

MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

STATE CAPITOL
ROOM 126
SACRAMENTO, CALIFORNIA

MONDAY, FEBRUARY 5, 2007

10:00 A.M.

JAMES F. PETERS, CSR, RPR
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Mr. John Garamendi, Lieutenant Governor, Chairperson

Mr. John Chiang, State Controller

Mr. Michael Genest, Director of Finance, represented by
Ms. Anne Sheehan

STAFF

Mr. Paul Thayer, Executive Officer

Mr. Jack Rump, Chief Counsel

Ms. Nicole Dobroski

Ms. Mary Hays, Manager, Division of Land Management

Mr. Alan Scott

Ms. Kimberly Lunetta, Executive Assistant

ATTORNEY GENERAL

Mr. Alan Hager, Assistant Attorney General

ALSO PRESENT

Ms. Sarah Abramson, Heal The Bay

Ms. Tracy Egoscue, Santa Monica Baykeeper

Mr. Jackson Gualco, California Council for Environmental
and Economic Balance

Mr. Warren Hagberg, Tahoe Swiss Village Homeowner's
Association

Mr. Tim Hemig, El Segundo Power & Cabrillo Power

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APPEARANCES CONTINUED

ALSO PRESENT

Mr. Steve Kaufmann, Woodfin Suite Hotels

Ms. Lorell Long, California Earth Corps

Mr. Karl Lytz, NRG

Ms. Linda Sheehan, California Coastkeeper Alliance

Mr. Sheldon Sloan, Woodfin Suite Hotels

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CHAIRPERSON GARAMENDI: Good morning. I'm John Garamendi, the Lieutenant Governor. And joining me today is our State Controller, John Chiang.

John, you and I are freshmen.

COMMISSIONER CHIANG: We are.

CHAIRPERSON GARAMENDI: So we've got a lot to learn. Fortunately we have Anne Sheehan, who is on my left, who can help us when I miss a step in this agenda.

And I know you've been at this for some time, Anne. Thank you.

Obviously we have a great staff, Paul and Jack -- Paul Thayer, Jack Rump. And also joined by Alan.

Are you going to keep us legally correct here, Alan, representing the Attorney General?

ASSISTANT ATTORNEY GENERAL HAGER: I will try.

CHAIRPERSON GARAMENDI: That's good.

You have my staff somewhere out there in the back of the room and the audience. And I see, John, you have your staff?

COMMISSIONER CHIANG: I do.

CHAIRPERSON GARAMENDI: And that is?

Cindy Sheehan -- oh, Cindy Aronberg. I'm sorry. I sat next to Cindy Sheehan on the airplane ride up --

CHAIRPERSON GARAMENDI: I'm getting confused.

1 COMMISSIONER CHIANG: Sorry, Cindy.

2 CHAIRPERSON GARAMENDI: Okay. Well, as long as
3 we know who we are. And now we'll figure out exactly what
4 we're doing.

5 I call this meeting to order. We've introduced
6 ourselves already.

7 For those of you that are in the audience, the
8 State Lands Commission administers properties owned by the
9 state as well as the state's mineral interests. Today
10 we're going to hear proposals concerning the leasing and
11 the management of these public properties.

12 The first item of business will be the adoption
13 of the minutes from the Commission's last meeting. I
14 assume we've all reviewed that carefully.

15 And, Anne.

16 ACTING COMMISSIONER SHEEHAN: Yeah, I'll move
17 approval of the minutes.

18 COMMISSIONER CHIANG: I will second.

19 CHAIRPERSON GARAMENDI: And the vote is 3-0.

20 I assume you guys are okay with that, having made
21 the motion and the second.

22 Minutes are unanimously adopted.

23 The next order of business is the Executive
24 Officer's report.

25 Mr. Thayer, may we have your report.

1 EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.
2 The report will be brief this morning. I just have two
3 items. One is to echo the sentiments that were expressed
4 by the Chair. We're all looking forward as the staff to
5 working with the new Commissioners, as well as Anne, with
6 whom we've worked for the last few years.

7 We're trying to think about the last time we had
8 two new Commissioners instantly like this. And it
9 happened eight years ago. But at that time, Gray Davis
10 had moved from becoming Lieutenant Governor to Governor,
11 so it really wasn't that much of a switch in terms of the
12 representation from the Department of Finance. So we
13 really can't recall the last time, but it's been awhile.

14 And I know both the new members have worked for
15 the public for a long time and with the public's interests
16 at heart. And as the staff, we're looking forward to
17 working with all of you. So on our behalf I wanted to
18 welcome all of you to the Lands Commission.

19 The second item, I just wanted to note a
20 retirement, which is that one of our lead people in the
21 Marine Facilities Division, Ken Leveridge, who was in
22 charge of our Hercules office in the Bay Area -- that
23 office dealt with preventing oil spills from tankers
24 recalling the Bay Area -- he is retired, not just to live
25 the life of Riley, but he's going to be going to Africa,

1 to Chad, and will be working for his church over there
2 with his wife. And it's a big loss for us, but a big gain
3 for Africa for him to be over there. So I just wanted to
4 note we can honor him by mentioning that. I don't think
5 he's here today though.

6 CHAIRPERSON GARAMENDI: My recollection is
7 there's a major oil project underway with a pipeline that
8 has a tendency to spill. So perhaps he'll continue
9 working in a area he has knowledge.

10 (Laughter.)

11 EXECUTIVE OFFICER THAYER: Probably be calling on
12 him.

13 And that concludes the Executive Officer's
14 report.

15 COMMISSIONER CHIANG: Paul, let me thank you for
16 those warm words of welcome.

17 And I just wanted to reiterate that I am looking
18 forward to working with the Chair, John Garamendi, an
19 extraordinary public servant, and Anne Sheehan, who I've
20 served with in the Franchise Tax Board.

21 EXECUTIVE OFFICER THAYER: And that concludes the
22 Executive Officer's report.

23 CHAIRPERSON GARAMENDI: Very good.

24 EXECUTIVE OFFICER THAYER: Next item is the
25 consent calendar.

1 CHAIRPERSON GARAMENDI: On the consent calendar
2 the normal process, as I understand it, is to ask if
3 there's anyone in the audience who wishes to speak on any
4 one of the items in the consent calendar. And so -- and
5 we have a whole list of people that want to speak here.
6 And I don't know if these are consent items or not.

7 EXECUTIVE OFFICER THAYER: No, these items as we
8 look through them are all of the regular calendar items,
9 the numbers on them.

10 CHAIRPERSON GARAMENDI: Okay. So these are
11 all -- none of these are consent. So seeing no one
12 jumping up and asking for the opportunity, the consent
13 calendar is now before us.

14 Then I want --

15 ACTING COMMISSIONER SHEEHAN: Any issues you want
16 to discuss, Paul?

17 EXECUTIVE OFFICER THAYER: Yes. Often we have
18 items that we need to remove because of last minute
19 problems. And I would like to note that after
20 conversations with the Chair, that the Chair asked us to
21 take Item 34, which is the Tahoe Swiss Village Homeowners
22 Association lease that involve a number of old and new
23 buoys, to have that taken off the consent calendar. So I
24 would like to take that off and put it on the regular
25 calendar. We've contacted the association, and I believe

1 the association president is here today to respond to any
2 questions. And staff is prepared to make a presentation.

3 We can hear it any time. But normally we would
4 just put those at the end of the regular calendar and take
5 them up at that time today.

6 CHAIRPERSON GARAMENDI: Very good.

7 ACTING COMMISSIONER SHEEHAN: So I'll move the
8 consent calendar with the exception of Item No. 34.

9 COMMISSIONER CHIANG: And I will second.

10 CHAIRPERSON GARAMENDI: Very good.

11 Any questions from any of us?

12 Not being any, I would assume we have a unanimous
13 support of the consent calendar. And so be it.

14 Our next are Items 41, 42, 43. And these concern
15 leases for the proposed power plants, the once-through
16 cooling systems.

17 Paul, if you would.

18 EXECUTIVE OFFICER THAYER: Certainly. Thank you,
19 Mr. Chair.

20 A couple of housekeeping items on this. Two of
21 these items were originally scheduled for hearing in
22 December, but there was a request from some public
23 interest groups that it be put over for some additional
24 work. We did that, and we're prepared to go today.

25 Then about a week and a half ago, a very

1 significant federal court decision came down related to
2 the regulation of these facilities. And there was
3 initially some move on the part of the same folks that had
4 asked us to put it over in December to do that again.
5 However, at the end of this last week we were able to work
6 out the concerns that those folks had. And so we've made
7 a couple of additions to the lease. And I wanted to make
8 sure to highlight them so that people who had old versions
9 of the staff report would understand what we're proposing.
10 They're fairly technical and I don't think there's any
11 problem I believe with the applicant.

12 So there are three changes:

13 First is -- and this is the most technical one --
14 that when you look at page 2 of the staff report,
15 paragraph 2 towards the top, there's a reference to the
16 Commission having the right to reopen the lease should
17 additional requirements be imposed by other agencies,
18 federal or state, regarding once-through cooling, and if
19 those requirements are feasible. And that's a test that
20 we don't think it's appropriate, because that same
21 feasibility question has already been faced by the other
22 state and federal agencies before they imposed those
23 requirements, and would put us in a position of second
24 guessing what the experts on once-through cooling think.
25 So we'd like to remove that reference to feasibility.

1 The second change would be to schedule a hearing
2 five years out after these leases have been approved to
3 review compliance with their terms. We don't normally do
4 that. But we did do that last year where there were some
5 concerns over the transfer of oil leases to a new company.
6 And the Commission wanted an opportunity to review
7 compliance in that instance as well.

8 So this is very similar to that process. And
9 basically what would happen, the leases would be granted
10 for a full term of 20 or 30 years, depending upon which of
11 these are issued here. And then five years from now the
12 Commission would conduct a public hearing in which
13 everyone would participate in, see how we're doing with
14 once-through cooling.

15 And then the last change is that all of these
16 leases -- three of these leases require that an annual
17 report be submitted by the applicant on compliance with
18 once-through cooling requirements. And the only change is
19 that we'll post that on the website so it will be easily
20 available to anybody who approves. It's a public document
21 anyway. It's just a question of getting it out there more
22 easily.

23 So those are the three changes that we're
24 recommending as part of these.

25 CHAIRPERSON GARAMENDI: Anne.

1 ACTING COMMISSIONER SHEEHAN: Yeah. So the only
2 actual change on the lease is the language on the
3 technology, the --

4 EXECUTIVE OFFICER THAYER: That's right.

5 ACTING COMMISSIONER SHEEHAN: -- the alternative
6 technology.

7 The others would just be that -- as part of the
8 minutes, as part of the record would reflect, we have a
9 hearing every five years.

10 EXECUTIVE OFFICER THAYER: And we're
11 contemplating putting those in the lease just to record
12 that.

13 ACTING COMMISSIONER SHEEHAN: Oh, Okay. Because
14 I --

15 CHAIRPERSON GARAMENDI: Let's make that up after
16 we hear from people whether that should or should not be
17 in the lease.

18 ACTING COMMISSIONER SHEEHAN: Yeah. Well, that's
19 what I couldn't quite --

20 CHAIRPERSON GARAMENDI: Sure.

21 EXECUTIVE OFFICER THAYER: It's a little strange
22 because a lease is basically a contract between the
23 Commission and an entity. And if those two entities
24 agree, you can make any changes you want. But I think
25 there was some concern. But we can hear from witnesses.

1 CHAIRPERSON GARAMENDI: In looking at the --
2 please finish.

3 EXECUTIVE OFFICER THAYER: Oh, well, I just
4 wanted -- the last thing I was going to say is that Alan
5 Scott's going to give us an overview on once-through
6 cooling, particularly for the benefit of the new
7 Commissioners. We've heard this a lot last year.

8 All three of these items are very similar.
9 They're existing power plants whose leases have expired,
10 and we're going to renew them, raise the rent, that kind
11 of thing. So our intention is to give an overview of
12 once-through cooling and then describe all three items at
13 the same time.

14 But obviously if at any point the Commission has
15 questions or wants to look at these more individually, you
16 know, we could do that.

17 CHAIRPERSON GARAMENDI: In looking at the
18 requests to speak from the general public --

19 COMMISSIONER CHIANG: I'd like to make a comment.
20 After discussion with Paul and the chief counsel,
21 and to avoid appearance of a conflict of interest, I
22 resigned from the Board of Governors of Heal the Bay last
23 Friday. So I wanted a full disclosure on that.

24 EXECUTIVE OFFICER THAYER: Thank you.

25 CHAIRPERSON GARAMENDI: Okay, John. Thank you.

1 In looking at the requests to speak, there are
2 some people that want to speak on one, some people want to
3 speak on three, some people want to speak on two of the
4 items.

5 So I think what we'll do is we'll take the
6 overview next and then we're hear from the individuals
7 starting with Item 41, and then we'll take anybody that
8 wants to speak on 41. And between now and that, I'll try
9 to figure out how to make some sense out of all of this.

10 EXECUTIVE OFFICER THAYER: Sounds perfect.

11 Oh, so Alan Scott, who was with our Land
12 Management Division, is now officially retired, but he's
13 an expert on all of this stuff and has consented to come
14 back as a retired annuitant on project updates. And he
15 wrote the staff report for several of -- and will make the
16 presentation.

17 MR. SCOTT: Thank you, Paul.

18 Good morning, Mr. Chairman and members of the
19 Commission. Again, my name is Alan Scott. I'm a member
20 of the Commission's Land Management Division, here today
21 to speak on Calendar Items No. 41, 42, and 43.

22 These items each address proposed leases for the
23 continued use of lands under the Commission's jurisdiction
24 for existing facilities that are a part of once-through
25 cooling systems for existing coastal power plants.

1 Before I go into detail into the individual
2 calendar items, I'd like to take a few minutes to discuss
3 once-through cooling.

4 Once-through cooling is a means used by some
5 power plants and other industrial plants to cool parts of
6 their facilities. In the case of power plants, the
7 equipment that requires cooling includes the turbines,
8 whether gas or steam, other parts of the electric
9 generators, and boiler water. Cooling water is collected
10 from a source, passes through the plant, cooling heated
11 components, and then is returned to the source.

12 When the water source is located within waters of
13 the United States, then it is used -- is subject to the
14 Clean Water Act. Certain authority established within the
15 Clean Water Act has been delegated to the state by the
16 United States Environmental Protection Agency and is
17 administered in part by the State Water Resources Control
18 Board through the National Pollutant Discharge and
19 Elimination System permit, most commonly referred to as an
20 NPDES permit.

21 The intake of large volumes of water for
22 once-through cooling has impact on coastal organisms by
23 entrainment and impingement.

24 Impingement occurs when marine organisms are
25 trapped against components of the cooling water system,

1 such as streams, where they die.

2 Entrainment is the induction of small marine
3 organisms into and through the cooling system itself.
4 Most, if not all, of the organisms are destroyed by either
5 mechanical damage, temperature increases or
6 toxicity -- toxic stress.

7 In addition, once-through cooling results in
8 biological impacts through thermal discharge. Thermal
9 discharge is the release of cooling water at temperatures
10 above ambient conditions, which results in the elevation
11 of the temperature of marine waters in the immediate
12 vicinity of the outfall. These effects adversely impact
13 coastal and ocean resources and uses that are within the
14 jurisdiction of the Commission.

15 There are presently 21 coastal power plants that
16 utilize once-through cooling systems. Please see the
17 chart on the screen. And you have a map that shows the
18 approximate location of those coastal facilities.

19 CHAIRPERSON GARAMENDI: We are about to see the
20 chart. So why don't we just cool ourselves for a while.

21 Now we have the chart.

22 MR. SCOTT: I can't see that you can't see.

23 (Laughter.)

24 MR. SCOTT: Continuing on. These once-through
25 cooling systems have a cumulative cooling water intake

1 flow estimated at 16 billion gallons per day. And
2 there -- but there is one facility that utilizes wet
3 cooling tower technology, and that's located in Suisun
4 Bay.

5 Of these --

6 CHAIRPERSON GARAMENDI: Which one is --

7 MR. SCOTT: -- 21 plants -- excuse me.

8 Do you have a question, sir?

9 CHAIRPERSON GARAMENDI: I was just going -- you
10 said one of them, it's located where?

11 MR. SCOTT: One of them's located in Suisun Bay.
12 And that is the one that uses a cooling water tour rather
13 than once-through cooling.

14 CHAIRPERSON GARAMENDI: Okay. Thank you.

15 MR. SCOTT: Of the 21 plants, 10 have leases
16 issued by the Commission. The other 12 coastal power
17 plants are located within legislative grants to cities,
18 counties, or are otherwise not located within the
19 Commissioner's jurisdiction.

20 The 21 coastal power plants generate
21 approximately 24,000 megawatts of power annually. Many of
22 these plants are what are referred to as peaker
23 facilities, which are operated at times of greatest energy
24 demand.

25 In addition to the State Lands Commission, the

1 state agencies that exercise jurisdiction over various
2 aspects of coastal power plants are the California Energy
3 Commission, the Regional Water Quality Control Boards --
4 and the Regional Water Quality Control Boards.

5 The CEC is the state's primary energy policy and
6 planning agency. In addition to forecasting energy needs,
7 developing energy technologies, and promoting energy
8 efficiency, the CEC licenses thermal power plants having a
9 capacity of 50 megawatts or more. Substantial
10 modifications to such plants in the form of expansion,
11 replacement, or repowering are also reviewed by the CEC.

12 Application for new plants or modifications of
13 existing facilities are assessed in compliance with the
14 Warren-Alquist Act Act and the California Environmental
15 Quality Act. This includes an assessment of cooling water
16 impacts to coastal resources and mitigation for those
17 impacts.

18 The CEC has also conducted studies of coastal
19 power plants in order to document and analyze the
20 engineering and environmental issues associated with each
21 power plant to address such issues when applications are
22 received for expansion, repowering, or replacing existing
23 power plants.

24 The CEC has prepared an inventory of existing
25 facilities permits and operational levels in order to

1 understand the facilities and their role in meeting the
2 state's electrical power needs.

3 Finally, the CEC has conducted a study to define
4 and analyze the performance, economic and environmental
5 trade-offs among available cooling water systems.

6 There are nine regional water quality control
7 boards in California. The boards have jurisdiction over
8 discharges to land or surface waters under the
9 Porter-Cologne Act and have Clean Water Act authority
10 exercised through the National Pollutant Discharge and
11 Elimination System.

12 NPDES permits are reviewed every five years.
13 Thus the primary responsibility for the assessment of
14 thermal impingement and entrainment impacts rests with the
15 boards.

16 The boards have in some cases issued temporary
17 extensions of NPDES permits in light of pending litigation
18 challenging the Environmental Protection -- U.S.
19 Environmental Protection Agency's rules on once-through
20 cooling which were issued in 2004. The Court recently
21 directed the U.S. EPA to revise their regulations to
22 better control environmental impacts of once-through
23 cooling.

24 The State Water Quality Control Board has held
25 various public workshops to gather information on whether

1 a statewide 316(b) policy should be adopted.

2 At the 2005 State Water Board workshop in
3 Oakland, board staff proposed the development of a
4 statewide wide 316(b) policy that would become part of the
5 existing State Water Board's California Thermal Plan. The
6 thermal requirements for power plants are currently
7 covered by this plan. Except for the potential addition
8 of 316(b) requirements to the California Thermal Plan, no
9 new action is planned for thermal requirements at this
10 time. The California Thermal Plan requirements will be
11 addressed and updated as some future point.

12 As described above, the requirements under 316(b)
13 have been primarily implemented independently by the
14 regional boards through the National Pollutant Discharge
15 and Elimination System permitting program. However, the
16 firm approach of the staff of the State Water Quality
17 Control Board would result in the development of a
18 statewide policy with requirements for both new and
19 existing once-through cooling power plants.

20 The Commission staff understands that the
21 proposed 316(b) policy will be developed based on a CEQA
22 evaluation which is still being prepared. The Commission
23 staff continues to monitor and provide comments to the
24 State Water Board.

25 The Commission previously has expressed concerns

1 about the potential environmental impacts to state waters
2 caused by the continued use of those waters for
3 once-through cooling. They were particularly concerned
4 with the biological impacts caused by impingement
5 mortality and entrainment. As mentioned previously, these
6 impacts are generally regulated through the NPDES permits
7 issued by the regional boards.

8 The calendar items before you today deal with
9 leases covering the existing improvements located on lands
10 under the Commission's jurisdiction that are used as part
11 of once-through cooling systems for existing upland
12 electric generation plants.

13 Even though there are some similarities among the
14 three leases, there are some differences, and they will be
15 covered as I discuss each individual calendar item.

16 Proceeding with Calendar Item 41.

17 This item asks the Commission to authorize a
18 20-year lease between the Commission and Cabrillo Power I,
19 a limited liability company, covering the continued
20 operation and maintenance of two existing rock-growing
21 structures used as part of an existing once-through
22 cooling system for the Encina power plant near the City of
23 Carlsbad in San Diego County.

24 Co-located on the upland at the parkland site is
25 a small desalinization test facility. A small amount of

1 brine water from the test facility is mixed with the
2 discharge waters from the once-through cooling system. A
3 full scale desalinization plant is proposed for this
4 location, but no application has been submitted for such a
5 project.

6 Further, the terms of the proposed lease will not
7 allow any other use of the leased area or existing
8 improvements located on the leased area without the prior
9 approval of the Commission.

10 The two structures covered by the proposed lease
11 consist of two rock groins protecting the entrance to Agua
12 Hedionda Lagoon, source of the cooling water for the power
13 plant; and two other rock groins with an open-water
14 channel between them crossing the beach in front of the
15 power plant used to return the cooling water to the
16 Pacific Ocean.

17 These facilities were previously covered by two
18 separate leases, both of which have expired, one in July
19 of 1999 and the other in December of 2002. These leases
20 are considered to be in holdover pending negotiations and
21 approval of a replacement lease. This process has taken
22 longer than normal due to consideration of a proposed
23 modification to the existing improvements, which has
24 subsequently been abandoned. The lessee has agreed to pay
25 rent for the period of holdover in the amount of \$256,440;

1 and staff recommends acceptance of that amount.

2 Further, staff proposes that the two facilities
3 be combined and covered by a single lease and recommends
4 that the Commission authorize execution of that lease.

5 Special provisions have been incorporated into
6 this lease. The lease provides for the automatic
7 adjustment of the annual rent so that the rent will keep
8 pace with changing economic conditions.

9 Because of previous Commissioners' concerns with
10 the potential impact of once-through cooling on the
11 environment, the lease contains specific language that
12 requires the lessee to comply with laws and regulations
13 issued under Section 316(b) of the Clean Water Act and
14 with all other laws and regulations designed to minimize
15 impacts of once-through cooling.

16 The lease requires an annual report identifying
17 the regu -- excuse me -- identi -- identifying the
18 regulatory --

19 CHAIRPERSON GARAMENDI: Hang on. We've got
20 water.

21 (Laughter.)

22 MR. SCOTT: May I please.

23 CHAIRPERSON GARAMENDI: Just call it
24 once-through.

25 (Laughter.)

1 MR. SCOTT: Thank you.

2 Let's see. Now, where was I?

3 Because of the previous Commissioners' concerns
4 with the potential impact of the once-through cooling on
5 the environment, the lease contains specific language that
6 requires the lessee compliance with Section 316(b) and
7 with other rules and regulations to minimize impacts.

8 The lease requires an annual report identifying
9 the regulatory requirements imposed on the lessee and the
10 status of compliance. The lease also provides for the
11 Commission to review the lessee's regulatory compliance at
12 a public hearing in five years.

13 Further, the lease allows the Commission to amend
14 this lease should other regulatory agencies require an
15 alternative cooling method not involving once-through
16 cooling.

17 Calendar Item 42.

18 EXECUTIVE OFFICER THAYER: At this point, if the
19 Chair wanted to take any witnesses on 41, we could
20 continue the presentation after that.

21 CHAIRPERSON GARAMENDI: Thank you very much,
22 Paul.

23 We do have a couple of witnesses that want to
24 speak specifically to 41 and then several of them want to
25 speak to all of the items, 41, 42, and -- so let's take

1 Linda Sheehan. Apparently you only want to speak to Item
2 41.

3 MS. SHEEHAN: Good morning. My name is Linda
4 Sheehan. I'm the Executive Director of the California
5 Coastkeeper Alliance. We represent all 12 waterkeepers
6 who span the coast from the Oregon Border down to San
7 Diego. And we've been working on this issue for quite
8 awhile.

9 And I did bring for you today to complement your
10 presentation six copies of our just released Waterkeeper
11 national magazine that is focused exclusively on
12 once-through cooling systems, so you can see what's going
13 on around the country.

14 This Commission approved a precedent-setting
15 resolution last April identifying the devastating impacts
16 of once-through cooling and urging other agencies to come
17 up with policies as soon as possible to eliminate or
18 significantly minimize the impacts of this devastating
19 system. And I would like to again thank the Commission
20 for their foresight in this regard, particularly
21 Commissioner Sheehan who was here last year and approved
22 the resolution.

23 The Court decision that Mr. Thayer referenced
24 just a few minutes ago, Riverkeeper versus U.S. EPA, it
25 can't be understated the significance of this decision.

1 My organization, California Coastkeeper Alliance, was a
2 named plaintiff. And one of the first things I did when I
3 started my job over two years ago was to write a
4 declaration to be part of this litigation. And it found
5 that EPA's once-through cooling regulations on which the
6 leases before you today are based are illegal, and they
7 were sent back for further review.

8 A couple of the key points that the Court made in
9 doing this were, one, that EPA had required the best
10 available technology that could be reasonably borne by the
11 industry, that no cost benefit analysis was allowed; it
12 had to be the best.

13 And the second thing that they focused on was no
14 restoration would be allowed. You can't mitigate after
15 the fact. It just doesn't work. You have to prevent the
16 impacts.

17 So the point's clear: The status quo of allowing
18 these systems to continue is going to change, and it's
19 going to change quickly, which is why we would of course
20 far prefer much shorter leases than decades' long leases.
21 But at a minimum, as our comment letter requested, we
22 would like to see a five-year hearing, as Mr. Thayer
23 indicated. And we think that that's a good way for the
24 public to track compliance with a rapidly changing
25 environmental regulatory landscape.

1 We would also like to see, and we totally
2 approve, the additional change that Mr. Thayer recommended
3 with regard to annual reports being placed on the web so
4 we could track things as they quickly change.

5 And then, additionally, the requirement with
6 respect to feasibility in paragraph 2 at the top of the
7 page, we support Mr. Thayer's oral articulation of that
8 change and ask that that phrase, should the technology
9 become feasible, be struck as the resolution is approved.

10 These requests apply to Items 41, 42 and 43. And
11 other speakers will address the specifics of those plans
12 and why it's important -- Cabrillo that's a proposed
13 desalinization facility that would use the same pipes as
14 these systems. And if these systems are changed, that
15 would obviously be a problem, especially in light of the
16 Commission's resolution which highlighted the need for a
17 very careful evaluation of desalinization facilities that
18 are hooked up with these systems.

19 So thank you very much.

20 CHAIRPERSON GARAMENDI: Any questions of the
21 witness?

22 Thank you very much for the information. Thank
23 you.

24 MS. SHEEHAN: Thank you.

25 CHAIRPERSON GARAMENDI: Is there anyone out there

1 that would like to speak specifically to 41?

2 So everyone wants to speak to every one of those.

3 Okay.

4 (Laughter.)

5 CHAIRPERSON GARAMENDI: We can deal with that.

6 Why don't you go ahead and continue. And then
7 we'll pick them all up after you've finished your
8 presentation.

9 MR. SCOTT: Thank you.

10 Continuing on. Calendar Item 42.

11 CHAIRPERSON GARAMENDI: Excuse me. Just one
12 question on 41. These riprap structures, are they on the
13 beach or in the lagoon?

14 MR. SCOTT: Two of the groins extend from the
15 mouth of the lagoon and protect the opening to the lagoon
16 so that the tidal influence can exchange water with the --
17 between the ocean and the lagoon itself.

18 The power plant extraction, it's cooling water
19 from a basin in the lagoon. There is an outfall channel
20 that crosses the beach in front of the lagoon and there
21 are two rock groins that protect that channel. And they
22 extend across the sandy beach and into the waters of the
23 ocean.

24 EXECUTIVE OFFICER THAYER: But generally they're
25 perpendicular to the beach rather than along the beach.

1 MR. SCOTT: Yes, they're perpendicular to the
2 beach.

3 CHAIRPERSON GARAMENDI: Such structures have
4 historically interrupted the flow of sand along the
5 beaches?

6 MR. SCOTT: That's correct. And they're -- at
7 this particular power plant, they dredge periodically the
8 entrance into Agua Hedionda Lagoon. And that sand is
9 deposited downstream of the -- on the beach downstream of
10 the.

11 CHAIRPERSON GARAMENDI: Outflow?

12 MR. SCOTT: -- return channel, yes. So that it
13 does enhance the beach.

14 CHAIRPERSON GARAMENDI: Does the lease speak to
15 the issue of the disruption of sand flows?

16 MR. SCOTT: Mr. Chairman, no, I don't believe it
17 does. Although there is a separate lease for the dredging
18 and the beach enhancement that does speak to the continued
19 deposit of sand downstream of the outlet channel to
20 protect the beach.

21 CHAIRPERSON GARAMENDI: Is there any requirement
22 ongoing over the next -- over the term of this lease that
23 would require the power company to maintain or to mitigate
24 any loss of sand downflow of the normal flow of the ocean
25 from their riprap?

1 MR. SCOTT: No, there's nothing specific in our
2 lease that assures that. But I think that -- as I recall,
3 the outlet channel is a very short structure, not nearly
4 as long as the entrance channel to the lagoon. And I'm
5 not positive, but I think that the sand problem does
6 transit between -- from upstream around the structure and
7 then downstream.

8 CHAIRPERSON GARAMENDI: Now, these --

9 MR. SCOTT: But it would really take a coastal
10 engineer to tell you what impact that --

11 CHAIRPERSON GARAMENDI: I'm more than a little
12 curious about this. It's been an ongoing problem across
13 the entire nation coastally. And the interruption of the
14 normal flow of sand by such structures is well known and
15 well documented.

16 I'm going to ask the power company to address
17 this before we complete this item.

18 Please continue on.

19 MR. SCOTT: Thank you.

20 Calendar Item 42.

21 This item asks the Commission to authorize a
22 lease between the Commission and the El Segundo Power I
23 and El Segundo Power II, both limited liability companies,
24 covering the continued operation and maintenance of two
25 sets of submerged pipelines located in Santa Monica Bay in

1 the City of El Segundo, Los Angeles County, that provide
2 cooling water to lessees' upland electric generating
3 facilities.

4 Co-located at the power plant is a small
5 desalinization test facility. A small amount of brine
6 from that test facility is mixed with the discharge waters
7 from the once-through cooling system.

8 At this time, no desalinization plant is proposed
9 for this location. However, if a plant were to be
10 proposed, the terms of the lease will not allow any other
11 use of the leased area or existing improvements located on
12 the leased area without the prior approval of the
13 Commission.

14 This lease replaces a lease that expired in 2002
15 and is for a term of 30 years, beginning December the
16 14th, 2006. A 30-year term for this lease is proposed
17 because some of the older upland electric generating
18 facilities are in the process of being replaced by more
19 modern, efficient, and environmentally sound
20 combined-cycle turbine generating equipment.

21 It has been the practice of the staff to
22 negotiate and recommend lease terms and conditions that
23 reflect the economic life of lessee's constructed
24 improvements located on or associated with the
25 Commission's lease, including the length of the lease and

1 periodic adjustments of the rent.

2 The rebuilt upland generating plant has a
3 designed life that exceeds the proposed 30-year term of
4 the proposed lease. If the upland electric generating
5 plant is not develop as proposed, the lease reserves the
6 right for the Commission to reduce the term of the lease
7 to 20 years, making it consistent with other leases for
8 comparable older generating plants.

9 As in the lease covered in Calendar Item 41, this
10 lease also contains specific language covering automatic
11 rent adjustment, provisions for changing to the cooling
12 system, and requires the Commission's lessee to comply
13 with laws and regulations issued pursuant to Section
14 316(b) of the Clean Water Act along with all other
15 regulatory requirements.

16 The lease requires an annual report identifying
17 the regulatory requirements imposed on the lessee and the
18 status of compliance, and further provides for the
19 Commission to review the lessee's regulatory compliance at
20 a public hearing in five years.

21 In addition, this lease requires compliance with
22 conditions imposed by the California Energy Commission
23 during the CEC's certification and then licensing program
24 for the upland plant redevelopment. These include several
25 conditions dealing with the cooling water system, such as

1 reducing the total amount of water allowed for intake from
2 the current amount of 220 billion gallons per year to 127
3 billion gallons per year, requiring funds to be committed
4 to the Santa Monica Bay Restoration Commission to study
5 current ecological conditions in Santa Monica Bay of an
6 initial \$ 1 million up to a total of \$5 million, and
7 requiring our lessee to test a physical aquatic barrier at
8 the intake pipeline intended to reduce the intake of
9 aquatic organisms with the cooling water.

10 The lessee must also meet all requirements of the
11 Clean Water Act, including Section 316(b), administered by
12 the Regional Water Quality Control Board through its NPDES
13 permit.

14 The lessee's application for renewal of their
15 NPDES permit is currently being processed by the regional
16 board, while their previous permit from 2002 remains in
17 effect.

18 The prior lease expired in October of 2002 and
19 has been in holdover pending processing of the CEC's
20 license and negotiation of a replacement lease. The
21 lessee has agreed to pay back rent for the period from
22 expiration of the prior lease through December the 13th,
23 2006, in the amount of \$806,495. And staff recommends
24 that this amount be accepted as the total rent owed for
25 the period of holdover between the end of the old lease

1 and start of the new proposed lease.

2 Staff recommends that the Commission authorize
3 execution of this lease.

4 Calendar item 43.

5 This item asks the Commission to authorize a
6 20-year lease with AES Huntington Beach, a limited
7 liability company, for the continued operation and
8 maintenance of two submerged pipelines located in the
9 Pacific Ocean offshore of Huntington Beach State Park in
10 Orange County.

11 These pipelines are for the intake and return of
12 seawater used in a once-through cooling system for the
13 existing upland electric generating facilities.

14 As in the above two leases, this lease also
15 provides for automatic rent adjustment, allows the lease
16 to be changed to an alternative cooling system, and
17 requires the lessee to comply with laws and regulations
18 issued pursuant to Section 316(b) of the Clean Water Act
19 as well as with other -- all other regulatory agency
20 requirements.

21 The lease requires an annual report identifying
22 the regulatory requirements imposed on the lessee and the
23 status of compliance, and also provides for the Commission
24 to review the lessee's regulatory compliance at a public
25 hearing in five years.

1 The Santa Ana Regional Water Quality Control
2 Board approved the issuance of a new NPDES permit to AES
3 on August the 25th of 2006. That permit contains
4 reopening provisions that allow the permit to be changed
5 based on future changes to 316(b) regulations.

6 Similar to Calendar Item 42, the California
7 Energy Commission certification and licensing of the AES
8 facility requires a number of conditions of certification
9 including some that involve the cooling system. The CEC
10 required mitigation for impacts to marine life in the form
11 of a contribution of \$5.5 million to the Huntington Beach
12 wetland conservation -- excuse me -- wetlands conservancy
13 for the purchase, restoration, and maintenance of 66.8
14 acres of tidal wetlands. As is the case with Calendar
15 Item 41, a full scale desalinization plant is proposed for
16 location adjacent to the existing power plant, and
17 proposes to use the existing seawater intake and outfall
18 pipelines. No application has been received for this
19 desalinization project.

20 Further, the terms of the proposed lease will not
21 allow other use of the leased area for the existing
22 improvements located on the leased area without the prior
23 approval of the Commission. Based on this, staff
24 recommends the Commission authorize execution of this
25 lease.

1 This concludes my presentation. And I'd be happy
2 to wait for any questions the Commissioners might have.

3 And there are representatives of both -- all
4 three of the power facilities in the audience, and they
5 are also available to respond to any questions you might
6 have.

7 Thank you.

8 CHAIRPERSON GARAMENDI: Thank you very much.

9 Just stand -- sit by.

10 (Laughter.)

11 CHAIRPERSON GARAMENDI: And we'll undoubtedly
12 come back to you for some clarification along the way.

13 We now have several witnesses that would like to
14 speak.

15 Lorell Long.

16 I'm going to call three names. And if you'd kind
17 of line up.

18 You want to translate it?

19 COMMISSIONER CHIANG: Looks like Karl Lytz.

20 MR. LYTZ: That's correct.

21 CHAIRPERSON GARAMENDI: Very good.

22 MR. LYTZ: I would like to respond to questions
23 only, and would follow Mr. Hemig, representative from NRG,
24 and in the event that follow-up is necessary.

25 CHAIRPERSON GARAMENDI: All right. How about

1 Tracy --

2 MS. EGOSCUE: -- Egoscue.

3 CHAIRPERSON GARAMENDI: Thank you, Tracy.

4 And Jackson Gualco.

5 Those will be the next three.

6 Please begin. I think I mispronounced your --

7 MS. LONG: Lorell.

8 Lorell.

9 MS. LONG: I'll be brief. I came prepared -- I'm
10 with the California Earth Corp.

11 I came prepared to ask for a 30-day extension on
12 this particular item. But after listening to the
13 presentation, it seems that there's enough flexibility in
14 this lease that -- in these leases that the issues that we
15 have, because of the hearing -- or because of the federal
16 case, has -- there's enough flexibility here to where I
17 think we -- that the Commission can look at this.

18 I would like you to be mindful of the
19 desalinization plans, because I think here is where you
20 might have some trouble. I don't think you would like to
21 see companies expending capital on a project that requires
22 once-through cooling. But I still think that there's
23 enough flexibility here to where that you can -- when that
24 appears to be the case, when items come up like that, that
25 you can look at it and have a hearing or alert people to

1 that.

2 So --

3 CHAIRPERSON GARAMENDI: Thank you very much.

4 MS. LONG: -- that's it.

5 Thank you.

6 CHAIRPERSON GARAMENDI: Tracy.

7 MS. EGOSCUE: Good morning. My name is Tracy
8 Egoscue, and I'm the Executive Director of the Santa
9 Monica Baykeeper. I welcome this opportunity and thank
10 you for this chance to speak on El Segundo Generating
11 Station, Item No. 42.

12 I'd like to start by a little digress. I wasn't
13 prepared. But I'm reacting to the map that was supplied
14 by the staff with all of the once-through cooling plants.
15 And I just have to take the opportunity to state that the
16 impact in our area, in particular Southern California, is
17 significant. And the little inset of the Los Angeles area
18 is a perfect illustration of what we've been fighting
19 against.

20 As referenced in paragraph 7 in your staff
21 report, the California Energy Commission did indeed
22 recently recertify this plant. Santa Monica Baykeeper
23 along with Heal The Bay were named actually environmental
24 intervenors for all parties. And we joined with the CEC
25 staff in recommending the abandonment of these intake

1 cooling systems.

2 The commission found that the 316 regulations
3 were significantly -- were a significant burden on these
4 intake systems. And no offense meant, but it's sort of
5 like the dog chasing it's tail, to read in the staff
6 report what the Energy Commission did in relying on the
7 316(b) regulation, in a manner that if this power plant
8 came in front of the CEC today, it most likely would not
9 be recertified using these intake systems.

10 For that reason and because we were also named
11 plaintiff in the Riverkeeper versus the United States
12 Environmental Protection Agency lawsuit, we are here to
13 support the five-year mandatory reopener, so that we can
14 ensure that if the state regulation comes down and it
15 renders these intakes obsolete, that this lease will be
16 flexible enough that we'll be able to adapt to the
17 changing regulatory environment and that this action today
18 by the Commission will not be arbitrary and capricious.

19 Thanks.

20 CHAIRPERSON GARAMENDI: Thank you very much.

21 Mr. Gualco.

22 MR. GUALCO: Mr. Chairman, Commissioners, good
23 morning. Jack Gualco on behalf of the California Council
24 for Environmental and Economic Balance for Items 41
25 through 43, and for AES on Item 43 and respond to specific

1 questions on that lease proposal.

2 But let me just succinctly state that we think
3 that the proposals in front of you strike a reasonable
4 balance. CCEEB intends to be very much involved in the
5 316(b) development here in California, as the staff well
6 knows. And we look forward to working with the
7 Commissioners and the staff when both the reopener
8 provision and other developments technologically is made
9 and come about as a result of 316(b).

10 Thank you, Mr. Chairman.

11 CHAIRPERSON GARAMENDI: Thank you.

12 I'll call up three more people. Sarah --

13 ACTING COMMISSIONER SHEEHAN -- Abramson.

14 CHAIRPERSON GARAMENDI: Come on up, Sarah.

15 (Laughter.)

16 CHAIRPERSON GARAMENDI: Apparently people know
17 who you are and how to pronounce your last name.

18 Tim Hemig and Steve -- I guess it's Kaufmann.

19 EXECUTIVE OFFICER THAYER: Mr. Kaufmann wants to
20 speak during the public comment period at the end of the
21 meeting and not on this item.

22 CHAIRPERSON GARAMENDI: Karl Lytz.

23 All right. Sarah.

24 MS. ABRAMSON: Good morning. My name is Sarah
25 Abramson. I'm a staff scientist with Heal the Bay. I

1 thank you for welcoming us to give public comment on the
2 items before you here today, both 42 and 43.

3 Would you like me to address both of those items
4 in this comment now? I had submitted two comment cards.

5 CHAIRPERSON GARAMENDI: All at once. You're
6 here. Take all three if you'd like.

7 MS. ABRAMSON: Thank you so much.

8 First of all, I'd like to just support the
9 comments made by my colleagues Tracy Egoscue and Linda
10 Sheehan. We wholeheartedly support the comments that they
11 gave today.

12 I'd also like to add just a couple of things.
13 First of all, I'd like to commend the State Lands
14 Commission for its leadership in addressing the impacts of
15 once-through cooling, specifically in its April 2006
16 resolution where the Commission found that once-through
17 cooling causes significant harm to coastal and marine
18 sources and found that alternative cooling technologies
19 and sources of cooling water are readily available.

20 Specifically, we support the inclusion of a
21 five-year minimum reopener in the lease, which was
22 addressed by Mr. Thayer today, along with the other
23 changes that he addressed.

24 We also support the change in lease fees, as they
25 better reflect the damages done to the natural resources

1 and the environment.

2 The coastal power plants using once-through
3 cooling have significant damage to the marine and coastal
4 resources in southern California, and especially in the
5 Santa Monica Bay. The three plants that we have in the
6 bay are estimated to consume 13 percent of the near-shore
7 water every six weeks. So these are significant impacts.

8 And the provisions outlined by Mr. Thayer are
9 reasonable and will ensure that compliance with the likely
10 change in 316(b) regulation and ensuing state policy are
11 complied with and required by the State Lands Commission
12 as part of its lease.

13 In respect to the Huntington Beach generating
14 station, the AES generating station, I would like to raise
15 to your attention that other agencies are taking a similar
16 precautionary approach when granting permits for these
17 plants, given the changing regulatory arena of 316(b) and
18 the complementary State policy.

19 In August 2006 the Santa Ana Regional Board
20 renewed the NPDES permit for AES Huntington Beach. And at
21 the time of the renewal the Second Circuit Court decision
22 had not yet been issued, so they include reopener language
23 for that as well as the ensuing state policy.

24 CHAIRPERSON GARAMENDI: Excuse me.

25 MS. ABRAMSON: Um-hmm.

1 CHAIRPERSON GARAMENDI: A question has come. And
2 it's not to you. It's to staff here.

3 We've had three witness up here that say there's
4 a mandatory reopener of five years. Is it indeed a
5 mandatory reopener that we're discussing here?

6 EXECUTIVE OFFICER THAYER: It's not a mandatory
7 reopener in the sense that five years the Commission will
8 go in and look at this again. Instead, the Commission
9 with these provisions can reopen the lease at any time
10 where there's a change to the regulatory environment, you
11 know, changes from the federal side or the state side.
12 The five-year reference though is to a public hearing,
13 which will require the Commission to conduct a public
14 hearing on compliance and make sure that these issues are
15 being addressed. And at that time, as with any other
16 time, the Commission would have the opportunity to open
17 the lease and impose additional conditions.

18 I presume that's consistent with your
19 understanding of this.

20 MS. ABRAMSON: Our understanding is there would
21 be a public hearing at five years so that the public was
22 able to review the lease itself and its compliance with
23 316(b) and state policy.

24 CHAIRPERSON GARAMENDI: And the Commission
25 reserves the right to reopen the lease at any time there

1 is a significant -- whatever that means -- or change in
2 the environmental regulations?

3 EXECUTIVE OFFICER THAYER: That's correct.

4 CHAIRPERSON GARAMENDI: I think we better
5 define -- we take a look and have our Attorney General
6 representative take a clear look at this as to whether
7 what is -- if the word is "significant," which sounds to
8 me like an opportunity for a great debate.

9 EXECUTIVE OFFICER THAYER: The lease is
10 outlined -- you know, what matters most is the language in
11 the lease obviously, not the staff report. But as
12 outlined in the staff report, the word "significant" isn't
13 there. It's just whenever there's a change that would
14 require Commission approval, that we have that opportunity
15 to do that. We don't have to sit back say we can't make
16 any changes to the lease for the 30 years, but one of them
17 runs.

18 So, for example, if some mitigation is imposed on
19 once-through cooling that involves a different kind of
20 screening or different kind of physical change to the
21 pipes, we'd have the ability to go in there and make
22 changes. But I think the Commission might very well want
23 to look at other ancillary impacts from those kinds of
24 changes as well. And I'm sure most of those speaking
25 today would want us to not implement.

1 ACTING COMMISSIONER SHEEHAN: Yeah, because I
2 guess -- when I am seeing this in the language that we
3 reserve the right to modify the lease to require the
4 applicant to implement alternative environmentally
5 superior technology such as alternative cooling systems,
6 should such systems become feasible and be required by
7 another permitting federal or state agency? And that sort
8 of takes us back to the, okay, if the Water Board
9 completes their 316(b), or the Energy Commission, then
10 requires something else for these plants, then that gives
11 us ability to have our lease reflect what is already going
12 to be required by those permitting agencies.

13 EXECUTIVE OFFICER THAYER: Yes.

14 ACTING COMMISSIONER SHEEHAN: And the five years
15 really is to, okay, what has happened since the last five
16 years? Have we done anything to put in that new
17 technology? You know, what has the Water Board required,
18 how have we, you know, met those requirements?

19 EXECUTIVE OFFICER THAYER: Yes.

20 ACTING COMMISSIONER SHEEHAN: That's what I'm
21 seeing this, you know, versus -- I mean the reopener is
22 there linked to a requirement by the other regulatory
23 agencies, because then --

24 EXECUTIVE OFFICER THAYER: That's correct.

25 ACTING COMMISSIONER SHEEHAN: -- we had a lot of

1 discussion about this last year in terms of those really
2 are the ones who put the specific technical requirements
3 on. And ours is, "Tell us what you've done to make sure
4 you're meeting those."

5 EXECUTIVE OFFICER THAYER: And I think, you know,
6 our existing boilerplate for all leases require that the
7 applicant's being compliant with other law, other leases,
8 other permits, that kind of thing.

9 This though provides the specificity and I think
10 a clear direction from the Commission to the applicant
11 that it's going to be looking pretty closely at this
12 particular issue.

13 ACTING COMMISSIONER SHEEHAN: And I think from at
14 least the discussion this member has had, you know, with
15 the various players in this, they recognize this is
16 coming. They're looking at these. They know the
17 technology is coming. They know the technology is, you
18 know, close to development and economic feasibility so
19 that they can meet these.

20 You know, one of the issues in terms of the
21 length of the lease is making sure -- one, making sure
22 that we can still continue, you know, to keep the power to
23 the grid in the state. We're still in a very tenuous
24 situation. But also keep the applicants aware that they
25 need to continue to take the steps that they are to make

1 sure they're meeting with the new technology and working
2 with the Energy Commission as well as the water boards in
3 meeting the new requirements, which is why the 20- or
4 30-year lease, you know, so that financially we can see
5 these things going.

6 So it is a balance of all that. But I think this
7 language reflects well what the intent is. And I think
8 the applicants -- and I will let them -- I don't want to
9 speak for them. I'd let them speak for themselves. But I
10 think they fully understand what those requirements are.

11 EXECUTIVE OFFICER THAYER: I think so.

12 And just I wanted to say parenthetically that
13 that particular paragraph that you read has the
14 feasibility language in there that we're going to take
15 out. So -- and you've read --

16 ACTING COMMISSIONER SHEEHAN: Well, and -- but
17 whatever is required from the permitting agency is what
18 needs to be in there, right?

19 EXECUTIVE OFFICER THAYER: Correct.

20 ACTING COMMISSIONER SHEEHAN: We can't second
21 guess in terms of the technology for the 316(b). That's
22 what the Water Board is there for.

23 EXECUTIVE OFFICER THAYER: Right.

24 ACTING COMMISSIONER SHEEHAN: Okay. Thanks.

25 MS. ABRAMSON: All right. Just to finish up --

1 CHAIRPERSON GARAMENDI: I think we interrupted
2 your flow there.

3 MS. ABRAMSON: That's all right.

4 Basically what I'd like to say is that we support
5 both the language that you were discussing here and the
6 mandatory five-year reopener because it allows for a
7 public review. It's a public hearing. We come and check
8 and see what the State Lands Commission's been doing and
9 also see how it acts in relation to what's going on with
10 316(b).

11 CHAIRPERSON GARAMENDI: I want to make this
12 clear. As I understand it, there's not a mandatory
13 five-year reopener. There's a mandatory hearing in five
14 years to review the circumstances surrounding the
15 environmental requirements from various agencies as well
16 as the power companies at hearing those requirements, and
17 perhaps any other thing that the Commissioner may want to
18 take up at that time.

19 EXECUTIVE OFFICER THAYER: I think that --

20 CHAIRPERSON GARAMENDI: It's not a reopener at
21 five years. There may be, depending upon the
22 environmental -- upon the requirements of the various
23 reviewing agencies, there may be a reopener that would be
24 required -- a reopener would occur as the basics of -- as
25 a result of the requirements put forth by those other

1 agencies. In other words, the lease might have to be
2 modified because now we don't have -- the outfall is 2700
3 feet rather than 1600 feet.

4 EXECUTIVE OFFICER THAYER: I could be wrong --
5 and Sarah will stop me if I am -- but I think the word
6 "reopener" has a variety of different meanings. And from
7 the perspective of some who are outside the Commission,
8 the fact that we would hold a public hearing and open up
9 the issue that people could then bring information to the
10 Commission about compliance with these other agencies is
11 what a lot of people are thinking about when they talk
12 about a reopening. It gives -- otherwise there's no
13 hearing on this project for another 30 years. And --

14 CHAIRPERSON GARAMENDI: As long as there's
15 clarity here, is the lease may or may not be reopened.

16 EXECUTIVE OFFICER THAYER: Correct.

17 CHAIRPERSON GARAMENDI: There is a review or
18 reopening of the issue.

19 MS. ABRAMSON: Right. I guess I'd like to say
20 that we support the five-year hearing, the discussion of
21 the issue, and at that stage the possibility of reopening
22 the lease in light of compliance with other things. It
23 may or may not happen, but it's reviewed properly.

24 CHAIRPERSON GARAMENDI: Yeah, there may be a
25 reopening of the lease at any time based upon the

1 requirements of the other agencies.

2 MS. ABRAMSON: Correct. I apologize for the
3 confusion.

4 I think that's the gist of my comments today.
5 Thank you very much.

6 CHAIRPERSON GARAMENDI: Appreciate you being
7 there so we could discussion this.

8 Karl.

9 MR. HEMIG: Good morning, Mr. Chairman and
10 Commissioners. My name is Tim Hemig with the applicant
11 for Agenda Items 41 and 42. And Karl would only speak,
12 you know, if necessary, on particular comments in his
13 expertise.

14 But I would like to address some of the points
15 brought up earlier. And I work for NRG energy and we're
16 the owner and operator of both the El Segundo Generating
17 Station and the Encina Power Station. Both of these power
18 stations are located in critical locations for grid
19 reliability. The El Segundo station is just south of the
20 LAX Airport. And the Encina Power Station is in the City
21 of Carlsbad, northern San Diego County.

22 And combined these power plants produce over 1600
23 megawatts of power-generating capacity. And with the kind
24 of current needs of -- on a per-person basis, that's about
25 a million people worth of power. And we seem to be using

1 more and more energy on a per-person basis. So I mean
2 what used to be, one megawatt was about a thousand people.

3 So we are here to request your approval of both
4 of these leases. Not only are they once-through cooling
5 structures, which are critical components of these
6 power-generating facilities, but they're the
7 power-generating facilities themselves that we're
8 approving since they rely on these cooling systems.

9 And just to kind of bring you in the big picture,
10 actually 44 percent of the in-state generation relies on
11 once-through cooling as its technology for cooling. So
12 this is a big form of cooling and a very efficient form of
13 cooling throughout the state.

14 And really we don't object to the three changes
15 that the staff has brought up. And we know that 316(b) is
16 an important issue. I think there's over a dozen agencies
17 that are involved in this in the state, and we're looking
18 forward to working with those to achieve compliance. And
19 so the three changes are acceptable to us.

20 And certainly within the next five years I think
21 there will probably be a lot of other hearings within the
22 jurisdiction of other agencies. So there will be lots of
23 opportunity for public comment.

24 And just so everybody knows, all of the
25 information we submit for 316(b) compliance is -- are

1 public documents. And if you go to the Los Angeles
2 Regional Water Quality Control Board and the San Diego
3 Regional Water Board, they have this information on their
4 websites; the State Water Board has information on their
5 website. So it's very accessible.

6 Just to get, you know, kind of clear on a couple
7 of questions that Mr. Chairman brought up about the
8 Cabrillo power jetties. We do perform dredging. In fact,
9 we're doing it right now. And the dredging is actually
10 something we have to do for operations. If we don't do
11 this dredging -- I don't know. Is this timing --

12 CHAIRPERSON GARAMENDI: Please continue on.

13 MR. HEMIG: The dredging we do is -- if we didn't
14 do it, we'd have to actually -- the lagoon mouth would
15 close. And not only would the power plant not be able to
16 operate, but the health of the lagoon would be
17 significantly compromised.

18 So I think you should be assured that this is
19 happening very frequently just for the pure nature of
20 continuing to operate and for maintaining the health and
21 tidal prism of the lagoon. But on a requirements side, we
22 have an agreement with the City of Carlsbad to do the
23 dredging and to place sand in a particular spot so that
24 there isn't an impact to beaches. In fact, we blend the
25 amount of sand between north and south of the jetty so

1 that even though sand transport is south of the jetty,
2 particularly we do put some north so that the beaches
3 remain, you know, with good clean sand in both areas.

4 And that particular dredging does more than just
5 support the power plant. It also supports other benefits
6 within the lagoon like aquaculture. They grow mussels and
7 oysters there. And there's also a hub Sea World White Sea
8 Bass Fish Hatchery inside the lagoon. And by dredging and
9 keeping that lagoon healthy supports more than just the
10 power plant.

11 And then on the El Segundo lease, as was talked
12 about by several people, that the California Energy
13 Commission did approve the repowering of that site. That
14 is a fully approved license from the Energy Commission.
15 It's valid for five years. And we are about a year and a
16 half into that. And so it's -- there isn't any debate on
17 that particular project. It is fully approved by the CEC
18 and the license is effective.

19 So we ask that you adopt and approve both of
20 these leases for our two power plants. And I'm available
21 for any questions.

22 CHAIRPERSON GARAMENDI: I do have a question.
23 And thank you for responding to the issue of the sand
24 replenishment.

25 I think the sand belongs to the state?

1 EXECUTIVE OFFICER THAYER: Any sand below the
2 mean high-tide line belongs to the state.

3 CHAIRPERSON GARAMENDI: The agreement that you
4 have with the City of Carlsbad is apparently the only
5 mechanism that is formally in place for the replenishment
6 of sand that might be lost as a result of the jetties or
7 the riprap; is that correct?

8 MR. HEMIG: You know, actually I do not know the
9 answer if there's anything more than that. I do know that
10 we are permitted by the Army Corps, the Coastal
11 Commission, the Regional Water Board, and the State Lands
12 Commission, and Park and Recreation Department to do this
13 dredging. I can't tell you if there's a frequency or the
14 obligation in writing. I do know the City of Carlsbad
15 agreement for the proper placement of the sand is in
16 effect.

17 CHAIRPERSON GARAMENDI: I'm thinking that this
18 lease should address the disruption of the flow of state
19 property both north -- well, it would be basically
20 south -- I believe the currents are moving southward in
21 that area. And it's just a fact that all of these types
22 of jetties or riprap do disrupt. And the power company,
23 since it's your disruption, you should be responsible for
24 dealing with that. And I would like to see an amendment
25 to this that there is a specific responsibility in the

1 lease for the maintenance of the beaches to the south of
2 both of the jetties, assuming you're responsible for both
3 of them.

4 EXECUTIVE OFFICER THAYER: We can add that.

5 CHAIRPERSON GARAMENDI: Perhaps the Commission
6 ought to discuss this.

7 Any comments from my colleagues, any comments
8 from the staff on this?

9 EXECUTIVE OFFICER THAYER: I think we would want
10 to check and see what other agencies are doing to make
11 sure we're not getting cross purposes. Although, I think
12 that the agencies that are involved share the same
13 interests as the Chair and the rest of the Commission on
14 this. I'm just struggling a little bit to make sure we
15 put the right standard in there. Because, as I'm sure the
16 Commission is aware, there are a variety of causes of the
17 loss of sand in southern California. Dams on the rivers
18 that prevent the flow -- the natural flow of sand from the
19 upstream to replace the sand that eventually moves out.

20 So we would want to have any lease condition
21 establish a responsibility for the impact of the sand on
22 the beaches that's caused by the groin, to not assign a
23 responsibility to them for anything occurring because of
24 some of these -- because of some of these other factors.
25 So I think that would tie it up in a way that would put

1 them properly in -- would properly make them responsible
2 for the impacts that they cause.

3 And so I could imagine crafting some language.
4 We might run it past the Commissioners' offices, past the
5 applicant. And if there's no disagreement, then we can
6 just put it in. If there's come confusion or problem, we
7 can just bring it back to the next Commission meeting if
8 there's some issue.

9 ACTING COMMISSIONER SHEEHAN: Yeah, I think
10 that's -- I think that's a good suggestion. What I would
11 be fearful of is us wandering inadvertently into an area
12 we haven't researched enough; and just make sure that
13 we're not either making requirements or making promises
14 that we haven't done our homework and our due diligence.

15 So I think your suggestion is probably a good one
16 in terms of what the other agencies require and what is
17 the city -- it all may be, you know, much ado about
18 nothing, but just making sure that it's drafted correctly
19 and whoever the proper agencies that would have to be
20 consulted before we add the language.

21 EXECUTIVE OFFICER THAYER: Certainly. So then we
22 can take that approach.

23 And the other thing of course is that we know the
24 Chair's interested in this subject and it's something we'd
25 be more prepared on the next iteration.

1 CHAIRPERSON GARAMENDI: Yeah, the Chair has spent
2 too many years on this subject in Washington DC just to
3 let this one go by.

4 COMMISSIONER CHIANG: So, Paul, do you recommend
5 a process here?

6 EXECUTIVE OFFICER THAYER: Well, what I would
7 suggest, if the applicant is agreeable, that -- after all
8 this is the contract, and the Commission would want to
9 approve it in this more general sense, that we would craft
10 at least conditions which would require the applicant to
11 maintain -- or prevent impacts or maintain the beach as it
12 otherwise would be absent their groins, of somewhat to the
13 groins, and make that a condition of the lease, and that
14 we work with the applicant to develop that language and
15 send it around to the Commissioners' offices as well. As
16 I say, if there's any disagreement amongst all of those
17 individuals, we'll just bring it back to the Commission
18 for a more formal review.

19 I mean normally we like to have the precise
20 language worked out before we come to the Commission. But
21 on something like this that's as focused as we're talking
22 about, you know, this might be a way to expedite the
23 process, if the Commission's comfortable with that.
24 Otherwise, we could just put it over and come up with some
25 language and bring it back at the next meeting.

1 COMMISSIONER CHIANG: I'd like to have a full
2 discussion on it. You know, I don't know if everybody's
3 had the opportunity to comment on the proposal that's been
4 raised.

5 EXECUTIVE OFFICER THAYER: Sure. Then we can
6 bring it back at the next Commission meeting, which would
7 likely be in April.

8 CHAIRPERSON GARAMENDI: That's fine.

9 COMMISSIONER CHIANG: But I think it's a great
10 idea.

11 CHAIRPERSON GARAMENDI: I'm comfortable with the
12 general intent. But I'm always comfortable with what my
13 colleague would like to have.

14 EXECUTIVE OFFICER THAYER: I guess the one thing
15 I would ask the applicant is whether that delay creates
16 any issues.

17 MR. HEMIG: No, actually at this point I think
18 I'd prefer to go back and make sure -- maybe I can provide
19 some assurance on it and maybe I -- you know, as
20 mentioned, maybe it's already covered and rather than try
21 and figure it out right now -- then a delay till April is
22 not a problem for that particular lease.

23 EXECUTIVE OFFICER THAYER: Okay.

24 CHAIRPERSON GARAMENDI: Okay. With regard to --
25 yes.

1 MR. SCOTT: Mr. Chairman, just as a side comment,
2 the City of Carlsbad has had what they refer to as an
3 opportunistic beach sand replenishment program for any
4 number of years, where they have identified locations
5 along the -- particularly along the north coast in San
6 Diego for beach enhancement and for sites for taking sand
7 to be used in those locations. So that may be a place
8 where we can look to see what's being proposed for that
9 area already. And they did some significant coastal
10 engineering to make the determination as to where the
11 specific site should be for beach enhancement that would
12 allow the literal drift to continue to maintain the widths
13 of beaches in north coast San Diego, and also sites that
14 may be even inland that were available for sand to be used
15 in those locations.

16 CHAIRPERSON GARAMENDI: That's all well and good.
17 My issue here is -- I want to be very clear about
18 it -- that we're providing a lease for a structure that
19 obstructs the normal flow of sand. And I believe that
20 those who have the lease and build the obstruction must be
21 responsible and must mitigate any damages that occurs as a
22 result of that obstruction. And that's where I'm coming
23 from on this. This will be here for the next four years
24 whenever these leases come up. So be aware.

25 And if there's other agencies that are -- that

1 have adequately dealt with this, I'm quite happy to have
2 them deal with it rather than this agency. But if they're
3 not, then I expect that, at least insofar as I'm
4 concerned, I will push this issue so that there is a
5 responsible party for damages that occur as a result of
6 the leases and the structures that are built consistent
7 with that lease.

8 MR. HEMIG: We have a suggestion from my
9 colleague Karl for -- go ahead and adopting the lease as
10 is and then have a reopener clause for bringing back this
11 particular issue.

12 CHAIRPERSON GARAMENDI: No.

13 EXECUTIVE OFFICER THAYER: I think one of the
14 Commissioner's had indicated they wanted to get this
15 resolved before we conclude --

16 MR. HEMIG: Sure. That's acceptable as well.

17 CHAIRPERSON GARAMENDI: Thank you.

18 Further discussion on these leases?

19 Anne.

20 ACTING COMMISSIONER SHEEHAN: So we would see
21 this in April?

22 EXECUTIVE OFFICER THAYER: That would be our
23 goal.

24 Now, obviously if we run into some big technical
25 issue that takes longer, we'll let you know and --

1 ACTING COMMISSIONER SHEEHAN: Right, and to find
2 out in terms of this. Because it -- you know, having been
3 through this, you know, wanting to keep the discussion
4 going on this. I think it's an important issue. I think
5 a lot of it is just what is happening, what are the
6 requirements, you know, what other agencies are involved.

7 So to the extent that, you know, we can bring
8 back language that's acceptable to all the parties in
9 April, I think that would be good instead of continuing,
10 you know, on this. And then coming back and having a full
11 discussion of this issue with the members at that time
12 that you come back with specific recommendations on
13 language, I think would be very helpful.

14 EXECUTIVE OFFICER THAYER: Great. We'll do that.

15 CHAIRPERSON GARAMENDI: Thank you very much.

16 MR. HEMIG: Thank you.

17 CHAIRPERSON GARAMENDI: I believe that completes
18 the comments -- the public comments on Items 41, 42, and
19 43?

20 There being no other people wishing to speak to
21 that, we now have -- I believe Item 41 we're going to put
22 over until the next hearing. Items 42 and 43 are now
23 before us.

24 Any questions from the Commissioners?

25 ACTING COMMISSIONER SHEEHAN: It was Item 42 and

1 43; isn't that right?

2 CHAIRPERSON GARAMENDI: Yes, Item 41 will be put
3 over to the next meeting. Items 42 and 43 do not have --
4 as I understand it, do not have this particular issue.

5 EXECUTIVE OFFICER THAYER: That's correct.

6 CHAIRPERSON GARAMENDI: Okay. Item --

7 COMMISSIONER CHIANG: I'll move approval.

8 CHAIRPERSON GARAMENDI: Mr. Chiang.

9 COMMISSIONER CHIANG: I move to approve.

10 CHAIRPERSON GARAMENDI: Move to approve Item 42
11 and 43.

12 Do we have a second?

13 ACTING COMMISSIONER SHEEHAN: I'll second.

14 CHAIRPERSON GARAMENDI: All Commissioners in
15 support?

16 (Ayes.)

17 CHAIRPERSON GARAMENDI: Very good.

18 Those two are approved -- those two leases are
19 approved.

20 All right. That leaves us with Item 44.

21 EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.

22 Item 44 is a semiannual report which the
23 Commission is required to make to the Legislature
24 concerning the Ballast Water Program. And since this is a
25 relatively new program to the Commission -- it's been

1 around five or six years -- and some of the Commissioners
2 are new, we've asked staff to make a presentation on the
3 Ballast Water Program, much of which is -- much of that
4 background information is contained in this report.

5 And making this presentation will be Nicole
6 Dobroski.

7 MS. DOBROSKI: Thank you, Mr. Thayer.

8 (Thereupon an overhead presentation was
9 Presented as follows.)

10 MS. DOBROSKI: Good morning, Mr. Chairman and
11 Commissioners. Nicole Dobroski on the 2007 biannual
12 report on the California Marine Invasive Species Program.

13 CHAIRPERSON GARAMENDI: Would you like to move to
14 this side?

15 MS. DOBROSKI: I think I'll be fine. I think I
16 went forward too far.

17 CHAIRPERSON GARAMENDI: If you're more
18 comfortable, we've got plenty of room over here. That
19 little red light you can see from over there as well.

20 ACTING COMMISSIONER SHEEHAN: That way you can
21 see --

22 CHAIRPERSON GARAMENDI: There are three options
23 available to you.

24 (Laughter.)

25 MS. DOBROSKI: Thank you.

1 As a bit of background. Non-indigenous species,
2 or NIS, are organisms transported by humans to a region
3 where they do not occur historically.

4 NIS may have serious negative economic,
5 environmental, and/or human health impacts in the
6 receiving environment. For example, zebra mussels, seen
7 in the upper photo, have cost billions of dollars in
8 damage to the water piping and intake systems in the Great
9 Lakes. And just last month they were -- just last month
10 the closely related quadra mussel was discovered in Lake
11 Havasu on the California border.

12 CHAIRPERSON GARAMENDI: Excuse me. You can slow
13 down a little bit. We're not going to run the clock on
14 you here.

15 (Laughter.)

16 MS. DOBROSKI: The Chinese mitten crab, seen in
17 the lower photo, is not only a host to a parasitic lung
18 fluke that can infect humans, but it also burrows holes in
19 levees and thus has the potential for undermining levee
20 integrity.

21 These and other species have arrived in U.S.
22 waters by way of a variety of mechanisms for vectors, such
23 as recreational boating, intentional release, and
24 aquaculture. However, the ballast water of ships is one
25 of the major vectors of species released in aquatic and

1 tank vessels make up only 28 percent of vessel calls to
2 California ports, but they are responsible for 75 percent
3 of the volume of the discharged ballast water in the
4 state.

5 --oOo--

6 MS. DOBROSKI: Since 2004, over 250 million
7 metric tons of ballast water has been carried into
8 California in ships. Ninety-nine percent of that water
9 was managed in compliance with the law, either through
10 retention of all ballast on board or through proper
11 exchange, which includes a full flushing of ballast tanks
12 with offshore waters prior to discharge.

13 Looking specifically at discharge ballast
14 water -- the left side over here -- of the noncompliant
15 water -- I'm sorry. Excuse me. Looking specifically at
16 discharge ballast water, between 83 and 91 percent of
17 discharge water has met the requirements of the law.

18 Of the noncompliant water -- looking here on the
19 right figure -- the majority was exchanged prior to
20 discharge but was exchanged in the wrong location. So,
21 for example, it was exchanged at 100 nautical miles from
22 shore as opposed to the required 200 nautical miles.

23 In 2006, we see an increase in the discharge of
24 non-exchanged ballast water. This could be attributed to
25 the implementation in March of 2006 of new regulations

1 governing the management of ballast water in coastal
2 vessels. Keep in mind, however, that this increase in
3 vessels discharging without exchange is reflective of only
4 eight additional vessels over the second half of 2005
5 statistics. And this is out of approximately 6,000
6 vessels that visited the state in the first six months of
7 2006.

8 CHAIRPERSON GARAMENDI: The same eight over and
9 over again, the same ships are not exchanging properly, is
10 that it?

11 MS. DOBROSKI: Oh, it's not necessarily the same
12 eight vessels. But in an eight -- the number of
13 additional vessels over the 2005 statistics. But keeping
14 in mind that that's out of 6,000 vessels that visited in
15 the first half of 2006.

16 --o0o--

17 MS. DOBROSKI: Bulk and tank vessels account for
18 as much as 85 percent of the volume of noncompliant water
19 that is discharged in the state in recent years. And the
20 geographic source of this noncompliant ballast water
21 varies. But over one-third can be attributed to Mexican
22 waters, and a full one-quarter from within the U.S. West
23 Coast Region.

24 --o0o--

25 MS. DOBROSKI: The Marine Invasive Species

1 Program has completed many reports and projects over the
2 last two and a half years. In March of 2006, new
3 regulations governing the management of ballast water in
4 coastal vessels went into effect. In 2006, the program
5 also produced a report recommending standards for ballast
6 water discharge. These recommendations were incorporated
7 into the Coastal Ecosystem Protection Act, Senate Bill
8 497, which was signed by the Governor in the fall of 2006.

9 In conjunction with recommending performance
10 standards, we have been investigating and funding
11 projects, working towards the development and evaluation
12 of new ballast water treatment technologies that will be
13 required to meet the new standards.

14 We have also been investigating the role of the
15 non-ballast vessel vectors, such as hull fouling, in their
16 role in species introductions. The program completed a
17 report on these non-ballast vectors in early 2006, and
18 legislation is currently being considered.

19 Throughout we have encouraged and funded when
20 possible research that will help us improve our management
21 of non-indigenous species, including the testing and
22 evaluation of ballast water treatment technologies,
23 methods and techniques capable of verifying ballast water
24 exchange, and an assessment of the patterns in risk of
25 species introductions due to vessel fouling.

1 --o0o--

2 MS. DOBROSKI: Over the next two years, the
3 Marine Invasive Species Program will address many
4 questions and challenges in order to fulfill new
5 legislative directives and to continue to move toward the
6 elimination of the discharge of non-indigenous species in
7 the state waters.

8 Under California's Coastal Ecosystems Protection
9 Act of 2006, the program is required to develop and adopt
10 regulations to implement the ballast water discharge
11 performance standards as detailed in our staff report.
12 Additionally, based on our expanded and extended
13 responsibilities, we will require regulations to reset the
14 program fee.

15 CHAIRPERSON GARAMENDI: What's the timing for
16 your regulatory activities?

17 MS. DOBROSKI: By January 1, 2008, for the
18 performance standards. And for the regulations -- I mean
19 for the fee -- sorry -- I know we plan to --

20 CHAIRPERSON GARAMENDI: But you expect to have
21 them completed by January of 2008?

22 MS. DOBROSKI: Yes.

23 CHAIRPERSON GARAMENDI: Have the public hearings
24 been scheduled?

25 MS. DOBROSKI: Not yet.

1 EXECUTIVE OFFICER THAYER: And the regulations
2 will implement those standards, which were subject to
3 public hearings, both in the original development by a
4 joint committee involving environmentalists, industry, and
5 state representatives; and then those came to the
6 Commission about a year ago and were subject to a hearing
7 then.

8 So the legislation is new. But kind of the
9 develop of these standards that eventually will have to be
10 implemented has been going through a public process right
11 along.

12 But having said that -- and I think I may have
13 mentioned this to you and the other Commissioners -- this
14 is a going to be very difficult, because to a great extent
15 the technology is still being developed that will be
16 necessary to meet these standards. So it's going to take
17 a lot of work and we're going to have to be monitoring
18 regularly how we're doing on that.

19 CHAIRPERSON GARAMENDI: Those two pieces, there's
20 that piece and then there's the development of the
21 regulations themselves.

22 EXECUTIVE OFFICER THAYER: Right. And the
23 regulations will implement the standards that the
24 Commission have been working on. And so the substance of
25 those regulations in terms of what needs to be done is

1 that the standard that has to be met has been -- has been
2 discussed. But that's, as I say, the first half of that.
3 And the second half will be how they're done.

4 CHAIRPERSON GARAMENDI: To get all that done in
5 one year is -- you have to hop to it, don't you.

6 EXECUTIVE OFFICER THAYER: You bet. You're
7 right.

8 MS. DOBROSKI: Echoing what Mr. Thayer just said,
9 one of our biggest challenges over the next couple years
10 will be the standardization of specific testing procedures
11 and performance criteria necessary to assess the status of
12 the ballast water treatment systems.

13 The program will also be required to conduct the
14 review of available treatment technologies in order to
15 determine if appropriate technologies exist to achieve the
16 standards.

17 But of course the program will continue our focus
18 on improving vessel compliance with the requirements of
19 the Act.

20 --o0o--

21 MS. DOBROSKI: In coming years the focus of the
22 State Lands Marine Invasive Species Program will continue
23 to be on protection, prevention, outreach and education,
24 and solution-based actions.

25 We make the following recommendations to the

1 submittal to OAL is the first one. But ultimately we
2 would anticipate bringing these regulations to the
3 Commission in December. We meet regularly in December,
4 and that's where we would have it considered.

5 CHAIRPERSON GARAMENDI: Could we see those
6 mileposts?

7 EXECUTIVE OFFICER THAYER: Certainly.

8 CHAIRPERSON GARAMENDI: If you can develop those
9 and deliver them to us so that we can see what else is
10 required of our staff.

11 Apparently we have comments from the public on
12 ballast water, Sarah Abramson and Linda Sheehan.

13 You'd like -- pardon?

14 It says ballast water.

15 You don't want to speak on ballast water?

16 All right. Moving on.

17 (Laughter.)

18 ACTING COMMISSIONER SHEEHAN: Do we need to
19 approve this formally?

20 EXECUTIVE OFFICER THAYER: Yes, we'd like to
21 take -- the Commission take action just to approve the
22 report prior to our submittal to the Legislature.

23 COMMISSIONER CHIANG: Move approval.

24 ACTING COMMISSIONER SHEEHAN: Second.

25 CHAIRPERSON GARAMENDI: Without objection,

1 unanimous.

2 We are now on 45.

3 EXECUTIVE OFFICER THAYER: Mr. Chair, members of
4 the Commission. Item 45 is a resolution that was proposed
5 by the Controller's office regarding offshore oil
6 development, specifically a prohibition of that.

7 The state has actually a long history of digging
8 in its heels and trying to slow down offshore oil
9 development even in state waters. Not many people know,
10 but almost 50 years ago the Legislature in the state
11 adopted the first restrictions on offshore oil development
12 in state waters; prohibited new leases off of northern
13 California and some places in central California. And
14 steadily since then the Legislature's added additional
15 areas where an outright prohibition against new leases,
16 until I think it was 1994 the Legislature adopted a total
17 ban of new offshore oil leases except in very limited
18 circumstances.

19 The Legislature has also addressed the federal
20 side of the equation and has adopted resolutions right
21 through the nineties opposing new leases in federal
22 waters. The state only has jurisdiction out three miles.
23 And the majority of the platforms right now, several dozen
24 of them, are in federal waters.

25 So the Legislature adopted a number of

1 resolutions.

2 The State Lands Commission has also exhibited a
3 lot of leadership on this issue. Following the 1969 Santa
4 Barbara spill, the Commission has not approved leasing any
5 new areas. And prior to the Legislature adopting the
6 statutory prohibition on new leases, the State Lands
7 Commission had adopted administratively that policy, that
8 it wasn't going to approve new leases in state waters.

9 On the federal side the Commission has also been
10 active. And since 2000 I think we've approved five or six
11 resolutions that deal with various aspects, various
12 proposals that have been rooted in Washington DC to
13 advance new leases. There were proposals for inventories
14 of oil and gas. There were various proposals to actually
15 start new leases. And the Commission has a record of
16 adopting a number of different resolutions opposing that.

17 And so this resolution is in that tradition. And
18 I think the Controller's office wanted to have an
19 opportunity for this Commission with two new members to
20 indicate that it was going to be consistent in that
21 approach.

22 The resolution takes the form of identifying the
23 impacts to California from new offshore oil development
24 and notes the importance of California's coastal economy
25 to the overall state economy, the importance of the

1 coastal resources for recreation, tourism, economic
2 activities like fishing; and voices its support for a
3 newly introduced bill in Congress as Senate Bill 151,
4 which has been introduced jointly by the two senators from
5 California. And so adoption of the resolution would
6 indicate the Commission's support for that bill. And that
7 bill specifically prohibits any new oil and gas leasing in
8 federal waters off California.

9 The resolution also would command staff to send
10 copies to the congressional delegation of the state's
11 delegation as well as some named administrative officials
12 back in DC.

13 So staff recommends that the Commission adopt the
14 resolution and send it on once that's occurred.

15 And that concludes staff's presentation unless
16 there's any questions.

17 CHAIRPERSON GARAMENDI: Any questions that we
18 have by the Commission?

19 We have two people that apparently want to speak,
20 not to ballast water but to this particular resolution.

21 (Laughter.)

22 CHAIRPERSON GARAMENDI: Linda Sheehan and Sarah
23 Abramson.

24 You can do it if you would. Come on up.

25 (Laughter.)

1 MS. SHEEHAN: Thank you, Chair Garamendi. Linda
2 Sheehan with the California Coastkeeper Alliance. And,
3 for the record, I co-sponsored the original ballast water
4 legislation that set up this program with the State Lands
5 Commission, and they've been doing an excellent job. I
6 highly commend your staff for their work.

7 In brief, we would like to thank the Controller's
8 office for this resolution. We have 12 waterkeepers
9 spanning the coast of California, including at Santa
10 Barbara and Venture County, particularly impacted by
11 ongoing drilling, and we strongly support the resolution,
12 particularly in light of the recent report by an
13 international team of scientists highlighting the problems
14 with global warming. This is exactly the right path, this
15 type of resolution, and that California needs to be going.
16 And so we support it.

17 Thank you very much.

18 MS. ABRAMSON: Sarah Abramson, staff scientist
19 with Heal The Bay.

20 Again, I would like to reiterate the comments of
21 Linda Sheehan, my colleague, and that I wholeheartedly
22 support this resolution. And thank you for your
23 leadership on this very important issue.

24 Personally, I was a resident of Santa Barbara for
25 quite some time. I went to graduate school there and saw

1 the rigs off the coast, which is a constant reminder of
2 the issue of offshore oil drilling. So I just -- I'm
3 really personally committed to what you're doing here and
4 thank you very much.

5 CHAIRPERSON GARAMENDI: The resolution itself?

6 ACTING COMMISSIONER SHEEHAN: I'll move approve
7 of the resolution.

8 COMMISSIONER CHIANG: Second.

9 CHAIRPERSON GARAMENDI: Have approval and second.

10 I see no more audience participation.

11 Move for a vote.

12 Everyone's in support, 3-0.

13 Very good.

14 Do we have any other items before us?

15 Mr. Thayer.

16 EXECUTIVE OFFICER THAYER: The one item remaining
17 then would be to revisit the Tahoe Swiss Village
18 Association's -- Homeowners Association.

19 CHAIRPERSON GARAMENDI: The one I took off
20 calendar.

21 Yes, let's deal with that.

22 EXECUTIVE OFFICER THAYER: To give a staff
23 presentation for background is Mary Hayes from the Land
24 Management Division.

25 DIVISION OF LAND MANAGEMENT MANAGER HAYES: Good

1 morning, Mr. Chairman and members of the Commission. My
2 name is Mary Hayes and I'm a land management -- I am the
3 Land Management Manager with the Commission of Land
4 Management Division. And I'm here to present information
5 on Calendar Item No. 34.

6 This item asks the Commission to authorize a
7 lease between the Commission and the Tahoe Swiss Village
8 Homeowners Association covering the use and maintenance of
9 multiple-use recreational facilities located in Lake
10 Tahoe.

11 The facilities include 2 piers, 31 mooring buoys,
12 and 2 marker buoys previously authorized by the
13 Commission, and the retention of 39 additional existing
14 buoys not previously authorized by the Commission.

15 The association is composed of 80 member lots and
16 2 lakefront lots owned in common by the membership. The
17 recreational facilities are located off shore of the
18 common-owned lots.

19 The association has been a lessee of the
20 Commission since 1975 when the two piers and a swim float
21 were authorized under a 15-year lease.

22 In 1980 the association obtained permits from the
23 Tahoe Regional Planning Agency and the U.S. Army Corps of
24 engineers for 31 mooring buoys and one swim float that
25 were existing at that time. That same year the Commission

1 authorized an amendment to the lease to include the 31
2 existing buoys, one of which was used as a swim float.
3 The buoys are located in fish habitat and must be removed
4 from September 16th through May 14th.

5 In 1991 the Commission authorized a new five-year
6 lease for 2 piers and the 31 moorings. And again in 1996
7 the Commission authorized a new ten-year lease which
8 expired on October 14th of 2005.

9 In 2005, the association applied to the
10 Commission to renew their lease and for authorization to
11 retain the additional 39 existing buoys that the
12 association has stated were placed some time before 1990.

13 The lease before you today contains specific
14 language that requires the association to obtain a permit
15 for the additional 39 buoys from the Tahoe Regional
16 Planning Agency within two years of the adoption of the
17 Lake Tahoe Shore's own EIS and the approval of the new
18 amended ordinances.

19 Staff recommends that the Commission authorize
20 issuance of the lease because the association has a buoy
21 field alignment that arranges the buoy field -- excuse
22 me -- arranges the mooring buoys in a grid pattern in
23 accordance with the current and proposed regulatory
24 standards, that's identified each buoy with an association
25 tag, has removed four buoys placed by nonmembers, has

1 placed marker buoys to ensure safe navigation, maintains a
2 maintenance and repair program, and enforces a buoy
3 allotment program for ensuring use to all of its members.

4 Commission staff as well as Mr. Warren Hagberg,
5 President of the Tahoe Swiss Village Homeowners
6 Association, are here to answer your questions.

7 This is my presentation.

8 CHAIRPERSON GARAMENDI: I'd like to hear from the
9 association's representative.

10 DIVISION OF LAND MANAGEMENT MANAGER HAYES: Mr.
11 Hagberg.

12 MR. HAGBERG: Mr. Chairman Commissioner and
13 Commissioners. My name is Warren Hagberg. I'm the
14 President of the Tahoe Swiss Village Homeowners
15 Association.

16 CHAIRPERSON GARAMENDI: Thank you for coming.

17 This is kind of like do you ask for permission or
18 do you ask for forgiveness. This Chairman doesn't believe
19 in forgiveness.

20 So tell me why -- apparently you've come before
21 us for a couple of leases and these buoys were not
22 mentioned in those leases?

23 MR. HAGBERG: The present board, which started
24 around 2002, has made a commitment to comply with the
25 rules and regulations and any compliance that's from TRPA

1 and also State Lands Commission, and tried to go back and
2 reconstruct what happened. My own knowledge goes back to
3 1968. And prior to that, being in the area for around 60
4 years.

5 However, what I've been able to reconstruct is
6 that, for instance, the 31 buoys were placed, as I
7 understand it, before TRPA was formed and before we
8 applied with the State lands. The people who were in
9 charge at the time, the board of directors and so on, I've
10 been unable to ascertain too much because they are all
11 deceased.

12 CHAIRPERSON GARAMENDI: That would limit the
13 conversations.

14 (Laughter.)

15 MR. HAGBERG: And so the present position of the
16 board is to be forthright and straightforward and say this
17 is the situation as it is. We wish to comply and we have
18 applied for that purpose for the existing situation. As
19 Ms. Hayes represented, we've gone through and tried to
20 find these buoys and so on, and there were some that were
21 not in our area and so we've had them removed.

22 And we plan to control them, police that in the
23 future.

24 CHAIRPERSON GARAMENDI: This practice of placing
25 buoys and indeed piers without appropriate leases has not

1 been limited to your homeowners association, I suspect?

2 MR. HAGBERG: I'm sorry?

3 CHAIRPERSON GARAMENDI: The practice of seeking
4 forgiveness rather than permission is probably not limited
5 to your situation.

6 Now, I'm told that we don't have the staff to
7 count buoys at Tahoe. But I suspect if we would to do so,
8 we would find numerous home owner associations and
9 individuals who have buoys, perhaps even docks, without
10 the appropriate leases.

11 MR. HAGBERG: As I understand, the piers were
12 there before the --

13 CHAIRPERSON GARAMENDI: I'm not -- we're not
14 questioning your piers in this case. I'm making a general
15 comment.

16 MR. HAGBERG: You are correct. And I understand.
17 That's why we certainly agree with the whole approach of
18 regulation and bringing -- and maintaining the scenic
19 beauty as well as everything else that goes along with
20 this natural resource. We just went through three and a
21 half years with TRPA regarding the two parcels and beach
22 revetment. And the number of agencies, including the
23 fish -- the people who are in charge of that. And then
24 also plant -- mitigation of any plant problems and so on.

25 It's too valuable an area to allow to get out of

1 control.

2 CHAIRPERSON GARAMENDI: I'm using your lease
3 and -- to make a point. And the point is this, is that
4 the protection of Tahoe requires very strict adherence to
5 all of the regulatory requirements -- TRPA, water, air.
6 And the placement of illegal docks, piers, and buoys, to
7 the extent that we find out about it, they'll be removed.
8 And to the extent that we can place fines and other
9 things, I expect it to be done. I've spent too much of my
10 life on Tahoe issues to simply not use this opportunity to
11 say "enough already."

12 MR. HAGBERG: I appreciate that.

13 CHAIRPERSON GARAMENDI: All right. Any comments
14 from the staff or from my colleagues?

15 COMMISSIONER CHIANG: Yes, I'd like to ask Paul a
16 couple questions.

17 How do we guard against unapproved construction?

18 EXECUTIVE OFFICER THAYER: It's very difficult.
19 And there's a lot of water area. And we often get
20 violations that are more minor. So we'll have one buoy
21 out there. Where we find out about it, we try and do
22 something about it. But, frankly, it's very difficult to
23 get a judge to order a buoy to be removed.

24 And sometimes we work with other agencies. I
25 think we generally take more action depending upon the

1 size of the illegal development and also whether or not
2 there's a hazard involved. So we've worked cooperatively
3 with some agencies in San Francisco Bay to get rid of
4 derelict boats and illegal river boards, and that kind of
5 thing. And generally that sort of group approach works
6 best, because we don't have an authority to impose any
7 fines. And so usually if there's a violation in that it
8 doesn't have a lease from us, the development doesn't have
9 leases from other entities too which do have that fining
10 authority.

11 So --

12 COMMISSIONER CHIANG: Would you please repeat
13 that.

14 EXECUTIVE OFFICER THAYER: It's to our advantage
15 to work cooperatively with other agencies that do have the
16 authority to impose fines, have a bigger stick than we
17 have.

18 So I guess that would be -- there's more of this
19 going on than we'd like. But we do, particularly where
20 there's particular health impacts or the development is
21 particularly significant.

22 COMMISSIONER CHIANG: Would it require a
23 statutory change to impose fines?

24 EXECUTIVE OFFICER THAYER: I'm not sure -- I
25 would ask our attorney to respond to the possibility of --

1 ASSISTANT ATTORNEY GENERAL HAGER: Yes, you
2 would.

3 EXECUTIVE OFFICER THAYER: -- in violation of the
4 lease.

5 COMMISSIONER CHIANG: The charges -- in point,
6 can we just put it in the lease?

7 CHAIRPERSON GARAMENDI: Any violation of the
8 lease would result in some -- not fine but some payment
9 for violation of the lease.

10 ASSISTANT ATTORNEY GENERAL HAGER: Yes. If you
11 would say -- okay, let's say the lease says you're
12 supposed to -- you could have no more than 25 buoys and
13 you found that there were 35, yes, you could put in
14 something like a liquidated damage clause that if there
15 are, you know, an additional buoy, the fine would be --
16 you've got to spell it out in a lease. You can't just
17 sort of leave it vague.

18 CHAIRPERSON GARAMENDI: So we would put in
19 liquidating damage of \$10 million for each buoy that's
20 not --

21 (Laughter.)

22 ASSISTANT ATTORNEY GENERAL HAGER: It may be not
23 more than 8 or 9 million.

24 (Laughter.)

25 EXECUTIVE OFFICER THAYER: And my understanding,

1 in talking with our staff over the years about this issue,
2 is that there are real limits on what the courts will
3 sustain in the way of related damages, that the amount of
4 money is usually equivalent to --

5 CHAIRPERSON GARAMENDI: Okay, \$10,000 or some
6 appropriate liquidating damage.

7 ASSISTANT ATTORNEY GENERAL HAGER: Yeah, it
8 would -- yeah, I mean liquidated damages have to be what
9 is the damage to the state as a result of it. And to pay
10 \$10,000, that's too much. If you want to have a penalty
11 that is a deterrent, which I think is really what you're
12 looking for, I think a statute giving you a
13 specific -- providing you a specific penalty, which is
14 punishment, not damages for your loss, that's a better way
15 of doing it.

16 CHAIRPERSON GARAMENDI: The lease is canceled and
17 you've got to remove all the buoys and the pier, for
18 example.

19 (Laughter.)

20 EXECUTIVE OFFICER THAYER: Well, I think the
21 Chair's actually right, that that's the -- that's the one
22 remedy we have, which is that if you're not compliant to
23 the lease, you know, you forfeit the lease.

24 CHAIRPERSON GARAMENDI: You forfeit -- for every
25 buoy and pier, you have to remove three.

1 (Laughter.)

2 EXECUTIVE OFFICER THAYER: But of course the
3 enforcement problem, we have some of -- we're looking at
4 right now, which is that a lessee has more improvements
5 than the lease provides for. But the other issue is where
6 there's no lease at all. And in those cases we can go to
7 court and ask that the development be removed. But I'm
8 not sure how much authority we have to impose a
9 punishment. I don't think we have it.

10 ASSISTANT ATTORNEY GENERAL HAGER: No, we don't.

11 COMMISSIONER CHIANG: Well, do we have any other
12 enforcement remedies available?

13 CHAIRPERSON GARAMENDI: Isn't it a -- excuse me.
14 Go ahead, John. I'm sorry.

15 EXECUTIVE OFFICER THAYER: We do not generally
16 have --

17 COMMISSIONER CHIANG: -- other than a court
18 action?

19 EXECUTIVE OFFICER THAYER: So that's why we
20 generally go other agencies. Like BCDC, we do -- which
21 does have an administrative fine available to them.
22 Coastal Commission has the same thing.

23 COMMISSIONER CHIANG: Why don't we have staff put
24 together a memo spelling the various remedies that we may
25 want to pursue. I'm interested in a statutory action. I

1 mean if you have this consistent bad behavior, you know,
2 I'd like to have the -- the Commission have the
3 opportunity to discuss whether we want to levy a fine.

4 EXECUTIVE OFFICER THAYER: We'd be glad to do
5 that.

6 CHAIRPERSON GARAMENDI: Is it not a trespass?

7 CHIEF COUNSEL RUMP: Yes, it is.

8 CHAIRPERSON GARAMENDI: And whatever's already in
9 the law on a trespass would be available, correct?

10 ASSISTANT ATTORNEY GENERAL HAGER: Correct.

11 CHAIRPERSON GARAMENDI: Well, in any case you're
12 right, John. Let's get a memo on it.

13 EXECUTIVE OFFICER THAYER: We'll do that. And
14 we'll get that back to you before the next meeting. So
15 then you'd have the opportunity, if necessary, in closed
16 session, to talk about that you, know, as --

17 ACTING COMMISSIONER SHEEHAN: -- an option.

18 EXECUTIVE OFFICER THAYER: -- an enforcement
19 option, right.

20 COMMISSIONER CHIANG: Paul, can I have that memo
21 prior to the next meeting?

22 EXECUTIVE OFFICER THAYER: Yeah, that's --

23 COMMISSIONER CHIANG: Actually if you could have
24 it sooner, the members have reviewed it, to be scheduled.

25 EXECUTIVE OFFICER THAYER: Exactly.

1 CHAIRPERSON GARAMENDI: Further comments?

2 Well, I appreciate Tahoe Swiss Village Homeowners
3 Association providing us with this opportunity to discuss
4 this issue, which I believe is important, and apparently
5 my fellow Commissioners do also.

6 Do I hear a motion on renewing this lease as
7 presented to us by staff?

8 COMMISSIONER CHIANG: So moved.

9 ACTING COMMISSIONER SHEEHAN: Second.

10 CHAIRPERSON GARAMENDI: The vote of the
11 Commission is unanimous to renew the lease.

12 MR. HAGBERG: Thank you very much.

13 COMMISSIONER CHIANG: We look forward to your
14 stewardship -- correct stewardship.

15 CHAIRPERSON GARAMENDI: Further business before
16 the Commission?

17 Mr. Thayer.

18 EXECUTIVE OFFICER THAYER: One last item is the
19 public comment period. And I understand that
20 representatives from Woodfin, a time share developer,
21 would like to speak.

22 CHAIRPERSON GARAMENDI: Very good.

23 CHAIRPERSON GARAMENDI: Let's hear from our
24 witnesses on time shares.

25 MR. KAUFMANN: Thank you. Good morning, Mr.

1 Chairman and Commissioners. My name is Steven Kaufmann,
2 and a represent Woodfin Suite Hotels.

3 MR. KAUFMANN: I'm here today to request the
4 Commission to agendize two matters at your next meeting:
5 First, a workshop on the issue of time shares on public
6 trust lands. And, second, following the workshop,
7 reconsideration and reevaluation of Woodfin's hotel
8 project, which includes a modest time share component.

9 At the December meeting Commissioners Sheehan and
10 Bustamante expressed an interest in the workshop or a
11 forum in which the time share issue could be considered
12 further. On Friday the Port of San Diego also sent you a
13 letter joining in our request for a workshop.

14 The issue of time shares on public trust lands is
15 of current statewide interest. We believe this Commission
16 and its staff would benefit greatly from a public hearing
17 and input from a panel of experts, including the Attorney
18 General's Office, which has written a formal opinion on
19 the issue; interested stakeholders; hoteliers; financiers;
20 and time share experts; of course the many tidelands
21 grantees in the state who actively manage tidelands and
22 public trust lands; and members of the public; and
23 interest groups.

24 Last August the Coastal Commission conducted just
25 such a workshop on one type of development structure for

1 financing new hotel development, condominium hotels. The
2 Commission itself appointed a subcommittee of two
3 Commissioners to help set up that workshop. The result
4 was a very successful, balanced workshop and it helped to
5 thereafter shape and condition Coastal Commission
6 approvals of condo hotel projects in Huntington Beach and
7 at the Hotel Del in Coronado.

8 Commissioners, the hospitality industry of
9 California is currently responding to changes in the
10 economy. The cost of construction is dramatically
11 increasing because of the demand for core construction
12 materials and also the impact of both national and
13 international disasters. So the nature and financing of
14 hotel development is necessarily changing, and that's true
15 with respect to Woodfin, which proposes a 140-unit hotel
16 project but with a 40-unit carefully regulated time share
17 component.

18 Woodfin seems to be the test case for public
19 trust consistency. And we believe that a workshop would
20 be informative to you and would de-mystify the time share
21 financing mechanism, and demonstrate to you that there is
22 indeed a way to approve a carefully limited and carefully
23 regulated time share component consistent with the public
24 trust.

25 The Coastal Commission found it sufficient to

1 hold one workshop, and it took about a half the day. And
2 we respectfully request that this Commission do the same,
3 perhaps right here in Sacramento; and then take up Woodfin
4 again and apply the lessons learned from that workshop.
5 I'm certainly happy to participate in such a workshop if
6 either you or your staff think that might be helpful.

7 We truly appreciate your consideration of our
8 request.

9 Thank you.

10 CHAIRPERSON GARAMENDI: Mr. Sloan.

11 MR. SLOAN: Good morning. My first opportunity
12 to congratulate both you -- well, I haven't had the
13 opportunity to congratulate the Controller Chiang, so
14 congratulations on your election.

15 And I'm not going to take a lot of your time
16 because I join what my colleague had to say.

17 Unfortunately at the last hearing, I did not
18 really have the opportunity to fully discuss the kind of
19 thing that ought to be discussed about the appropriateness
20 of time shares on public lands.

21 And we really believe that it's not invasive,
22 it's certainly not residential, and it's really a tool by
23 which a developer can appropriately create the kind of
24 improvements for the public that you're seeking in all
25 these lands. And so I will suggest that at the minimum

1 the representatives of your major ports, Oakland, San
2 Francisco, San Diego, Los Angeles and Long Beach, be
3 included as well as any other delegates, because all of
4 these people are looking at this issue as a possibility
5 for really improving the quality of all of our ports and
6 all of our tidelands for the public.

7 So I really urge that you consider this request.

8 Thank you.

9 CHAIRPERSON GARAMENDI: Thank you.

10 Mr. Thayer.

11 EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.

12 Just to fill in the history of what brought these
13 two individuals here. There was a hearing in
14 December -- well, earlier last year the Port of San Diego
15 approved a lease or an agreement with Woodfin to put in a
16 hotel which includes a time share component that was just
17 mentioned.

18 At that time, there was a lot of public debate
19 before the Port Board. We sent letters indicating our
20 perspective, and there was a lot of testimony.

21 The Port Board noted that the Lands Commission
22 had not weighed in on whether or not time shares could be
23 on public trust lands. The basic issue is whether these
24 are hotel-like or whether they're more private. So do
25 they include more people coming to the coast; or because

1 they occupy space that otherwise might be taken by a
2 full-fledged hotel that anybody could go to, whether they
3 end up excluding people? It's not something the
4 Commission has taken a position on.

5 So, noting this, the San Diego Port Board
6 approved the project, with oral discussion about making
7 this a test case, to bring it to the Lands Commission,
8 that if the Lands Commission cared, it could speak up and
9 get involved.

10 We received a letter from several different
11 groups in the San Diego area asking us to do just that.
12 We initially tried to schedule this for a hearing in
13 October. There was a notice problem. We canceled that
14 meeting so that all the groups were aware of our interest
15 in this, including Woodfin and other groups. But we put
16 over the meeting and had the action meeting in December on
17 this.

18 We heard about two hours of testimony from a
19 number of the same interests that were just outlined in
20 terms of being appropriate for a workshop. It included
21 Woodfin and other representatives of industry, unions,
22 public interest groups. The Port of San Diego testified,
23 and a number of time share owners testified.

24 At the conclusion of that, the Commission voted
25 to find that Woodfin was not consistent with the Public

1 Trust Doctrine. There were several concerns -- and I
2 think Commissioner Sheehan should describe her own
3 involvement in this. But there were several concerns
4 expressed about whether or not this -- whether, by doing
5 this, there might be some impact to affordability of
6 accommodations along the coast. It was something that
7 both she and Commissioner Bustamante had some concerns
8 about. And there was some discussion about whether or not
9 a workshop would be the best way to deal with that.

10 Staff has gone off and thought about this and now
11 discussed this with Commissioner Sheehan because she was
12 the one who was there and most interested in this.

13 And, if I may, one approach that we were thinking
14 we could take to this would be twofold:

15 The first one is that the Commission often, as it
16 has just now, asks staff to provide additional information
17 about different matters, and staff often responds with
18 memos or other correspondence, that kind of thing.

19 I think that given the breadth of the review of
20 the time share issue, that the nature of the request for
21 information that came from the Commissioners in December
22 was on that order, that the -- we had a very comprehensive
23 discussion. And so it's our intent to go back and
24 research that further. For example, the Coastal
25 Commission has an affordable accommodation in its policy,

1 so it's not the Lands Commission operating solo on this
2 issue. There's a variety of state policies and state law
3 that affect that.

4 The other approach that we were talking about
5 with Commissioner Sheehan is to replicate what we had done
6 five or six years ago, which was an attempt to do an
7 outreach on the Public Trust Doctrine, which can be
8 confusing to people who haven't dealt with it before. And
9 we held staff workshops in San Francisco, in San Pedro,
10 and San Diego. And as part of all those workshops, we had
11 panels that involved people industry, the Attorney
12 General's representative was there to deal with the legal
13 issues, and we invited public interest groups to speak.
14 And we went through a variety of specific topics like time
15 shares. We did not do time shares this time.

16 So it seemed to Commissioner Sheehan that we
17 should replicate that and that we should once again go out
18 on the road -- and it's appropriate anyway, it's been five
19 or six years since the last time -- and have these
20 workshops where people can participate; and perhaps in San
21 Diego, where there was especially a keen interest in time
22 shares, devoting a panel which we could invite Woodfin to
23 be part of.

24 Commissioners who wanted to come to any of these
25 workshops would be welcome to do that. Of course we'd

1 publicize this very well.

2 So it's staff's recommendation that we proceed
3 with additional work on time shares in those two venues,
4 providing information to the Commission, and then doing
5 workshops so that all elements of the public could
6 participate on this issue as well as others.

7 We do not recommend reconsideration of the
8 Woodfin issue because the Commission really did have a
9 comprehensive hearing on this. A variety of interests
10 spoke. It was well noticed. There was a lot of warning
11 about the hearing. I think it was very well covered.

12 CHAIRPERSON GARAMENDI: Very good.

13 Questions from the Commissioners?

14 ACTING COMMISSIONER SHEEHAN: Did you want to
15 add -- say something else?

16 MR. KAUFMANN: Well, thank you, Commissioner
17 Sheehan. Mr. Chairman.

18 Of course our interest is not on a general topic,
19 which we have a hotel project, which is a good project.
20 And we believe that we do comply with the public trust.
21 And in a sense, we're thinking -- this came up in San
22 Diego. You didn't have all your grantees there. They
23 weren't really informed that this was going on on a
24 generalized topic of time share on public trust lands. So
25 in a sense you have a project driving some type of policy

1 rather than the reverse, which is policy after being
2 informed and having the benefit of input then determining
3 how a project can or should be approved.

4 CHAIRPERSON GARAMENDI: Thank you.

5 Other comments from the Commissioners?

6 COMMISSIONER CHIANG: I have a procedural
7 question of Paul.

8 If we vote to support a discussion or a workshop
9 on the Public Trust Doctrine and vote to deny agendizing a
10 discussion on Woodfin's application, can they bring back
11 an appeal for the Woodfin application if we do decide that
12 time shares -- Jack, you're answering no?

13 CHIEF COUNSEL RUMP: No.

14 COMMISSIONER CHIANG: Procedurally why does
15 that --

16 EXECUTIVE OFFICER THAYER: They could always
17 file -- well, the first thing is the approval was before
18 the Port Board. And as such, the Commission's involvement
19 was on a policy basis, and expressing the view of the
20 Commission on this particular project and more generally
21 on time shares.

22 So they have already asked for an additional
23 hearing. And the Commission could of course do that if it
24 wants to. But we're not voting on the lease per se. It's
25 just the consistency of the Public Trust Doctrine with

1 this project. The Port has its leasing authority in the
2 granted areas.

3 I don't know if that's responsive to your
4 question.

5 ACTING COMMISSIONER SHEEHAN: Jack, do you want
6 to clarify?

7 CHIEF COUNSEL RUMP: There's several matters that
8 are procedural here.

9 First of all, this is a public comment section.
10 It hasn't been properly noticed. So there's not really
11 technically a vote that you could take on this.

12 The matter was disposed and completed as a vote
13 of the Commission in December. It's final. There's no
14 appeal.

15 Essentially both parties know that this is a test
16 case. And perhaps it's better resolved in court if we
17 have those basic disagreements.

18 So I think we're faced today with whether or not
19 these workshops may be of benefit. But I would not
20 recommend trying to reopen because it's final at this
21 point.

22 CHAIRPERSON GARAMENDI: Yeah.

23 ASSISTANT ATTORNEY GENERAL HAGER: In short,
24 you're not voting on anything.

25 COMMISSIONER CHIANG: I'm sorry?

1 ASSISTANT ATTORNEY GENERAL HAGER: In short,
2 you're not voting on anything.

3 COMMISSIONER CHIANG: I understand.

4 CHAIRPERSON GARAMENDI: Okay. Anne.

5 ACTING COMMISSIONER SHEEHAN: There's nothing
6 before us to vote on. I mean I think what we can do is
7 instruct staff to collect information, to come back; that
8 at least this member thinks it is good to have the public
9 forums in the discussion on this.

10 I guess the one question I would have is: If
11 Woodfin wanted to come back with a revised application or
12 a different project, that is always within their purview.

13 CHIEF COUNSEL RUMP: Yes.

14 EXECUTIVE OFFICER THAYER: Two responses to that.
15 First, absolutely the case. They can come back to the
16 Port and make a new application for a project.

17 And also -- Woodfin can clarify this, or the
18 representative from Woodfin -- but I believe the Port's
19 approval would permit this project to go forward entirely
20 as a hotel if the time shares -- if Woodfin chooses not to
21 pursue the time shares. Is that correct?

22 MR. KAUFMANN: It was originally drafted in that
23 manner. And it kind of evolved, because the time share
24 component became much more strictly regulated and then it
25 became an integral part of it. Whether or not it morphs

1 into that, I can't say.

2 I can say this though. I've been with the
3 Attorney General's Office. And having represented state
4 agencies like the Coastal Commission and to a far lesser
5 extent your commission, this project didn't come to you in
6 the typical quasi-judicial manner in which some of the
7 projects came before you today. In fact, this type of
8 project is something that would be determined by your
9 tidelands grantee. That's why you have them. They manage
10 the tidelands. And they made their decision. Your staff,
11 responding to a request for information, took this up and
12 brought it to you.

13 And certainly in December the Commission made a
14 decision on it. But I would have to say this isn't your
15 usual decision. And I don't believe it's final.

16 And I also believe the wisdom of this would be:
17 Let's not take it to litigation. Let's try to figure out
18 what the answer is. That's I think a better approach.

19 CHAIRPERSON GARAMENDI: This is a question of Mr.
20 Thayer and Mr. Rump or Mr. Hager.

21 What exactly is before -- was before the
22 Commission? Does this commission have any specific
23 authority to approve or disapprove the Woodfin project?

24 EXECUTIVE OFFICER THAYER: There's -- the answers
25 are yes and no. The Commission in the normal course of

1 events would not have heard this item. It wouldn't have
2 come as any other item had been before you today as an
3 application, because it is on lands that have been granted
4 to a local entity to administer.

5 However, the Commission retains statutorily an
6 oversight responsibility for how grantees are carrying out
7 the terms of their grant and whether they're following the
8 Public Trust Doctrine. So it is the Commission's business
9 to look at what the grantees are doing and decide whether
10 it's appropriate or not.

11 And the Commission has occasionally heard
12 specific projects in this context. The most recent one
13 would have been the Mills project, that I think Ms.
14 Sheehan was here for, along the San Francisco waterfront.

15 We've also gotten involved with litigation in the
16 past where grantees have taken money out of a port, as it
17 was the case with Los Angeles, and tried to bring it
18 downtown to pay for municipal purposes.

19 So we have regularly gotten involved with this.
20 Not five times a year. But about every year or so there's
21 some issue that involves the more general administration
22 of the Public Trust Doctrine where we will get involved
23 with grantees.

24 CHAIRPERSON GARAMENDI: So what's being requested
25 here now is a review of this Commission's policy with

1 regard to a specific type of development --

2 EXECUTIVE OFFICER THAYER: Correct.

3 CHAIRPERSON GARAMENDI: -- as it may exist in any
4 of our direct authority and where we have -- where the
5 authority has been granted to others, right?

6 EXECUTIVE OFFICER THAYER: Yes.

7 CHAIRPERSON GARAMENDI: If we hold a hearing, a
8 workshop, that would inform the new Commissioners as to
9 this entire issue of time shares as it applies across the
10 state. We could then take up that issue as it -- I
11 suppose we could -- we can go back over the specific
12 Woodfin action in December and say it's absolutely right
13 or it's not. We'd have the additional information, which
14 would certainly inform me and -- John, you know all about
15 this; you don't need anymore?

16 COMMISSIONER CHIANG: No, I need a lot more.

17 (Laughter.)

18 CHAIRPERSON GARAMENDI: He needs a lot more too.

19 So the issue before us right now is whether we
20 want to or not hold an informational hearing on time
21 shares on state lands and on lands that have been granted
22 to other authorities as to its adherence to the Public
23 Trust Doctrine. And that's what's before us. Okay?

24 EXECUTIVE OFFICER THAYER: That's what the
25 request is. And, again, it's staff's position that,

1 number 1, the Commission of course can do that. It's
2 within your jurisdiction.

3 CHAIRPERSON GARAMENDI: Let me add to what I just
4 said.

5 And that the issue of Woodfin specifically, I
6 would recommend we deal with it later and not make any
7 prediction now as to whether we will or will not want to
8 take that issue up again.

9 EXECUTIVE OFFICER THAYER: But I -- staff would
10 go on. As I say, you have the ability yourselves to
11 decide what you want to hold hearings on, and you can
12 certainly conduct one on this. But that was in fact the
13 purpose of the December meeting, was to look at this, not
14 just with respect to Woodfin. And the transcript would
15 show that much of the discussion had to do generally with
16 the time share industry and these issues.

17 So this was -- the December hearing was intended
18 in fact for the Commission to grapple with this. That's
19 not to say that you don't have your own independent
20 knowledge, requirements, and needs, which could be met
21 through a variety of different ways. But the Commission
22 did grapple with this both specifically with respect to
23 Woodfin and in a larger sense in December.

24 CHAIRPERSON GARAMENDI: Ms. Sheehan.

25 ACTING COMMISSIONER SHEEHAN: Yeah, let me add at

1 couple of things that we -- Paul, I think you're right.
2 We did grapple with this. But the reason that I wanted to
3 have additional workshops is some of the issues,
4 specifically the affordability, the economics, some of
5 those issues that had come up, which we didn't really
6 have -- they came up anecdotally. And so the idea was:
7 All right, let's find out what are the economics of some
8 of these projects; you know, who is coming; who are using
9 these? You know, this type of financing mechanism for
10 vacations. Are we -- and I think the issue that the
11 Lieutenant Governor had brought up, you know, are we
12 excluding people through some of these decisions? -- it
13 was kind of going down that path a little bit in terms of
14 what projects are affordable at the coast. And so getting
15 a little more information on that.

16 But I guess what I want to make sure is it
17 isn't -- I mean I am a proponent of workshops sort of
18 discussing the public trust theory. This being one
19 component of that, because we are seeing it more. And
20 having been in San Francisco the other day and knowing
21 those pier projects are coming back to us on the -- those
22 issues that we need to have a discussion about, with two
23 new members on the Commission understanding what the
24 public policy is involved in this.

25 So I do think the -- getting additional

1 information. Having the forum -- the workshops would be
2 very good. But I want to make sure it's not exclusively
3 time shares. It's, you know, what other issues are on the
4 forefront in the Public Trust Doctrine that is coming
5 towards us. I mean some of it's, you know, office
6 development on the piers, you know, that aren't
7 necessarily -- you know, is it enough public trust use or
8 are we excluding other uses? Some of the issues that we
9 have kind -- some of the other projects that we know are
10 coming before us.

11 EXECUTIVE OFFICER THAYER: Certainly. And that's
12 of course what we were trying to do with this alternative
13 proposal where we would have held these workshops, not
14 just one, but staff workshops up and down the state to
15 gather information as well to respond to this economics
16 question that came out of the last meeting.

17 But, again, whatever the Commission wants to do
18 in this.

19 CHAIRPERSON GARAMENDI: John.

20 COMMISSIONER CHIANG: Yeah, I concur with Anne's
21 approach. I'd like a more universal discussion about
22 public trust. I think if you have a discussion that's
23 limited to time shares, we're going to miss out on a lot
24 of issues.

25 EXECUTIVE OFFICER THAYER: Okay.

1 CHAIRPERSON GARAMENDI: So we're headed for
2 workshops, which the Commissioners can choose to attend or
3 not.

4 And, Paul, if you'll make a specific
5 recommendation. It will at least initially not be a
6 commission meeting. We may decide to take the issue up
7 and then formalize our views on this. That would be a
8 subsequent time.

9 So you'll give us a schedule?

10 EXECUTIVE OFFICER THAYER: Yes, we will, as well
11 as outline the potential subject matter. And we'd welcome
12 input from the Commission on any of that.

13 COMMISSIONER CHIANG: Paul, do you envision a
14 timeframe on this?

15 EXECUTIVE OFFICER THAYER: As I recollect -- it's
16 been a while since the last time, but I think it took four
17 or five months to kind of set these up and run them. So
18 it took several -- you know, we'd set up one, get the
19 witnesses together, and then move on to the next part of
20 the state.

21 So I'm anticipating by the end of the summer
22 having run through all three of these, if that seems
23 appropriate to the Commission.

24 CHAIRPERSON GARAMENDI: John.

25 COMMISSIONER CHIANG: I just want the best

1 process possible. It seems a little long to me, but
2 that's fine.

3 CHAIRPERSON GARAMENDI: A little long.

4 EXECUTIVE OFFICER THAYER: We'll try and expedite
5 it.

6 CHAIRPERSON GARAMENDI: I think we've gone
7 through this issue. But the view of the Commission is
8 pretty clear with regard to the public workshops that are
9 out there, and that at this time not interested in
10 bringing back the Woodfin issue. That may become later.

11 MR. SLOAN: May I just say here, Mr. Garamendi,
12 that the entire state is really watching this, because
13 time shares in particular, which we feel do not violate
14 the public trust and are acceptable, as opposed to condo
15 hotels and fractionals and other of the mystifying --

16 CHAIRPERSON GARAMENDI: Well, do you --

17 MR. SLOAN: -- viewed as -- if I could just
18 finish. One second.

19 The entire state's watching us because it's
20 really a developmental tool that's really enabling the
21 kind of developments that I think you want. So --

22 CHAIRPERSON GARAMENDI: Mr. Sloan. Thank you.

23 MR. SLOAN:

24 CHAIRPERSON GARAMENDI: Apparently there's going
25 to be at least one -- and from Mr. Thayer's discussion --

1 two or three more opportunities for that debate to be
2 thoroughly aired. In the meantime, we have decided that
3 we're going to do public workshops. And the Commission
4 may or may not choose to come back and deal with the
5 Woodfin issue.

6 MR. SLOAN: I understand. I'm just urging that
7 it be sooner rather than later.

8 CHAIRPERSON GARAMENDI: Thank you very much.

9 MR. KAUFMANN: Thank you.

10 CHAIRPERSON GARAMENDI: Mr. Thayer, any other
11 business before the Commission?

12 EXECUTIVE OFFICER THAYER: That concludes the
13 public hearing. And we have a brief closed session
14 scheduled.

15 CHAIRPERSON GARAMENDI: Very good.

16 Thank you all very much. We're going to have a
17 closed session, which means all of you can leave, except
18 the staff.

19 (Thereupon the California State Lands
20 Commission meeting adjourned
21 at 12:21 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
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13 IN WITNESS WHEREOF, I have hereunto set my hand
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