of the lands to be purchased and enhanced with
14 Public Trust revenues. In doing so, the Commission has
15 ensured that proper use of trust revenues and the
16 permanent protection of public-property rights would take
17 place.

18 Commission staff has worked cooperatively
19 with federal, state, and local jurisdictions, as well as
20 public-interest groups and the public at large to ensure
21 the positive outcome of these important attempts to
22 preserve endangered species and restore thousands of acres
23 of wetlands lost in the last 150 years.

24 That brings us to our present opportunity.
25 As part of the base relocation and closure process, 25

1 acres of land at Camp Nimitz at the Naval Training Center
2 in San Diego is scheduled to be transferred to the Port.

3 Ten acres of that property, that you see in
4 the center there, has been identified as habitat for the
5 California least tern. Because of the critical location
6 of the site for the expansion of facilities -- excuse me,
7 of Lindbergh Field facilities, the Port and the Fish and
8 Wildlife Service have negotiated an agreement for the
9 acquisition of lands at south San Diego Bay to mitigate
10 the critical habitat needed for the least terns in San
11 Diego Bay.

12 Following months of discussions and
13 negotiations between the Service and the Port and
14 Western Salt, the Port and Western Salt entered into an
15 acquisition agreement. This agreement provides for the
16 purchase of all of Western Salt's interests in the salt
17 ponds in south San Diego Bay.

18 The purchase of the property was conditioned
19 on the results of several studies and contingencies,
20 including the approval of the cooperative agreement with
21 the Service and the approval of the purchase by the
22 Commission.

23 In a major step towards realizing the
24 long-held desire to create this national wildlife refuge
25 in San Diego Bay, the service and the Port last year

1 entered into that cooperative agreement. It provides for
2 the protection and enhancement of nesting and foraging
3 habitat for the California least tern at the salt ponds in
4 the South Bay.

5 The agreement also obligated the parties to
6 work with the Commission to implement the mitigation of
7 the Naval Training Center site by the addition of 1400
8 acres to the proposed wildlife refuge, and gave the Port
9 specific rights for future mitigation within the acquired
10 lands.

11 It also provided \$900,000 to the Service for
12 biological monitoring, predator control, development of
13 habitat-restoration plans, and nesting and foraging
14 habitat.

15 There are three important goals the title
16 settlement agreement before you today seeks to
17 accomplish. Protect the endangered California lease
18 turn. It also allows for expansion of airport -- needed
19 airport facilities at Lindbergh Field. And finally, it
20 settles long-standing title and boundary issues in south
21 San Diego Bay.

22 This acquisition will bring into public
23 ownership nearly all of the shallow-water habitat in south
24 San Diego, and facilitate the placement of over 2200 acres
25 of State-owned Public Trust lands within the proposed

1 wildlife refuge.

2 Some people may ask, what's so important
3 about South San Diego Bay? South San Diego Bay holds
4 a large --

5 MS. CONNELL: Only those people who would
6 be misinformed would raise that question.

7 MR. FOSSUM: Many members of the public, who
8 probably are not here today.

9 MS. CONNELL: Certainly none of the members
10 of this board.

11 MR. FOSSUM: I'm glad to hear that. South
12 San Diego Bay does hold a large share of the remaining
13 estuarine wetlands, shallow waters and coastal habitat
14 existing on the south coast of California.

15 It plays a pivotal role in ecosystem
16 functioning on a regional scale, and it is of
17 international importance as a critical link in the Pacific
18 Flyway, providing habitat for hundreds of thousands of
19 migratory shorebirds and wintering waterfowl.

20 The proposed settlement agreement is an
21 essential part of the creation of the proposed San Diego
22 National Wildlife Refuge. It will allow the protection
23 and enhancement of over a thousand acres of valuable
24 habitats at the southern end of the bay, including
25 eelgrass beds, shallow water, mud flats, salt ponds, dikes

1 and salt marsh.

2 On this map, you will notice the eelgrass is
3 in green, mud flats in tan, shallow water in blue, and the
4 salt ponds in orange. These salt ponds contain many
5 species of food for the endangered birds that use the
6 area, and will continue to do so after the transaction.

7 The high ground of the dikes shown here in
8 this slide is critical nesting habitat for at least nine
9 species of ground-nesting birds. The nesting species
10 include the state and federally-listed California least
11 tern, the federally-listed threatened Western snowy
12 plover, as shown in this slide.

13 The salt ponds in the South Bay are one of
14 the only two nesting sites in the United States for
15 Elegant terns, and they are one of only three primary
16 locations for Black skimmers in the United States. Both
17 of those species are areas -- are considered California
18 species of concern.

19 Lastly, the dikes and narrow fringes of
20 saltmarsh found along these slopes also provide nesting
21 areas for the state-endangered Belding's savannah
22 sparrow. Feeding or nesting waterbirds are often observed
23 in congregations of hundreds or even thousands, providing
24 the public with spectacular viewing experiences from
25 public observation points on the southern and western

1 perimeter of the ponds. And for those of you who haven't
2 been there, it is a spectacular view. I encourage you to
3 see it.

4 The proposed transaction is of immense
5 importance, and will enable the planning and
6 implementation of appropriate management and conservation
7 measures to protect threatened and endangered species, and
8 expand the valuable habitats in that area.

9 With the approval of the Commission, the
10 Port will buy out Western Salt's interest in approximately
11 836 acres of lands and the final years of a 612 acre
12 lease for 20.5 million dollars.

13 Approximately 722 of those acres, shown in
14 the dark blue here, will be vested in the State of
15 California and held by the State Lands Commission, subject
16 to the Public Trust. The remaining 114 acres of the
17 purchase from Western Salt will be vested in the Port and
18 subject to the Public Trust, as well as the statutory
19 provisions providing for the Port's operations. That area
20 is in goldenrod on these pictures.

21 The entire 722 acres vested in the State,
22 together with an additional 1485 acres of State-owned
23 Public Trust lands is proposed to be leased to the Service
24 for inclusion in the South Bay unit of the National
25 Wildlife Refuge.

1 The refuge is presently in the planning and
2 NEPA review stage. And at such time as the Service has
3 completed its environmental processing, the Commission
4 will be asked to implement the plan by leasing the lands
5 to the Service. The outline of the proposed refuge is
6 shown there in red.

7 The staff of the Commission has conducted an
8 extensive study of the area. It's reviewed the complex
9 issues of title and boundary questions involved. In an
10 effort to determine the location of the tide and
11 submerged-lands boundaries, it has examined historical
12 maps and other evidence concerning the area.

13 Historical evidence suggests the existence
14 of some tidal sloughs within the lands sold and patented
15 as swamp and overflow lands. This evidence has been
16 evaluated by the Commission staff and used in conjunction
17 with appraised values to assure that the Public Trust
18 funds being expended are for the value of the
19 privately-owned property rights, not for lands already
20 subject to the trust.

21 In closing, I would like to thank all the
22 public interest and environmental groups and individuals
23 for their tremendous support for this project. I would
24 also like to recognize the crucial help provided by the
25 staffs of the U.S. Fish and Wildlife Service, Port of San

1 Diego, and the courteous cooperation of the Western Salt
2 Company.

3 Finally, it is my privilege to state that
4 the Commission staff has reviewed the proposed agreement
5 and believes it is consistent with the Public Trust needs
6 in the area, the transaction is in the best interest of
7 the State, and recommend that the Commission approve the
8 findings, authorizing the execution of the agreement and
9 the proposed expenditure of the Public Trust funds by the
10 Port.

11 Thank you very much. I'll be happy to take
12 any questions.

13 MR. BUSTAMANTE: Is there anybody else from
14 the Port or Wildlife Service?

15 MR. HIGHT: Yes, Mr. Chairman.
16 Mr. Paul Spear, Vice Chairman of the Board of Port
17 Commissioners would like to make a brief presentation.

18 MR. SPEAR: Mr. Chairman, welcome to
19 San Diego. I am here on behalf of our chairman, Chairman
20 Patricia McQuarter, who's in Washington on official
21 business. But we just want to welcome you to San Diego
22 once again, and welcome you to our facilities here at the
23 Port, which are pretty nice now that we moved into this
24 room over here.

25 MR. BUSTAMANTE: Very nice.

1 MR. SPEAR: Want to say that -- am I on the
2 air?

3 MR. BUSTAMANTE: Yes.

4 MS. CONNELL: There you are.

5 MR. SPEAR: Am I on the air? Okay. By
6 approving this transaction today, you'll help us create
7 what I'm told is one of the largest wildlife refuges
8 within the confines of a port district anywhere in the
9 United States.

10 And you will also help us -- as you heard
11 from the very fine briefing you had, you will help us here
12 at the Port do some mitigation, so that we can take
13 advantage of the property that will be coming to us near
14 Lindbergh Field, in expanding our passenger
15 capabilities -- or our capabilities at that field to serve
16 the public in the future.

17 I'd like to thank, personally, a couple of
18 people. Mr. Mike Spear and also Mr. Dean Rundel -- I
19 believe Dean is here today from U.S. Fish and Wildlife
20 Service -- because they went a long way towards helping us
21 in putting this together. Dean, are you here? Dean is
22 back here.

23 And with that said and with welcoming you,
24 I'd like to introduce for further comment on the Port's
25 position, Mr. Dan Wilkins. And then we'll be prepared to

1 answer questions after that is done. Thank you.

2 MR. WILKINS: Thank you,
3 Commissioner Spear. Commissioners of the Land Commission,
4 welcome to San Diego as well. I too would like to extend
5 our sun-filled greetings to you, and please come back
6 often.

7 My duty today is to try to give you a little
8 bit of an overview of what we did, and what the public
9 benefits, and how this all works together. And they say
10 that success has a thousand parents. I'm sure you've
11 heard that. And I know you know the correlary to that.
12 There are many parents to this. Many people contributed
13 to this.

14 First of all, the vision and leadership of
15 our board, and certainly our board's leadership, working
16 in partnership with many of the environmental community
17 that are here today, who probably will want to address you
18 in terms of their view. I won't attempt to speak for
19 them. But I will tell you that there are some individuals
20 that you need to understand their long work in this
21 effort.

22 One is Laura Hunter from the Environmental
23 Health Coalition. Another is Mr. Jim Peugh with the
24 Audubon Society. Another is Mr. and Mrs. McCoy -- and if
25 I may, Doctor and Mrs. McCoy. Mrs. McCoy is a city

1 counsel member for one of our member cities,
2 Imperial Beach.

3 And I know when you name people, you run the
4 risk of leaving people out. There are many others, but
5 certainly those three, in my tenure on this issue in the
6 last several years, have been at the forefront of bringing
7 this forward, and sometimes holding my personal feet to
8 the fire when I needed it. And I respect that. And other
9 times, pushing us in the direction we needed to go.

10 If you take a quick look here, you
11 understand the wildlife refuge is in the southern part of
12 the bay. The airport property is in the northern part of
13 the bay.

14 It's basically an historic act in which we,
15 the Port, will acquire this acreage, as Mr. Fossum briefed
16 you on; subsequently conveyed, we hope by your actions to
17 the US Fish and Wildlife Service.

18 What we will get out of this will be
19 mitigation, if you will, for those least terns at the
20 airport, and the opportunity to work with the U.S. Fish
21 and Wildlife Service on some future mitigation efforts.
22 We will -- next slide, please -- we will be helping the
23 Service in terms of that development by funding a \$250,000
24 refuge restoration plan.

25 We're contributing \$500,000 to essentially

1 an endowment for management expenses, as well as \$150,000
2 for immediate enhancement for least tern nesting in the
3 property with the U.S. Fish and Wildlife Service. We get
4 the mitigation rights at the airport.

5 We get the exclusive rights to mitigate for
6 airport and future Port projects in concert with that
7 restoration plan and, of course, the least tern habitat is
8 removed from Lindbergh Field, allowing the use of that
9 property by the airport.

10 Quickly, we'd just like to tell you a little
11 brief commercial about the Port. And it will only take 30
12 seconds. We are a large contributor to the economy in our
13 region. Recent analysis by Source Point here -- part of
14 our regional planning agency -- indicates that we create
15 through indirect and induce jobs, over 100,000 jobs in our
16 region, 2.4 billion dollars in payrolls, 7.2 billion in
17 regional business output.

18 And for example, the airport alone
19 contributes almost -- over half those jobs, about half the
20 payrolls, and right at half of the regional-business
21 output. Our maritime business -- which is growing by
22 leaps and bounds, thanks to the leadership of our board
23 and our staff -- is a hundred and eighty-two million
24 dollar input in our region, and 52 million dollars in
25 regional impacts.

1 In short, this is the proverbial win-win-win
2 for all parties. I think you will hear from others that
3 will tell you that.

4 At the risk of upstaging some of my friends
5 in the environmental community, I would invite them
6 to remind you, if they have time, to address the issue of
7 a major South Bay Bird Festival that is soon to be
8 launched on these properties and in the general area of
9 the Tijuana River Valley, in which the Port this year, for
10 the first time, is cosponsor of that.

11 And I believe it's the fourth year they've
12 had this organized South Bay Bird Festival to allow people
13 to go down for guided tours. And the people who I named
14 earlier, plus many others, are the responsible party for
15 that wonderful event. I'm sure they will be pleased to
16 talk to you about that.

17 It's my pleasure now to introduce Mr. Dean
18 Rundel of the U.S. Fish and Wildlife Service, who would
19 like to say a few remarks for you.

20 MR. RUNDEL: Thank you very much, Dan. Good
21 morning, Mr. Chairman and members of the State Lands
22 Commission. I'm Dean Rundel. I'm the refuge manager of
23 the South San Diego National Wildlife Refuge Complex, U.S.
24 Fish and Wildlife Service, and I appreciate the
25 opportunity to address you this morning.

1 Curtis Fossum and Dan have covered many of
2 the important wildlife resources of south San Diego Bay,
3 and I'm not going to carry on with a further description
4 of that. These are truly significant national,
5 international wildlife resources.

6 The Fish and Wildlife Service has been
7 concerned and desirous to aid in the protection of those
8 resources for many years because of the significance of
9 the federal trust for wildlife, the endangered species,
10 and migratory birds. The creation of a national wildlife
11 refuge in south San Diego Bay has been a dream of many
12 people in this community for a long time.

13 My agency has been working with the
14 community, trying to make that a reality for at least the
15 last ten years. So it's been a long process. We just
16 this week are completing all the administrative
17 requirements we need to do to establish that national
18 wildlife refuge boundary.

19 I would like Michael Spear, who is our
20 former regional director of Region 1, is currently the
21 California/Nevada Operations Manager in charge of all Fish
22 and Wildlife Service business in the State of California,
23 who was unable to make it this morning, but I would like
24 to quickly read a letter from Mr. Spear to you.

25 "Dear Lieutenant Governor Bustamante and

1 members of the Commission. I regret being unable
2 to attend your meeting in San Diego today.

3 However, I want to take this opportunity as
4 California/Nevada Operations Manager to strongly
5 encourage your approval of the acquisition of the
6 Western Salt Company properties in South San Diego
7 Bay, by the Port District.

8 The acquisition of these lands and
9 protection of the State tide lands of California,
10 and eventual management as part of the National
11 Wildlife Refuge System, is an example of
12 government at its very best.

13 For several years, the Service has been
14 working diligently with the Port District, local
15 governments, the business community, and the public
16 to resolve difficult issues related to wildlife
17 resources, conservation and infrastructure
18 development in San Diego County.

19 Some of the most difficult issues we faced
20 have been the conflict in needs for airport
21 expansion, endangered species protection in and
22 around Lindbergh Field in our proposals to
23 establish a National Wildlife Refuge in south
24 San Diego Bay.

25 Thanks to outstanding leadership, and I'd

1 like to" --

2 Mr. Spear singles out special leadership
3 from former Port Commission Chairman and current
4 Commissioner David Malcolm; County Supervisor, Greg Cox;
5 and many people in the environmental community; Port
6 Staff, Dan Wilkins, whose negotiations were
7 successful last fall.

8 "Who in cooperation with Western Salt
9 Company, the Service and Port District crafted a
10 solution best described by Mr. Jim Peugh of the
11 Audubon Society as elegant.

12 The acquisition of these lands by the Port
13 District, and subsequent cooperation between our
14 agency and the State Lands Commission, for
15 permanent protection of those habitats will allow
16 the Port to expand Lindbergh Field operations onto
17 current Naval Training Center, San Diego.

18 And the agreement also provides for
19 perpetual management of endangered species in the
20 South Bay, planning for comprehensive habitat
21 restoration and enhancement, and potential for
22 mitigation credits the Port needs for future
23 maritime infrastructure development.

24 This arrangement is truly a winning solution
25 for all parties, has the widest possible public

1 support, and there are no losers.

2 In over three decades of public service,
3 I've rarely seen or enjoyed the opportunity to be
4 part of such a perfect solution to such a difficult
5 set of problems. Your action to approve the Port
6 District's acquisition on January 29th is an
7 essential element in realizing the vision of many
8 people in San Diego's business, governmental and
9 environmental communities.

10 I sincerely hope you act affirmatively and
11 join those of us at all levels of government who
12 are working to meet the needs of San Diego Bay,
13 its people, and its wildlife."

14 And I would just like to add one final
15 thing. This has truly been a cooperative effort. We have
16 planned a refuge with deep, full involvement by citizen
17 groups, the five cities around San Diego Bay, the business
18 community, the Port District, State Lands, other State
19 agencies.

20 And my pledge to you as refuge manager, is
21 that we will continue to do our comprehensive planning,
22 restoration planning, public use planning, in an open and
23 public process cooperatively with you and with many other
24 interested parties. Thank you.

25 MR. BUSTAMANTE: Thank you, Mr. Rundel.

1 MR. WILKINS: Mr. Chairman, members of the
2 Commission, that concludes our presentation. With your
3 indulgence, I would like to introduce Frank O'tasin from
4 the Board of Port Commissioners representing the City of
5 Imperial Beach who joined us. We'd be pleased to answer
6 any questions you may wish of us.

7 MR. BUSTAMANTE: We have several members of
8 the public for testimony. If the members have any
9 questions, you can ask them at any time. But if not, we
10 will go into the public testimony. We have one organized
11 presentation, and we also have Patricia McCoy from
12 Imperial Beach.

13 Is the council member here? Would you like
14 to make your presentation or are you going to be a part of
15 the organized --

16 MRS. MC COY: I'll wait.

17 MR. BUSTAMANTE: You'll wait?

18 MRS. MC COY: Thank you.

19 MR. BUSTAMANTE: The organized
20 presentation, there are several members. There are five
21 members; Laura Hunter, Nohelia Ramos, Jim Peugh, Leticia
22 Ayala, and Mike McCoy. If we could take them -- do you
23 have a particular order?

24 MS. HUNTER: You just announced the order.
25 I'll be happy to introduce as we go. And we'll try to

1 move quickly through this.

2 Thank you very much, Lieutenant Governor and
3 the Commissioners. We are delighted to have you here. We
4 want to welcome you to San Diego for your first meeting,
5 and we're honored that you're here to help us with this
6 very historic event for San Diego Bay.

7 My name is Laura Hunter. I'm the director
8 of the Clean Bay Campaign for the Environmental Health
9 Coalition. We're a local environmental organization
10 that's worked along with many, many others, very, very
11 hard on this issue.

12 Mr. Fossum says there's some excitement in
13 the environmental community. I think that's an
14 understatement. Delirious is more accurate. In terms of
15 the significance of this and what it represents, both in
16 environment protection and a coalescing a community that,
17 you know, sometimes is divided on things. But we have
18 really all come together, and it's been very exciting.

19 We have a number of people that would like
20 to speak to you that represent both organizations and
21 residents from the South Bay. We'd like to start first
22 with Nohelia Ramos, a member of the next generation who
23 this action will really benefit. And I mean the future's
24 generations is why we need to protected these areas. I
25 broke the rules and got her out of school. So we'll have

1 to send her right back quickly. But, Nohelia, could you
2 come up and make a couple of comments?

3 MS. CONNELL: I hope you're getting
4 appropriate independent credit for this in your science
5 class. If not, you may need to speak to your teacher.

6 MS. RAMOS: No, I'm not getting credit.

7 MS. CONNELL: Maybe we could send a note to
8 your teacher.

9 MS. RAMOS: Oh, thanks. Please do. Well,
10 good morning. My name is Nohelia Ramos. And I'm the
11 founder and president of an environmental club in my
12 school in National City. I'm in a high school. I'm also
13 representing the City of National City.

14 And I would like to tell you that a lot of
15 our members did not know what this was and what the
16 wildlife refuge was. So I would think that by being able
17 to have this with us, we would have -- my generation,
18 generations after me being able to enjoy and explore what
19 San Diego has, and the natural resources that we can give
20 them.

21 Also, National City does not have a lot of
22 green areas to explore and enjoy. So I think that, if
23 this wildlife refuge is open, we would all be able to
24 benefit from this. So that is all I want to say. Thank
25 you.

1 MR. BUSTAMANTE: Thank you.

2 MS. HUNTER: Thank you, Nohelia. Next is
3 Mr. Jim Peugh from the San Diego Audubon Society.

4 MR. PEUGH: Hello. Welcome to San Diego.
5 The San Diego Audubon Society strongly supports this
6 transfer, and we appreciate the work of the Fish and
7 Wildlife Service and the Port to bring it about. The Fish
8 and Wildlife Service will be a great custodian of this
9 valuable public resource. Matter of fact, we'll make
10 sure. We'll watch them like a hawk.

11 MS. CONNELL: Is that a pun?

12 MR. PEUGH: Yes.

13 MS. CONNELL: I'm surprised you didn't use
14 one of the environment -- what was the name of the bird
15 that we saw on the screen?

16 MR. GAGE: The least tern.

17 MS. CONNELL: You should have said that,
18 "We'll watch them like a least tern."

19 MR. PEUGH: That wouldn't carry over as
20 well, because they're not very mean.

21 MS. CONNELL: Oh, dear.

22 MR. PEUGH: This will provide tremendous
23 value in terms of habitat conservation, endangered-species
24 protection, national reserve-based recreation, education,
25 research, and economic benefits from ecotourism.

1 You heard from Mr. Fossum what a valuable
2 habitat it is now. But the potential refuge would improve
3 management. And with restoration improvement, actually
4 just dwarfs its current activity. When you think of what
5 can be there in the future, and if you look a few decades
6 down the road, it's really awesome.

7 The coolest birds that uses -- that we see
8 in our area -- it's not endangered. It's not even rare.
9 It's called an eargrede, a little muffin-like bird with a
10 little, teenie neck that sticks up. And they earn their
11 living swimming under water great distances, hundreds of
12 feet, and burrowing and digging through the mud and trying
13 to find invertebrates in the mud, and then eating them.

14 The neat thing about them is, during their
15 nesting season, the little muffin-like bird sort of puts
16 its wings up part way. And all the clutch of chicks will
17 be riding on the back of it as it paddles around, looking
18 for food. It's kind of neat. I saw one chick actually
19 half fell off, and so its wing was caught in the adult's
20 wing. And the little chick was being towed along
21 backwards, really upset. And finally the adult stopped,
22 and the chick got back on top.

23 The largest concentration I've ever seen was
24 at the salt ponds. And, you know, allowing people to be
25 able to see things like that will be immense. So we

1 strongly urge you to implement this action. I think
2 you'll really appreciate what you see in the future.

3 MR. BUSTAMANTE: Thank you.

4 MS. HUNTER: Next is Leticia Ayala, who is
5 one of the primary organizers for garnering support and
6 talking to folks to support the wildlife refuge.

7 MS. AYALA: Hi. Good morning. Thanks for
8 coming down to San Diego. I can actually see face-to-face
9 some of the people that I voted for. So, it's very
10 exciting.

11 MS. CONNELL: A rare opportunity. Perhaps
12 even more rare than the endangered species. Yes, there
13 are moments when we think of ourselves as endangered.
14 Isn't that right, Cruz?

15 MS. AYALA: Well, thank you so much. My
16 name is Leticia Ayala. I'm a resident of Chula Vista.
17 I'm also staff with Environmental Health Coalition. And
18 over the past two years, I was really involved in all the
19 door-to-door canvassing, talking to people from all over
20 San Diego, especially at community events in the South
21 Bay.

22 And we all feel strongly that, you know,
23 our -- our wildlife and our -- and all of our natural
24 resources are in critical need of protection. And it's a
25 life-or-death situation for our South Bay. And we need to

1 do something now to protect what little is left.

2 And, you know, we're just here, hopefully,
3 to just get moving on the designation of this wildlife
4 refuge, because it's very important. South Bay is my
5 home. It's home to a lot of people. It's our
6 neighborhood. We want to see it taken care of and
7 protected.

8 And for Spanish media, I would like to say
9 some few words in Spanish.

10 (Comments followed in Spanish.)

11 MS. HUNTER: Thank you. And then, batting
12 last -- sorry. I'm not good at baseball analogies --
13 Mike McCoy, from Southwest Wetland Interpretive
14 Association.

15 DR. MC COY: Lieutenant Governor,
16 Commissioners, I appreciate this opportunity. I want to
17 say too, that the Tijuana River just to the south of south
18 San Diego Bay, and the connection with this south San
19 Diego Bay National Wildlife Refuge will culminate in an
20 important junction for feeding of wading and shorebirds
21 which migrate between the two areas day and night.

22 This is a momentous occasion, culminating in
23 the effort of citizens, private sector, government
24 agencies, the San Diego Port Commission, the environmental
25 community, and local jurisdictions over the past 25 years.

1 This will lead us to further protection of Pacific Flyway
2 and a new opportunity and economic vision for south San
3 Diego Bay cities, especially Imperial Beach.

4 I want to particularly thank people who have
5 taken leadership roles in bringing this agreement to
6 fruition. Some of the names that stand out over the
7 history of this endeavor: Ralph Pasapia, United States
8 Fish and Wildlife Service; Leo McCarthy, State Lands
9 Commission; Laura Hunter, Jim Peugh, environmental
10 community; Allen Jones, Western Salt; David Malcom,
11 Dan Wilkins, Port Commission; and Dean Rundel of the
12 United States Fish and Wildlife Service.

13 The work accomplished and the partnerships
14 that we've developed will be appreciated by generations to
15 come. Thank you very much.

16 MR. BUSTAMANTE: Is that the end of the
17 organized presentation? Welcome.

18 MRS. MC COY: Thank you.

19 MR. BUSTAMANTE: We're going to have to get
20 you a box or a Barbara Boxer box.

21 MRS. MC COY: I was going to say. Usually I
22 have something in my pocket. This must be built for giant
23 people. I think this is a very momentous occasion, as my
24 husband said. Because sometimes we can all come together
25 from the various points of view and do the right thing,

1 and actually get it done.

2 Imperial Beach is a poor community
3 economically, but we're rich in natural resources. And we
4 support this magnificent plan. We have hopes for
5 ecotourism. You may have with your handouts something on
6 the very festival that opens today. And it has grown over
7 the past three years.

8 I think people, in general, in the
9 population are appreciating more and more natural things
10 to do, places to go. And they don't necessarily want the
11 artificial, the canned entertainment. And we're finding
12 that more and more people come from all over the nation,
13 and indeed from all the over the world.

14 And I wanted to thank you today for your
15 vision. And also to give you thanks of the community from
16 Imperial Beach. Thank you very much.

17 MR. BUSTAMANTE: Thank you. There is a few
18 other letters that were received -- letters of support:
19 Eric Bowlbee, Chair Executive Committee, San Diego County
20 Chapter of the Sierra Club; Denise Ducheney, Assembly
21 Member, 79th District; Anne Ewing, Planning Director,
22 Endangered Habitats League; Michael Klein, Senior,
23 President Nature Festivals of San Diego County; and
24 Patricia Zabrukey, I believe -- I'm sorry if I
25 mispronounced your name -- Ocean Awareness Club, UCSD.

1 There are several other individuals, but
2 these were the other organizations that also sent letters
3 of support. Are there any questions yet of the members of
4 the Commission?

5 MS. CONNELL: Mr. Chair, I have some just
6 comments, not questions. I want to thank our staff and
7 certainly members of all of the groups that made
8 presentations this morning.

9 And I would just ask that we direct our
10 staff -- the presentations that were made here this
11 morning were great. I'd like to see them available to the
12 schools of California. Not only the schools in San Diego,
13 but the schools throughout the state.

14 Mr. Chair, in the past, when we've had
15 presentations like this, we've tried to release
16 information to the schools. As a parent of two children
17 in California schools, the restrictions on funding
18 science-related activities is so severe that, if we can
19 do anything we can to make materials available, I think we
20 should always encourage that.

21 And I would hope that we could transfer some
22 of this information, Bob, to the schools in a format where
23 it could be used. And unfortunately, the young woman who
24 was here earlier may not get credit in her science class.
25 But maybe other children can benefit from the information

1 and gain a greater sensitivity to the resources that we
2 have here. I would like --

3 MR. BUSTAMANTE: Do we have a web site?

4 MS. CONNELL: Yes, we do.

5 MR. BUSTAMANTE: And is it this kind of
6 information that could be placed on there specifically
7 for classrooms?

8 MR. HIGHT: Yes.

9 MS. CONNELL: Yes, I think it would also be
10 available in just pamphlet form, as we have done in the
11 past for schools.

12 This to me, Mr. Chair, represents, I think,
13 the -- the conclusion of what has been an extended effort
14 on the part of many levels of government, many sectors of
15 government, many aspects of the community -- both the
16 environmental community, and members of the general
17 population here in San Diego.

18 And I think the only other time I've seen a
19 similar coming together of this magnitude has been in
20 Bolsa Chica where we had a like victory, I guess about a
21 year and a half ago, where we were able to save some very
22 valuable land in Orange County, and it really represented
23 the culmination of well over ten years of work by local
24 community activists there.

25 I want to congratulate the members of the

1 community who've worked on this for so long. I really
2 think it does represent one of the largest wetlands in
3 Southern California. I'm a resident of Southern
4 California. I'm a biker -- not a motorcycle biker. I do
5 not have tatoos. Let me clarify that for the media
6 present.

7 I particularly am intrigued when we've been
8 able to conclude an agreement like this. Because it does
9 open up -- and I agree entirely with members here, that I
10 think there are people seeking to have an opportunity to
11 connect with the environment. And certainly preservation
12 of this land will do that.

13 I think it not only creates a significant
14 wildlife refuge and protects environmentally-sensitive
15 lands, which obviously is the priority here of the Land
16 Commission. But I also think it's important that it
17 secures the economic advancement of this area with the
18 expansion of Lindbergh Field.

19 And I think that that unique partnership of
20 being able to pull together the environmental component
21 with the economic component is something that is one of
22 the true capacities of the Land Commission. And all of
23 you who made it possible to bring this -- this completion
24 together should really feel a victory today.

25 I think this is good for the environment. I

1 think it's good for San Diego's future. And I think it's
2 good, as a parent, of what we can do throughout
3 California. And I would only ask that all of you who
4 worked so hard to bring it together would serve as
5 voluntary advisors as we find other opportunities in
6 California.

7 If we can connect you through phone numbers
8 and through web sites to other environmental groups as we
9 struggle to find similar solutions to problems throughout
10 the state, I would be deeply appreciative of it. And I --
11 again, I can't extend my thanks for all that you have
12 done.

13 MR. BUSTAMANTE: Thank you. Yes?

14 MR. GAGE: Mr. Chairman, just one quick
15 question, more out of curiosity than anything else. And
16 perhaps the -- either the Port staff or the Fish and
17 Wildlife Service staff can speak to this.

18 I was curious about how the nesting area is
19 located on the airport land now. Is that actually moved
20 or do the birds simply move to the nesting site
21 themselves? I'm not familiar with those issues,
22 certainly. I was just interested in getting a sense of
23 how that's -- is the Port required to undertake
24 instigation in that respect?

25 MR. RUNDEL: Well, the agreement that we're

1 involved with today in south San Diego Bay involves the
2 least tern nesting site on the Naval Training Center land
3 that is going to the Port.

4 We have been working for many years to find
5 a place to relocate the site where the birds aren't moved,
6 but a new site is enhanced and prepared that would attract
7 them. Hence the Port -- the monetary contributions they
8 are making to make the South Bay sites that much better.

9 That would make up for any lost production
10 that would occur at the current Naval Training Center
11 site. This does not involve the other least terns on
12 Lindbergh Field. It allows for the expansion on the Naval
13 Training Center site. Does that answer your question?

14 MR. GAGE: Yes, thank you.

15 MR. BUSTAMANTE: We do have a couple of
16 other members of the public who are interested in making a
17 presentation. Is there a H.L. Young in the audience?
18 Welcome, sir.

19 MR. YOUNG: Good morning. Mr. Chairman and
20 Commissioners, I moved to San Diego from Seattle in 1962.
21 I've never looked back. The -- my two children -- two of
22 my children grew up in San Diego, and I've -- I'm
23 approaching retirement now.

24 For the last couple of years, I've been
25 working as a volunteer at the Tijuana Estuary Visitor

1 Center and the Chula Vista Nature Center. I'd like to
2 speak on behalf of another bird that would benefit from
3 the creation of this refuge in South Bay.

4 While I can't speak for the Chula Vista
5 Nature Center, I know that the brant is important to that
6 center. The brant is a small goose of the ocean and bays.
7 It's smaller than the goose that we're used to. It's
8 larger than the mallard. The color is predominantly
9 black.

10 If we could go -- we could have gone to
11 South Bay -- the south San Diego Bay on this date a
12 hundred years ago, we could have seen 100,000 brant on the
13 bay. They feed primarily on eelgrass, and they winter in
14 Southern California and Baja California.

15 If we go down there today, we could -- we
16 would be likely to find a hundred brant in the South Bay
17 area. The creation of this refuge will restore that --
18 the eelgrass beds and bring back the brant.

19 So on behalf of the brant, and on behalf of
20 the grandchildren of all California, especially of
21 San Diego, I urge the Commission to adopt the
22 recommendation and bring these brant back. We may see --
23 someone in the future may see 10,000 of them in
24 San Diego Bay. Thank you.

25 MR. BUSTAMANTE: Thank you, sir. We also

1 have Wendel Gayman. Welcome, sir.

2 MR. GAYMAN: Good morning. As an
3 environmentalist, I am inclined to strongly endorse any
4 plan which will -- designed to preserve the South Bay
5 wetlands for wildlife habitats. And I'm also quite
6 pleased that the Port is willing to spend 20 million
7 dollars worth of their funds to help preserve the
8 environment of the area.

9 However, as an oceanographer, a geologist,
10 and a taxpayer, I'm somewhat unhappy about the
11 settlement. I do believe that it makes a difference
12 whether this case or other cases we pay 5 million or 10
13 million or 20 million or 40 million dollars or nothing in
14 order to preserve these lands for environmental purposes.

15 In the past several decades, I believe there
16 have been a great many other cases throughout the state
17 where the State and the local government has spent large
18 sums of money to purchase tide lands which, I
19 believe, already belonged to the State.

20 In 1850, many -- perhaps most of these cases
21 resulted from bad law. That is the redefinition by the
22 courts of the ordinary high-water mark, equating it to the
23 mean high-tide line. The concept of the mean high-tide
24 line did not really exist in 1850 when the State joined
25 the union.

1 According to this definition, most
2 vegetation portions of the coastal salt marshes -- perhaps
3 all vegetated portions are above the mean high-tide line.
4 And thus, they are not now in the State tide lands. This
5 seems to me to be a ridiculous conclusion. How else could
6 the salt marshes obtain their salt if not by frequent
7 inundation by the tide.

8 I don't expect you to change the state law
9 and the court precedents today or this year. But I do
10 think that the State Lands Commission should at least
11 institute efforts to get the state law changed or at least
12 change the interpretation of the ordinary mean high-water
13 mark in order to ensure that all of these lands, which are
14 ordinarily submerged by the tides, are returned to the
15 Public Trust.

16 Such changes would return many hundreds of
17 millions of dollars in property to the State. Also I
18 think there's been some hanky-panky or corruption involved
19 in several title litigation cases settled in San Diego
20 County in the past six to seven decades. For this reason,
21 I believe all parties in such litigation in relation to
22 land-assessment issues should be carefully scrutinized.

23 If the State and/or other parties continue
24 to purchase tide lands or other wetlands at excessive and
25 unreasonable prices for environmental purposes, I believe

1 this sets a very bad precedent, and it encourages misuse
2 of public funds and perhaps bribery and corruption.

3 For this reason, I am highly suspicious of
4 any land-assessment programs that were to be carried out
5 by private properties for wetlands being considered for
6 purchase for environmental preservation. I strongly urge
7 that such assessments be made only by government personnel
8 or by government contract, and that the full details of
9 these assessments be made public.

10 In 1960, the courts gave the Coronado Towers
11 some accretal beach land in Coronado, which clearly is --
12 I believe is illegal. And that land is worth somewhere
13 between a hundred and 500 million dollars today.

14 In 1939, there was a lawsuit on Mission Bay
15 which determined the tide lands. And it excluded the
16 Famasa Slough, which was clearly below the mean -- the
17 ordinary high-water mark in 1850. And several years ago,
18 the City paid four and a half million dollars for that.

19 On the other hand, it's my understanding
20 that the -- in 1972, a graduate student did a tidelands
21 litigation study for San Elijo Lagoon. And this resulted
22 in the State acquiring or retaining a large portion of the
23 lagoon without any purchase required, for zero money
24 involved.

25 Also in the late 1970s -- the early 1970s,

1 one or two environmental organizations joined with the
2 State Lands Commission to sue the Irvine Company in upper
3 Newport Bay, and they retained large areas of land for the
4 public without any purchase cost. And I think this -- the
5 land retained is probably worth many millions of dollars
6 today. Thank you.

7 MR. BUSTAMANTE: Thank you, sir.

8 MS. CONNELL: Mr. Chair, could we ask our
9 staff to respond to some of those statements?

10 MR. BUSTAMANTE: Mr. Hight?

11 MR. HIGHT: Yes. Thank you,
12 Mr. Chairman. I'll give a kind of a brief response, and
13 then the attorney general's office can respond, as well as
14 our legal staff. The commission staff, in analyzing this
15 transaction, has taken into consideration the applicable
16 law on the books today and has found, in essence, the
17 State is not buying anything that is now State-owned.

18 I understand Mr. Gayman's issues and
19 concerns. But as the facts -- as they apply to this
20 particular case, the State is not buying anything that it
21 now owns. Dennis Eagan from the attorney general's office
22 can amplify on that, if necessary.

23 MR. BUSTAMANTE: Please.

24 MR. EAGAN: The lands that are being
25 purchased from Western Salt, historically, were patented

1 in private ownership as swamp and overflow lands, which
2 were lands granted to the states in the latter part of
3 September, 1850, a few weeks after California became a
4 state.

5 They are distinct from tide and submerged
6 lands. S.O. land -- swamp-and-overflow lands are not held
7 subject to any Public Trust obligations. They are
8 capable of sale into private ownership, free and clear of
9 any retained public interest.

10 Now, there are some slough areas in some of
11 the swamp and overflow lands at issue here today, and
12 those are subject to State claims of ownership because, at
13 least there's a possibility that certain of those slough
14 areas were tide and/or submerged lands, and subject to the
15 Public Trust.

16 That circumstance, however, has been taken
17 into consideration, both in the lands that are being
18 purchased by the Port and also with regard to the exchange
19 aspect of this transaction. So the distinction has been
20 observed.

21 And as Mr. Gayman pointed out, at least in
22 California and also in the federal court system, the mean
23 high-tide line established the boundary between overflow
24 lands and tide lands. And that, generally speaking, is --
25 lies somewhere landward of the inner edge of marsh, in

1 most situations.

2 MR. BUSTAMANTE: So this is exempt from the
3 issue that was -- that was talked about by Mr. --

4 MR. EAGAN: Swamp and overflow lands are
5 subject to full, private ownership free and clear of any
6 retained Public Trust interest in the State.

7 MS. CONNELL: Thank you.

8 MR. BUSTAMANTE: Any other questions?

9 MR. GAGE: I guess an additional follow-up
10 question for staff. Is there a dispute with the gentleman
11 who just spoke as to -- is the dispute a legal dispute or
12 is it a factual dispute as to whether or not these are
13 swamp and overflowed lands?

14 MR. EAGAN: The gentleman can perhaps speak
15 best for himself. But I think it's beyond dispute that
16 the vast majority of the lands that are being purchased
17 from Western Salt are swamp and overflow lands.

18 Conceivably that consensus might not exist
19 if we had a different definition of where this boundary is
20 between the tide lands and S-and-O lands. But it is well
21 established in California that it's the mean high-tide
22 line. So I'm assuming that there's no dispute about that.

23 And I'm not aware of any dispute about where
24 the existing areas of state claims could be. And those
25 have been given full value. And that has been factored

1 into -- to both the purchase and exchange elements of this
2 transaction.

3 MR. GAGE: Thank you.

4 MR. BUSTAMANTE: What about the larger
5 issue that he raises with respect to where, in fact, those
6 lines ought to be? If this one is -- is exempt from
7 that -- from the issue of mean high-tide line, is the
8 larger issue that there are other properties up and down
9 the coast that, in fact, could come under this?

10 MR. EAGAN: This is not an exceptional
11 transaction from the standpoint of what historically the
12 State Lands Commission has done by way of State
13 settlements. And staff is expert, if you will, in terms
14 of evaluating these situations, and is virtually not a
15 calendar item or a calendar before a meeting of the State
16 Lands Commission where some such title-settlement
17 agreement doesn't come before the Commission for approval.

18 So in no sense, this is a one-of-a-kind
19 transaction. A lot of the legal principles and factual
20 inquiries that have been applied here by staff are
21 routinely applied in title settlements of this type.

22 MR. BUSTAMANTE: Okay. Any other
23 questions? We have one other person,
24 Mr. William Claycomb. Did I say the name right? Good
25 morning.

1 MR. CLAYCOMB: Good morning.

2 MR. BUSTAMANTE: Welcome, sir.

3 MR. CLAYCOMB: Commissioners, my name is
4 William A. Claycomb. I'm speaking on behalf of Save Our
5 Bay, Inc. I furnished you a copy of this testimony. But
6 I want to read some into the record.

7 We urge you to use extreme caution and
8 consider all the facts before approving expenditures of
9 twenty and a half million dollars of Public Trust funds by
10 the San Diego Unified Port District to purchase
11 approximately 836 acres, many of what may already have
12 ownership reserved for the people of California by its
13 1850 constitution.

14 The reservation in the constitution is that
15 all lands below the mean high-tide line as it was located
16 in 1850. Since 1850, at least two huge floods have come
17 down the Otay River and deposited so much eroded-earth
18 material, and even downed cattle at and beyond the river's
19 mouth, that the mean high-tide line was relocated a
20 considerable distance to the north and west into what is
21 now the salt-pond area.

22 This change in location of the mean
23 high-tide line, however, did not change the area public's
24 ownership. We sent Governor Gray Davis on November 30th,
25 1998, 26 pages of information concerning the salt-pond

1 area in south San Diego Bay.

2 On January 23rd, 1999, we sent the same
3 material to your office, care of Linda Small. We also
4 sent a copy of the January 7th, 1999, San Diego County
5 Grand Jury letter to Save the Bay, Inc., and a copy of our
6 January 15th, 1999, certified letter, reply to the grand
7 jury. Of all this material --

8 MR. BUSTAMANTE: Mr. Claycomb, excuse me,
9 sir. Need to interrupt you. Are you opposed to this
10 project?

11 MR. CLAYCOMB: Not opposed to it. We're
12 opposed to paying for acres that we think maybe the State
13 already owns. And we're certainly opposed to the price
14 being paid for it.

15 MR. BUSTAMANTE: All right, sir. Thank
16 you. Go ahead.

17 MR. CLAYCOMB: And I don't like being the
18 skunk at the garden party either.

19 MR. BUSTAMANTE: Couple minutes. Go ahead.

20 MR. CLAYCOMB: Of all material furnished to
21 the California State Lands Commission, we wish to read two
22 sentences from a California State Land Commissioner to
23 Norman J. Williams, Community Development Director of City
24 of Imperial Beach, and three sentences from a California
25 State Lands Commissioner to Ms. Julie Hawking, Chair, San

1 Diego Club -- Sierra -- San Diego chapter of the Sierra
2 Club. They sum up the Public Trust tideland-ownership
3 problem in south San Diego Bay.

4 The letter to Imperial Beach Community
5 Development Director was dated October 19th, 1989, was
6 signed by Debbie Townsend, Land Agent. The pertinent
7 paragraph is:

8 "Lastly, the review of the in-house title
9 evidence, including historical maps and surveys,
10 reveals to the Commission, may have undetermined
11 ownership interests within the project area.
12 The extent of these interests will need to be
13 defined and settled prior to the approval of
14 specific plans for development."

15 The second letter to which I referred to the
16 Chairwoman of the San Diego Chapter of the Sierra Club,
17 was dated August 3rd, 1992, and was signed by Curtis L.
18 Fossum, Senior Staff Counsel. The pertinent sentences
19 are:

20 "The precise nature, extent, and location of
21 the State's Public Trust interest in many portions
22 of south San Diego Bay are undefined by court
23 judgment or settlement agreement. Generally the
24 boundaries of the State's interests must be
25 resolved before development can proceed.

1 Unfortunately, given the limited resources,
2 we are unable to initiate studies necessary to
3 research these title issues without reimbursement
4 of staff costs."

5 As to the title settlement agreement, we
6 note on page 5, paragraph 2, the word "appraisal." We
7 understand that all or nearly all of the lands under
8 discussion are in the Otay River flood plain and under
9 California Coastal Commission jurisdiction as well.

10 As such, the potential for development is
11 next to nothing. In fact, the City of San Diego agreed
12 with the U.S. EPA to stop development in flood plans. Was
13 this fact considered in the appraisal? Was sea-level rise
14 considered?

15 And on the advice of our attorney, we spent
16 an hour this morning looking at the appraisal. Because
17 what he told us was, an appraisal was no good if it
18 doesn't have a title search -- the title search of the
19 land you're proposing to buy. And we spent that hour, and
20 there's no evidence at all that a title search has been
21 done. So that puts the question on the other side of the
22 page.

23 As to the TSA, page 6, paragraph 4, we note
24 the word "compromise," and results of such litigation
25 would be uncertain. As to compromise, it appears that the

1 public has compromised on everything and Western Salt has
2 compromised on nothing.

3 As to uncertain litigation results, we refer
4 the Lands Commissioners to the very certain outcome of use
5 of public -- the doctrine of Public Trust to preserve San
6 Elijo Lagoon prepared for John Laboratory for Cal Poly
7 Pomona, by Barbara G. Crowley, 615 Linda Vista, Pasadena,
8 California, January 29th, 1972. This 35-page document was
9 used to save the lagoon from a private duck-hunting club.

10 As to the TSA, page 7, paragraph 1, unless
11 the staff has done core drillings and other field
12 investigations to correctly locate the mean high-tide line
13 as it was in 1850, it has not done a satisfactory
14 job.

15 It has been suggested too that the City of
16 San Diego expenditure of several million dollars to
17 acquire Famosa Slough, when it was known to be
18 Public-Trust tidelands justifies similar action in this
19 case. We do not agree --

20 MR. BUSTAMANTE: Mr. Gayman, we're talking
21 about this one -- this one project, though; correct?

22 MR. CLAYCOMB: I'm sorry?

23 MR. BUSTAMANTE: You're raising a lot of
24 issues concerning many projects. We are talking about
25 this one project?

1 MR. CLAYCOMB: Yes.

2 MR. BUSTAMANTE: Can we keep it to this one
3 project?

4 MR. CLAYCOMB: I have one paragraph. We see
5 here an opportunity for the California State Lands
6 Commissioners to not complete this settlement agreement as
7 written, and to restore some of the public's lost faith in
8 their government by acting on their behalf, rather than
9 that of a special interest, in this case, Western Salt
10 Company.

11 MR. BUSTAMANTE: Thank you, sir. Staff,
12 would you speak briefly to the appraisal, title search,
13 and the settlement agreement?

14 MR. FOSSUM: Yes, Mr. Chairman. I'd like
15 to speak on several issues raised by both of the last two
16 speakers. The Commission staff, as the attorney general's
17 office points out, does this on virtually every Commission
18 meeting. You're looking at a similar type of settlement
19 agreement that the Commission staff has investigated
20 historic evidence of title claims, has looked at the
21 values of the property with our professional appraisal
22 staff we have, and have studied this.

23 As to the letter that was read that I signed
24 several years ago, at that time, we had not conducted a
25 final study of these lands, and we did not have the staff

1 and the money to do so.

2 We have a reimbursement agreement from the
3 Port of San Diego that has helped fund the last three
4 months of our staff time to be able to do a more indepth
5 analysis than had previously been done for this property.

6 And the conclusions of that study were that
7 there was some interest in the lands sold as
8 swamp-and-overflow lands. We evaluated those acreages.
9 We discounted those acreages from the appraised values.
10 Our appraisers did independent studies of the appraisals.
11 And the value that the appraisal was done for, this was
12 discounted by several millions of dollars.

13 So the tax payers of California have, in
14 fact -- but luckily it didn't have to be discounted,
15 because the Port District had negotiated an agreement that
16 was much less than the appraised value. So what we are
17 asking for you today --

18 MR. BUSTAMANTE: What was the appraised
19 value?

20 MR. FOSSUM: I believe it was 24 million
21 dollars or in excess of that -- in excess of 24 million
22 dollars.

23 MR. BUSTAMANTE: What does that mean, "in
24 excess"? Is that like 24.5 or 24?

25 MR. FOSSUM: 24 and a half. And we

1 discounted -- from that, we discounted acreages. We also
2 discounted valuation of several other factors of that.

3 And the professional advice that we give,
4 both legal, boundary and appraisal advice, is that this --
5 the value of the interests that are being acquired from
6 Western Salt is still in excess of 20.5 million dollars.
7 It's still a better deal for us.

8 And it's my understanding that Western Salt
9 Company intends to take a significant charitable
10 contribution by donating the excess lands to the State of
11 California, and to the Port of San Diego.

12 The previous speakers mentioned several
13 other situations in California, such as Famosa Slough. I
14 spent many years dealing with Famosa Slough. The problem
15 with that is, in fact, what happened -- and that was, we
16 went to court. The State of California litigated the
17 boundaries in Famosa Slough in the 1930's and lost.

18 They mentioned other places in California
19 where those things were litigated. When you go into
20 court, you take chances. One of the reasons that the
21 Commission tries to settle these things is because we know
22 what the facts are. We also know that when you get into
23 court, sometimes you don't win. We wanted to be a win-win
24 situation.

25 So when we evaluate these claims, we are

1 very conservative in our estimates and we are very
2 cautious about that. San Elijo Lagoon was mentioned.
3 San Elijo Lagoon was a settlement agreement where the
4 State did purchase the lands. The Department of Fish and
5 Game, I believe, contributed close to a million dollars to
6 help purchase the lands around San Elijo Lagoon.

7 The State of California ended up with the
8 property. We didn't pay anything. The Department of
9 Fish and Game got an interest around the lagoon, some
10 wetlands as part of the settlement with the United
11 California Bank. So if you have any other questions, I'd
12 be happy to answer them. Otherwise, I think your staff
13 has done everything that's been asked, and will continue
14 to do so.

15 MR. BUSTAMANTE: So the appropriate title
16 searches were done?

17 MR. FOSSUM: Absolutely.

18 MR. BUSTAMANTE: The --

19 MR. FOSSUM: I have archive boxes full of
20 title reports.

21 MR. BUSTAMANTE: The appraisal was at 24.5,
22 and the settlement agreement was approximately 4 million
23 dollars under the appraisal?

24 MR. FOSSUM: That's correct.

25 MR. BUSTAMANTE: Are there any other

1 questions? Is there a motion?

2 MS. CONNELL: Yes. I would move that we
3 support the staff motion, which is basically to approve
4 the settlement.

5 MR. GAGE: I would second.

6 MR. BUSTAMANTE: With a motion and second,
7 if there is obviously no -- no additional opposition, by
8 at least the Commissioners, we will deem this to be
9 approved by unanimous vote. Staff, it does sound as if,
10 in fact, there was a, as described, a win-win-win
11 situation here. It's wonderful to see that activity
12 taking place.

13 It appears that there was due diligence by
14 staff to make sure that the taxpayers' money was, in fact,
15 safeguarded. And as a result, we were able to get a
16 wonderful addition to the San Diego area here for
17 environmental purposes. I think we did a great job. And
18 thank you to all participants of the project.
19 Congratulations.

20 Next item, Item Number 46. A proposed
21 expenditure of Port of San Diego funds for the acquisition
22 of the South Bay Power Plant near Chula Vista and National
23 City. Mr. Hight?

24 MR. HIGHT: Thank you, Mr. Chairman.
25 Mike Valentine, Assistant Chief Counsel, will make a very

1 brief presentation, followed by a presentation by the
2 Port.

3 MR. VALENTINE: Good morning, Mr. Chairman,
4 members of the Commission. I will be very brief, because
5 I believe the Port has another one of those pretty
6 power-point presentations for you. And then will both
7 stand by for any questions that there may be.

8 Let me just say, this is a proposed
9 acquisition of three parcels amounting to approximately
10 160 acres along south San Diego Bay, including the
11 location of the San Diego Power Plant, which the Port
12 Commission would like to buy and arrange for its
13 replacement, decommission and demolishing that facility.
14 That's the purpose of their acquisition.

15 The secondary benefit would be that it would
16 free up substantial acreage that would be suitable for
17 other Public Trust purposes, in accordance with the terms
18 of their grant.

19 You are being asked to review this, at the
20 Port's request, because it is a substantial expenditure
21 which is outside the trust grant of the City of
22 San Diego -- the Port District of the City of San Diego.
23 We believe that the findings required of you by law are
24 justified in this case.

25 And we will be, at the end of this

1 presentation by the Port, moving and recommending that the
2 Commission approve the acquisition. With that, I would
3 like to turn it over, if you would, to representatives of
4 the Unified Port District.

5 MR. BUSTAMANTE: Do we have a question
6 first?

7 MS. CONNELL: Yes, thank you. Mr. Chair,
8 maybe I should be directing this to the Port, but I had a
9 question. I see that it's intended that -- that we are
10 going to keep the SBPC functional up to ten years. And
11 that during that period, that Duke is going to develop a
12 new facility to replace the old plant. Is there any
13 question in your mind that we will be able to do that
14 within the ten-year period?

15 MR. VALENTINE: I think there is some. That
16 is the intent. But sure, there is some question as to
17 whether it is, in fact, possible. There are guidelines,
18 landmarks in the agreement set forth to make sure that
19 progress is being made toward that end.

20 It may be. And the agreements with Duke and
21 San Diego Gas and Electric contemplate that, since it is
22 required to keep this facility on line until there's a
23 replacement for it, it is contemplated that it may be
24 necessary to build the replacement facility at the south
25 end of this 160 acre parcel on or near what is called the

1 LNG site.

2 That would be -- take up about 25 acres.

3 And while that would not be an ideal solution by any
4 means, it would certainly be a facility -- that the
5 replacement would be a facility that would be subject to
6 1990 or 2002 or whatever the year is -- environmental
7 laws, as opposed to the environmental laws as they existed
8 in 1960 when this plant was built.

9 And it could scarcely be as ugly as the
10 existing plant. I dare say there's not a power plant in
11 California that's as ugly as this plant.

12 MS. CONNELL: Do you anticipate any
13 problems with -- with environmental litigation on this? I
14 mean, where are we on an EIR, and what are we
15 contemplating is the time period here? While it may be
16 replacing a truly ugly plant, there may be those who would
17 prefer that it not be replaced at all. Let me be very
18 direct about that. So I'm just concerned about the
19 reality of getting this through an environmental process.

20 MR. VALENTINE: In terms of replacing, my
21 understanding of the situation is that we don't have a
22 choice of making it go away. Our choice is leave it as it
23 is, or replacing it. The Port obviously would like to
24 replace it off the waterfront.

25 I mean, that's the purpose of this

1 acquisition after all. But we do what is possible. And
2 the Port is committed to replacing it before the existing
3 facility is demolished. It's not a perfect world. But as
4 things stand now, this plant must remain in operation
5 until the energy generated by a replacement facility comes
6 on line.

7 And will there be environmental litigation
8 over building the replacement plant? Who knows? That --
9 that certainly -- that's a possibility. But Duke will
10 have the responsibility of securing all environmental and
11 other permits that may be necessary to build -- to locate
12 and build a replacement facility.

13 The divestiture -- that is the sale of the
14 facility, which is the part of it that's before you
15 today -- has been the subject of an environmental
16 document, which has already been approved by the Public
17 Utility Commission, and has been reviewed by staff.

18 MS. CONNELL: Mr. Chairman, may I ask a
19 follow-up question? I have a question about the way this
20 is going to be financed. Maybe you could help me
21 understand this. It's my understanding that we're
22 going -- that Duke is intending to do a sale of bonds in
23 order to finance their facility expansion. What is Duke's
24 relationship to SBPC -- SBPP, and who is going to
25 actually -- is it Duke standing behind the bonds? Is it

1 their credit and their balance sheet?

2 MR. VALENTINE: If I may, I would like to
3 give you a very limited understand -- my very limited
4 understanding of this, and then turn that particular
5 question -- which I'm sure you're quite capable of asking
6 more questions than I can answer. I would like to turn
7 that over to the Port.

8 But as I understand, there will be bonds
9 that will be marketed. The bond issuers will loan the
10 money to the Port District for the acquisition. The Port
11 District will use the money to acquire this site.

12 Duke will pay rent, if you will, in the form
13 of debt service on a schedule, so that it can -- the bonds
14 can be serviced and amortized over the period of their
15 lease.

16 MS. CONNELL: So these are lease-revenue
17 bonds, I'm assuming. Someone in the audience is shaking
18 their heads.

19 MR. HOLLINGSWORTH: Lease-revenue bonds,
20 without recourse to the Port District, their only recourse
21 is to Duke.

22 MS. CONNELL: Okay. I don't mean to
23 interrupt this flow. Maybe it will come, Mr. Chair, in
24 the course of conversation. Those are just concerns that
25 I wanted -- I hope that somebody can address as you make a

1 fuller presentation. If you could illuminate on the
2 structure of the bonds. I'm curious about that.

3 MR. VALENTINE: I would like to yield to the
4 Port after making the one point that came from the floor
5 was a good one. Is that the bonds -- there is no recourse
6 for the bond holders against the Port District or against
7 the Port District's property it's acquiring here. The
8 recourse would be against Duke. So if I could --

9 MR. BUSTAMANTE: Go ahead. Continue with
10 the presentation.

11 MR. SPEAR: Well, Mr. Chairman, I'm going
12 to stay out of the middle of this discussion and let the
13 professional people get into it.

14 MR. BUSTAMANTE: I don't blame you.

15 MR. SPEAR: But I would like to introduce
16 our new executive director, who I understand came in.
17 Mr. Dennis Bouey, who's on board. And with that said, I
18 would like to ask Mr. Tom Morgan from the professional
19 staff to come up and give you the Port's presentation on
20 the purchase.

21 We are excited about the purchase for a
22 number of reasons, as I'm sure you can see. And we see it
23 as being transparent to the consumer, because the energy
24 will continue to be produced down there.

25 And also, it will give us a -- a piece of

1 that property down there that we can use for Port purposes
2 and for -- for Trust purposes. And it will enhance the
3 waterfront down in Chula Vista. Thank you. Tom?

4 MR. HIGHT: Mr. Chairman, if I could for
5 one second introduce Mr. Bouey, who has just come to the
6 Port of San Diego, was previously, in another life, the
7 Executive Director of the Port of San Francisco. And
8 we've had a very wonderful relationship with him, which
9 culminated in the San Francisco ball park, just after he
10 left.

11 MS. CONNELL: He did our part there. Now
12 it's up to the City of San Francisco.

13 MR. MORGAN: Thank you. Good morning,
14 Chairman Bustamante and Commissioners. It's my privilege
15 on behalf of the Port of San Diego to present for your
16 consideration and request approval of the Port's
17 acquisition of the South Bay Power Plant.

18 This important acquisition would not be
19 before you today if it were not for the invaluable
20 contribution and cooperation of both Duke Energy and the
21 San Diego Gas and Electric Company.

22 Before I begin my more formal remarks, I
23 would like to take this opportunity to introduce to the
24 Commission representatives from both Duke Energy and
25 San Diego Gas and Electric.

1 With us today are Mr. Keith Head from Duke
2 Energy, who is the vice president of power acquisition,
3 Mr. Tom Williams, who's the Regional Public Affairs
4 Manager of the western region, and Mr. Steve Gotskey, the
5 plant manager for both Duke's Morro Bay and Moss Landing
6 facilities, and is also a member of the South Bay
7 Transition Team.

8 And then also representing San Diego Gas and
9 Electric, we have Mr. Bruce Williams, who's the manager
10 of -- regulatory case management for Sempra Energy and
11 also Attorney Michael Thorpe with Sempra Energy.

12 The Port would especially like to thank the
13 representatives of San Diego Gas and Electric for their
14 cooperation and contribution to the Bay-wide region by
15 agreeing to sole source the negotiations with the Port of
16 San Diego, that allows us to bring this very important
17 transaction before you today.

18 The wildlife refuge is a very tough act to
19 follow. However, you can see the close proximity on the
20 screen before you of the South Bay Power Plant. It's
21 contiguous, located just to the north. The combined
22 acquisition of these properties will provide a contiguous
23 area in excess of 1500 acres on the waterfront.

24 As this slide demonstrates, the power plant
25 is in close proximity to downtown San Diego, approximately

1 seven miles south of the city, located in the City of
2 Chula Vista, which is a member city of the Port of
3 San Diego.

4 The Port recognized that it would be in the
5 Bay-wide region's best interest to acquire this plant with
6 the intent of its ultimate decommissioning, demolition and
7 removal. The transaction includes the acquisition of
8 basically three properties.

9 The southerly property is identified as the
10 LNG site or what was previously used for liquid natural
11 gas distribution, approximately 13 acres. The main plant
12 site in the center is 116 acres. And then the
13 transmission property in -- outlined in blue, is
14 approximately 16 acres that extends to the north.

15 This entire 165-acre, three-parcel property
16 is being acquired for a hundred and ten million dollars.
17 I'm going to give you the layman's economics of the deal.
18 And we have with us our treasurer, Mr. Bruce Hollingsworth
19 and also Mr. Russ Goings for First Albany, who will be
20 able to explain Commissioner Connell's concerns and
21 questions with regards to the bonds.

22 But essentially, they are lease-revenue
23 bonds that will be issued in the amount of approximately a
24 hundred and fourteen million dollars, which will include
25 not only acquisition costs, but also closing costs.

1 The bonds will be secured by Duke Capital,
2 and the bond holders have no security interest in the
3 property, and have no recourse to either the Port of San
4 Diego or the State of California. Duke Power's lease
5 payments will equal the debt service on the bonds, and the
6 amortization period coincides with the lease term, which
7 is approximately ten years, depending upon the interest
8 rate at closing.

9 The Port is very pleased to introduce
10 Duke Power as our operator of this facility. Duke is a
11 worldwide leader in power generation and distribution, and
12 as just previously mentioned, the owner of two other
13 California power plants -- one in Moss Landing and the
14 other in Morro Bay -- Duke Capital, with over 26 billion
15 dollars in capital in assets, provides energy services to
16 over 50 countries.

17 The Port would like to take this opportunity
18 to congratulate Duke on being named the 1998 Utility of
19 the Year by Electric Power and Light Magazine, as well as
20 being named first in electric-utility industry customer
21 satisfaction by Fortune Magazine. So we believe that we
22 have selected the right operator.

23 The transaction with Duke, as I mentioned
24 just previously, includes a debt payment that would equal
25 the bond amortization. It includes a requirement for due

1 diligence and commercially reasonable efforts to locate a
2 replacement-generating-facility site, to move through all
3 the -- of the permitting processes required, and then to
4 construct a replacement facility to allow the South Bay
5 Power Plant to be decommissioned, demolished and removed.

6 It currently is in a must-run-status
7 category with the CPUC and would have to have the
8 alternative power supply available before this could be
9 accomplished. In addition, Duke's responsibility is the
10 decommissioning, the demolishing and removal, and also
11 remediation of any existing facilities.

12 As far as the risks to the Port of San Diego
13 and for the State of California, this transaction's been
14 negotiated so that any existing remediation responsibility
15 falls under the responsibility of San Diego Gas and
16 Electric.

17 Any future remediation responsibility, due
18 to the operation -- ongoing operation of the facility will
19 be Duke Energy's. So the Port and the State have no
20 liability with regards to remediation responsibilities.

21 And then in summary, the Port envisions that
22 there are many benefits to the San Diego community, as
23 well as the State of California concerning this
24 transaction. The transaction will allow us to acquire
25 over a hundred and sixty acres of tide-lands property with

1 essentially no capital expenditure by the Port.

2 The positive environmental and community
3 effects will begin with the early demolition of the north
4 tank farm, which includes three large tanks that are on
5 the north end of the property. The Port is seeking to
6 demolish these large empty tanks within two years of the
7 initial acquisition.

8 Of course, the ultimate benefit for the
9 community will be the complete demolition and removal of
10 the plant. The replacement plant will implement modern
11 technological advances in power generation facilities and
12 will conform to modern environmental regulations.

13 The bottom line is, that the -- the Port's
14 acquisition of this property is an opportunity -- creates
15 an opportunity to remove an aging plant from the
16 waterfront. If the Port were not purchasing this
17 facility, it could possibly continue to operate
18 indefinitely under private ownership.

19 And then as you can see, Michael couched it
20 pretty clearly. It's ugly. It's an ugly plant. This is
21 the view from the bay. By State Lands Commission
22 approving this acquisition, you will help achieve the goal
23 of demolishing the plant and enhancing the waterfront.
24 And as they say, a picture is worth a thousand words.

25 MS. CONNELL: It's amazing what you can do

1 with computer graphics.

2 MR. MORGAN: That concludes my presentation.

3 MS. CONNELL: Before we just used white
4 out. But we've -- now we have computer graphics.

5 MR. MORGAN: I and my staff remain
6 available to answer any questions you might have. If
7 you'd like to address the bond situation initially, we can
8 have Mr. Goings come up.

9 MR. BUSTAMANTE: Please.

10 MS. CONNELL: Yes, if we could have both
11 Russell and Bruce come up, I have a couple of questions on
12 the bond.

13 MR. HOLLINGSWORTH: Good morning,
14 Mr. Chairman, Commission. My name is Bruce Hollingsworth,
15 and I'm the treasurer of the Port of San Diego. And with
16 me is Russell Goings. And Russ is our -- our financial
17 advisor with First Albany. We've prepared a flow chart.

18 MS. CONNELL: How lovely. Something --
19 something I'm very comfortable with.

20 MR. HOLLINGSWORTH: I might go through that
21 real quickly, if I might. The issuer is the California
22 Maritime Infrastructure Authority. Pursuant to a loan
23 agreement, they will take the proceeds of the issuance,
24 loan them to the Port of San Diego.

25 Those proceeds will be assigned to the

1 trustee. And the bond proceeds will be paid for the
2 acquisition of the plant to San Diego Gas and Electric.
3 The Port is the borrower, but also the lessor. And under
4 a lease agreement -- and the documents off to the side are
5 the -- the dotted line are the cooperation agreement, et
6 cetera.

7 Those are the documents for which the
8 protection and the lease agreement between the Port and
9 Duke, South Bay LLC. Duke, South Bay LLC will be the
10 operator of the plant. Supporting the Duke, South Bay LLC
11 is a corporate guarantee which is Duke Capital
12 Corporation. And those are the documents -- the guarantee
13 documents.

14 The guarantee runs to the bond holders
15 through the trustee. The guarantees protect the Port and
16 the State and the Maritime Infrastructure Authority, so
17 that the recourse for the bond holders is through the
18 Duke, South Bay LLC and Duke Capital as guarantor. The
19 underwriters are Solomon Smith Barney, and the trustee is
20 the Bank of New York.

21 MS. CONNELL: Can we go back to the
22 corporate guarantee through Duke Capital Corporation? Is
23 this a corporation that is being created or was created
24 for purposes of this transaction?

25 MR. HOLLINGSWORTH: No, it's not. Duke

1 Capital Corporation is the corporation that does
2 primarily -- and Duke is here. They might speak as to
3 their corporate nature. But they are the primary
4 corporation that puts together these deals around the
5 country for Duke.

6 MS. CONNELL: So they have an independent
7 balance sheet, I'm assuming?

8 MR. HOLLINGSWORTH: They have an independent
9 balance sheet, and the rating --

10 MS. CONNELL: What is that rating?

11 MR. HOLLINGSWORTH: The rating is an A
12 rating.

13 MS. CONNELL: Okay.

14 MR. HOLLINGSWORTH: And this is a Duke
15 Corporate guarantee, so that the bonds will be rated off
16 of the guarantee of Duke Capital.

17 MS. CONNELL: Second consideration here, we
18 are trying to obviously synchronize the lease with the
19 demolition and recreation of the facility. What in the
20 bond-transaction language, in the official statement or
21 other documents allows for a continuation of the bonds or
22 an extension of the bonds if indeed we don't have this
23 facility completed in time?

24 I just want to make sure we don't have
25 interruption of lease payments going forth to secure this

1 transaction if there is a mitigation problem or if there
2 is a problem in the construction of a new facility.

3 MR. GAGE: Mr. Chairman, maybe another way
4 to phrase the question would be, are the lease payments
5 dependent on the operation of the plant as it currently
6 exists?

7 MR. HOLLINGSWORTH: No, they're not.
8 They're independent. The way that the documents are
9 drafted, the lease payments will equal the amortization
10 schedule on the bonds, and will continue in full force and
11 effect until the bonds have been fully amortized.

12 If the plant has problems, if Duke decides
13 to -- is allowed to or decides to shut down the plant, in
14 terms of not operating for economic reasons, the
15 obligation to pay the lease is still there. And
16 therefore, the funds through the trustee would be paid to
17 the bond holders.

18 MS. CONNELL: What happens if there are
19 cost overruns in this process?

20 MR. HOLLINGSWORTH: All of that is liability
21 of Duke.

22 MS. CONNELL: How did the bond documents
23 deal with that?

24 MR. HOLLINGSWORTH: The bond documents
25 reference all of those agreements that we have between the

1 Port and Duke, South Bay LLC, and then the cooperation and
2 guarantee agreements. And those agreements provide for
3 that and are referenced in the official financing
4 documents.

5 MS. CONNELL: I assumed that there will be
6 issuance if there is a cost overrun?

7 MR. HOLLINGSWORTH: There would be -- no,
8 this is just -- 110 million dollars is the acquisition
9 fee. We are approximating that the bond issue would be
10 about a hundred and fourteen million, which would cover a
11 cost of issuance. And the -- all of the costs that the
12 District has incurred in putting this transaction together
13 would be paid out of that. That would be the sole amount
14 of money or sole issuance on this deal.

15 MS. CONNELL: The reason I'm pursuing this
16 line of questions, Mr. Chair, is that we have had other
17 circumstances where we thought we had the right amount of
18 money, and we found out we were short. I just -- I'm
19 trying to anticipate what -- I'm sure you've already
20 anticipated this. I guess the question is, what happens
21 if there is a shortfall, given some misunderstanding of
22 what the costs of this project might be?

23 MR. HOLLINGSWORTH: I might put it this
24 way. We have an agreement with SDG and E that provides
25 for what the purchase price is, so that the bond proceeds

1 are merely going to fund the purchase price -- the
2 acquisition of the property. If there are other costs
3 associated in the future with the operation of the
4 plant -- remediation, mitigation, any of those things --
5 those are the responsibility of Duke Capital.

6 MS. CONNELL: Okay. So this agreement does
7 not speak to that issue?

8 MR. HOLLINGSWORTH: That's correct.

9 MS. CONNELL: All right. Thank you.

10 MR. GAGE: Mr. Chairman, I'd like to follow
11 up with a couple more questions. The hundred and fourteen
12 million dollars -- that's the purchase, plus additional
13 costs associated with the transaction. Is that -- that's
14 purchase of the land as well as the existing power plant;
15 correct?

16 MR. HOLLINGSWORTH: No. That price includes
17 the purchase of the facility. The land is subject to
18 another transaction. That will be granted to the Port.
19 And the purchase price of that -- or the cost of that is
20 being absorbed through a tax deductible receipt that would
21 be issued to San Diego Gas and Electric as a donation.

22 MR. GAGE: So this is just the facility?

23 MR. HOLLINGSWORTH: That's correct.

24 MR. GAGE: Right. And then, at the
25 conclusion of this transaction, this facility will be

1 decommissioned, presumably. Is Duke Power obligated to
2 provide the replacement facility?

3 MR. HOLLINGSWORTH: There are provisions in
4 the agreement that they will use best efforts and
5 cooperation with the Port to find a relocation site for
6 this plant. And as the presentation mentioned, subject to
7 that not being able to happen, the plant would still --
8 the intent is, the plant would still be decommissioned.

9 A new plant, more efficient plant, better
10 looking plant, would be built on the site. And there are
11 provisions for that. So that if the plant continues to
12 have a must-run designation by the State, the plant's
13 generating capabilities would be protected. The plant
14 would be continued in a smaller portion on that site.

15 MR. GAGE: And under the agreement, who
16 owns that future replacement plant?

17 MR. HOLLINGSWORTH: I'd have to ask our
18 counsel on that.

19 MR. MORGAN: The Port of San Diego would
20 own the land, and it would be a lease to the operator.

21 MR. GAGE: So that the operator -- whoever
22 that future operator would be -- could potentially be Duke
23 Power?

24 MR. MORGAN: Could be. They would hope it
25 would be.

1 MR. GAGE: They would lease land. I guess
2 what I'm alluding to is, the hundred and ten million
3 dollars is being paid -- is basically being -- at the end
4 of the day, does the Port have an asset?

5 MR. MORGAN: Yes, sir.

6 MR. GAGE: And what is that asset?

7 MR. MORGAN: It's 165 acres of land. The
8 fee ownership in land.

9 MR. GAGE: But I thought the earlier
10 comment was that the hundred and ten million dollars was
11 simply paid for the facility, not the land?

12 MR. MORGAN: No, sir. The land is
13 included. There's this tax-deductible contribution that
14 would be to the benefit of San Diego Gas and Electric, if
15 there's a value over the 110 million bond portion of the
16 acquisition.

17 So there's an appraisal being performed by
18 San Diego Gas and Electric to determine what the ultimate
19 value would be. And then they would receive a
20 tax-deductible contribution for the difference. But the
21 fee ownership of the land comes with the transaction.

22 MR. GAGE: So that additional transaction,
23 based on the appraisal -- do we have any sense at this
24 point in time as to what the potential additional amount
25 could be?

1 MR. MORGAN: We have not seen their
2 appraisal to this point. It's an issue that really is
3 more concern to San Diego Gas and Electric than it would
4 be to the Port. Because we have the State actually absent
5 the 15 million dollars -- the State is contributing some
6 money to the transaction. The Port of San Diego is not
7 investing any dollars into the transaction and is
8 receiving the fee ownership of the land at the end of the
9 day for redevelopment purposes, in accordance with the
10 trust.

11 MR. GAGE: So the Port receives title to
12 the land, independent of this additional appraisal and
13 side transaction, if you will?

14 MR. MORGAN: Yes, sir.

15 MR. BUSTAMANTE: What does the State get?

16 MR. MORGAN: The participation of seeing an
17 ugly power plant removed from the waterfront, and great
18 new development accomplished for the benefit of the
19 citizens of the state.

20 MR. BUSTAMANTE: Is the appraisal done
21 prior to or before the plant is demolished?

22 MR. MORGAN: The appraisal would be
23 conducted -- it's being conducted now I believe. I could
24 ask San Diego Gas and Electric to speak to that issue, if
25 you'd like.

1 MR. BUSTAMANTE: Yeah.

2 MR. MORGAN: Would you like to have
3 Mr. Williams come forward?

4 MR. BUSTAMANTE: So 15 million dollars we
5 get a better view?

6 MR. WILLIAMS: Good morning. Bruce
7 Williams, Sempra Energy, representing San Diego Gas and
8 Electric. Actually the appraisal is yet to start. The
9 IRS regulations require that the appraisal be done within
10 a 60-day time period of the actual closing of the sale.

11 And so we're anticipating that within a
12 month of our anticipated closing date we'll commence the
13 appraisal activities, and then complete those within a
14 60-day time period.

15 MR. GAGE: Mr. Chairman, if you could,
16 could you go back over a little bit the nature of the
17 transaction that would occur following that appraisal, in
18 terms of I guess what could be referred to as excess value
19 that would have to be paid for the land?

20 MR. WILLIAMS: Certainly. In layperson's
21 terms -- I'm not a tax expert nor an attorney. But we
22 will -- the actual -- the hundred and ten million dollars
23 is from -- again, a conversational standpoint -- is for
24 the improvements of the property.

25 We will have the power plant itself

1 appraised. To the extent that the appraisal is above a
2 hundred and ten million dollars or the tax base of the
3 property, that incremental amount would be -- on the tax
4 basis would be a charitable contribution, which we would
5 claim in that year's tax filing.

6 We will also have the three parcels of
7 property appraised. And then the total-appraised value
8 will be the basis for tax -- or the charitable
9 contribution from which our tax deduction will be
10 calculated.

11 MR. GAGE: So if I understand this
12 correctly, basically, San Diego Gas and Electric is
13 prepared to live with whatever the appraise -- the
14 difference, and that incremental value. And in effect,
15 your only compensation is the deduction from the tax
16 perspective?

17 MR. WILLIAMS: Correct. The worst-case
18 scenario is that -- is this transaction would result in a
19 hundred and ten million dollars for San Diego Gas and
20 Electric.

21 MR. GAGE: Could we go back to the budget
22 act appropriation of 15 million dollars? If someone,
23 perhaps yourself -- if someone could describe the role
24 that those dollars are expected to play in the
25 transaction.

1 MR. WILKINS: Mr. Chairman, Dan Wilkins,
2 Port staff. That was the affect legislature that was
3 promulgated at the request of State Senator Steve Peace.
4 And as I understand, it was money that would be available
5 to the Port. In fact, I do understand. The money would
6 be available to the Port to aid in the closing, due
7 diligence, and any environmental responsibilities, which
8 you now know the Port has none, nor does the State have.
9 And that money was in this year's budget and signed by the
10 Governor.

11 MR. GAGE: Remind me. To whom was this
12 appropriation made?

13 MR. WILKINS: The actual agency is PUC, I
14 believe.

15 MR. GAGE: And so talk a little bit, if you
16 would, about how you would anticipate that this budget act
17 appropriation might actually be expended.

18 MR. WILKINS: Well, as we get through the
19 end of the transaction -- which we're not yet here, this
20 is one stop along the way -- I would envision that we
21 would be sitting down with the cumulative parties --
22 seller, buyer, ourselves -- and take a look at the
23 sum-total of the cost.

24 Where we come up that we are short, with
25 regards to that title-financing package, we would be going

1 to the State to look to bridge the gap. We don't know
2 that yet, until we get all the way through it. We know
3 the financing cost. We don't know some of the other
4 costs. We apparently have yet to run through those total
5 numbers until we get past both this step and ultimately
6 into the closing phase of this transaction.

7 MR. BUSTAMANTE: So this is a 15 million
8 dollar slush fund to close the deal?

9 MR. WILKINS: It's help from the State to
10 further the transaction, yes, sir.

11 MS. CONNELL: Mr. Chairman, may I follow-up
12 on this?

13 MR. BUSTAMANTE: Please.

14 MS. CONNELL: I want to put on my former
15 investment-banking hat here and ask the question of my
16 colleagues who are structuring this deal, why couldn't
17 that 15 million dollars be made part of the bond
18 financing? Why is the State paying anything here?

19 And I also would like to just remind you, I
20 sit as the chair of the tax agency. So I'm particularly
21 interested in the tax-deductible nature of the excess
22 funds here.

23 MR. MORGAN: I believe I can -- I'll attempt
24 to answer that question. I hope I can answer it. The
25 acquisition cost is one part of the formula in having

1 Duke's interest in willing to come alongside and be the
2 operator of this facility and pay the lease payments that
3 are required for the acquisition, in addition to assuming
4 the responsibility to demolish the facility at the end of
5 the day, and then to perform any remediation activities
6 that might be required.

7 Some of those cost estimates are unknown.
8 They are only estimates at this point. And so as part of
9 the overall negotiations, the 15 million dollars was taken
10 into account. It was made available to us by the State
11 for acquisition, demolition, and remediation. So when we
12 were into our negotiations with all three parties, it was
13 looked at as being a fungible asset.

14 In other words, the 15 million dollars was
15 part of the transaction. So in order for Duke Energy to
16 agree to a limit of ten years on the term, the 15 million
17 dollars was applied to solve some of these problems at the
18 end of the lease term.

19 MS. CONNELL: I guess my concern here is
20 that there doesn't seem to be anyone sitting around the
21 table that is going to have the State's financial interest
22 at heart here. In other words, if you have an open-ended
23 15 million dollar fund, what encourages you to be
24 efficient in the use of the way this project is run?

25 None of the people who are going to draw

1 down on that fund are at risk. The State, who is not
2 party to any of this activity, is going to make available
3 a checkbook, and you're going to come to us and ask for a
4 15 million dollar check from the State of California.

5 Maybe it should have been ten, maybe it
6 Should have been five, maybe it should have been three. I
7 mean, I really feel very strongly there should be some
8 monitoring of costs along the way. There should be some
9 limit as to the exposure. I mean, I don't know why the 15
10 million dollars was set as a limit for the State's
11 participation.

12 Do you know the history of that? I mean,
13 how do we come up with 15 million dollars? I think it's
14 only fair to ask, since we are providing the funding here.
15 How do we know that these dollars are being effectively
16 used? And our -- I mean, it's easy if when you have an
17 unlimited cash register there to be a little careless, as
18 you go through a process.

19 I would like to make sure that -- that we
20 are paying no more than we need to pay. I might even
21 question why we're paying at all. But obviously that is
22 not my decision. I assume the legislature has taken
23 action. So having that they've taken action. My concern
24 here to -- is to make sure that we control the use of
25 those dollars.

1 I would like to see -- and my usual brief
2 for the State -- most of those dollars coming back to the
3 State, to tell the truth. I mean this is a -- this would
4 be nice if we could return some of the 15 million dollars
5 back to the State of California. So how can -- can you
6 assure this Commission here today that those dollars are
7 going to be carefully watched?

8 MR. MORGAN: We would certainly agree with
9 you. And as trustee ourselves of the assets of the State
10 of California under the Tide Lands Trust, we would have
11 that same concern in our negotiations. Those were very
12 uppermost in our minds when we negotiated this
13 transaction, both trying to reach an acceptable
14 acquisition price with San Diego Gas and Electric, and in
15 trying to limit the length of term with the operator,
16 Duke Energy.

17 Because really, the Port of San Diego is not
18 interested in the long-term transaction and that power
19 plant remaining on the property and the waterfront. We
20 would prefer to have it removed as soon as possible.

21 MR. BUSTAMANTE: But you don't have any
22 money invested in this deal.

23 MR. MORGAN: That's correct.

24 MS. CONNELL: I'm still getting back to my
25 question, I guess, of, why are we playing the role of

1 providing the dollars for cost overrun or for additional
2 funding that may not be able to be determined at this
3 point -- we being the State of California -- and
4 secondarily, how can we minimize those costs?

5 MR. GAGE: Mr. Chairman, I can perhaps
6 speak to the issue a little bit. I mean, I think your
7 point is an excellent one. It occurred to me that we
8 certainly have to be careful to insure that there's
9 incentive on the part of the parties to this agreement,
10 that as little of the 15 million dollars that's
11 available is expended for purposes of closing the deal.

12 My understanding is, the 15 million dollar
13 amount was derived last year in negotiations between
14 Senator Peace and the prior administration. I don't know
15 the basis for that particular figure. But my
16 understanding is, that was the best available estimate of
17 time of what was the gap, if you will, in financing -- in
18 putting together this agreement.

19 And I think perhaps what it would mean is,
20 that we should have a conversation with the PUC as well as
21 the other parties to the agreement, for the purpose of
22 laying out for them our concerns as it relates to, again,
23 minimizing the amount of the 15 million that's used.
24 Using only that portion that is truly essential to close
25 this deal out.

1 MR. BUSTAMANTE: Maybe we can require a --
2 a match with the Port of San Diego.

3 MS. CONNELL: Well, at the very least -- I
4 mean, I think that before that 15 million dollars is paid,
5 there should be a very defined list as to what ingredients
6 would go into the 15 million.

7 I mean, I don't want cost overruns in the
8 financing that should have been born by the bond to be
9 paid for by the State of California. I mean, I'm totally
10 against that. I mean, some very serious concerns about
11 the, you know, the overlapping here between the bond
12 financing and this 15 million dollar fund.

13 I mean, I think it's a bit unusual, the way
14 this is being structured. And I think we need to have
15 some rather tight definitions as to whoever's going to
16 make the decision as to whether we pay or we don't pay. I
17 go back to the fact that we are not at the table.

18 And while it's comforting to know that the
19 Port of San Diego views themselves as a trustee to this
20 transaction, their interests are not duplicated with that
21 of the State of California.

22 I mean, I really do want to emphasize here
23 the State of California has an independent balance sheet,
24 and that 15 million dollars is forthcoming from our
25 general fund. And while it's nice that we have a

1 surrogate sitting at the table for us, I wonder why we're
2 not sitting at the table before that check is written to
3 make up for whatever costs are accumulated.

4 MR. BOUEY: Mr. Chairman, if I may. As I
5 was introduced earlier, my name is Dennis Bouey, and I've
6 been the executive director here now for 12 days. And I'm
7 about to do something very, very dangerous. And that is,
8 talk.

9 Of anybody in this room, I probably know the
10 least about this deal. But I'm concerned that we may be
11 heading on the wrong track here. And I'm going to ask our
12 attorneys to straighten me out if I say something that's
13 wrong.

14 I understand your concern that when this
15 money is used for the remediation and the demolition,
16 what's to stop them from expanding their cost to 15, when
17 maybe it could really be done for 10, therefore saving the
18 State 5 million dollars.

19 The truth of the matter, as I understand the
20 deal -- again, I'm on dangerous territory here -- is that
21 we are buying the utility and the land and the three-part
22 transaction. We've already heard about the hundred and so
23 million dollars that's going to be issued in bonds.

24 You've already heard about the tax
25 deduction. And at a point in time some time ago, the

1 State was at the table, and they agreed to fund or put
2 into the deal 15 million dollars to make this work.

3 Austensibly that money would go into an
4 account. And so at that point in time when the facility
5 can be demolished, and the area can be remediated, and
6 that money will be there. But that money's in the deal.
7 That's the deal as I understand that San Diego and Duke
8 agreed to.

9 And quite frankly -- I'm just being candid
10 here. And again, if I'm mistaken, somebody step up and
11 stop me. But if they spent 13 million dollars instead of
12 the 15, they're keeping the two. Because that's what --
13 again, there's a hundred and ten, there's 15, and there's
14 the tax deal.

15 MS. CONNELL: No, let me clarify here. This
16 deal is not yet done.

17 MR. BUSTAMANTE: You were right in your
18 opening statement.

19 MR. BOUEY: Well see, I told you it's
20 dangerous.

21 MR. BUSTAMANTE: That's all right. Go
22 ahead.

23 MS. CONNELL: I've got to tell you, that
24 isn't the answer I was hoping for.

25 MR. BOUEY: Even if I made a mistake, I

1 certainly don't want to leave you with the wrong
2 impression.

3 MS. CONNELL: I've been Controller for four
4 years and I've asked similar questions, and I've never had
5 quite that candid a response. I don't know whether
6 we're --

7 MR. BUSTAMANTE: Staff, did you know about
8 this?

9 MR. HIGHT: We never saw Mr. Bouey before.

10 MS. CONNELL: I don't think that's the way
11 we want to think through this process. If I can just
12 suggest it, that what we need to do here, hopefully, is to
13 recognize that obviously we want to support Senator
14 Peace's desire to move this forward.

15 What we're trying to do is not cancel a deal
16 that has already been made. What we're trying to do is
17 make sure that we don't leave any money on the table. And
18 I think that that is our obligation as Commission members.
19 Certainly it's my obligation as Controller.

20 It would be a deed of public funds which is,
21 as the Attorney General has often reminded me, illegal.
22 So we have to be very circumspect here, that we make sure
23 we put sufficient support behind the deal so that it moves
24 forward, but that we do not encourage dollars to be
25 misspent that otherwise should not be.

1 And I certainly want to make it clear to
2 every person who's a participant in this deal, that this
3 deal will at some point be available for public discussion
4 and public review.

5 And I certainly know that I, and I'm sure my
6 colleagues on this commission are concerned that we can be
7 proud of what we've accomplished with the contribution,
8 whatever that amount is, to this transaction.

9 And that's what we're really trying to
10 discuss. And I think that's the -- I feel that that's
11 probably the feeling unanimously of this commission here
12 today.

13 MR. BUSTAMANTE: Yes, sir.

14 MR. CHAPMAN: Mr. Chairman, my name is
15 David Chapman. I'm the attorney for the Port of San
16 Diego -- in house counsel. Mr. Bouey was right on track
17 directly on every point, up until the last comment with
18 regard to any remainder of the 15 million that might exist
19 after demolition, decommissioning and remediation.

20 Were there to be any surplus in that
21 account, that would return to the State. The current
22 estimates in today's dollars that have been developed --
23 and they are very, very broad in nature.

24 It's very preliminary and difficult to come
25 up with those numbers, and part of the difficulty in

1 negotiating this transaction. But the current estimates
2 for demolition and remediation vastly exceed the 15
3 million dollar number.

4 It is certainly my understanding and
5 expectation that the moneys that would be expended would
6 be fully subject to scrutiny by the State and audit as to
7 how they were expended, as would any other governmental
8 grant, that I would expect this agency or any other agency
9 I've worked for, to receive, would be.

10 So that kind of supervision and review we
11 anticipate. Records will be kept accordingly, and any
12 procedures that the State would like to impose for
13 participation and evaluation of the expenditure of those
14 funds would be more than welcome by us, and I'm certain by
15 our partner, Duke.

16 But once again, the 15 million dollars is
17 essential to this deal. It was part of the transaction.
18 It was anticipated to be available, and it was the way we
19 were able to do a deal that gets the plant down in ten
20 years.

21 This is a very short amortization period for
22 this kind of transaction, and that was the difficulty we
23 were confronting. So it is important, and it was factored
24 into negotiations that Duke made in agreeing to the deal.

25 But we do respect that degree of review,

1 that I think you're looking for. We welcome it. I
2 honestly do not expect there will be any moneys left over.
3 But certainly, if there are, we would be happy to return
4 them to the State.

5 MS. CONNELL: What do you do with the
6 shortfall if it's going to be more than 15 million?

7 MR. CHAPMAN: That's Duke's responsibility.

8 MS. CONNELL: It's whose?

9 MR. CHAPMAN: Duke. They have the full and
10 complete obligation to decommission, demolish and
11 remediation. The 15 million is there just to assist in
12 that effort.

13 MR. GAGE: And, Mr. Chairman, that
14 characterization is certainly consistent with my
15 understanding of the use of the 15 million dollars as it
16 was run through the budget process. That it was, in
17 effect, a piece of what would close the deal. But I
18 certainly welcome the opportunity to participate in
19 scrutiny of the costs -- the decommission cost as we go
20 forward.

21 MR. CHAPMAN: As I said, we not only expect
22 it, we invite it.

23 MR. BUSTAMANTE: The question that was
24 asked earlier by the Controller was, why wasn't this
25 rolled into the bonds rather than a up-front cash --

1 MR. CHAPMAN: It really --

2 MR. BUSTAMANTE: -- account?

3 MR. CHAPMAN: It could have been. Buying
4 down the bond issue, though it simply -- it becomes a
5 financial consideration for Duke. Essentially they're
6 going to pay everything irrespective of how it's
7 allocated.

8 Their preference is to bond for the full
9 110 -- actually 14 with costs imbedded -- acquisition
10 cost, and reserve the 15 million dollars as an account to
11 help them ten years in the future for the demolition,
12 remediation. But again, as someone said earlier, the
13 moneys are fungible. If it had been utilized in the front
14 end, they'd have a bigger obligation in the back end.

15 MS. CONNELL: I think you're -- you were
16 saying, so we can clarify for the record, because I think
17 there is something that is important. As we are not
18 likely to be on this commission -- I certainly won't be on
19 this commission eight years from now.

20 I think it's important for the record to
21 show that it was intended that this was a way of reducing
22 the period in which the bonds had to stay outstanding.
23 Because if you add another 10 million dollars, 15 million
24 to a bond transaction that's already at a hundred and
25 fourteen -- my old investment-banking days -- would

1 suggest you would probably add another couple of years or
2 a year and a half. Is that about right, Russell? To the
3 amortization period?

4 MR. GOINGS: It would have been closer to
5 five years, actually.

6 MS. CONNELL: Two, three, four, five years.
7 So you would have end up amortizing over a more extended
8 period of time which would change the financial dynamics,
9 and probably change the willingness of certain partners to
10 come to the table.

11 MR. BUSTAMANTE: Is that what you guys
12 meant to say?

13 MS. CONNELL: I hate to be the investment
14 banker here.

15 MR. CHAPMAN: Precisely.

16 MR. BUSTAMANTE: Thanks.

17 MS. CONNELL: I'm just trying to make sure
18 I understand this. Because I think it is important, Bob,
19 that when we do staff write-ups on this in the future,
20 that we clarify the understanding that this commission has
21 as we move forward in our action today. Certainly my
22 understanding -- and I just want to make sure that -- that
23 we're all on the same page here.

24 MR. GAGE: I agree. And I think the
25 fundamental public purpose associated with, particularly,

1 the 15 million dollars was decommissioning the plant more
2 quickly than not. That's what's the -- fundamentally the
3 public benefit that we're seeing.

4 MS. CONNELL: Right. And that's not --
5 that hasn't been -- I don't -- I think we need to
6 emphasize it again. I think it got a little confused in
7 the discussion today.

8 MR. BUSTAMANTE: Are there any other
9 persons that would like to speak on this? Any other
10 discussion or debate on the issue? I guess I see none.
11 Then at this point, a motion would be in order.

12 MR. GAGE: I would move, Mr. Chairman.

13 MS. CONNELL: I'll second.

14 MR. BUSTAMANTE: Motion and a second to
15 approve the project as recommended by staff. Let the
16 record show that it was passed unanimously by the members
17 of the Commission. Is there any other items to come
18 before us today before the meeting is to be adjourned?

19 MR. HIGHT: No, Mr. Chairman. That's the
20 conclusion of the agenda.

21 MR. BUSTAMANTE: Okay. If there's no other
22 items to come before the Commission, this meeting will be
23 considered adjourned.

24 (The proceedings were concluded at 12:20 p.m.)

25 * * *

1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF LOS ANGELES)
4

5 I, Kathleen Knowlton, C.S.R. 11595, a Certified
6 Shorthand Reporter in and for the state of California, do
7 hereby certify:

8 That the foregoing proceedings were taken down by
9 me in shorthand at the time and place named therein and
10 were thereafter reduced to typewriting under my
11 supervision; that this transcript is a true record and
12 contains a full, true and correct report of the
13 proceedings which took place at the time and place set
14 forth in the caption hereto as shown by my original
15 stenographic notes.

16 I further certify that I have no interest in the
17 event of the action.

18

19 EXECUTED this 14th day of March,
20 1999.

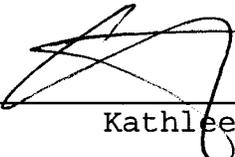
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Kathleen Knowlton