

MEETING  
STATE OF CALIFORNIA  
LANDS COMMISSION

THE CITY OF CULVER CITY  
MIKE BALKMAN COUNCIL CHAMBERS - 1ST FLOOR  
9770 CULVER BOULEVARD  
CULVER CITY, CALIFORNIA

FRIDAY, OCTOBER 29, 2010  
10:09 A.M.

JAMES F. PETERS, CSR, RPR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 10063

APPEARANCES

BOARD MEMBERS

Mr. John Chiang, State Controller, Chairperson, also represented by Ms. Cindy Aronberg

Mr. Abel Maldonado, Lieutenant Governor, represented by Ms. Amanda Fulkerson

Ms. Ana J. Matosantos, Director of Finance, represented by Ms. Cynthia Bryant

STAFF

Mr. Paul Thayer, Executive Officer

Mr. Curtis Fossum, Chief Counsel

Ms. Kathryn Colson, Staff Counsel

Mr. Colin Connor, Assistant Chief, Land Management Division

Mr. Mario De Bernardo, Legislative Liaison

Ms. Jennifer Lucchesi, Senior Staff Counsel

Mr. Greg Scott, Chief, Mineral Resources Management Division

ATTORNEY GENERAL

Mr. Alan Hager, Deputy Attorney General

ALSO PRESENT

Mr. Jim Adams, Los Angeles, Orange County Building and Construction Trades Council

Mr. Martin Adams, Los Angeles Department of Water and Power

Mr. Baker, IBEW Local 441

Mr. Brett Barbre, Southern California Metropolitan Water District

APPEARANCES CONTINUED

ALSO PRESENT

Ms. Mary Jo Baretich, Cabrillo Wetlands Conservancy

Ms. Rebecca Bartling, 22nd District Agricultural Association

Mr. Denis Bilodeau, Orange County Water District

Mr. Keith Bohr, City of Huntington Beach Council Member

Ms. Lindsay Brennan, representing Orange County Supervisor John Moorlach

Mr. Perry Cain

Mr. Tony Capitelli, representing Congressman Dana Rorhabacher

Mr. Lou Correa, State Senator

Mr. Pat Davis

Mr. Shawn Dewane, Mesa Water District

Ms. Siobhan Dolan, Desal Response Group

Mr. Dale Dunn

Ms. Karalee Ethridge

Mr. Conner Everts, Desal Response Group

Mr. Bob Foster, Mayor, Long Beach

Mr. Joe Geever, Surfrider Foundation

Ms. Cathy Green, Mayor, City of Huntington Beach

Ms. Michele Grubbs, Pacific Merchant Shipping Association

Mr. Ruben Guerra, California Latino Water Coalition, Latin Business Association

Mr. Don Hansen, Huntington Beach City Council Member

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Steve Harbison

Mr. Tom Harman, State Senator

Ms. Juliette Hunter, Sheldon Family Partnership

Ms. Kate Klimow, Orange County Business Council

Mr. Rich Kolander

Mr. Rodney Larson, Plumbers and Steamfitters Local 582

Dr. William Lochrie

Ms. Renee Maas, Food & Water Watch

Mr. Scott Maloni, Poseidon Resources

Mr. Scott Malsin, Culver City Council Member

Ms. Cathy Meschuk

Mr. Martin McIntosh

Ms. Merle Moshiri, R4RD

Ms. Stephanie Pacheco, Democratic Party of Orange County

Mr. Manny Padilla, Orange County Hispanic Chamber of  
Commerce

Mr. Martin Paine, representing Senator Mimi Walters

Mr. Reed Royalty, Orange County Taxpayers Association

Mr. Karle Seckle, Orange County Municipal Water District

Mr. Robert Shannon, Long Beach City Attorney

Mr. David Smyser, Western States Petroleum Association

Mr. Jose Solorio, State Assemblyman

Ms. Katherine Stone, Seacliff Homeowners Association

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Michael Sullivan, Orange County Coastkeeper

Mr. Alan Templeman, Seacliff Homeowners Association

Mr. Michael Tsai, Environment Now

Ms. Jody Vaughn, representing Assemblywoman Diane Harkey

Mr. Noble Waite, Orange County Water District

Ms. Jacqueline Winterer, City of Del Mar

Mr. Rick Zbur, Poseidon Resources

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1 town that's hitting on all cylinders right now. We have  
2 great roots -- the movie industry has great roots here.  
3 But we're also fortunate to have live theater, art  
4 galleries and terrific restaurants. We've been working  
5 very hard to make sure that the city is moving forward and  
6 it is a terrific place to live here on the west side.

7           So please, if there's anything that we can do to  
8 help you, if you need anything during the course of the  
9 meeting, please let us know. And if you'd like to have  
10 your meetings here in the future, please also let us know.  
11 We're happy to host them.

12           Thank you very much.

13           CHAIRPERSON CHIANG: Thank you very much. And  
14 thank you for that generous offer. I also wanted to point  
15 out that City Manager John Nachbar is also in attendance.  
16 So, John, if you'd raise your hand and be acknowledged.  
17 Thank you.

18           The next item is minutes. The first is the  
19 adoption of the minutes from the Commission's last  
20 meeting. Is there a motion?

21           ACTING COMMISSIONER BRYANT: Move approval.

22           CHAIRPERSON CHIANG: We have a motion by Cynthia.  
23 Second?

24           ACTING COMMISSIONER FULKERSON: Second.

25           CHAIRPERSON CHIANG: Second by Amanda. Without

1 objection, the motion passes.

2           The next order of business is the Executive  
3 Officer's report.

4           Paul.

5           EXECUTIVE OFFICER THAYER: Good morning, Mr.  
6 Chair and members of the Commission. I wanted to cover I  
7 think about 3 items. The first is to update the  
8 Commission on the additional steps taken by staff in  
9 response to the forthcoming audit, which was requested by  
10 Senator Cogdill regarding our rent-setting process.

11           As I mentioned at the August meeting, staff was  
12 undertaking a variety of measures to better assure that  
13 the correct rent is assessed. That's now reached the  
14 point where staff has developed an internal memo, which is  
15 particularly important, because it directs staff on very  
16 specific things that we're going to do in the future.  
17 There will be things like putting a requirement into our  
18 major leases that applications for renewal have to occur 2  
19 years in advance of the expiration of the lease. This  
20 will assure that we get the process done before the lease  
21 expires.

22           It also includes some more down-in-the-bushes  
23 things about how staff will withdraw the files from  
24 storage and get them to the -- assigned to the right staff  
25 people, so that -- at an earlier stage. The point being

1 that if we start all of these things earlier with a better  
2 tickler system, then we'll better assure that the rent is  
3 updated in a timely fashion.

4 I should report that at this stage, we don't know  
5 when the audit is going to occur. We originally had been  
6 told by the Auditor that it would start sometime in  
7 September. And it's the end of October, and we haven't  
8 heard from them yet, so we're not sure when that's going  
9 to be initiated.

10 The other issue I wanted to point out that we've  
11 been working is you'll recall that one of the issues was  
12 whether or not a certain rent-setting mechanism that's in  
13 the statute that talks about charging two cents per  
14 diameter inch for pipelines, whether or not that should be  
15 updated.

16 Staff has surveyed the rent-setting mechanisms  
17 used in 20 different states, so that we could figure out  
18 where California is. And we find that no other state is  
19 really using that formula at all. Instead, they're either  
20 using a rent setting based on the value of the land on  
21 which the pipeline is placed or a rent-setting mechanism  
22 that's dependent not on the diameter of the pipeline, but  
23 the lineal footage of it. So they charge say \$5 a foot no  
24 matter what the diameter of the pipeline is.

25 We're still absorbing that to figure out, you

1 know, what's the best way for us to go, but we're thinking  
2 of switching to this lineal foot basis. But in the  
3 interim, as I explained to the Commission in a previous  
4 meeting, we're still using our normal rent setting for the  
5 right of way that's used for these pipelines. And that's  
6 current and gets good market-rate rents, because it's  
7 based on an appraisal of the land today.

8           So we'll continue to report back to the  
9 Commission as that audit occurs, and as staff continues to  
10 take other steps to respond to the issues that were  
11 originally raised.

12           The second thing I wanted to talk about was the  
13 progress more recently made on some of the outstanding  
14 violations and enforcement actions that were authorized by  
15 the Commission.

16           At the last meeting, there were two instances  
17 where folks with existing leases were out of compliance  
18 for different reasons. And in both -- and the Commission  
19 authorized the staff to take legal steps as necessary to  
20 bring them into compliance.

21           Both of these people, or applicants or lessees,  
22 have responded to that push from the Commission to have  
23 taken a lot of steps to come into compliance for the  
24 Hamiltons, which were one of the applicants. They've now  
25 applied to the Corps to get the permit they need, in which

1 they didn't have. And the Rio Ramaza Marina has brought  
2 their rent up to date and has paid the application fee.  
3 So we think that steps are being taken.

4 I won't go through all of these, unless there's a  
5 specific question.

6 There was also great success with respect to the  
7 Spirit of Sacramento. This is a vessel that's perhaps as  
8 much as 80 or 100 feet long that has been abandoned or  
9 near abandoned and half sunk south of the City of  
10 Sacramento. We've gone to court to get the owner to do  
11 something about it. And he has now refloated that vessel  
12 and moved it to a marina for repairs. So we think that  
13 issue has actually been resolved.

14 Some of you may recall Mr. Asuncion and the Blue  
15 Whale Sailing School, a property in the Bay Area, where he  
16 conducted various activities, including having a pier and  
17 having some fill without authorization from the  
18 Commission. The Commission has now gotten both a judgment  
19 in favor of the State's position on this, but now we have  
20 been authorized to move to collect the \$85,000 in back  
21 rent and to take the necessary steps regarding that  
22 unauthorized improvement.

23 And finally, I wanted to point out that the  
24 Commission has authorized its staff to file an amicus  
25 brief in the Alameda Gateway case. This is a case where

1 the City of Alameda, which is a local grantee, operates  
2 tidelands pursuant to a grant from the Legislature, and  
3 had gotten into a disagreement with one of its tenants  
4 that was supposed to have made some needed improvements.

5 The Commission authorized filing an amicus on  
6 behalf of the local government to help them in their own  
7 lawsuit. The defendant resisted that amicus, but the  
8 court ruled in our favor and allowed us to file it. And  
9 then on the merits, the court has held that the lessee has  
10 not complied with the terms of the contract.

11 And I raise this issue, in part to note the  
12 success of what the Commission had authorized, but also to  
13 point out this is another example where we work with the  
14 grantees, that the grantees are not -- don't independently  
15 manage their tidelands and that we try and work  
16 cooperatively with them on cases where we can do that.

17 So that concludes the presentation on violations.

18 The last success story that I wanted to mention  
19 is that there was an oil spill several years ago from a  
20 ship called the Command, where it had proceeded out of San  
21 Francisco Bay and then pumped 3,000 gallons of oil over  
22 the side. It was identified as being the ship  
23 responsible, and it paid I think about \$4 million for  
24 remediation of the damage that it caused.

25 Some of the damage for which that money was paid

1 had to do with loss of the beach because of the clean up,  
2 loss of the beach to the public for use. And so some of  
3 the money was supposed to be used for recreational  
4 improvements. And, in fact, on the San Mateo coast,  
5 Commission staff worked with the local entities to develop  
6 and implement a new stairway down to the beach there, so  
7 that the existing stairway had about fallen apart. So  
8 there's now a brand new \$125,000 stairway that improves  
9 public access down to the beach.

10 And that's a direct result of the Commission's  
11 involvement on behalf of the public on the public access  
12 issues. Other State agencies were obviously involved for  
13 the biological impacts. But I wanted to report that that  
14 was opened in the last couple weeks, that that stairway  
15 was opened.

16 And that -- unless, there's any questions, that  
17 concludes the Executive Officer's report.

18 CHAIRPERSON CHIANG: Thank you, Paul.

19 Any comments by the members?

20 Then let me take this moment to recognize Paul.  
21 Paul, this is your moment.

22 (Laughter.)

23 CHAIRPERSON CHIANG: It's a culmination of  
24 decades of extraordinary service to the People of  
25 California. We have a resolution from the Commissioners.

1 So if I can beg everybody's indulgence, I'm going to read  
2 the resolution honoring Paul and his service to the State.

3 A resolution by the California State Lands  
4 Commission commending Paul D. Thayer.

5 "Whereas, Paul Thayer for over 30 years has  
6 dedicated his career to public service; and,

7 "Whereas, Paul Thayer from 1971 to 1975  
8 served his country in the United States Navy  
9 rising to the rank of lieutenant; and,

10 "Whereas, Paul Thayer, after a short stint  
11 with the San Francisco Public Library providing  
12 reference services to branch libraries, began  
13 working for the People of California as a permit  
14 analyst, and then as a legislative liaison for  
15 the California Coastal Commission from 1980 to  
16 1984; and,

17 "Whereas, Paul Thayer brought his  
18 legislative, analytical, and communication  
19 talents to the Assembly Natural Resources  
20 Committee from 1985 to 1996, where he specialized  
21 in legislation affecting the Public Trust  
22 Doctrine, the California Environmental Quality  
23 Act, coastal resources and oil recycling under  
24 the leadership of then Assembly Member Byron  
25 Sher; and,

1           "Whereas, Paul Thayer in 1996 became the  
2 legislative liaison for the California State  
3 Lands Commission during which time he helped  
4 develop the Commission's legislative policies and  
5 built cooperative relationships with business,  
6 citizen groups, and local, State, and federal  
7 agencies; and,

8           "Whereas, Paul Thayer in 1997 became the  
9 Assistant Executive Officer for the California  
10 State Lands Commission. In this position, he was  
11 instrumental in supporting the Executive Officer  
12 and division chiefs in their roles and obtained  
13 broad knowledge of the Commission's programs and  
14 operations; and,

15           "Whereas, Paul Thayer in 1999 was appointed  
16 as the California State Lands Commission  
17 Executive Officer and for 11 years has assisted  
18 the Commission and led its staff through some of  
19 the biggest challenges involving natural  
20 resources, public policy issues facing the State,  
21 including preparing the State for climate change,  
22 sea level rise, alternative energy projects, oil  
23 spill prevention and protecting our coastline  
24 from new off-shore oil leasing; and,

25           "Whereas, Paul Thayer, as a person, is one of

1 the most interesting and unique persons anyone  
2 could meet..." --

3 (Laughter.)

4 CHAIRPERSON CHIANG: -- "...with his passion  
5 for Grateful Dead music, Southeast Asian cuisine,  
6 bird watching, wake boarding, guitar playing,  
7 wedding officiating, hiking, and Burning Man;  
8 and,

9 "Whereas, Paul Thayer's professionalism as  
10 Executive Officer and uniqueness as a person  
11 often converge during Commission meetings,  
12 resulting in analogies to the Sheriff in the  
13 movie Blazing Saddles, quotes such as, 'If it's  
14 wet, we're interested'; and --

15 (Laughter.)

16 CHAIRPERSON CHIANG: "Whereas, the State  
17 Lands Commission and Commission staff will miss  
18 Paul Thayer's dedication and services as an  
19 Executive Officer because of his integrity,  
20 personality, intellect, and sense of fairness;

21 "Now, therefore, be it resolved by the  
22 California State Lands Commission that Paul  
23 Thayer be commended for the distinguished record  
24 of professional public service to the State of  
25 California and for the legacy of accomplishments

1           during his 11 years serving the California State  
2           Lands Commission as its Executive Officer, we  
3           extend sincere best wishes for a rewarding and  
4           gratifying retirement. And the Commission wishes  
5           Paul, his wife Martha, and his band members the  
6           very best in the years to come."

7           Let me offer a personal comment. Paul, you are a  
8           man of extraordinary integrity. You are a public servant  
9           in its highest regard. You work to build bridges, to  
10          connect, to engage, to listen, and to see the best in each  
11          other, which I think is too short in supply unfortunately  
12          in public service in many instances.

13          We owe you a great debt of gratitude. I am very  
14          blessed to have you in my life, and I wish you a life  
15          that's absolutely extraordinary in retirement.

16          So thank you for everything you've done for me  
17          and for this agency.

18          Let me ask if my colleagues --

19          (Applause.)

20          ACTING COMMISSIONER BRYANT: I just want to add  
21          that I've learned so much from you this year. And you've  
22          just -- I just think of you as a friend, in spite of only  
23          knowing you for this short year. And our briefing time is  
24          just one of my favorite times. I look forward to talking  
25          about all of the unusual things that we talk about during

1 those times.

2 I did bring to you a letter from the Governor  
3 also congratulating you on your retirement. I will not  
4 read it into the record, but he concludes by wishing you  
5 the best for your retirement and your future. And thank  
6 you so much for your service.

7 ACTING COMMISSIONER FULKERSON: I'll just say on  
8 behalf of the Lieutenant Governor, thank you for all your  
9 hard work. We really appreciate it. We also have a  
10 letter for you, so you'll have a lot of things on the wall  
11 at home.

12 (Laughter.)

13 CHAIRPERSON CHIANG: Paul, would you like to  
14 offer any comments?

15 EXECUTIVE OFFICER THAYER: Well, I have to say  
16 that there's much too much information that didn't need to  
17 be in that resolution.

18 (Laughter.)

19 EXECUTIVE OFFICER THAYER: I suspect that Mario  
20 had a hand in drafting that.

21 (Laughter.)

22 EXECUTIVE OFFICER THAYER: But other than that  
23 small problem with staff, on the whole, I just want to  
24 stay that --

25 (Laughter.)

1 EXECUTIVE OFFICER THAYER: -- working with staff  
2 has been one of the pleasures of my life. There are a  
3 whole lot of aspects to this job which have been so  
4 rewarding, and are suitably, you know, the capstone to my  
5 career. I couldn't ask for anything better.

6 And a lot of it has to do with staff who are  
7 dedicated in a way that, you know, I wish some of the  
8 public could see the amount of time they put an effort to  
9 their work. They don't understand their taxpayers are  
10 well spent -- or the tax money is well spent for paying  
11 for that operation.

12 Also, I want to thank the Commission. It's  
13 always been interesting working with now -- I haven't  
14 counted up the number of different Commissioners, but the  
15 Commissioners and their staff, their liaison staff, in  
16 particular people like Cindy and Amanda, that have made  
17 the job interesting and rewarding.

18 I always felt we operated as a team, where we did  
19 our best, both with the Commissioners and with staff and  
20 with the public to honor the Public Trust Doctrine and the  
21 value that brings to the State of California.

22 And I think that's the thing -- the final thing I  
23 wanted to dwell on, is that that body -- I'm not an  
24 attorney, but that body of law charmed me when I worked  
25 for the Legislature and I found out about it.

1           And I think it's the best unknown law we've got.  
2 I mean, everybody knows about CEQA. But in terms of the  
3 environmental protection, the protection for other public  
4 needs and uses of the tidelands is something that's just  
5 vital to the State. And for me, the most rewarding part  
6 about my career has been able to interpret that and work  
7 with that and to enjoy using it.

8           I also can't close without thanking my wife  
9 Martha, who's here today, Martha Lennihan in the front  
10 row --

11           (Applause.)

12           EXECUTIVE OFFICER THAYER: -- for all of her  
13 support. The times that she patiently allows me to travel  
14 to the far reaches of the State and be out overnight and  
15 be gone. She's never complained, and respects the kind of  
16 thing that I feel is necessary to be done to carry out my  
17 role with the Commission. And I have to thank her for  
18 that.

19           So with that, thanks very much. And I'm sad that  
20 this is the last meeting. As the Commission knows, I'm  
21 retiring November 8th. And obviously, if anyone has any  
22 questions, my cell phone is still good, and I'd be happy  
23 to be of assistance after I retire.

24           CHAIRPERSON CHIANG: Well, Paul, we have all  
25 stood taller because of your service. So I'm going to

1 rise and thank you with a standing ovation.

2 So others who feel the same, please.

3 (Standing Applause.)

4 CHAIRPERSON CHIANG: Okay. With all that being  
5 said, we're going to get you out of here, Paul.

6 (Laughter.)

7 CHAIRPERSON CHIANG: We're going to move our 69  
8 up, which is consider the appointment of the Executive  
9 Officer. So the person who will have to follow and fill  
10 tremendous footsteps. Is there a motion for new Executive  
11 Officer.

12 EXECUTIVE OFFICER THAYER: If the Chair wouldn't  
13 mind, I'd like to talk a little bit about this issue.

14 CHAIRPERSON CHIANG: Sure.

15 EXECUTIVE OFFICER THAYER: I've talked with all  
16 the Commissioners about this. And I heartily recommend  
17 Curtis Fossum, the current Chief Counsel, for this  
18 position. You've dealt with him yourself, so some of this  
19 is going to be repetitive, but I feel it important to  
20 recapitulate the contributions he's made to the Commission  
21 and his abilities with respect to being able to be the  
22 Executive Officer.

23 He's a veteran of over 30 years for the State  
24 Lands Commission. He knows the Public Trust Doctrine  
25 better than anyone else in the State. He loves it. He

1 loves to look into the history of it. He does stuff I  
2 can't imagine wanting to do, but for him it's interesting.

3 He's been the Chief Counsel for the last five  
4 years. He's been involved in all the major issues coming  
5 to the State Lands Commission. He's familiar with them.  
6 He and I have been a team working out solutions to the  
7 issues to benefit the public and to accommodate lessees  
8 and compliance with the law and with Commission policies.

9 He thinks outside of the box. I can't -- I've  
10 told all of you individually. I can't remember the number  
11 of times where we'll be working on an issue one day, and  
12 he'll make some suggestion. I'll go, "You're crazy,  
13 Curtis". And then I'll think about it that night and come  
14 in the next morning and say, "Curtis, you're right. We've  
15 got to do this". And it's that kind of inventiveness that  
16 I think is important in dealing with something like the  
17 Public Trust Doctrine and the demands of the public.

18 He has management experience from leading the  
19 legal division for the last five years. And I think it's  
20 especially important for continuity at this point, if he's  
21 not applied, as you know, he intends to -- if he's not  
22 appointed, he intends to resign and that would mean that  
23 of our six divisions, five of them will have new division  
24 chiefs in this year and last.

25 So while the people we've picked are certainly

1 skilled and are good in their jobs, there's been a  
2 tremendous turnover. And I think it's important for  
3 continuity's sake to keep somebody like Curtis involved,  
4 so that the Commission won't miss a beat in doing its  
5 work.

6 So for all those reasons, I wanted to say that I  
7 recommend Curtis Fossum for this job.

8 CHAIRPERSON CHIANG: Thank you. Are there  
9 comments, questions by the members?

10 ACTING COMMISSIONER BRYANT: I do. I find myself  
11 in an awkward position on this matter. I could move Mr.  
12 Fossum as an Interim Executive Officer, but I feel -- and  
13 I think Paul's remarks in response to the resolution  
14 highlight that point, that this is an extremely important  
15 agency with an extremely valuable mission. And I feel as  
16 though that in order to appoint an Executive Officer, that  
17 I would want the benefit of knowing who else was  
18 interested in the position, and what other visions there  
19 might be for directing this agency into the future  
20 available to us.

21 I mean, obviously I totally have the greatest  
22 respect for Mr. Fossum's work. He's also in my briefings  
23 that I enjoy so immensely. And he's probably maybe the  
24 right person to run this agency, but I don't know that  
25 absent a search. And I serve also as the Chair of the

1 Commission on State Mandates. We're going through a  
2 similar thing right now, and we're doing the search. And  
3 I feel as though we need to run through that.

4 CHAIRPERSON CHIANG: Very good. Any other  
5 comments.

6 ACTING COMMISSIONER FULKERSON: I will comment  
7 that the Lieutenant Governor and I have had the same  
8 conversation that with all respect to Mr. Fossum, we would  
9 like the opportunity to look seriously at other  
10 candidates. That being said, we would also hope that Mr.  
11 Fossum would keep his name in the candidate pool.

12 CHAIRPERSON CHIANG: Okay. So for the public  
13 record, I am a strong supporter of Curtis. He just has  
14 amazing knowledge. He has a thoughtful approach to  
15 governance, and so I'm an advocate of Curtis' application.

16 That being said, it doesn't appear we have a  
17 consensus. Does anybody want to recommend a process?

18 ACTING COMMISSIONER BRYANT: Well, the process we  
19 use for -- in searching for executive officer for the  
20 Commission on State Mandates was putting out -- you know,  
21 putting out a notice and having people apply. And we have  
22 a personnel subcommittee that's conducting interviews.  
23 That's how we did it there.

24 So we could do something like that. I have not  
25 been contacted by anybody that has expressed interest in

1 it, but I think it's -- I'm not sure how well known it is  
2 that Paul was leaving, and I think that we should do  
3 something like that.

4 CHAIRPERSON CHIANG: Cynthia, do you recommend a  
5 timeframe?

6 ACTING COMMISSIONER BRYANT: Quickly. I would  
7 say we'd want to -- I mean, we can't leave this agency  
8 without leadership.

9 And if Curtis chooses to leave immediately, we  
10 really are in dire straits, but it doesn't mean we should  
11 rush to make a quick decision. So I would say that we  
12 should intend to make a decision by our next meeting.

13 CHAIRPERSON CHIANG: Okay. Amanda, do you have  
14 any objections to that?

15 ACTING COMMISSIONER FULKERSON: Our office  
16 agrees.

17 CHAIRPERSON CHIANG: Okay, very good. Are we in  
18 agreement that we should have Curtis as the Interim  
19 Executive Officer?

20 ACTING COMMISSIONER BRYANT: Absolutely, if he  
21 would agree to do it.

22 CHAIRPERSON CHIANG: We can have that  
23 conversation.

24 ACTING COMMISSIONER BRYANT: We can also have  
25 it -- can we have it in closed session or not? I don't

1 actually know.

2 CHAIRPERSON CHIANG: Curtis, discussion about you  
3 in closed session.

4 (Laughter.)

5 CHIEF COUNSEL FOSSUM: Well, actually, I've done  
6 a little research on this. And the last three Executive  
7 Officers were appointed, Paul being the exception, were  
8 discussed in closed session. So I believe it can be done  
9 that way as well.

10 Let me just say that the way the succession of  
11 office is right now, in the absence of the Executive  
12 Officer, our Assistant Executive Officer is supposed to be  
13 serving in his stead. We do not have that position due to  
14 loss of positions in the agency.

15 The Chief Counsel is, in fact, the Acting  
16 Executive Officer in the absence of the first two  
17 positions. So if I was still there, I would be the Acting  
18 Executive Officer.

19 I made a commitment basically that I would serve  
20 for -- in offering my name or Paul offering my name, that  
21 I would serve for the Commission for any length of time  
22 that they needed me to serve. I've also made a commitment  
23 though, that I didn't want to serve as the Acting  
24 Executive Officer.

25 So whether it would be a month or two months or

1 three months, my decision basically has been that I would  
2 be retired as of Tuesday, unless the Commission decides  
3 they want to appoint me, but we can certainly discuss it  
4 more in closed session if you'd like.

5 CHAIRPERSON CHIANG: Okay, very good. Thank you.  
6 We'll bring that item up in closed session. The next item  
7 is the Consent Calendar. Is there a motion?

8 ACTING COMMISSIONER BRYANT: I'll move approval.

9 EXECUTIVE OFFICER THAYER: Mr. Chair, there's  
10 several items that I wanted to remove from the Consent  
11 Calendar first.

12 CHAIRPERSON CHIANG: Please.

13 EXECUTIVE OFFICER THAYER: There are five that  
14 would be removed and heard at a subsequent meeting. Those  
15 are 2, 7, 29, 47, and 60. There needs to be additional  
16 work with the applicant before those can be acted on by  
17 the Commission. There's one item that I think we could  
18 act on today, but which for -- about which we've received  
19 letters. And that's the Del Mar Application number 55.  
20 So I would ask that that be removed from the Consent  
21 Calendar and that we hear that at the end of the regular  
22 calendar.

23 CHAIRPERSON CHIANG: Okay. Are there any  
24 objections to pulling 55 and hearing it at the end of the  
25 day?

1           Okay, Item 55 is pulled. Request to pull 2, 7,  
2 29, 47, 60. Any objections?

3           No.

4           Okay, can I have a motion for the rest of the  
5 calendar.

6           ACTING COMMISSIONER FULKERSON: I'll move.

7           CHAIRPERSON CHIANG: We have a motion by Amanda.  
8 Is there a second?

9           ACTING COMMISSIONER BRYANT: Second.

10          CHAIRPERSON CHIANG: Second by Cynthia. Without  
11 objection, motion passes.

12          Next item.

13          EXECUTIVE OFFICER THAYER: In conversations with  
14 the Chair, we talked about wanting to deal with some items  
15 where all three Commissioners might want to be present for  
16 these. And I understand there may be some Commissioners  
17 that need to meet -- to leave before the end of the  
18 Commission meeting, otherwise.

19          And one of those was Item 68, in which we're  
20 requesting Commission authorization to sponsor a bill to  
21 increase the fee that pays for the Oil Spill Prevention  
22 Program. And so I would ask that we take that up at this  
23 juncture, file Item 68.

24          CHAIRPERSON CHIANG: Very good.

25          EXECUTIVE OFFICER THAYER: And Mario De Bernardo

1 is the staff person who will make the presentation on  
2 that.

3           LEGISLATIVE LIAISON DE BERNARDO: Good morning,  
4 Mr. Chair and Commissioners. My name is Mario De  
5 Bernardo, the Legislative Liaison for the State Lands  
6 Commission.

7           This calendar item recommends that the Commission  
8 sponsor legislation that would fully fund the State Lands  
9 Commission and OSPR's Oil Spill Prevention and Response  
10 fund and programs.

11           This, an exhibit to the calendar item, is a  
12 spreadsheet provided by OSPR, that shows a deficit in the  
13 next year. And that deficit grows in the OSPAF fund,  
14 which funds State Lands' and OSPR's programs. That  
15 deficit grows each year after that.

16           The fund had been running on reserves -- or is  
17 running on reserves that have been built up over the  
18 years. They've been built because State Lands  
19 Commission's program and OSPR's program were not fully  
20 developed from the start, which allowed for this reserve  
21 to grow.

22           In 2002, there were worries that the reserve was  
23 running out, and that something needed to be done to  
24 replenish the fund through an increase in fees, and the  
25 Legislature voted to increase the per barrel fee that is

1 part of the OSPAF's funding source, a penny, from four  
2 cents a barrel to five cents a barrel of oil transferring  
3 over the State's marine oil terminals. And then also  
4 imposing a fee on non-tank vessels of \$2,500.

5 That was a temporary fix. Since then, the  
6 programs have developed and are spending more money than  
7 what is being brought into the account.

8 Just to put into context, in 1990, when the  
9 Lempert-Keene-Seastrand Act passed gasoline cost about a  
10 \$1.26 a gallon, and now it's up at \$2.80. And it's only  
11 been -- the fee imposed on per barrel oil has only  
12 increased one penny since then.

13 As a matter of public policy, in light of the  
14 Gulf spill, the State should be strengthening oil spill  
15 prevention and response and not allowing it to become  
16 victim to underfunding. As such, I respectfully request  
17 that you adopt staff's recommendation and sponsor this  
18 legislation.

19 CHAIRPERSON CHIANG: Very good. Questions or  
20 comments?

21 ACTING COMMISSIONER BRYANT: I just want to say  
22 I'm going to abstain on this matter, because I'm in kind  
23 of an awkward position on next year's budget.

24 CHAIRPERSON CHIANG: Sure. Very good. Amanda?

25 ACTING COMMISSIONER FULKERSON: Yeah. I do have

1 some concerns on this. Obviously, the Lieutenant Governor  
2 is incredibly interested in oil spill prevention, as  
3 evidenced by his report to this Commission at the last  
4 meeting.

5 I am a little concerned, because this seems  
6 duplicative to me of Item 63 that we are also going to be  
7 considering the same legislative proposal that is in that  
8 item as well. So I ask staff if there's a way we can  
9 condense that, so we're only acting on the same item once.

10 LEGISLATIVE LIAISON DE BERNARDO: And I would  
11 just say that Item 63 is simply asking the Commission to  
12 support legislation. This item is asking the Commission  
13 to sponsor legislation. The benefit of sponsoring  
14 legislation is that the Commission would have control over  
15 the language and would add more credibility to the bill,  
16 since we are one of the main programs that is funded under  
17 OSPAF.

18 ACTING COMMISSIONER FULKERSON: Okay. Thank you  
19 for clarifying. I wasn't aware of that.

20 Our main concern with sponsoring legislation is,  
21 of course, the Lieutenant Governor is very big on  
22 efficient government. So our question is, has staff  
23 reviewed the audit of this fund that was conducted in  
24 2008? If it has, do we have a report or do we have  
25 results of how those audit recommendations have been

1 implemented, so that we know that we're not increasing  
2 fees into a flawed system?

3 EXECUTIVE OFFICER THAYER: Unfortunately, the  
4 Division Chief from our Marine Facilities Division, which  
5 is our Division that works on oil spill prevention, isn't  
6 here today, but we're very aware of that audit that  
7 occurred. And our understanding is that there were steps  
8 taken at the Department of Fish and Game to better assure  
9 that the funds from this fee go for the purpose for which  
10 they're collected, which is oil spill prevention, and that  
11 steps were taken to modify the approach.

12 Now, I can't list specifically what those steps  
13 were, but it was a very public audit, and the Legislature  
14 looked into this issue as well. And so I believe that  
15 reforms were made at Fish and Game over this.

16 Part of the problem here is that there is an  
17 existing OSPAF fund which for awhile was increasing. That  
18 the amount of money collected -- pursuant to the four cent  
19 and five cent per barrel fees was greater than the  
20 expenditures.

21 But because of additional programs where both  
22 agencies saw areas where we could do a better job to  
23 prevent oil spills, those programs were expanded, so that  
24 in essence, we've been operating at a deficit for several  
25 years. And the deficit was made up for by the surplus

1 that was in that fund.

2 That fund is now rapidly depleting. And so what  
3 will happen when that fund goes away is that both programs  
4 will have to be cut. So the increase isn't for  
5 anticipated new expenditures, but to preserve the existing  
6 expenditures that we won't be able to continue.

7 ACTING COMMISSIONER FULKERSON: Well, I must say  
8 that while oil spill prevention and coastal protection is  
9 a priority of the Lieutenant Governor, so is ensuring that  
10 we're not raising fees into a flawed system. So until  
11 we're able to see the recommendations from that audit and  
12 how they've been implemented and ensure that this fund is  
13 acting appropriately, it's not something we'd be prepared  
14 to support today.

15 LEGISLATIVE LIAISON DE BERNARDO: I'd just add, I  
16 have the report here. It's a 2005 report. And I met with  
17 OSPR this week to discuss this report with them, and they  
18 said a lot of the things that Paul stated, which is that  
19 they addressed a lot of the concerns in the report.

20 We can provide additional information to you on  
21 that. I also talked to them about the willingness to move  
22 forward in some sort of -- and create some sort of  
23 transparency mechanism or audit mechanism and legislation,  
24 and they were more than happy to -- they couldn't take a  
25 position. But the idea was that these type of audits

1 could probably occur and be mandated through legislation.  
2 The audits could occur on a regular basis. They could be  
3 conducted -- well, the last audit was conducted by the  
4 Department of Finance. It could be conducted by the same  
5 or another third party.

6 ACTING COMMISSIONER FULKERSON: Okay. Thank you.

7 CHAIRPERSON CHIANG: Is there a motion?

8 No motion. Okay, no action on this item.

9 EXECUTIVE OFFICER THAYER: Great.

10 The other item that has some potential for  
11 needing all the votes would be the oil spill prevention  
12 item. This is the one that the Commission heard in  
13 August, but it was -- and there was some staff  
14 recommendations for changes that could be made to our  
15 program, especially in light of the oil spill in the Gulf,  
16 that staff believes should be taken. But it was noticed  
17 as an informational item, and the Commission requested  
18 that we bring back that item at the next meeting. And so  
19 we're doing that here.

20 In there, there are some recommendations for  
21 legislation as well. And so we believe that that was an  
22 item that would be good to take up where all three members  
23 are here.

24 CHAIRPERSON CHIANG: Okay. Any questions or  
25 comments or action?

1 CHIEF COUNSEL FOSSUM: Mr. Chair, I'd like to  
2 point out that there are requests to speak on behalf of --  
3 or not on behalf of, but in opposition to Item 68 as well.

4 EXECUTIVE OFFICER THAYER: And we have a staff  
5 presentation for that, if you'd like.

6 CHAIRPERSON CHIANG: Please. Why don't you. And  
7 then I don't have the list of people who have signed up to  
8 speak.

9 EXECUTIVE OFFICER THAYER: We'll get those two  
10 names to you. And Greg Scott, who's Chief of our Mineral  
11 Resources Management Division, will make the presentation.

12 (Thereupon an overhead presentation was  
13 Presented as follows.)

14 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF  
15 SCOTT: Good morning.

16 CHAIRPERSON CHIANG: Actually, if you don't mind,  
17 I want to take this up later in the day. We have two  
18 items that have significant public participation. So I  
19 want to move to those, so that we don't have to keep those  
20 in the audience here waiting as long as the normal course  
21 of time would take.

22 So if we can move up the Poseidon issue  
23 immediately.

24 EXECUTIVE OFFICER THAYER: Sure.

25 CHAIRPERSON CHIANG: And then we'll bring up the

1 Long Beach issue immediately following the Poseidon issue.

2 EXECUTIVE OFFICER THAYER: Okay. File Item 62 is  
3 the Poseidon issue. And that staff presentation will be  
4 made by, I believe, Colin Connor.

5 (Thereupon an overhead presentation was  
6 Presented as follows.)

7 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

8 Good morning, Mr. Chairman and members of the  
9 Commission. My name is Colin Connor. And I'm the  
10 Assistant Chief of the Land Management Division. I'm here  
11 to present information on Calendar Item 62, which is a  
12 request for an amendment to an existing lease to add  
13 Poseidon Resources, Surfside, LLC as a co-lessee with AES  
14 Huntington Beach, LLC.

15 --o0o--

16 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

17 The lease with AES is for one intake and one  
18 outfall pipeline which are currently used as part of a  
19 once-through cooling system for the Huntington Beach  
20 generating station. This lease was authorized by the  
21 Commission on February 5th 2007, and has a 20-year term  
22 and will expire on August 7th, 2026.

23 The lease area is outlined in the blue. Although  
24 it doesn't go all the way to the plant, the lease area  
25 basically goes from about the water line outward.



1           In addition, OTC results in biological impacts  
2 through the discharge of warmer water from the outfall  
3 into the ocean. These effects adversely impact coastal  
4 and ocean resources and uses, as well as Public Trust  
5 resources that are within the jurisdiction of the  
6 Commission.

7           The State Water Resources Control Board adopted a  
8 statewide policy on the use of OTC for power plant cooling  
9 that became effective October 1st, 2010. This policy,  
10 recent court decisions, and anticipated new regulations  
11 adopted by both State and federal agencies will likely  
12 reduce or eliminate the use of OTC by power plants over  
13 the next decade.

14           All existing power plants, including AES, must  
15 submit their plan to the State Water Board to reduce and  
16 eliminate impingement and entrainment from OTC by April 1,  
17 2011. Implementation of the plan must begin by October 1,  
18 2011.

19           The Water Board's OTC policy, however, does not  
20 currently apply to seawater desalination plants.  
21 Consequently, the impingement and entrainment impacts of  
22 the OTC would continue under desalination facilities  
23 operating in stand-alone capacity.

24           The proposed desalination facility would reuse  
25 the power plant's cooling water for its supply source. At

1 present, the AES power plant draws in an average of  
2 approximately 250 million gallons per day, or mgd, for  
3 cooling its generators. Of this, Poseidon would use up to  
4 124 mgd. Under stand-alone operation, the desalination  
5 facility's intake may increase to 156 mgd.

6 The water would then be desalinated using reverse  
7 osmosis technology, producing approximately 50 mgd of  
8 product water. The byproduct would be the other 74 mgd of  
9 brine concentrated seawater. The brine solution would  
10 then be commingled, diluted, and discharged with the OTC  
11 flows from the power plant. The higher concentration of  
12 brine in the discharge water may have adverse effects on  
13 aquatic organisms in the vicinity of the outfall.

14 Can you go back to the second slide, please.

15 --o0o--

16 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

17 And that would be at the end of the shorter of  
18 the two. A Subsequent Environmental Impact Report, or  
19 SEIR, on the project was prepared by the City of  
20 Huntington Beach acting as the lead agency under the  
21 California Environmental Quality Act or CEQA.

22 The City certified the SEIR on September 7th,  
23 2010 and adopted CEQA Findings of Fact, a Statement of  
24 Overriding Considerations, and a Mitigation Monitoring and  
25 Reporting Program for the project.

1           On September 20th, 2010, the City adopted an  
2 energy minimization and greenhouse gas reduction plan,  
3 which I'll refer to as just the GHG plan, for this  
4 project.

5           Commission staff has reviewed the GHG plan  
6 adopted by the City. And it's staff's opinion that it  
7 does address the GHG emissions from both construction and  
8 operation of the facility and the ancillary impacts.

9           According to the SEIR, the elevated salinity in  
10 the discharge area, while not environmentally significant,  
11 would affect an area of from 7 to 20 acres, an area that  
12 marine life is likely to avoid. The project is therefore  
13 expected to use an area of at least 7 acres of sovereign  
14 tide and submerged lands. Although, the actual area may  
15 prove ultimately different.

16           As a consequence, Poseidon has agreed to pay  
17 annual rent of \$115,000 for the use of these lands  
18 commencing with the start of the operation of the  
19 desalination facility. The rent was based upon the value  
20 of the 7 acres expected to be occupied by the concentrated  
21 brine.

22           In addition, Poseidon has agreed to additional  
23 conditions -- excuse me. In addition, Poseidon has agreed  
24 to conditions of this amendment, such as comply with the  
25 GHG plan adopted by the City of Huntington Beach. There

1 is also a condition in the amendment that authorizes the  
2 Commission's Executive Officer to incorporate any new  
3 terms lawfully imposed on the GHG plan by any and all  
4 applicable regulatory authorities.

5           Poseidon must also implement a Salinity  
6 Monitoring and Reporting Program, which I'm going to refer  
7 to as the SMRP, which supplements the effluent and  
8 receiving water monitoring, required Poseidon by the  
9 National Pollutant Discharge Elimination System Permit,  
10 NPDES permit -- a lot of acronyms here -- issued by the  
11 California Regional Water Quality Control Board.

12           As part of the SMRP, Poseidon shall perform  
13 random quarterly sampling for salinity, temperature and pH  
14 at three supplemental locations to those required under  
15 the NPDES permit. The sampling shall be done for 1 year  
16 under pre-discharge conditions, 2 years under  
17 post-discharge conditions, and 2 years after commencement  
18 of any stand-alone operation.

19           Poseidon Resources must also conduct quarterly  
20 benthic monitoring at the three supplemental stations  
21 during the same time periods. They must also provide all  
22 NPDES permit and monitoring data and the results to the  
23 Commission's Executive Officer in accordance with the  
24 timeframes established by the Regional Water Quality  
25 Control Board's permit.

1           At the conclusion of 2 years of post-discharge  
2 monitoring under the SMRP, Poseidon shall prepare and  
3 submit a report to the Commission's Executive Officer.  
4 That report will summarize all the collected monitoring  
5 data, including receiving monitoring data collected per  
6 the requirements of the Water Quality Control Board.

7           The report will also present a comparison of  
8 pre-discharge and post-discharge data and characterize its  
9 statistical trends in benthic species richness, abundance,  
10 population or adversity. And the plan will also evaluate  
11 receiving water salinity data to assess the  
12 characteristics at its size and density of the discharge.

13           Poseidon shall -- as another requirement,  
14 Poseidon shall also prepare a similar report at the  
15 conclusion of 2 years of stand-alone monitoring, under the  
16 SMRP. If after 2 years of post-discharge monitoring or  
17 stand-alone post-discharge monitoring, the Commission's  
18 Executive Officer reasonably determines that the results  
19 in the SMRP report are sufficient to assess the extent of  
20 use of Public Trust resources due to the increases in  
21 salinity levels, then the SMRP shall be discontinued.

22           Based on the results of the monitoring, Poseidon  
23 may submit to the Commission a request regarding the  
24 modification or elimination of the consideration for the  
25 use of the Public Trust resources in the 7 acres.

1           Poseidon, as a separate obligation, shall provide  
2 copies of all regulatory monitoring and compliance reports  
3 pertaining to the operation of the desalination facility  
4 to Commission staff at the time of submitting such reports  
5 to the regulatory agencies.

6           Poseidon, as a separate obligation, shall provide  
7 notice and sufficient details to the Commission 60 days  
8 prior to any changes in ownership or assignment of  
9 interest as defined in the lease.

10           Poseidon, as a separate obligation, shall provide  
11 to the Commission a performance deposit in the amount of  
12 \$500,000 prior to commencement of project construction.  
13 Also, as a separate obligation, Poseidon shall provide to  
14 the Commission an unconditional guarantee by the parent  
15 company, which is Poseidon Water LLC, for full performance  
16 of Poseidon of all the obligations under the lease.

17           Poseidon acknowledges that the Commission may  
18 conduct a public hearing 5 years after the effective date  
19 of commencement of the desalination facility's operations  
20 in order to publicly review and evaluate Poseidon's  
21 compliance with the terms of the lease.

22           In addition, AES shall notify the Commission in  
23 writing prior to discontinuing its use of the lease  
24 premises in connection with the production of electricity  
25 using the OTC. AES may apply to the Commission for an

1 assignment of its obligations under the lease to Poseidon.

2 In considering approval of an assignment, the  
3 Commission will take into account Poseidon's past  
4 performance and the likelihood that Poseidon could and  
5 would carry out all obligations under the lease as sole  
6 lessee.

7 In the event that the Commission finds that there  
8 is a substantial probability that Poseidon would not or  
9 could not carry out all such obligations, then the  
10 Commission may disapprove the assignment, in which case,  
11 at AES's option, the lease would terminate or AES would  
12 remain as co-lessee.

13 If the Commission agrees to the assignment, then  
14 its compensation for use of Public Trust resources on  
15 sovereign lands affected by the stand-alone entrainment  
16 and impingement impacts, Poseidon shall assume the ongoing  
17 maintenance obligations for the existing entrainment and  
18 impingement mitigation program currently being carried out  
19 by AES as of the date of the amendment.

20 Poseidon must complete construction of the  
21 desalination facility within eight years of the  
22 authorization of this amendment.

23 In the event that Poseidon fails to comply in any  
24 material respect with any and all of its separate  
25 obligations under this lease, the Commission may terminate

1 Poseidon's rights under the lease without affecting any of  
2 AES's rights or obligations.

3 With these conditions, staff is recommending  
4 approval of the lease amendment to include Poseidon as a  
5 co-lessee.

6 This concludes my presentation. Staff is  
7 available to answer your questions and representatives  
8 from Poseidon are also available.

9 CHAIRPERSON CHIANG: Thank you. Paul, who's the  
10 next speaker?

11 EXECUTIVE OFFICER THAYER: I could probably -- we  
12 can move to the speaker's list perhaps and give the  
13 applicant an opportunity to address the Commission.

14 CHAIRPERSON CHIANG: So the applicants don't want  
15 to offer an initial comment?

16 MR. MALONI: This is Scott Maloni on behalf of  
17 the application Poseidon Resources. We do have an  
18 organized presentation, and I'm requesting about 10  
19 minutes.

20 CHAIRPERSON CHIANG: Please proceed.

21 (Thereupon an overhead presentation was  
22 Presented as follows.)

23 MR. MALONI: Good morning, Chairman Chiang and  
24 members of the Commission. My name is Scott Maloni on  
25 behalf of the applicant, Poseidon Resources. Joining me

1 this morning are members of Poseidon's senior management  
2 team, as well as the legal and technical consultants that  
3 have worked on this project for the last decade. We will  
4 all be available this morning to answer any questions that  
5 you may have.

6 --o0o--

7 MR. MALONI: Like the Carlsbad Desalination  
8 Project that the State Lands Commission unanimously  
9 approved in 2008, our Huntington Beach facility is a  
10 56,000 acre feet per year or 50 million gallon per day  
11 seawater desalination plant. It's capable of providing  
12 Orange county with about 8 percent of its drinking water  
13 supply. We are located next to the power generating  
14 station to take advantage of the power station's existing  
15 seawater intake and outfall infrastructure, and we're  
16 proposing to use reverse osmosis as the primary means of  
17 treatment.

18 Today, around the world, there over 8,000  
19 seawater desalination plants that use RO technology in 120  
20 countries producing 10 billion gallons of drinking water  
21 every day.

22 Our facility will use the same state of the art  
23 reverse osmosis technology used in the most modern  
24 large-scale desal plants today around the world.

25 Finally, the objective of the project is to

1 offset Orange County's demand on imported water by relying  
2 on technology that is proven to ensure that we are at a  
3 affordable rate, providing high quality drinking water  
4 that has no significant operational impacts.

5 --o0o--

6 MR. MALONI: Poseidon first introduced the  
7 Huntington Beach facility in 1998 and we spent the better  
8 part of the last decade successfully permitting the  
9 project. In 2005, the City of Huntington Beach certified  
10 a recirculated Environmental Impact Report for the  
11 co-located desalination plant.

12 The project approval was approved to operate in  
13 unison at that time with the power plant's seawater  
14 cooling system. The City's certification was challenged  
15 in superior court by opponents of seawater desalination,  
16 and that challenge was rejected by the courts in December  
17 of 2006.

18 In 2006, the City also approved a coastal  
19 development permit, and a conditional use permit. And  
20 that same year, the Santa Ana Regional Water Quality  
21 Control Board issued a NPDES discharge permit to the  
22 project.

23 And the project also has a conceptual drinking  
24 water permit for the Department of Public Health issued in  
25 2002. Last month, the City of Huntington Beach certified

1 a Subsequent Environmental Impact Report and approved a  
2 conditional use permit and a coastal development permit  
3 for the co-located and stand-alone operation of a desal  
4 plant.

5 The stand-alone operation assumes that at some  
6 point in the future, the desalination plant will  
7 independently use the power plant's cooling water system.

8 So coming in today, we have the hearing at the  
9 State Lands Commission, and then we're on to the Coastal  
10 Commission soon after. That will wrap-up the permitting  
11 process for the project and construction can start.

12 --o0o--

13 MR. MALONI: This is an aerial of the site. Your  
14 staff just showed you this. I'll just quickly breeze  
15 through it again. This is -- I have a laser pointer. I'm  
16 not sure if you can see it.

17 This is the Huntington Beach Pier off in the  
18 distance. Pacific Coast Highway. This is the Huntington  
19 Beach generating station, 900 megawatt power plant built  
20 in the 1950s. The last half century it's used seawater as  
21 part of the electrical generating process. About 20 years  
22 ago, the power plant stopped burning oil and vacated those  
23 four white oil storage tanks. The power plant burns  
24 natural gas today.

25 --o0o--

1 MR. MALONI: This is the same aerial that your  
2 staff just showed you with a circle around the  
3 desalination facilities. In 2005, the City of Huntington  
4 Beach approved this configuration for the desalination  
5 plant. And they did so again last month. We're replacing  
6 three of the vacated oil storage tanks with pre-treatment  
7 facilities, the reverse osmosis to the right and the top  
8 of the screen within the circle is a 10 million gallon per  
9 day water storage tank.

10 --o0o--

11 MR. MALONI: This is a rudimentary flow schematic  
12 showing the relationship between the power plant in the  
13 Pacific Ocean and the desalination plant and the power  
14 plant's cooling water system. As your staff noted, one of  
15 the benefits of co-locating here is that we can use the  
16 existing seawater intake and outfall infrastructure. We  
17 don't have to construct new facilities which would be  
18 damaging to Public Trust resources.

19 The proposal is to divert the power plant's  
20 discharge. It takes 2 gallons of seawater to make 1  
21 gallon of drinking water. We'll divert 100 million  
22 gallons of the power plant's discharge every day. And  
23 we'll co-mingle our discharge, the concentrated seawater,  
24 with the remaining discharge from the power plant. You  
25 could see in the yellow box the same outline that your

1 staff showed you, the portion of the intake and outfall  
2 that are subject to the State Lands jurisdiction and the  
3 lease amendment that's before you today.

4 --o0o--

5 MR. MALONI: In the lease, as your staff  
6 mentioned, there are a number of environmental  
7 protections. Poseidon is required to comply with the GHG  
8 plan that was approved by the City of Huntington Beach and  
9 supported by CalEPA and the California Air Resources  
10 Board.

11 The GHG plan contains the same requirements as  
12 the plan approved by the State Lands Commission and the  
13 California Coastal Commission for our Carlsbad project.

14 The lease also requires additional salinity  
15 monitoring above and beyond the requirements in our  
16 regional board discharge permit. And we are going to  
17 maintain, or obligated to maintain, the power plant's  
18 marine life mitigation program during the stand-alone  
19 operation of the desal plant.

20 --o0o--

21 MR. MALONI: On this screen is a list of the  
22 Orange County municipalities and public water agencies.  
23 We've been working with this group for the last three or  
24 four years. We are collectively called the Orange County  
25 Sea Water Desalination Working Group.

1           The intent behind the partnership, public-private  
2 partnership is Poseidon is responsible for siting,  
3 permitting, designing, building, starting up, and  
4 operating the desal plant. We then enter into long-term  
5 30-year fixed price contracts with the public water  
6 agencies, where all the water is appropriated for public  
7 use.

8           You could see the acre feet on the right-hand  
9 side of the screen. Each one of those municipalities and  
10 public water agencies have signed non-binding letters of  
11 intent to purchase water from the plant. The capacity is  
12 slightly above the project's 56,000 acre feet maximum  
13 capacity.

14           While each of these agencies has a unique  
15 interest in the plant, they all share the common goal of  
16 reducing their command on imported water.

17                           --o0o--

18           MR. MALONI: I wanted to talk a little bit about  
19 the public support today. As your staff referenced,  
20 there's a number of elected officials in the audience  
21 today that have made the trip. On the left-hand side of  
22 the screen, you see 17 cities in Orange County that have  
23 independently approved or voted to authorize resolutions  
24 of support for the project. These cities represent 80  
25 percent of Orange County's population. That number



1 and adopt the staff's recommended findings.

2 Thank you.

3 CHAIRPERSON CHIANG: Thank you.

4 Let me ask a series of questions. You talked and  
5 referenced the initial impacts, in terms of construction.  
6 I want to get a holistic picture for the future, because  
7 we're going to have many more desalination projects coming  
8 before this Commission for the future. And I think it's  
9 important that, on an individual basis, we understand the  
10 concerns. But I think we need, and for this State, to  
11 implement best practices.

12 And so I understand the construction concerns for  
13 the alternatives, the slant wells, the rainy wells, the  
14 infiltration gallery. My concern here is the monitoring  
15 period. We have a short monitoring period, in my  
16 estimation for the outflow. We need to understand what  
17 the long-term consequences are, right?

18 I'm not saying no to the project. I'm just  
19 saying for the future, maybe we shouldn't be using these  
20 types of projects. And as we're going to traverse  
21 different ground, we ought to know what all the  
22 consequences are. And we have a responsibility, because  
23 we are using public lands to provide oversight and  
24 transparency from this agency, what are the best practices  
25 that should be used when we're using public lands for the

1 State.

2           So if you can share with everybody the sense of  
3 why OTC, in this sense, right? Did you cost out the  
4 long-term consequences? Would you be willing to extend  
5 the monitoring period?

6           I know quite a few of the people here are here  
7 because of the jobs. Certainly, that is a massive concern  
8 for the State of California. Why such a long timeframe  
9 before we're going to create those jobs, so that we have  
10 the best sense, right? Because I'm concerned about the  
11 jobs issue too. That's referenced in why you're pushing.

12           If that's the concern, why aren't we pushing more  
13 aggressively on that, right? And if it's the financing  
14 issue, I'll ask more questions in the aftermath, right,  
15 because I sit on the other Board in regards to where  
16 you're publicly disclosing this time that you're going to  
17 use some intervention by government agencies.

18           MR. MALONI: Thank you. Let me address your  
19 first question. The Subsequent Environmental Impact  
20 Report that was certified by the City of Huntington Beach  
21 extensively studied alternative intakes that you  
22 mentioned, subsurface intakes, beach wells, infiltration  
23 galleries and determined that the alternative intakes are  
24 environmentally infeasible and technically --  
25 environmentally inferior and technically infeasible.

1           As a responsible agency under CEQA, your State  
2 Lands Commission is relying on the certification of the  
3 EIR in the City's findings. And it's my pleasure to let  
4 you know that that certification was not legally  
5 challenged. The Statute of Limitations for filing a legal  
6 challenge against a certification of that EIR has expired.

7           We've looked at the alternative intakes, and they  
8 simply don't work. And to put it in context, I mentioned  
9 how many seawater desalination plants are operating around  
10 the world today.

11           CHAIRPERSON CHIANG: Scott, if I could interject  
12 so -- it's technically not feasible at that location or  
13 it's technically not feasible?

14           MR. MALONI: It's technically not feasible at  
15 that location with a facility of that size. The point I  
16 was going to make is that there are no large scale  
17 seawater desalination plants operating anywhere around the  
18 world today -- a large scale would be defined as 20 mgd or  
19 greater -- that use subsurface intakes. They all use the  
20 type of intake that we're proposing to use in Huntington  
21 Beach, including a half dozen desal plants that have  
22 recently built in Australia. All large scale plants use  
23 very similar intakes.

24           To your second question about the monitoring  
25 period, we do have a salinity monitoring reporting program

1 that is a condition of this lease, that is above and  
2 beyond the monitoring that we already have in our NPDES  
3 permit. The monitoring in our NPDES permit is for the  
4 full life of the project.

5 The requirement of our lease is in addition to  
6 that, and it's not -- it's a 5-year monitor program. It's  
7 1 year of pre-operation monitoring, 2 years of  
8 post-discharge co-located monitoring, an additional 2  
9 years of stand-alone monitoring. And that's the bare  
10 minimum.

11 The Executive Officer of the Commission does have  
12 the authority to extend that period of that monitoring if  
13 they feel that it's necessary. And that provision is  
14 spelled out in the lease. So the 5-year monitoring  
15 program is a bare minimum, and it's in addition to the  
16 life long monitoring we have through our NPDES permit.

17 CHAIRPERSON CHIANG: Does salinity -- correct me  
18 if I'm incorrect, the salinity monitoring programs are 2  
19 years, is that inaccurate?

20 MR. MALONI: It's 5 years. It's 1 year prior to  
21 operation of the desal facility, an additional 2 years  
22 after operation of the desal facility under the co-located  
23 scenario. And then we have to do an additional 2 years  
24 under the stand-alone scenario.

25 So at some point in the future when the power

1 plant does decommission its cooling water system, we're  
2 operating independently, we have an additional 2 years of  
3 monitoring at that time as well.

4 CHAIRPERSON CHIANG: And is that --

5 MR. MALONI: Rick Zbur. Can I ask --

6 CHAIRPERSON CHIANG: Yeah, absolutely.

7 Hi, Rick. Introduce yourself for the record,  
8 please.

9 MR. ZBUR: Chairman Chiang, I just wanted to add  
10 something else and just make sure that you understood.

11 Rick Zbur with Latham and Watkins representing  
12 Poseidon Resources.

13 CHAIRPERSON CHIANG: Yeah, thank you.

14 MR. ZBUR: Two things with respect to the  
15 monitoring. The Regional Board does require salinity  
16 monitoring over the life of the project. Your staff  
17 actually asks for additional salinity monitoring. The  
18 reason being that if you remember back, the EIR actually  
19 looked at both impingement, entrainment, and salinity  
20 impact and determined that the impacts would be less than  
21 significant, because the project is projected to meet  
22 regional board standards to protect marine life.

23 So the lease imposes a lease payment to  
24 compensate the State for the less-than-significant impacts  
25 of the project. And so they've added additional

1 monitoring requirements to assure that the State -- that  
2 the use is consistent with what is projected in the EIR,  
3 because they're looking at the area of  
4 less-than-significant impact.

5           So I don't know if that's helpful. So that was  
6 intended to be a period of time that's sufficient to  
7 assess whether or not the less-than-significant area is  
8 consistent with the lease payment. But in terms of the  
9 environmental protection issue, meeting the ocean plan  
10 requirements, which is in the jurisdiction of the regional  
11 board, that monitoring will continue over the life of the  
12 project. So this is just the supplemental piece.

13           CHAIRPERSON CHIANG: Yeah, that is of assistance.  
14 A further question, Rick. What's the appropriate time for  
15 study under best practices for marine biology, marine  
16 science?

17           MR. ZBUR: I think that's --

18           CHAIRPERSON CHIANG: Salinity monitoring.

19           MR. ZBUR: What's the appropriate period of time?  
20 I think that's sort of a technical question that maybe  
21 some of our scientists could answer. You know, it's --  
22 the monitoring that was imposed under the regional  
23 board -- I'm sorry, under the lease provisions requires  
24 that the monitoring take place -- that was determined to  
25 be a sufficient time to assess the salinity impacts of the

1 project. And the Executive Director -- if, in fact, the  
2 data is inconclusive for that determination to be made,  
3 the lease provisions allow the Executive Director to  
4 extend that.

5 So we would come in to limit it, if, in fact,  
6 there's concurrence with your scientific staff that the  
7 data is sufficient to statistically predict the use of the  
8 area. I don't know, that was sort of a convoluted  
9 response, but --

10 CHAIRPERSON CHIANG: That's okay.

11 MR. ZBUR: The point was being that this is a  
12 fairly long period of time, and there will be a technical  
13 review of the data. And, at that point, it's -- your  
14 staff could require more data if, in fact, it's viewed  
15 that it's not sufficient to determine the extent of the  
16 use.

17 CHAIRPERSON CHIANG: Are there any questions or  
18 comments for the applicants?

19 MR. MALONI: Thank you.

20 CHAIRPERSON CHIANG: We have public comment. So  
21 let me welcome first public speakers, representatives of  
22 the people. The Honorable Senator Tom Harman from the  
23 35th Senate District, followed by the Honorable State  
24 Senator Lou Correa, followed by the Honorable State  
25 Assembly Member Jose Solorio.

1 Tom, welcome.

2 SENATOR HARMAN: Thank you very much, Mr. Chair.  
3 I appreciate it. Good morning. I'm Senator Tom Harman.  
4 I appreciate the opportunity to testify before you in  
5 support of the Huntington Beach Desalination Plant.

6 I represent the 35th Senate District in  
7 California, which covers most of Orange County's coastline  
8 and includes the City of Huntington Beach. Having lived  
9 in Huntington Beach for nearly 40 years, I'm very proud to  
10 call Huntington Beach my home town.

11 I've served on the Huntington Beach City Council  
12 for 6 years before being elected to the Legislature, where  
13 I've now served for 10 years, first, in the Assembly and  
14 now in the Senate.

15 Because of my long association with the City, I'm  
16 intimately familiar with the issues that are of importance  
17 to the City of Huntington Beach and to its residents.

18 The project before you today is located in my  
19 Senate district and is broadly supported by my  
20 constituents. In fact, I'm proud that all 14 members of  
21 the Orange County State delegation to the Legislature,  
22 Republicans and Democrats, have unanimously endorsed this  
23 project.

24 As a delegation, we have collectively written  
25 you, urging your approval of this project. That letter is

1 in your record and I hope you've had a chance to review  
2 it.

3 As you know, southern California's access to  
4 water from northern California and the Colorado River is  
5 constrained. Currently, Orange County must import half of  
6 its water supply. The proposed desalinization project  
7 presented to you today provides Orange County with another  
8 tool to augment water conservation and recycling efforts  
9 and to reduce the county's dependence on imported water.

10 As California struggles with the statewide issue  
11 of water supply, it only makes common sense for  
12 Californians to access as many different sources of water  
13 supply as possible, rather than rely almost exclusively on  
14 imported water.

15 Twice the City of Huntington Beach has certified  
16 Environmental Impact Reports that demonstrate that the  
17 proposed project will pose no significant impact to public  
18 resources that are under the jurisdiction of the State  
19 Lands Commission. Further more, this project will provide  
20 jobs, economic stimulus, and new tax revenue.

21 Fresh drinking water and jobs, I can't think of  
22 two more important issues confronting the people of  
23 California today.

24 Once approved and operational, this project will  
25 provide an important step towards providing for those two

1 critical needs, fresh water and jobs. I respectfully  
2 request your approval today.

3 Thank you.

4 CHAIRPERSON CHIANG: Thank you.

5 SENATOR HARMAN: Just one other matter, Mr.  
6 Chairman, if I could, on something of a personal nature.  
7 As you know, Senator Correa and I are members of the  
8 legislature. We haven't received a paycheck since June  
9 30th and wondered if you might have brought our paychecks  
10 with us today.

11 (Laughter.)

12 CHAIRPERSON CHIANG: Actually, Senator Harman, if  
13 you check your bank account, you should have received it  
14 yesterday.

15 SENATOR HARMAN: Good job.

16 (Laughter.)

17 CHAIRPERSON CHIANG: If you have any problem,  
18 tell us.

19 Senator Correa, welcome.

20 SENATOR CORREA: Thank you, Mr. Chiang and  
21 members of this honorable committee. I'm State Senator  
22 Lou Correa and I represent the area right next door to  
23 Senator Harman. And those Huntington Beach sands that you  
24 were looking at on that screen a minute ago were places I  
25 used to frequent when I was in high school, and now, as a

1 father of four, we visit those beaches quite a bit in the  
2 summertime.

3           So I can say I'm very concerned about what  
4 happens in those beaches, because they are part of my  
5 community, although right outside my district.

6           What this project represents is more than 10  
7 years of planning. What this project represents is a  
8 balance, a good balance. I want to thank all the people  
9 that have been involved, all the organizations, for making  
10 it a better project from what it was 10 years ago.  
11 Because of the input from the environmental community,  
12 because of the input of others, this project today, in my  
13 opinion, represents a solid good balance between  
14 environmental concerns and jobs.

15           This project directly will generate about 2,000  
16 construction jobs. With a multiplier effect, many more  
17 thousands of jobs, many of those workers will live in my  
18 district. And many more of those secondary jobs that will  
19 be created will be in my district.

20           And as Mr. Harman was talking about receiving a  
21 paycheck, I have to remind -- I don't have to remind  
22 people, but let me point out that the unemployment rate in  
23 the district is not 12 percent, it's more like 15 to 20  
24 percent.

25           This last wave of foreclosures is due directly to

1 people having lost their jobs. This is an important  
2 project for not only Mr. Harman's district, but for all  
3 our areas, not only because of the jobs, but as Mr. Harman  
4 pointed out, because of the fresh water it will generate.  
5 I stand here in strong support of this project. And I  
6 hope you move forward and vote this, so we can get these  
7 jobs --

8 CHAIRPERSON CHIANG: You may proceed.

9 SENATOR CORREA: Did I do something?

10 (Laughter.)

11 SENATOR CORREA: I ask for an aye vote. Thank  
12 you very much.

13 CHAIRPERSON CHIANG: Thank you very much.

14 Assembly Member Solorio, welcome.

15 ASSEMBLY MEMBER SOLORIO: Thank you, Chair and  
16 Commissioners. I appreciate the time to speak today. I  
17 am here with my other colleagues again in full bipartisan  
18 support of this Huntington Beach water desalination  
19 proposal. I would tell you that in Orange County, we have  
20 about 50 percent of our water is imported. And as the  
21 Assembly Chair of the Select Committee on approaches to  
22 dealing with the State's water crisis, part of what we  
23 need to do is have regional solutions.

24 Here, we have a situation where Orange County is  
25 willing to step up to the plate and create a new source of

1 drinking water. We know through our State Water Plan that  
2 we need 500,000 acre feet of seawater desalination in  
3 California by 2030. And our metropolitan water district  
4 plan calls for 150,000 acre feet of desalinated seawater  
5 by 2020. That's just 10 years from now.

6 And we've got to start building these things.  
7 These things are on the books as desal projects that we  
8 must build to keep dealing with good water quality and  
9 having available water for our residents and our economic  
10 growth. So it is with much support that I'm here in  
11 support, again with my other colleagues, of this very  
12 important Huntington Beach water desalination project.

13 Thank you.

14 CHAIRPERSON CHIANG: Thank you, Assembly Member.  
15 Just so that people understand, the lights indicate you  
16 have time for about 2 minutes to make public comment.

17 Mayor Cathy Green from the City of Huntington  
18 Beach, followed by Keith Bohr, Council Member from the  
19 City of Huntington Beach, followed by Don Hansen also a  
20 Council Member from the City of Huntington Beach.

21 HUNTINGTON BEACH MAYOR GREEN: I'll actually ask  
22 my colleagues to please come up. I am Cathy Green, Mayor  
23 of Huntington Beach. This is the immediate past Mayor,  
24 Keith Bohr and our Council Member Don Hansen.

25 CHAIRPERSON CHIANG: Welcome.

1           HUNTINGTON BEACH MAYOR GREEN: Chair,  
2 Commissioners, congratulations, Paul, on your retirement.  
3 I wish you the very, very best.

4           EXECUTIVE OFFICER THAYER: Thank you.

5           HUNTINGTON BEACH MAYOR GREEN: On behalf of the  
6 City of Huntington Beach and our 200,000 residents, we are  
7 here to urge your approval of the Huntington Beach desal  
8 project.

9           In December -- I mean, in September, the city  
10 council voted to certify the project's final subsequent  
11 Environmental Impact Report, concluding that there were no  
12 significant impacts for both the construction and  
13 operation of the project related to 13 different areas  
14 studied, including marine impacts.

15           As a CEQA responsible agency, the State Lands  
16 Commission commented on the draft SEIR, and these comments  
17 were addressed in the final certified report.

18           The seawater desalination project will provide  
19 Huntington Beach and Orange County with an environmentally  
20 responsible drought-proof water supply that replaces local  
21 demand on imported water. The project will relieve  
22 pressure on the Sacramento-San Joaquin Bay-Delta, and  
23 avoid --

24           (Thereupon the buzzer went off.)

25           HUNTINGTON BEACH MAYOR GREEN: Is that for me?

1           -- the considerable energy consumption associated  
2 with pumping water through the State Project to southern  
3 California.

4           As a condition of the City's approval, the  
5 project includes an energy minimization and greenhouse gas  
6 reduction plan that will result in the project being a net  
7 carbon neutral. This plan is identical to the energy  
8 minimization plan prepared for Poseidon's Carlsbad project  
9 and approved by the California Coastal Commission, State  
10 Lands Commission, in 2008, and endorsed by the California  
11 Air Resources Board, the California Energy Commission and  
12 the Metropolitan Water District of Southern California.

13           HUNTINGTON BEACH CITY COUNCIL MEMBER BOHR: In  
14 the interests of time, I'll keep it very short. Keith  
15 Bohr, Huntington Beach City Council.

16           Thank you, Chairman, and members of the  
17 Commission.

18           Fifty million gallons of drinking water per day.  
19 It's 8 percent of what Orange County uses -- or requires.  
20 Two thousand jobs, \$106 million of revenue for Huntington  
21 Beach. Seventy plus percent of the community supports it.  
22 All the legislative districts. It's one prong in the  
23 multi-prong approach to drinking water, conservation,  
24 recycling and desal. And we urge your support today.

25           Thank you.

1 HUNTINGTON BEACH CITY COUNCIL MEMBER HANSEN:

2 Good morning, Commission. Council Member Don  
3 Hansen, City of Huntington Beach. Just to echo what's  
4 already been said, this is a needed project within our  
5 region. I think Orange Countians pride themselves as  
6 being a self-help county in many ways. We've delivered  
7 projects to our region that are cutting edge, in both the  
8 use of water recycling and now desalination.

9 My colleagues and I have been on the council and  
10 have reviewed both the initial EIR, as well as the  
11 subsequent EIR. We are near unanimous approval in the  
12 subsequent EIR approval.

13 Our city attorney has delivered to the Executive  
14 Officer that there's been no legal challenges to this most  
15 recent certification. My colleagues, as well as the  
16 delegation of Orange County legislature, we urge your  
17 adoption and approval of this.

18 Thank you.

19 CHAIRPERSON CHIANG: Thank you. We have Martin  
20 Paine and Tony Capitelli followed by Jody Vaughn.

21 MR. PAINE: Well, good morning, Chairman Chiang  
22 and Commissioners. My name is Martin Paine. I am the  
23 district director of California State Senator Mimi  
24 Walters, who unfortunately is unable to be here this  
25 morning because of prior commitments.

1           However, she has asked me to speak before you on  
2 behalf of the approval of this lease to the Huntington  
3 Beach desalination facilities. Although, the 33rd  
4 district does not encompass the City of Huntington Beach,  
5 basically everybody in Orange County is drinking out of  
6 the same spigot there. And we must all ensure that we  
7 will be able to meet the demands of our growing population  
8 and the climatic challenges inherent to this region.

9           First of all, as Chairman Chiang pointed out,  
10 with the California EDD statistics showing the 2.2  
11 unemployment figure for the State, we should all welcome  
12 the opportunity to generate 2,100 jobs, much needed there  
13 in Orange County as this project does. With the  
14 growing -- I'm sorry, by utilizing the existing AES  
15 facilities and infrastructure, we should all be for  
16 recycling as this project does.

17           This project will be able to provide as much as 8  
18 percent of the water supply for Orange County, which would  
19 help alleviate that pressure of imported water supplies  
20 from Northern California and the Colorado River. With  
21 growing concerns over the integrity of the California  
22 aqueduct system of levees and lift stations, it is often  
23 noted that our region is only one event away from a  
24 catastrophic result should a failure occur.

25           Should that catastrophic event ever occur, the

1 Huntington Beach desalination plant's creation of 50  
2 million gallons of fresh drinking water each day could  
3 make the difference of whether or not our parched  
4 communities will have a spigot to drink from. Reflecting  
5 back on those images of Katrina and other natural  
6 disasters where massive lines of victims were lining up  
7 for a simple bottle of water to drink, you can see how  
8 important this facility will be in that event.

9           Again, on behalf of Senator Mimi Walters, I  
10 respectfully request your support of the approval for the  
11 Huntington Beach desalination facilities.

12           Thank you.

13           ACTING CHAIRPERSON ARONBERG: Thank you, Mr.  
14 Paine. Tony Capitelli is next. We're having a  
15 malfunction with the timer, so if everyone could try to  
16 keep your remarks to 2 minutes, we'd really appreciate it  
17 while we work on fixing the malfunction.

18           MR. CAPITELLI: No problem. My name is Tony  
19 Capitelli, district representative for Congressman Dana  
20 Rohrabacher.

21           As you know, the desalination facility would lie  
22 in the Congressman's district. I'd like to read into the  
23 record of the State Lands Commission meeting the following  
24 statement from Congressman Rohrabacher:

25           "California's current regulatory milieu and

1 reported water drought makes impossible southern  
2 California's reliance on imported water. It is  
3 crucial that we use innovative technologies to  
4 find and harvest local water sources.

5 Desalination is fundamental in this endeavor.

6 "I am a committed advocate in the House of  
7 Representatives for both the Long Beach  
8 desalination pilot project and the Orange County  
9 Water District's groundwater replenishment  
10 system. Similarly, the Huntington Beach  
11 desalination facility will provide clean water  
12 and improve the reliability of our local supply.  
13 I firmly offer my whole-hearted support for this  
14 project".

15 And I'd like to submit this letter for the  
16 Commission's review.

17 ACTING CHAIRPERSON ARONBERG: Thank you.

18 Jody Vaughn.

19 Ms. Vaughn will be followed by Lindsay Brennan,  
20 who will be followed by Brett Barbre.

21 MS. VAUGHN: Hello. My name is Jody Vaughn. And  
22 I'm the District Director for Assemblywoman Diane Harkey  
23 of the 73th District, which encompasses south Orange  
24 County and north San Diego County. I have come here today  
25 from San Juan Capistrano on behalf of Assemblywoman

1 Harkey.

2           The residents and businesses of Orange County  
3 want a reliable drought-proof and cost certain supply of  
4 water. Currently, Orange County is reliant on imported  
5 water for about half of its water needs. The volatility  
6 of imported water rates makes it difficult for businesses  
7 to accurately estimate their costs. This project will  
8 help reduce our dependency on imported water and make the  
9 cost and availability of water more consistent, so that  
10 businesses may more accurately project the cost of doing  
11 their business.

12           The Huntington Beach seawater desalinization  
13 project, which will provide 50 million gallons of fresh  
14 drinking water to Orange County, will help to do this.  
15 Not only will this project provide 2 million annually in  
16 tax revenue to the local community, it will, during its  
17 construction, provide 2,000 construction jobs. A welcome  
18 boost to an area that is in double digit unemployment.

19           The building and operating this project will be  
20 with private funding. Public water agencies will only pay  
21 for the water if it is delivered at the quantity and  
22 quality agreed upon in its contracts.

23           Assemblywoman Harkey sees the project as an  
24 excellent public-private partnership that will stand out  
25 as an example of a successful way to build sorely needed

1 State infrastructure.

2           This Commission has approved a similar lease for  
3 the desalinization project in Carlsbad. Assemblywoman  
4 Harkey respectfully urges you to give the same  
5 consideration to Orange County that you have already given  
6 to San Diego county.

7           Thank you.

8           MS. BRENNAN: Good morning, Commissioners.  
9 Supervisor Moorlach couldn't make it this morning, but he  
10 did want me to read into the record a letter that he  
11 recently sent you all.

12           "I am pleased to see that Poseidon Resources,  
13 Huntington Beach seawater desalination project,  
14 which will be built in my district, continues to  
15 move forward through the permitting process. It  
16 has received all of the environmental approvals  
17 necessary at the local level. And science has  
18 shown that the project can be built and can  
19 operate in an environmentally responsible and  
20 safe way.

21           "This project was recently named to the 2010  
22 green team by OC Metro for its environmental  
23 stewardship. And it shows how a private-public  
24 partnership can successfully benefit Orange  
25 County's infrastructure needs while protecting

1 the ratepayers.

2 "The project will also provide more than  
3 2,100 jobs to Orange County, as well as 2 million  
4 in annual tax revenue to the City of Huntington  
5 Beach and millions more in public benefits. The  
6 50-million gallon per day project will provide  
7 enough water for 8 percent of Orange County's  
8 needs and help wean Orange County off  
9 increasingly constrained imported water.

10 "Poseidon Resources has agreed to voluntarily  
11 offset their indirect greenhouse gas emissions  
12 through a carbon offset program. Because the  
13 desalination facility itself creates virtually no  
14 greenhouse gases, the idea of offsetting its  
15 indirect greenhouse gases due to energy use is  
16 unprecedented and should be lauded.

17 "While we must encourage businesses who  
18 engage in environmentally responsible behavior  
19 like this to operate in California, I encourage  
20 you to grant Poseidon Resources the lease it  
21 needs to take the next step toward building this  
22 much needed state of the art water purification  
23 process."

24 Thank you, Commissioners.

25 ACTING CHAIRPERSON ARONBERG: Can you just before

1 you leave, identify yourself for the record. I didn't  
2 catch that.

3 MS. BRENNAN: I'm sorry. Lindsay Brennan,  
4 Supervisor Moorlach. Thank you.

5 ACTING CHAIRPERSON ARONBERG: Thank you.

6 So Brett Barbre is next, followed by Renee Maas,  
7 followed by Noble Waite. Can you please -- can folks who  
8 are waiting come a little bit closer to the podium to save  
9 that walking-down-the-aisle-time, please.

10 MR. BARBRE: Sure. Thank you very much. My name  
11 is Brett Barbre. And I'm wearing two hats today. One,  
12 I'm an elected director of the Municipal Water District of  
13 Orange County, which is the import agency for Orange  
14 County, and I'm also a director on the Metropolitan Water  
15 District.

16 We view this as a very important project that's  
17 very key to the diverse water supply for Orange County.  
18 We're very fortunate in southern California, in that we  
19 import water both from northern California and from the  
20 Colorado River, but we also put a huge emphasis on local  
21 production, the development of local resources.

22 We have a local groundwater basin that's very  
23 well managed. We have developed recycled water, and we  
24 believe desal is a very important component of it as well.  
25 At Metropolitan we have set aside 150,000 acre feet to

1 meet the needs of the future. We believe this is a  
2 critical component of it, and we are very, very supportive  
3 of this. And we urge you to support this as well.

4 Thank you.

5 ACTING CHAIRPERSON ARONBERG: Thank you.

6 MR. WAITE: Good afternoon. My name is Noble  
7 Waite. I am the director of the Orange County Water  
8 District and also best known to my community as the oldest  
9 living city councilman still living in Huntington Beach.

10 (Laughter.)

11 MR. WAITE: That is until today.

12 I earnestly ask you to approve this, so that we  
13 can get Poseidon moving on this desalting project. Orange  
14 County Water District filled in the best they can by  
15 taking 60 million gallons of secondary and tertiary  
16 treated sewer water and making it potable. And if they  
17 can do that, Poseidon can take the seawater and make it  
18 potable. And I know they can do it. And the only  
19 objection that I hear in the past is that the expense is  
20 going to be too much. To them I say, have you ever tried  
21 taking a bath in Sparkletts Water.

22 (Laughter.)

23 ACTING CHAIRPERSON ARONBERG: Thank you.

24 Next we have Renee Maas, who will be followed by  
25 Denis Bilodeau, followed by Merle Moshiri.

1 MS. MAAS: Good morning. My name is Renee Maas.  
2 And I'm a senior organizer with Food and Water Watch. We  
3 are a national consumer organization.

4 Today, I've heard a lot of discussion about  
5 whether or not California needs desal, whether or not we  
6 need water, whether or not we need jobs. Those things are  
7 not in debate here today.

8 What is in debate today is whether or not this  
9 project and Poseidon Resources is a good partner for the  
10 public -- that the public can trust to look out for our  
11 public resources, our land, our air, our water, things  
12 that we all -- that are all part of our Public Trust  
13 Doctrine.

14 We think -- we are particularly concerned about  
15 this project, given Poseidon's track record of failure.  
16 It is clear that they are an unacceptable partner for an  
17 agency to entrust with protecting our public lands. And  
18 we believe that approving a lease with Poseidon is not a  
19 good use of our tax dollars.

20 The consideration of this lease is extremely  
21 preemptive, given the fact that the Carlsbad Project,  
22 which is very similar to the Huntington Beach project, has  
23 not been resolved. We must see how that project plays out  
24 before we can make any decisions about this plant,  
25 particularly since things in Carlsbad have not been going

1 well.

2 I heard something -- some of the city council  
3 members from Huntington Beach said, you know, this will  
4 bring us lots of tax revenue. Well, there is actually an  
5 article written in the North County Times last week saying  
6 that the City of Carlsbad has already spent \$2.5 million  
7 to get their project approved and they have nothing to  
8 show for it.

9 And now it is suspected that the San Diego County  
10 Water authority is going to have to take over the project,  
11 which means the City of Carlsbad would continuously lose  
12 money in tax revenue.

13 Given this example of how Poseidon made many,  
14 many promises, big promises about jobs and water, they're  
15 going to come in and save California's problem, and having  
16 to deliver, and now making these same promises, we think  
17 that the Council, as members who are responsible for  
18 safeguarding our public resources, environmentally and  
19 fiscal, it would be irresponsible to move forward on this  
20 project before the project in Carlsbad is worked out. And  
21 we, therefore, ask you to reject this lease.

22 Thank you.

23 ACTING CHAIRPERSON ARONBERG: Thank you.

24 Denis Bilodeau. Are you in the room?

25 No, okay.

1 Merle Moshiri or Merle Moshiri.

2 MS. MOSHIRI: It's Merle.

3 ACTING CHAIRPERSON ARONBERG: Merle.

4 MS. MOSHIRI: I am Merle Moshiri. I'm a 38-year  
5 resident of southeast Huntington Beach where this project  
6 is proposed. I think, first of all, that it's important  
7 to state that we're not strictly opposed to ocean  
8 desalination. We know that the desalination via Long  
9 Beach and Dana Point can be done in a way that eliminates  
10 marine life mortality. And we know that the best is yet  
11 to come in this industry. Subsea intakes are a proven  
12 alternative.

13 We think the flaw of this project is that it was  
14 sited and designed to use the discharge from the power  
15 plant that sits in our backyard. We warned from the  
16 beginning that it was reasonably foreseeable that the  
17 cooling water intake and discharge would be prohibited,  
18 and Poseidon's plans would not work. We were ignored by  
19 Poseidon, our elected representatives, and administrative  
20 agencies responsible for protecting the environment.

21 But our prediction has come to reality. Now they  
22 have to listen to us. Now, they want to continue killing  
23 marine life off our coast and discharging concentrated  
24 brine into our near-shore waters with the same pumps and  
25 pipes the power plant is prohibited from using.

1           It's not only offensive, it's irrational. To  
2 prohibit one industry from impacting our marine  
3 environment and immediately turn around and allow a  
4 different industry to step into their shoes. We want our  
5 ocean restored and protected for our grandchildren and  
6 generations to come. We oppose more coastal  
7 industrialization, especially given that there are readily  
8 available alternatives to meet fresh water demand. Call  
9 us NIMBYs if you'd like, but we live on this coast. We  
10 love it, and we're not the only ones. We're Surf City  
11 U.S.A.

12           Millions of people visit our shores, not to look  
13 at a desalination plant, but to swim in clear water. In  
14 fact, our efforts are consistent with your Public Trust  
15 duties. We don't mind being called NIMBYs. Our coast is  
16 worth it.

17           But we cannot do this without your help. This  
18 plant does not employ the best intake technology  
19 available, and consequently kills marine life  
20 unnecessarily. It is extremely energy demanding and would  
21 only add to the difficult challenge to reduce greenhouse  
22 gas emissions and adapt to inevitable climate change.

23           In short, this proposal threatens healthy and  
24 robust marine ecological processes directly through their  
25 intake and discharge, and indirectly by adding to the

1 embedded energy in our regional water portfolio and  
2 exacerbating sea level rise and ocean acidification. We  
3 ask, as citizens, that you deny this lease based on your  
4 Public Trust duties.

5 Thank you.

6 ACTING CHAIRPERSON ARONBERG: Thank you.

7 Next we have Shawn Dewane, who will be followed  
8 by Karl Seckle, who will then be followed by Mary Jo  
9 Baretich.

10 MR. DEWANE: Thank you very much. It's my  
11 pleasure to be here. My name is Shawn Dewane. I'm  
12 currently serving as president of the Board of Directors  
13 at Mesa Consolidated Water District.

14 Mesa is an independent single-service special  
15 district serving the potable water to the City of Costa  
16 Mesa, part of Newport Beach, John Wayne Airport, and -- so  
17 on behalf of the citizens of the City of Costa Mesa, we  
18 urge your support of this project. Our polling numbers at  
19 the district show that over 72 percent support from the  
20 110,000 constituents that we currently serve.

21 We believe that this is an important part of the  
22 overall water supply portfolio for the County of Orange.  
23 Our interest in working with Poseidon is a transmission  
24 pipeline of 44 inches that transects the City of Costa  
25 Mesa. We have strong support on our board and strong

1 support in the community for the project, and we urge that  
2 you support the project as well.

3 Thank you very much.

4 ACTING CHAIRPERSON ARONBERG: Thank you.

5 Mark Baker or Bower followed by Mary Jo Baretich.

6 MR. SECKLE: Good morning, Commissioners. My  
7 name is Karl Seckle. I'm Assistant Manager District  
8 Engineer with Municipal Water District of Orange County.  
9 We're the import and planning agency within Orange County.  
10 We serve 28 retail agencies.

11 Over the last couple of years, we have been  
12 working with Poseidon in the working group that was  
13 referred to that currently includes about 17 of our retail  
14 agencies that are looking at the potential for purchasing  
15 water from this facility.

16 Currently, those 17 entities have executed  
17 nonbinding letters of intent, and we currently are  
18 coordinating the working group and coordinating the  
19 discussions and negotiations that are taking place between  
20 the retail agencies and Poseidon Resources Corporation.

21 One of the things the working group has in common  
22 is that collectively we are interested in adequate and  
23 reliable water supply. Ocean desal is not the single  
24 answer to that. We need to adequately pursue water use  
25 efficiency measures, water recycling development of other

1 local resources. But we find that ocean desalination will  
2 be an increasingly important component of those water  
3 resources, as we look to meeting future needs of our  
4 service area, and in reducing the dependence on the import  
5 system, which this project will do.

6 So with those comments, I'm here today to  
7 respectfully request your approval and concurrence to move  
8 forward with this project. And I'd be happy to address  
9 any questions you may have.

10 Thank you.

11 MS. BARETICH: Good morning, Commissioners. My  
12 name is Mary Jo Baretich. I represent the Cabrillo  
13 Wetlands Conservancy and the Residents for Responsible  
14 Desalination.

15 Yesterday I toured -- I had a fantastic tour of  
16 the Orange County Groundwater Replenishment System, and  
17 the Prado Wetlands. The Orange County Water Replenishment  
18 System, and the Orange County Water District are currently  
19 supplying 75 percent of the water to Orange County through  
20 the various methods of replenishing water back into our  
21 aquifers.

22 The first phase produces approximately 72,000  
23 acre feet per year. And within 5 years or so they'll be  
24 producing 130,000 as a predicted acre feet per year. The  
25 project will help prevent the predicted water shortages in

1 the future. Currently, 21 cities and water agencies pump  
2 water from this aquifer.

3           The question is why do we need an energy  
4 insensitive and environmentally destructive desalination  
5 plant in Huntington Beach, when the future of the  
6 groundwater replenishment system can be expanded? It is  
7 predictable and affordable. Desalination water costs  
8 anywhere between 1,500 to 2,000 per acre feet to produce.  
9 And a groundwater replenishment system can produce  
10 purified water for approximately 550 per acre foot.

11           Today, I'm speaking in opposition to the proposed  
12 desalination facility in Huntington Beach. The SEIR, in  
13 my opinion, is inadequate in many respects. I am for  
14 responsible desalination, but not the proposed project,  
15 because it has too many unanswered questions, and the  
16 projected water costs are unacceptable. I agree with the  
17 California Coastal Commission's comments on the SEIR, and  
18 I disagree with Poseidon's dismissal of these comments and  
19 others submitted when Poseidon states that the comments  
20 are not relevant.

21           In most cases, the comments were very relevant,  
22 and the adequacies of the SEIR had not been addressed  
23 properly. And the solutions to proposals were ignored.  
24 Samples of the issues to which I have concerned are as  
25 follows:

1           And this is short.

2           Number one, if the desalination plant is to be  
3 built, a better alternative first needs to be explored to  
4 reduce the antiquated AES water intake system, which is a  
5 destructive system. And the alternatives could be either  
6 the tapping of the Orange County Sanitation District  
7 outflow pipe system, as the groundwater replenishment  
8 system is doing at this time or the construction of the  
9 undersea intake system, which is less destructive to the  
10 marine environment. Poseidon has rejected both of these  
11 ideas and chose to use the antiquated AES intake system.

12           Number 2, the noise issue is not addressed  
13 thoroughly. And this is very important. The decibel  
14 levels from the 33 pumps, going 24 hours, 7 days a week,  
15 exceed the Huntington Beach noise standards. And the  
16 solutions proposed by Poseidon are inadequate at this  
17 time. Impacts will be not only on humans in close  
18 proximity to the facility, but also the wetland birds and  
19 animals living nearby. More solutions to these important  
20 impacts need to be explored and analyzed before any other  
21 authorization is acted upon.

22           A smaller wetland to the east, very close, for  
23 the proposed facility. And a larger wetland to the  
24 northwest and southeast of the proposed facility are home  
25 to the endangered Belding's Savannah Sparrow, threatened

1 Cooper's Hawk, and a threatened White Tailed Kite, among  
2 other resident and migratory birds.

3 Any increase in sound would adversely affect  
4 these animals. Please consider my concerns regarding the  
5 Poseidon desalination facility in Huntington Beach and  
6 please do not approve this application without further  
7 study.

8 Thank you.

9 ACTING CHAIRPERSON ARONBERG: Mark Baker, who  
10 will be followed by Rodney Larson, who will be followed by  
11 Joe Geever.

12 MR. BAKER: Good morning, Commission. My name is  
13 Mark Baker, and I'm a business representative for IBEW  
14 Local 441. That's the electrical workers of Orange  
15 County. And I'm here on behalf of our 2,300 members, 126  
16 of which live in Huntington Beach and pay taxes there.  
17 Out of that which there are 24 who are unemployed. And I  
18 urge that you approve this, so that we can put our members  
19 back to work. Thank you for your time.

20 MR. LARSON: Good morning, Chairman and  
21 Commission members. My name is Rodney Larson. I'm a  
22 business representative for Plumbers and Steamfitters  
23 Local 582 in Santa Ana. I'm also a resident of Huntington  
24 Beach. I ask that you approve this project.

25 ACTING CHAIRPERSON ARONBERG: Joe Geever, you'll

1 be followed be Reed Royalty and then Rick Zbur.

2 MR. GEEVER: Thank you, Commissioners. Joe  
3 Geever, California policy coordinator for Surfrider  
4 Foundation.

5 I'll tell you we have a lot of problems and  
6 concerns about this project. But I just wanted to briefly  
7 touch on one of those problems. And it's concerning the  
8 lease -- the language in the current lease about the City  
9 of Huntington Beach's inclusion of a greenhouse gas  
10 mitigation plan and the coastal development permit.

11 That permit is under appeal to the Coastal  
12 Commission by several organizations. And there will be a  
13 separate appeal by some of the Coastal Commissioners  
14 themselves. As you may recall, we opposed the GHG  
15 mitigation plan that was attached to Poseidon's lease and  
16 permits in Carlsbad.

17 One of the reasons we opposed the plan was that  
18 it was almost entirely based on the assumption that the  
19 water produced would offset imported water from the Delta.  
20 The GHG plan then created, what they call, the net --  
21 quote unquote net energy demand, that subtracted the  
22 electricity demand of imported water from the electricity  
23 demand of the desal facility.

24 We've yet to see any evidence the project will  
25 actually offset any imported water and believe that net

1 energy argument is fictitious. But the language in this  
2 lease proposes to accept the same GHG mitigation plan, but  
3 the basis for the Carlsbad mitigation plan is different  
4 than the case in Huntington. Yet, the mitigation plan  
5 isn't amended for the changes.

6           The EIR in Carlsbad concluded that there wouldn't  
7 be any growth-inducing impacts from the project. We doubt  
8 that's true. Nonetheless, that conclusion in the EIR was  
9 at least consistent with the presumption that the produced  
10 water would somehow offset imported water.

11           Huntington is different. The SEIR in Huntington  
12 assumes the project will result in significant growth  
13 inducement. They can't simultaneously claim that the  
14 project will offset current water imports and that the  
15 project will create growth inducement. Either the desal  
16 water replaces imported water and has no potential for  
17 growth inducement or it doesn't.

18           Maybe your staff missed this important difference  
19 between the assumption used in the Carlsbad case and the  
20 present case, but it's clear on its face that the  
21 arguments supporting the GHG plan in Carlsbad are not the  
22 same in Huntington and consequently the GHG plan can't be  
23 the same.

24           So we request that you direct staff to reassess  
25 the basis for the quote unquote net energy calculations

1 included in the GHG plan. This is important for the  
2 State's efforts to reduce and adapt to climate change.  
3 Like I said, we think the GHG plan for the Carlsbad plant  
4 and their claim of offsetting imported water was unproven  
5 and consequently the net energy calculation was flawed.

6 But in this case, they have as much as admitted  
7 that the product water won't replace imported water, if  
8 they still want the credit for reducing energy on a  
9 one-to-one basis.

10 This will set an unacceptable precedent.  
11 Developers should have to prove assumptions like  
12 Poseidon's net energy argument. That wasn't done in  
13 Carlsbad. But it's simply sticking our heads in the sand  
14 when the developer proves the net energy argument is  
15 flawed by admitting the project is growth inducing and the  
16 lease still accepts the assertion that the project will  
17 offset imports.

18 Please deny this lease until the truth about the  
19 energy demand and assumptions of replacement water  
20 argument are resolved. The lease must include an accurate  
21 GHG mitigation plan. Thank you very much. I'll answer  
22 any questions, if you have them.

23 ACTING CHAIRPERSON ARONBERG: Thank you.

24 MR. GEEVER: Thank you.

25 MR. ROYALTY: Good morning, Honorable Members.

1 My name is Reed Royalty. I'm President of the Orange  
2 County Taxpayers Association.

3 A recent Natural Resources Defense Council report  
4 said that virtually all of California faces the prospect  
5 of serious water shortages. And we at the Orange County  
6 Taxpayers Association want to prepare for that prospect  
7 and be celebrated for our foresight rather than cursed by  
8 our ignoring of the problem. To save you time, I will  
9 concentrate solely on the tax benefits of this.

10 This project will pay over two and a half million  
11 dollars in different types of taxes. And those taxes will  
12 support environmental protection, schools, municipal  
13 services in special districts and libraries. It will be  
14 operated for the benefit of the public by the tax paying  
15 private sector not by a tax exempt public agency. Private  
16 investors accept most of the risk and pay the bill.

17 This is a perfect fit for taxpayers. The Orange  
18 County Taxpayers Association first testified on this thing  
19 about 10 years ago. We need it now more than we needed it  
20 then. Please allow it to move forward.

21 Thank you very much.

22 ACTING CHAIRPERSON ARONBERG: Thank you. Is Jim  
23 Adams here? And Jim would be followed by Kate Klimow,  
24 followed by Conner Everts.

25 MR. JIM ADAMS: Good morning, Commissioners. My

1 name is Jim Adams. I'm a council representative for the  
2 Los Angeles Orange County Building and Construction Trades  
3 Council. Our Council represents affiliated construction  
4 unions whose membership exceeds 140,000 skilled craftsman  
5 and women in the construction industry. These  
6 construction workers build the infrastructure that keeps  
7 our community strong. We are here today to urge your  
8 approval of the Huntington Beach desal project.

9           In 2005, our organization joined in partnership  
10 with Poseidon Resources for the construction of the desal  
11 plant. The Project Labor Agreement underwhich the project  
12 would be built means that one of the most important water  
13 infrastructure projects in Orange County history will be  
14 built with skilled, cost-effective labor from the local  
15 communities.

16           The benefits to the employees, the employer, and  
17 the general public are enormous and we are proud to be  
18 apart of the team. The project will generate an estimated  
19 200 million in economic impacts and create more than 2,100  
20 jobs during construction.

21           The building trades industry has a strong record  
22 of promoting and protecting the environment. We believe  
23 that this particular project strikes a right balance  
24 between the strengthening of the economy and preserving  
25 the cultural marine environment.

1           For the region, the desal facility will create  
2 jobs, generate tax revenue, improve water quality, and  
3 enhance water reliability. In 2008, this Commission  
4 unanimously approved Poseidon in San Diego county. We are  
5 urging you to give the Los Angeles Orange County working  
6 families the same opportunity.

7           Thank you.

8           MS. KLIMOW: Good morning, Commissioners. My  
9 name is Kate Klimow. I'm vice president of government  
10 affairs for the Orange County Business Council.

11           We represent the business community working to  
12 enhance Orange County's economic development and  
13 prosperity in order to preserve a high quality of life.

14           A local, drought-proof, high quality water supply  
15 is essential for the infrastructure certainty that makes  
16 Orange County attractive to the business community. And  
17 the Poseidon Resources seawater desalination facility in  
18 Huntington Beach is a perfect example of how  
19 private-public partnerships can work and to move Orange  
20 County forward.

21           Looking to understand the implications of outages  
22 and drought, the OCBC research department, working with  
23 the researchers from UCI and UCLA conducted an assessment  
24 of the economic impact of water shortages under various  
25 scenarios of causes, including droughts and short-term

1 emergency interruptions. And we found that a 10- to  
2 60-day outage causing a shortage of 20 percent would  
3 create an economic impact of 500 million to 3.5 billion.  
4 And a 1 to 3 year drought causing a 5 percent shortage  
5 creates an economic impact of 14 to 41 billion. So  
6 clearly water is a critical business issue.

7           There's no silver bullet to solving water  
8 reliability and security issues for businesses and a  
9 growing population. It takes a diversity of sources,  
10 including conservation, groundwater replenishment, rain  
11 water capture, storage, and desalination.

12           We commend your decision to approve the Poseidon  
13 Resources desalination project in Carlsbad, and hope you  
14 will now afford Orange County the same opportunity of  
15 water reliability, cost certainty, and independence from  
16 imported water that you granted San Diego residents and  
17 businesses by approving that desalination project.

18           For these reasons, the business council asks you  
19 to approve the proposed lease amendment as recommended by  
20 Commission staff.

21           Thank you.

22           ACTING CHAIRPERSON ARONBERG: Okay, Conner Everts  
23 followed by Andy -- pardon me, if I mispronouncing this --  
24 Sienkiewich, and Manny Padilla.

25           MR. EVERTS: Thank you very much. My name is

1 Conner Everts. Commissioners, today I want to first  
2 concur with the comments made by Surfrider, Food and Water  
3 Watch, and other local residents with their concerns. The  
4 desal response group, which I represent, has been tracking  
5 ocean desalination for many years, maybe too many years,  
6 because we still haven't resolved the issues.

7 I've also served on the State desal task force,  
8 was a member of the review committee for allocation of  
9 Prop 50 funds for desalination, which mostly went to  
10 research and development, but we haven't seen the results  
11 of those yet, as we move forward with potentially large  
12 projects.

13 There are right ways and wrong ways to design  
14 desalination facilities. We're not just against  
15 desalination. We have supported some projects, but this  
16 one represents the wrong way.

17 Also, because there's so many economic and  
18 environmental downsides, ocean desalination should only be  
19 considered in a water portfolio when all other  
20 alternatives have been fully exhausted. Now, Congressman  
21 John Garamendi wrote to that.

22 Again, here, this is not the case. Orange County  
23 has the opportunity to fully implement alternatives that  
24 would result in a sustainable water supply portfolio and  
25 simultaneously makes improvements to currently intractable

1 environmental problems.

2           We have to immediately invest in programs that  
3 dramatically reduce irrigation demand. Innovative ideas  
4 like landscape designs that conserve water, eliminate  
5 chemical use, and capture rain water on site will both  
6 recharge local aquifers and dramatically reduce non-point  
7 source pollution.

8           I want to say personally we've looked at this  
9 project for a long time, and we really see an opportunity  
10 here for you to deny this lease, because the EIR failed to  
11 document these important considerations, and that there  
12 are alternatives. With the current drought situation,  
13 which is no longer in place, Orange County has saved more  
14 than the 8 percent that this project would produce.

15           Huntington Beach, as you drive through and see  
16 water running down the street, has never imposed mandatory  
17 conservation, and yet, we're pushing this forward.

18           There are Public Trust issues here.  
19 Industrialization of the coast.

20           Finally, I wanted to thank Paul and Curtis. It's  
21 not often that you get bureaucrats, when you call them up,  
22 you get to talk to them directly. And I appreciate their  
23 efforts in all these issues.

24           And I would say the City of Los Angeles has  
25 looked at the same issue, and their county economic

1 development, and have decided that it is not a priority to  
2 do desal first for the next 20 years.

3 Thank you very much.

4 ACTING CHAIRPERSON ARONBERG: Is Andy Sienkiewich  
5 in the audience?

6 Then we'll move to Manny Padilla.

7 MR. PADILLA: Thank you for the opportunity to  
8 visit with you this morning. I'm Manny Padilla. I  
9 represent the Orange County Hispanic Chamber. We have  
10 over 700 members throughout the county.

11 I won't repeat a lot of the things that have been  
12 said, particularly by elected representatives early on  
13 today. But I need to remind us that we live in an area  
14 that's, what I consider, reclaimed desert. And water is  
15 essential to our survival and existence.

16 Unfortunately, the regulatory process in  
17 California over the last several years and also the legal  
18 climate is such that it has become very difficult to build  
19 almost anything, including homes, which is fine for those  
20 of us that have homes and have lived here for quite  
21 awhile. We have our little corner of the earth. We just  
22 don't want to share it with anybody else.

23 However, I'm at a point in life, when I probably  
24 can survive all this, because I don't have that many years  
25 left. I'm 80 years old. But I do have children that live

1 here in Orange County, and I'm concerned for their future  
2 and what they have at stake for them. So I hope that you  
3 approve this project. We need it.

4 Thank you.

5 ACTING CHAIRPERSON ARONBERG: Thank you.

6 Rich Kolander, Karalee Ethridge, and followed by  
7 Martin McIntosh.

8 MR. KOLANDER: Yes. Good afternoon. My name is  
9 Rich Kolander, and I'm a resident of Huntington Beach.  
10 And I live in close proximity to the AES power plant,  
11 which has been in operation for 40 years. So I don't  
12 think it's going to disappear.

13 But I'm a retired engineer from Boeing. And  
14 basically engineers, their lot in life, is to build things  
15 for other people to use, so, you know, airplanes, cars, et  
16 cetera. You name it. And so that's why I support the  
17 Poseidon project. Orange County can certainly use 50  
18 million gallons of water per day, which Poseidon is going  
19 to provide.

20 I also understand that the Coastkeepers has filed  
21 a letter requesting a continuance. This has happened at  
22 virtually every, you know, public hearing for this  
23 project, because I've been to a number of these public  
24 hearings. And we hope you will take a reasonable action  
25 today and move this project forward, instead of, you know,

1 requesting, you know, their continuance.

2 Thank you.

3 ACTING CHAIRPERSON ARONBERG: Thank you.

4 MS. ETHRIDGE: Good afternoon. My name is  
5 Karalee Ethridge and I represent the Orange County  
6 Division League of California Cities. The Orange County  
7 Division is a nonprofit membership organization of Orange  
8 County cities that represents those cities on important  
9 public policy issues affecting the region.

10 On July 21st, the Orange County Division Board of  
11 Directors voted to endorse this project. The Division has  
12 been studying the State water crisis and firmly believes  
13 that the diversity of southern California's water  
14 portfolio is the most responsible action to take to ensure  
15 water supplies for our residents, and to help secure  
16 public safety in the event of a State Water Project -- in  
17 the event that our State Water Project is compromised.

18 This proposed seawater desalination facility will  
19 provide Orange County with 50 million gallons of clean  
20 drinking water per day. That's 8 percent of Orange  
21 County's water needs. It will reduce our dependency on  
22 imported water, which is becoming increasingly unreliable.

23 This project will be built by Poseidon Resources,  
24 a private company at no cost to the taxpayers. It will  
25 produce 2,000 jobs and \$2 million of annual revenue to the

1 City of Huntington Beach. This project represents a  
2 chance for Orange County to significantly increase its  
3 water supply, and along with the groundwater replenishment  
4 system, identify Huntington Beach and the region as a  
5 leader in the development of state of the art water  
6 reliability projects.

7 This State Land Use Commission has approved a  
8 virtually identical project in San Diego County. Orange  
9 County deserves the same opportunity to desalination. The  
10 Orange County Division League of California Cities stands  
11 shoulder to shoulder with over a dozen cities that have  
12 adopted resolutions in support of this project, 8 that  
13 have signed memorandums of understanding to purchase the  
14 product water the Orange County Business Council and the  
15 Orange County Taxpayer's Association in urging your  
16 approval of this vital resource.

17 I am submitting our Board resolution and  
18 resolutions of 14 more of our member cities in support of  
19 this project for your review.

20 Thank you for the opportunity to address you  
21 today.

22 MR. McINTOSH: Good afternoon. My name is Martin  
23 McIntosh. I'm here today representing the South Orange  
24 County Regional Chambers of Commerce Economic Development  
25 Committee. I'll keep this short. We have a lot of

1 speakers.

2           The South Orange County Regional Chamber of  
3 Commerce supports the Huntington Beach desalination  
4 project and urge you to approve the application. This  
5 project not only will it create jobs, it will help to keep  
6 jobs. Water reliability will help to attract businesses  
7 and keep the businesses that we have in Orange County.

8           With increased constraints on imported water  
9 through Sacramento, it is imperative that we find  
10 replacements for South Orange County. Along with  
11 conservation and recycling, desalination can and should be  
12 part of the solution. We urge you to approve the project.  
13 Thank you for your time.

14           ACTING CHAIRPERSON ARONBERG: Thank you.

15           It's William Lochrie, Cathy Meschuk, Michael  
16 Sullivan in that order.

17           DR. LOCHRIE: My name is Bill Lochrie, Dr. Bill  
18 Lochrie. I've lived in Orange County for the past 35  
19 years, and I just retired as an engineer and program  
20 manager at McDonnell-Douglas Boeing. And 25 of those  
21 years, by the way, was spent in Huntington Beach. I'm  
22 here in support of the project. I want you to make a  
23 couple points.

24           One is it's crucial for businesses -- being a  
25 program manager, I know that I need long-term cost

1 certainty when I bid a project worth hundreds of millions  
2 of dollars. I need to know what my costs are going to be  
3 4 or 5 years from now. I also need to know that my  
4 resources are reliable. And what this does is this helps  
5 in that situation.

6           And the other point is, is that California needs,  
7 what I call, high leverage jobs. That's my own invention.  
8 Basically, it's jobs that are funded with dollars that  
9 come from out of the State of California. They come to  
10 this state, and studies that we've done at the company,  
11 when I was there, is every job that Boeing provides, four  
12 additional secondary or support jobs are there, the  
13 restaurants, the bankers, the grocery stores, et cetera.

14           In order to ensure that we stop the bleeding of  
15 these high-leverage jobs, you've got to provide this  
16 infrastructure improvement which Poseidon's project does.

17           I just also might mention that in today's Orange  
18 Count Register, the leading newspaper in Orange County,  
19 the lead editorial is, "Let the Fresh Water Flow in  
20 Huntington Beach".

21           The last two sentences read, "The project is  
22 supported by all of Orange County's State legislators, all  
23 members of the County Board of Supervisors, Orange County  
24 Taxpayers Association, and the Orange County business  
25 counsel. After 10 years of red tape, it's about time to

1 get this project built and creating water for the county  
2 residents".

3           And I'd also just like to make one comment  
4 relative to rebut some of the comments people made about  
5 this thing killing fish. You need to see the video of the  
6 similar plant in Australia. It shows the fish swimming  
7 around the outtake area. It shows a seahorse sitting on  
8 the edge of one of the little wires that comes down.

9           It's not going to be doing -- they're doing it  
10 all over the world. We need to do it in California if  
11 we're going to survive.

12           Thank you.

13           MS. MESCHUK: Good afternoon. My name is Kathy  
14 Meschuk. My husband Bob and I have raised our children in  
15 southeast Huntington Beach and we've lived there for 17  
16 years. I have worked for 32 years in the interests of  
17 children and seniors.

18           They're counting on us to provide a reliable,  
19 safe, secure water supply. I also support this desal  
20 project because of the tax revenues that it will provide  
21 to the City of Huntington Beach. I urge you to vote in  
22 favor of this worthy project.

23           Thank you.

24           ACTING CHAIRPERSON ARONBERG: Thank you.

25           Perry Cain. I think actually I'd called Michael

1 Sullivan. Then Perry Cain and Pat Davis.

2 MR. SULLIVAN: Good day. My name is Michael  
3 Sullivan and I represent Orange County Coastkeepers.

4 Coastkeepers and its allies urge the Commission  
5 today to continue its vote on this lease amendment. In  
6 the four business days that we've had to review the  
7 amendment, we've identified numerous material deficiencies  
8 that are well detailed in our written comments.

9 Also, a continuance will not affect the  
10 implementation of this project, but will better ensure  
11 that the Public Trust is protected.

12 Importantly, the amendment extends the use of  
13 harmful technology that the Commission has already  
14 determined, in April 2006, as detrimental to public  
15 resources.

16 The Commission should continue to recognize that  
17 the intake of oceanic surface waters will quote  
18 significantly harm the environment by killing large  
19 numbers of fish, and other wildlife larva and eggs as they  
20 are drawn through the intake screens.

21 Additionally, wildlife loss due to impingement  
22 and entrainment in this system and the brine discharge  
23 will need to be addressed in a marine life mitigation plan  
24 as was required in the Carlsbad project. The amendment,  
25 as written, offers no clear language regarding a marine

1 life mitigation plan.

2 Coastkeeper urges the Commission to resolve to  
3 protect the marine life and Public Trust resources. For  
4 these reasons and others, Coastkeepers detailed in  
5 written -- pardon, detailed in Coastkeepers written  
6 comments. Coastkeeper urges and requests the Commission  
7 to continue this matter until the next meeting, so that  
8 the amendment may reflect all relevant information and  
9 concerns and best protect the Public Trust.

10 Thank you.

11 MR. CAIN: Honorable members of the State Lands  
12 Commission, good morning. My name is Perry Cain, and I'm  
13 the President/CEO of the Huntington Beach Chamber of  
14 Commerce. I represent nearly 1,000 businesses, and our  
15 Chamber of Commerce is the largest chamber in Orange  
16 County.

17 We come to you today with a unified voice asking  
18 that you please approve the Poseidon project. Poseidon  
19 Resources is exactly the kind of business we should be  
20 encouraging in California. It will provide a precious  
21 resource, which is clean drinking water. It will provide  
22 the city with about two million annually in tax revenue  
23 and benefits. It will provide the city with water cheaper  
24 than the imported water it would otherwise have to  
25 purchase.

1           Bottom line is we need the water, the tax revenue  
2 and the jobs. The project can be built in an  
3 environmentally sensitive way as is evidenced by the  
4 scientific analysis done for the Environmental Impact  
5 Report.

6           Please approve the lease and allow the Poseidon  
7 project to move forward. We've waited 10 years, and we're  
8 ready for it to move forward.

9           Thank you very much.

10          ACTING CHAIRPERSON ARONBERG: Thank you.

11          Pat Davis.

12          MS. DAVIS: Thank you. Good morning. My name is  
13 Pat Davis, and I live in Huntington Beach. This project  
14 makes sense. It makes environmental sense. It makes  
15 economic sense. And it makes sense to diversify our water  
16 supply. I'm not alone in supporting this project. My  
17 Vanna Whites --

18          (Laughter.)

19          MS. DAVIS: -- hold buckets with 4,700 support  
20 cards gathered at various community events. I hope the  
21 Commission will join the majority of Huntington Beach and  
22 Orange County's population and vote yes on this desal  
23 project.

24          Thank you.

25          ACTING CHAIRPERSON ARONBERG: Thank. Scott

1 Maloni followed by Dale Dunn and then Mitchell Tsai.

2 MR. MALONI: Madam Chair, I'm the applicant.  
3 That's my applicant's speaker's slip.

4 ACTING CHAIRPERSON ARONBERG: Okay. So the next  
5 person on the list, Dale Dunn. Thank you.

6 MR. DUNN: That's me.

7 ACTING CHAIRPERSON ARONBERG: Hi, Mr. Dunn.

8 MR. DUNN: I'm Dale Dunn. I'm a 44-year resident  
9 of Huntington Beach, and I'm here as a private citizen,  
10 not representing any agency or organization. I just love  
11 Huntington Beach. And I think that we don't have a water  
12 problem now, we will have. And we need to plan ahead so  
13 that we're ready at the time that we have this need. So  
14 I'm just here to support this vote and support Poseidon in  
15 their efforts to provide that for us.

16 Thank you.

17 ACTING CHAIRPERSON ARONBERG: Thank you.  
18 Mitchell Tsai followed by Ruben Guerra and then Denis  
19 Bilodeau.

20 MR. TSAI: Hi. My name is Mitchell Tsai. I'm  
21 here with Environment Now. We're a nonprofit foundation  
22 based in Santa Monica, California.

23 My comments today, which are in opposition to  
24 approving the desal plant, aren't based upon arguing  
25 whether or not desalination should exist, but the

1 particular form of desalination. Approving this lease  
2 would place the Lands Commission at odds with positions  
3 taken by other California State agencies.

4 In particular, the State Water Resources Board  
5 recently approved rules that states that OTC, once-through  
6 cooling, which is the kind of intake that the Huntington  
7 Beach desal plant would rely upon, should be taken away --  
8 should be phased out of California, based upon a  
9 determination that phasing out OTC is necessary in order  
10 to restore California's coastal ecosystem.

11 Approval of this lease would exploit a legal  
12 loophole that would allow the desalinization plant --  
13 allow one power plant, old power plants, as well as  
14 desalinization plants to continue using OTC, or  
15 once-through cooling, technology.

16 It would undermine the State Water Resources  
17 policy that phasing out OTC is necessary to restore  
18 California's coastal ecosystem, and would set a bad  
19 precedent and undermine the California State agencies'  
20 ability to protect California's coastal ecosystem.

21 Thank you very much.

22 ACTING CHAIRPERSON ARONBERG: Thank you.

23 Ruben Guerra followed by Denis Bilodeau, and then  
24 Stephanie Pachow.

25 MR. GUERRA: Good afternoon. Ruben Guerra. I'm

1 the Vice Chairman of the California Latino Water  
2 Coalition. I'm also the Chairman of the Latin Business  
3 Association, representing over 200,000 Latino businesses  
4 in California.

5           The reality of this is that we need jobs. We  
6 need business, and California needs serious people to get  
7 it done. And there's serious people in this room and  
8 there's not so serious people in this room. The ones that  
9 oppose this have not done their homework and the ones that  
10 are for it have done their homework.

11           We need serious people. California needs this  
12 project. We need reliability in water sources, and  
13 Poseidon is setting the footprints for California's future  
14 of reliability in water.

15           The California Latino Water Coalition supports  
16 it. The Latin Business Association supports it and we  
17 urge you to support it. We need serious people and I know  
18 that you're serious people.

19           Thank you.

20           MR. BILODEAU: Good afternoon, Commissioners. My  
21 name is Denis Bilodeau and I'm a director with the Orange  
22 County Water District and also a Council Member in the  
23 City of Orange.

24           My water district is responsible for managing  
25 Orange County's groundwater basin that supplies more than

1 20 cities and over 2.3 million residents. I am proud to  
2 be one of the leaders in the water industry that champion  
3 the groundwater replenishment system in Orange County,  
4 which is a water recycling plant that turns over 70  
5 million gallons of wastewater into potable water every day  
6 right now.

7 Orange County has done more than most in  
8 California to support water recycling and conservation.  
9 Yet, it's still not enough. Orange County still imports  
10 about 50 percent of the water it uses. These imported  
11 water sources continue to be constrained due to drought  
12 and environmental restrictions.

13 The desalinated seawater that would be produced  
14 by this plant would not be new water for Orange County,  
15 but it would be a way to replace imported water, thus  
16 relieving pressure on the Delta.

17 Your approval of the desalinization project in  
18 San Diego county was commendable. I ask that you provide  
19 Orange County with that same opportunity to make itself  
20 more self reliant, in terms of the water supplies and  
21 water reliability. Orange County's water community stands  
22 behind this project. Please vote yes on the lease and  
23 allow the permitting process on this project to move  
24 forward to the next step.

25 Thank you.

1           ACTING CHAIRPERSON ARONBERG: We have two more  
2 cards. It's Stephanie Pacheco and then Siobhan Dolan. So  
3 if anyone hasn't filled out a card, this would be the time  
4 to do so.

5           MS. PACHECO: My name is Stephanie Pacheco. I'm  
6 the Chair of the environmental committee in the Democratic  
7 Party of Orange County. And I'm on the Board of the  
8 Orange County League of Conservation Voters.

9           The State Lands Commission has an important duty  
10 to enforce the Public Trust Doctrine. In some respects  
11 you have already considered the marine life mortality from  
12 entrainment and impingement. After much investigation by  
13 your staff -- it's hard to do this in two minutes -- an  
14 exhaustive public comment, you approved a resolution to  
15 eliminate these impacts from the once-through cooling for  
16 coastal generators.

17           This policy statement by this Commission and the  
18 application to the Public Trust Doctrine and considering  
19 and passing the resolution would be identical to any  
20 seawater withdrawal for industrial purposes. Yet the  
21 reason for approving these leases appears to defer the  
22 authority to the California Energy Commission.

23           There is ongoing litigation that will interpret  
24 the provisions that the Porter-Cologne Act required  
25 minimization of entrainment. That law prohibits

1 after-the-fact restoration, like what is proposed here.

2 Also, the State Water Resources Control Board,  
3 after having finished their policy on once-through  
4 cooling, will be drafting a similar policy for desal  
5 intakes. We see no reason why the prohibitions on the  
6 after-the-fact restoration for cooling water intakes would  
7 be any different for desal facilities. But both the  
8 court's decision and the policy for the State Water  
9 Control Board will not be available to guide you today.

10 I'm going to have to cut this short. But given  
11 the importance of the Public Trust Doctrine, we request  
12 that you postpone this decision until a plan is proposed  
13 for protecting marine life from entrainment and  
14 impingement.

15 And I've got to say, I've walked almost every  
16 street in my city of Fountain Valley, Orange County, 4  
17 houses have drought tolerant landscaping. We have better  
18 ways to conserve water. Let's support green jobs, public  
19 water and agencies like the public water district.

20 And thank you.

21 ACTING CHAIRPERSON ARONBERG: Thank you.

22 Is Siobhan Dolan in the room?

23 MS. DOLAN: I'm Siobhan Dolan. I am a  
24 representative from Desal Response Group. I just really  
25 want to bring this back to the issue at hand. It's not

1 jobs, and it's not taxes, and it's not elected officials  
2 hot air. It's enforcing the Public Trust Doctrine. It's  
3 preserving the natural resources for generations to come.  
4 That's my generation. That's my children. That's their  
5 children.

6 With all due respect, I'm not even sure who out  
7 of the speakers that we've had today is still going to be  
8 alive when the plant, and if the plant, moves forward. So  
9 I really -- I know that I would never allow my co-sign to  
10 be leveraged for the financial benefit of the immediate  
11 lining of some pockets.

12 I do have to say watching Scott Maloni's lips  
13 move in tandem with the speakers today is certainly proof  
14 that the supporters are well informed and some smart solid  
15 people.

16 I just ask you to deny this lease, because the  
17 SEIR failed to document the important considerations. And  
18 you shouldn't rely on an inadequate SEIR as the basis for  
19 your decisions.

20 Thank you.

21 ACTING CHAIRPERSON ARONBERG: Thank you. There  
22 are no more speaker cards. Commissioners, do you have any  
23 comments or questions?

24 Amanda, are you ready?

25 ACTING COMMISSIONER FULKERSON: I'm okay.

1           ACTING CHAIRPERSON ARONBERG: Ms. Bryant.

2           ACTING COMMISSIONER BRYANT: I just wanted to say  
3 quickly, first of all, I really appreciate everybody  
4 coming today and all the comments. I think everybody did  
5 their homework. There's just differences of opinion.

6           But I think the use of desalinized water is  
7 critical for California. It's in the California Water  
8 Plan. I'm prepared to vote for this project today, and  
9 I'd like to go ahead and move it, if that's okay.

10          ACTING CHAIRPERSON ARONBERG: Okay. I have a  
11 couple questions.

12          ACTING COMMISSIONER BRYANT: Okay.

13          ACTING CHAIRPERSON ARONBERG: I don't know who --  
14 I don't know, Rick, if you're the one to answer these  
15 questions, but I wanted to follow up on something the  
16 Controller was inquiring about, which is the monitoring  
17 period.

18          Paul, I don't know who on staff can answer this  
19 question, but would we -- I think where the Controller is  
20 going is would we get more valuable information if there  
21 were a longer monitoring period, because I understand it  
22 to be only 2 years.

23          EXECUTIVE OFFICER THAYER: Since the Controller  
24 spoke on this issue, we've talked with Poseidon, and  
25 talked amongst ourselves, and here's my understanding of

1 it, and Poseidon can add or subtract.

2           As Poseidon indicated, the language in the lease  
3 can be interpreted to mean that the Executive Officer  
4 would have the opportunity to extend the monitoring period  
5 for a longer period of time. And they've, in essence,  
6 told staff that that's the interpretation they attached to  
7 the language. And with that on the record, certainly  
8 that's the interpretation we would give to the lease, so  
9 that at the end of the 2 years of monitoring, if the  
10 Executive Officer determined -- whoever that would happen  
11 to be --

12           (Laughter.)

13           EXECUTIVE OFFICER THAYER: -- determined that  
14 additional monitoring were necessary, that could be  
15 required.

16           However, when we started negotiating with  
17 Poseidon, there was some back and forth on this. And we  
18 originally -- staff asked for a longer monitoring period,  
19 and focused that additional length in the first stage of  
20 operations before the power plant was closed down.

21           Upon further review of when the brine would be  
22 worse or most intense, we believe that there should be  
23 monitoring both after the plant was constructed when there  
24 was cooperation with the power plant, as well as  
25 additional monitoring to look at what the situation would

1 be once the power plant was closed down.

2           And so it ended up to be the two and two. But  
3 again, staff initially believed that there should be a  
4 longer monitoring period after construction. And if the  
5 Commission -- while the condition, as I just discussed,  
6 enables staff to achieve that objective, if it does not  
7 believe that the first 2 years are sufficient, if the  
8 Commission wants to, on its own, assure that there be a  
9 longer monitoring period during that first interval, which  
10 is the time when staff believed that there should be more,  
11 it would have to require it as a condition, you know,  
12 today. Otherwise, it relies on the Executive Officer to  
13 make that determination.

14           ACTING CHAIRPERSON ARONBERG: What's the length  
15 of time that staff believes would get the most valuable or  
16 adequate information?

17           EXECUTIVE OFFICER THAYER: We had originally  
18 believed that there should be that one year of  
19 pre-monitoring and four years after that for final  
20 monitoring.

21           ACTING CHAIRPERSON ARONBERG: And, Rick or Scott,  
22 would you be okay with that period?

23           MR. MALONI: Just for clarification, again, the  
24 monitoring in the lease is above and beyond the monitoring  
25 we're already required to do for the life of the desal

1 plant under the NPDES permit.

2 ACTING CHAIRPERSON ARONBERG: Right. It's a  
3 different -- it's my understanding that it's completely --  
4 right, it's different. This is monitoring for the brine  
5 release.

6 MR. MALONI: Above and beyond. Well, there's  
7 salinity monitoring in our NPDES permit as well. In  
8 addition, we have 1 year of pre-discharge monitoring, 2  
9 years of post-discharge monitoring under the co-located  
10 scenario. And an additional 2 years of post-discharge  
11 monitoring under the stand-alone scenario. So the SMRP in  
12 the lease is 5 years of monitoring.

13 We spent a number of weeks with the staff, the  
14 environmental staff of the State Lands Commission and our  
15 scientists, and we concluded that would be sufficient for  
16 the initial monitoring. But it's a minimum number of  
17 years, because at the end of the first 2 years of  
18 post-discharge monitoring, the Executive Officer has the  
19 authority to extend the monitoring, if we have not been  
20 able to demonstrate that the impacts to Public Trust  
21 resources aren't significant.

22 MR. ZBUR: I mean, the one thing I'll just say  
23 about it to make it clear for the record is the way the  
24 lease works is it requires the monitoring for a minimum of  
25 the 2 years. There must be a determination by the

1 Executive Director that that -- that the data is  
2 sufficient to assess the use of the Public Trust Resources  
3 at that point.

4 If he does not make that determination, the  
5 monitoring does not stop. So that's the way the lease  
6 reads. It basically allows the monitoring to stop only if  
7 the Executive Director reasonably determines that there's  
8 sufficient data to assess the use.

9 So, you know, I don't know why you would want to  
10 impose a longer period of time. And that applies to both  
11 the first 2 years and the stand-alone 2 years, if, in  
12 fact, your Executive Director and your scientists have  
13 basically said that the data is sufficient to make that  
14 determination.

15 ACTING CHAIRPERSON ARONBERG: No. What I heard  
16 staff say is that a longer period of time would be the  
17 scientifically correct period. And so that's why I'm  
18 asking.

19 EXECUTIVE OFFICER THAYER: You know, another  
20 option here would be for -- again the staff had originally  
21 believed that a longer period was appropriate. It did  
22 agree to the shorter period with the staff option to  
23 continue it.

24 Another approach, if the Commission -- the  
25 Commission could require a longer initial period on its

1 own now to assure that that would occur. Another approach  
2 might be that at the end of the 2-year monitoring, rather  
3 than have that decision made by the Executive Officer, the  
4 lease could be modified to require that that matter be  
5 brought back to the Commission for its determination, you  
6 know, with a staff recommendation and input from the  
7 applicant. And then the Commission could decide whether  
8 it wanted longer monitoring or not.

9 ACTING CHAIRPERSON ARONBERG: All right. Thanks.

10 I have a couple more questions. And I don't  
11 know -- these are finance related questions, so I'm not  
12 sure who to direct them to. And I recognize that it might  
13 be premature to ask about the financing plan and strategy,  
14 but will this one -- are you planning to duplicate the  
15 plan that you proposed for the Carlsbad project?

16 MR. MALONI: It is premature. We won't start the  
17 financing process until we have the project fully  
18 permitted. We couldn't. We couldn't finance without all  
19 the permits in hand.

20 Ideally, we would look at the opportunity to  
21 apply for private activity bonds if that opportunity is  
22 made available, but again it's too early to tell.

23 ACTING CHAIRPERSON ARONBERG: Okay. I noted from  
24 the staff report that there's more interest in the water  
25 than there would be capacity from the plant. So how are

1 you going to decide who the purchasers will be?

2 MR. MALONI: The slide that I put up on the  
3 screen showing the list of the working group in Orange  
4 County, all those agencies have signed nonbinding Letters  
5 of Intent. And the value of those Letters of Intent is to  
6 provide a baseline of the demand. And that baseline is  
7 60,000 acre feet. The plan is 56,000 acre feet. At the  
8 end of the day, I think the working group feels that the  
9 project is important enough countywide that we'll be able  
10 to work it out, so that everyone interested in the water  
11 will get the amount of water that they need, obviously not  
12 exceeding the capacity of the plant.

13 ACTING CHAIRPERSON ARONBERG: Okay. And what's  
14 your schedule to have signed contracts, as opposed to  
15 Letters of Intent?

16 MR. MALONI: Next year. I think there's a letter  
17 in your record from a couple members of the working group  
18 who said as soon as we can get the project permitted, we  
19 can get the contracts signed. And so our focus right now  
20 is getting the approval from the State Lands Commission  
21 and the Coastal Commission soon after. And we expect that  
22 we'll be able to have fully executed water purchase  
23 agreements next year.

24 ACTING CHAIRPERSON ARONBERG: Okay. How far  
25 along is the design of the project itself?

1 MR. MALONI: It's been initially designed, but  
2 it's probably 25 percent designed. We're at the 25  
3 percent design level.

4 ACTING CHAIRPERSON ARONBERG: And what is the  
5 schedule or what do you see the schedule as being for the  
6 financing of the project, even though it's premature to  
7 know exactly what you're going to be doing, whether it's  
8 bonds or what have you?

9 MR. MALONI: Well, again, I'll have to speculate  
10 because it all assumes that the permits are acquired in a  
11 reasonable period of time. But assuming we could permit  
12 the project next year, receive all the permits we need,  
13 and the last permit would be the Coastal -- development  
14 permit from the Coastal Commission, we expect that we  
15 could close financing the first quarter, the first half of  
16 2012.

17 ACTING CHAIRPERSON ARONBERG: Thank you. Are  
18 there any other questions?

19 We have a motion on the table.

20 ACTING COMMISSIONER BRYANT: Let me revise -- can  
21 I revise my motion? So I'll move the staff recommendation  
22 with the change we discussed having the 2-year monitoring  
23 come back to the Board -- to the Commission for approval.

24 ACTING COMMISSIONER FULKERSON: I'll second that.

25 ACTING CHAIRPERSON ARONBERG: Okay. Without

1 objection, the motion is approved.

2 EXECUTIVE OFFICER THAYER: Again, just to clarify  
3 on this technical matter of the fact that the two  
4 representatives of the Constitutional Officers can't both  
5 vote. That in this instance, it was the Lieutenant  
6 Governor's representative that voted and the  
7 representative from Finance?

8 ACTING CHAIRPERSON ARONBERG: Yes.

9 EXECUTIVE OFFICER THAYER: Okay, great. Thank  
10 you.

11 MR. MALONI: Was the vote taken?

12 ACTING CHAIRPERSON ARONBERG: Yes, it was.

13 (Laughter.)

14 MR. MALONI: Thank you very much.

15 (Applause.)

16 ACTING CHAIRPERSON ARONBERG: We have another  
17 item to proceed with, so folks that are chatting, would  
18 you mind taking that outside the council chambers. And is  
19 Mayor Foster in the room? Mayor Bob Foster?

20 Bob Foster or City Attorney Shannon in the room  
21 somewhere?

22 EXECUTIVE OFFICER THAYER: If you'd like --

23 ACTING CHAIRPERSON ARONBERG: Why don't we  
24 proceed with an informational item while we --

25 EXECUTIVE OFFICER THAYER: Exactly.

1           ACTING CHAIRPERSON ARONBERG:  -- one that's going  
2 to take 5 or 10 -- oh, here, I see Mayor Foster.  Here he  
3 is.  So why don't we proceed with the Long Beach item out  
4 of courtesy to Mayor Foster.

5           EXECUTIVE OFFICER THAYER:  We have a staff  
6 presentation by Staff Counsel Jennifer Lucchesi.

7           EXECUTIVE OFFICER THAYER:  This is file Item 67.

8           SENIOR STAFF COUNSEL LUCCHESI:  Good morning --  
9 good afternoon, Commissioners.  My name is Jennifer  
10 Lucchesi, Senior Staff Counsel with the Commission.  I  
11 present to you Item 67, an informational staff report on  
12 the City of Long Beach Public Trust revenues, including  
13 their local Proposition D.

14           The purpose of this informational report is to  
15 inform the Commission on the status of the Long Beach  
16 grant, particularly in light of all the newspaper reports  
17 and opinions surrounding Proposition D and Port  
18 operations.  This is not an action item.  Commission staff  
19 is not recommending the Commission take any action.  This  
20 is just an informational report.

21           The current economic crisis facing most cities  
22 and counties in our state, including the City of Long  
23 Beach, is significant, complex and severe.  Based on  
24 staff's past experience with other trust grants in the  
25 state, it is precisely this kind of economic environment

1 where the Commission and its staff must vigilantly conduct  
2 its oversight responsibilities on behalf of all citizens  
3 of the state.

4           This is the first opportunity the Commission  
5 staff has had to inform the Commission about Proposition  
6 D, since the Long Beach City Council placed the  
7 proposition on its local ballot on August 3rd.

8           As background, the Commission has a statutory  
9 responsibility to oversee the management of Public Trust  
10 Lands and assets by legislative grantees who manage these  
11 lands in trust on behalf of all the citizens of the state.

12           While the Legislature granted management and  
13 control over these lands to these local entities,  
14 California, acting by and through the Commission, still  
15 remains the ultimate trustee of these lands and assets,  
16 and has a duty to continue to protect the public's  
17 interest.

18           And the management of these lands and assets,  
19 including the management and expenditure of trust  
20 revenues, is a statewide concern. The Commission and its  
21 staff exercise a supervisory role on a daily basis with  
22 all grantees throughout the state, including the cities  
23 and Ports of Oakland, San Francisco, Los Angeles, and San  
24 Diego.

25           For example, recently the Commission passed a

1 resolution opposing a local initiative that would have  
2 allowed for non-maritime uses at the 10th Avenue Marine  
3 Terminal at the Port of San Diego.

4           Also, in exercising this supervisory role, the  
5 Commission recently heard an informational staff report  
6 similar to this one on the relationship between port  
7 impacts and the Public Trust Doctrine relating to the Port  
8 of Los Angeles.

9           The City of Long Beach is one of the 70 plus  
10 grantees in the State. The original grant to the city was  
11 in 1911, and for the primary purpose of developing a  
12 harbor and a port. Since 1911, there's been numerous  
13 grants -- excuse me, numerous legislative acts amending  
14 that original grant.

15           And also, for the past 50 plus years, the  
16 Commission has worked with the city through many trust  
17 issues, including expenditure of trust revenues for the  
18 Queen Mary, the convention center, and other development  
19 projects and activities within the city and the port.

20           Pursuant to the city charter, portions of the  
21 city's Public Trust Lands are within the Port of Long  
22 Beach and are managed by the Long Beach Board of Harbor  
23 Commissioners. Port trust funds are held in the Harbor  
24 Revenue Fund. The city's remaining Public Trust lands and  
25 assets are managed by various other city departments,

1 including the Gas and Oil Department, which oversee over  
2 oil operations within the city. City trust funds are held  
3 in the Tidelands Operating Fund.

4           Proposition D is a City of Long Beach charter  
5 amendment that proposes two changes to the existing city  
6 charter. First, Proposition D proposes to allow a  
7 transfer of up to 5 percent of the port's gross revenue to  
8 the city's Tidelands Operating Fund.

9           Currently, the City Charter allows for the port  
10 to transfer up to 10 percent of its net revenues to the  
11 city. The port estimates that the change in the transfer  
12 formula will increase port transfers to the city by  
13 approximately 6.6 million per year. This increase will  
14 account for approximately 4 to 6 percent of the port's  
15 annual net income.

16           Second, Proposition D proposes to transfer the  
17 control, operation, and management of oil extraction  
18 operations in the harbor district -- excuse me, in the  
19 harbor district out of the port's jurisdiction and under  
20 the city's gas and oil department jurisdiction.

21           Revenues from oil operations are currently being  
22 deposited by the port into the Harbor Revenue Fund. If  
23 Proposition D passes, the city council, not the port, will  
24 direct where the revenues derived from the oil operations  
25 will be deposited, into the Harbor Revenue Fund or the

1 Tidelands Operating Fund.

2           It is anticipated for the foreseeable future that  
3 oil revenue will, in fact, go into the Tidelands Fund. If  
4 the city council directs these oil revenues be deposited  
5 into the Tidelands Operating Fund, the port estimates it  
6 would lose approximately 100 million in net cash flow over  
7 the next 5 years, fiscal years 2011 to 2015 cumulatively.

8           Over 5 years, this accounts for approximately 15  
9 percent of the port's annual net income. When combined  
10 with the increase in the transfer formula, the impact of  
11 Proposition D could account for approximately 20 percent  
12 of the port's annual net income.

13           To the knowledge of Commission staff, neither the  
14 city nor the port analyzed the potential financial impacts  
15 of the measure, and the consequences Proposition D may  
16 have on the port's operations, including its various  
17 security and environmental programs and capital  
18 improvement projects prior to the city council placing the  
19 Proposition D on the November ballot.

20           The loss of 20 percent of net income due to the  
21 loss of oil revenues and the change in the transfer  
22 formula would likely have an effect on port operations.  
23 The port's credit rating may be reduced resulting in  
24 higher interest rates. And it is likely the port will  
25 either have to borrow more for or spend less on its 3.1

1 billion 5-year capital plan.

2           The issue in diverting revenues from the port is  
3 whether the city would be impairing port operations of  
4 statewide, and even national importance to fund other  
5 operations within the city.

6           Staff is unaware of any detailed and  
7 comprehensive analysis conducted by the City, analyzing  
8 any potential fiscal implications, and impacts to port  
9 operations that may result from the passage of Proposition  
10 D.

11           In conclusion, the city has a fiduciary duty, as  
12 the State's trustee, similar to a private trust, as does  
13 every grantee in the State to balance competing Public  
14 Trust needs and to carefully consider any potential  
15 impacts to the port operations that any change to the City  
16 Charter may have.

17           That concludes my presentation. I'm available  
18 for questions.

19           ACTING CHAIRPERSON ARONBERG: Thank you,  
20 Jennifer.

21           We have 3 speaker cards on this item. Mayor  
22 Foster, followed by Michelle Grubbs, and Robert Shannon.

23           LONG BEACH MAYOR FOSTER: Thank you, Madam Chair.  
24           First of all, I think it's a little difficult to  
25 sit here and listen, and quite frankly, sort of get

1 lectured on our fiduciary responsibility under the Public  
2 Trust Doctrine. So I want to first state that we have  
3 always, as a city, honored and taken very seriously our  
4 fiduciary obligation.

5           Every year when we review our budget, we look at  
6 the impacts on any issue on the Port, its operation and  
7 its fiscal condition. I come out of the private sector.  
8 I was president of a Fortune 200 company for a lot of  
9 years, and I understand credit ratings. I understand  
10 finance. I understand how important it is to have the  
11 Port be a sound financial institution.

12           So I want to just let you know exactly what we've  
13 done in terms of our responsibilities under the doctrine.  
14 My city attorney is here. He'll be happy to talk about  
15 Measure D. I do want to say that, in terms of our  
16 obligation, there are two things that we look at, in terms  
17 of the Port.

18           First of all, it's our obligation -- and your  
19 staff report is correct, the city is the primary -- has  
20 the primary responsibility for balancing these interests.  
21 Our first obligation is to make sure that the Port remains  
22 a viable and robust economic entity, and that it has the  
23 credit worthiness and the resources to continue in that  
24 vein. I will always and the city will always make sure  
25 that that happens.

1           What you failed to hear about Measure D is that,  
2 in fact, there is a provision still in the existing  
3 formula and in the proposed new formula that the Port can  
4 say that, in fact, financial conditions prevent them from  
5 making that transfer. And if they can demonstrate that,  
6 our first responsibility is to make sure that the Port is  
7 a viable economic entity.

8           The second is to keep the Port free from  
9 politicization. And this happens in any business entity.  
10 One of the principles that we've established throughout  
11 this state is that entities like the Port need to be at  
12 arm's length relationship from politics. I happen to  
13 believe that that's essential for this port.

14           And, in fact, over the last 3 years, I personally  
15 have demonstrated how important that is. Two and a half  
16 years ago, there was a proposal to make sure -- and affect  
17 truck drivers at the Port, to make sure that they all  
18 became employees. We were just going to wave a magic  
19 wand, and every truck driver was going to be an employee  
20 by government fiat.

21           Now, I won't go into all the reasons why this was  
22 going to happen. Let's just say that there were political  
23 interests involved here and there certainly were labor  
24 interests involved here.

25           We fought that at the Port of Long Beach. I

1 personally fought it. Why? Because it was an intrusion  
2 on the political system on business operations. You were  
3 going to put businesses out of business by doing that.

4 We fought that. We've been victorious in court  
5 on that, and the principle was upheld that we want to keep  
6 the Port insulated from those political activities. We've  
7 also taken very seriously our role as a fiduciary at the  
8 Port.

9 Now, you've heard about some small issues.  
10 You've heard about -- quite frankly, I disagree with these  
11 numbers. We'll talk about it later. It's not worth  
12 arguing right now.

13 It is not \$6 million a year. This year, for  
14 example, under the new formula, we would get the same as  
15 we would under the net formula, if you did not deduct the  
16 previous year's transfer, which our auditor has  
17 recommended and has several reports that are available to  
18 your staff.

19 But bigger items. I take it personal -- very  
20 personally when the port proposes an expenditure that I  
21 think is unnecessary or even superfluous or, in fact,  
22 maybe ego driven. This year I vetoed not a 2 million, not  
23 a 5 million, not 100 million, a \$300 million  
24 administration building proposed at the port. Now, that's  
25 really fiduciary guardianship, because it wasn't

1 necessary.

2           Now, you want to talk about credit ratings, and  
3 you want to talk about -- that that building is still in  
4 their capital plan. What you heard in that report, that's  
5 what they're talking about, not being able to execute  
6 their capital plan. I vetoed that, removed it. I have a  
7 line item veto, because my responsibility is to make sure  
8 expenditures are proper and appropriate. It was, in my  
9 judgment, completely unnecessary.

10           The Gerald Desmond Bridge -- again, that was a  
11 \$300 million savings out of the capital program.

12           The Gerald Desmond Bridge. Our port was going  
13 along waiting for the federal government and others to  
14 pour money in their collection cup to raise \$1.2 billion  
15 to rebuild the Gerald Desmond Bridge.

16           Now, this is an organization that says it's a  
17 business entity. It claims that the Gerald Desmond Bridge  
18 is the single most important piece of infrastructure at  
19 the Port. If it fails, like the same designed as the  
20 bridge in Minnesota that failed, what will happen is that  
21 the Port's revenues will be seriously impaired. And yet,  
22 we were going to wait.

23           In February, I urged them, in the strongest  
24 possible terms, to basically get off their duff and get  
25 this started, because it needed to get rolling. Get a

1 design build program. Don't do this design-bid-build  
2 program. Get it now.

3 I gave them the names of several law firms that  
4 could help them with that. To their credit, they did hire  
5 that law firm, because -- and to move them along faster,  
6 because if you build that bridge not in four years, but if  
7 you start it in one year, everyone knows that this is the  
8 best time to build an infrastructure project. Every  
9 project I know is coming in between 20 and 40 percent  
10 under estimates.

11 This bridge won't be \$1.2 billion, it will be  
12 more like \$800 or \$900 million. Again, they're moving  
13 along. We're now -- we've got a lot of interest in this  
14 bridge. They're moving much faster.

15 Had it not been for the intrusion of the city,  
16 and had it not been for my urging, we would still be quite  
17 frankly plodding along on the Gerald Desmond Bridge. This  
18 will wind up being a savings of \$200 million to \$400  
19 million.

20 So let's talk about real big numbers. Let's talk  
21 about what real fiduciary guardianship is. I take it  
22 personally when someone questions that. I'm sorry, I do.  
23 We've been good guardians of the Public Trust here and  
24 we'll continue to be.

25 Now, we've also made sure that the port doesn't

1 run off and do things, foolish things that could damage  
2 its reputation. Like in the face in this economic  
3 climate, give salary increases to its employees. Other  
4 public employees, as you well know, are not going -- are  
5 not being given increases. In fact, they're being given  
6 reductions. We make sure of that, because we review the  
7 budget every year.

8           Every year, we go through and examine the  
9 financial condition of this port. So it is misleading to  
10 say that we didn't do a financial analysis. We do one  
11 every year.

12           Let me just simply say about the report. I,  
13 quite frankly, would be at a loss to come before a  
14 Commission and say I'm giving you information that was in  
15 the newspaper. I'm sorry. That's just simply  
16 inappropriate.

17           More information was available, had somebody only  
18 called my office, called the City Auditor's office, we  
19 would be happy to cooperate and supply any of the points  
20 of information that will be said today, and a lot more.  
21 There is detailed analysis on this.

22           And I guess, I have to say this. While this  
23 Commission staff may raise issues with us on things like  
24 whether or not it's appropriate to have a small support  
25 grant to the municipal band that's holding a concert in

1 the tidelands, that that will be a question about whether  
2 or not we're exercising the Public Trust appropriately,  
3 but yet, you will completely ignore and not deal with  
4 another port in this state right next to ours, the Port of  
5 Los Angeles, which grants \$20,000 per truck as a grant to  
6 two Arizona firms, and \$10,000 a year for numerous trucks,  
7 millions of dollars in money that I'm at a loss to see  
8 where there is any public benefit, environmental benefit  
9 or certainly any Public Trust benefit, that's not  
10 discussed, but Measure D is, 5 days before the election.

11           So finally, let me just say this, our city is  
12 well managed. We take our role as a fiduciary seriously.  
13 Our credit rating is five notches ahead of the State of  
14 California. Now, I realize that may be damming with faint  
15 praise, but it is five notches above the State of  
16 California, and we run our city very well. We manage it  
17 very well. We take our obligation at the Port very  
18 seriously. I spend probably more time on Port Commission  
19 appointments than any appointment I have. This is a vital  
20 resource to us. It's a vital resource to the State of  
21 California. We will never take it lightly. We're not  
22 taking it lightly here.

23           What Measure D does, in just simple terms, it  
24 changes the formula from net to gross, closely about the  
25 same amount of money. Why are we doing that?

1 I'm doing that to go back to the principle that I  
2 started with in the beginning, to try to keep the Port at  
3 arm's length from political issues. The way the formula  
4 works now, we've got to scrutinize almost every  
5 expenditure the Port makes. Now, sometimes -- and I will  
6 never give up on big expenditures, as I mentioned about  
7 the office building. But if we have to go through every  
8 expenditure line by line, that produces a level of  
9 scrutiny that I think is beyond what any business should  
10 withstand.

11 So the City Auditor, after a detailed audit,  
12 recommended that we go to a percentage of gross. A, to  
13 assure a more stable revenue for the Tidelands Trust Fund,  
14 which has \$400 million in capital projects backed up, and  
15 is in serious financial condition, but as important, to  
16 make sure that the City does not become -- does not go  
17 over the top in its scrutiny of port operations.

18 At a gross level, there's less interest in what  
19 they spend for paper clips and what they spend for travel  
20 and what they spend for other items. There will still be  
21 scrutiny on what the big items are, but it takes us away,  
22 one step removed, from their daily business operations.  
23 And that's the right thing to do.

24 Secondly, it deals with the oil issue. The oil  
25 issue is merely a clarification of existing law. The City

1 Attorney is right here. The oil operations are currently  
2 performed by the Department of Oil and Gas in Long Beach.  
3 The only thing that they do now is we basically cut the  
4 port a check. We're not changing existing law. The City  
5 has the discretion and the authority to both manage the  
6 operations and manage the funds. So nothing is being  
7 changed.

8 I think a lot of this could have been cleared up.  
9 You know, I will say this, you know I have a lot of  
10 respect for the members of this body. The City of Long  
11 Beach had a great relationship with the State Lands  
12 Commission, not so great in the last couple of years. I  
13 don't know why.

14 You know, I have both experience in the business  
15 and the public and private sector. I know all three of  
16 the Commissioners on this body personally. We're a  
17 responsible city. And yet somehow on issues such as the  
18 enhanced oil recovery out of the Wilmington Field or port  
19 issues, quite frankly, we're getting scrutiny at a level  
20 that goes back 10 years. That simply is, quite frankly, a  
21 waste of time and I think an embarrassment and also, in  
22 many cases, an insult to the city.

23 So I'm here today. Look, whatever has gone  
24 before, it's gone before. This issue is important to the  
25 City. You're going to hear a lot of, you know, behind me

1 a couple people come up and talk about this. And you'll  
2 hear them tell you -- in fact, a flier was put out by one  
3 of the advocates saying that the City is doing this to  
4 balance its budget, knowing full well that, in fact, not a  
5 dime of this goes into general fund. And, in fact, I've  
6 been very vigilant to make sure not a dime of any port  
7 money goes into general fund. This all goes for tidelands  
8 purposes. This is all for the Public Trust.

9 We need a better relationship here and we need to  
10 start now. We should not be up here 4 or 5 days before an  
11 election talking about something and having your staff  
12 tell you that they've gleaned most of this from  
13 newspapers. That's not a good relationship. And it's a  
14 disservice to us. It's a disservice to you as well.

15 So I want to thank you for the time. I urge you  
16 -- I know this is an informational item, but there's  
17 precious little information in this item. And what I'm  
18 urging you to do is I want to demonstrate to you how  
19 vigilant our city and I have been on the Trust  
20 responsibility we have given. I will never ever shirk  
21 that responsibility. I care about this port. And if the  
22 port, quite frankly, had its wits about them, they would  
23 realize instead of handing off reports to you, so things  
24 like this can come up, they would realize that the better  
25 path for them is, in fact, to go with the gross formula,

1 because it will cause them a lot less intrusion in the  
2 future.

3 Thank you for the time. I hope we can build a  
4 better relationship. I'm certainly open to it, and I am  
5 probably the most accessible mayor in this state. You can  
6 call me anytime. I'll be happy to give you my cell phone  
7 at the conclusion of this meeting today.

8 Thank you very much. Any questions?

9 ACTING CHAIRPERSON ARONBERG: Thank you.

10 Any questions?

11 LONG BEACH MAYOR FOSTER: Thank you.

12 ACTING CHAIRPERSON ARONBERG: I have a couple  
13 more speaker cards. Did you want to say something?

14 ACTING COMMISSIONER BRYANT: I'll wait till the  
15 speakers are finished.

16 ACTING CHAIRPERSON ARONBERG: Okay. Michelle  
17 Grubbs.

18 MS. GRUBBS: Good afternoon. My name is Michelle  
19 Grubbs. And I'm the Vice President of the Pacific  
20 Merchant Shipping Association. PMSA members are ocean  
21 carriers and terminal operators. Basically, we are the  
22 tenants and customers of the ports on the west coast.  
23 Our members represent about 90 percent of the  
24 containerized cargo moving in and out of the west coast  
25 ports.

1 PMSA members are very concerned about Measure D.  
2 And, in fact, we are opposed to Measure D. The  
3 international trade community view the Port of Long Beach  
4 as one of the best managed ports in the United States. It  
5 has a very talented staff and a hard working Commission,  
6 which the Mayor has appointed three of the members. And  
7 they are very diligent and hard working.

8 Unfortunately, because of Measure D, we're  
9 concerned very much about the politicalization of the Port  
10 of Long Beach. With little debate and no analysis, the  
11 city council rushed an amendment to the City Charter onto  
12 the November 2nd ballot.

13 So let me just give you the timeframe it  
14 happened. The Charter Committee of the City Council met  
15 on July 27th. The Harbor Commission had a meeting on  
16 August 2nd and they looked at the amendment and voted  
17 absolutely unanimously opposed. On August 3rd, it was the  
18 last day the City Council could put a measure onto the  
19 ballot. The City Council met that day and they voted to  
20 put it on. The harbor commissioners went in front of the  
21 City Council and they told them they were opposed and they  
22 were blasted, blasted.

23 And basically, what's so ironic about it, is that  
24 the harbor commissioners were following their fiduciary  
25 duty that the State Lands Commission had asked the City

1 Council to do in, I think it was, a late 2009 letter, that  
2 the staff had sent to the Long Beach City Council asking  
3 them to -- reminding them about their fiduciary  
4 responsibilities.

5           Each year, the Port of Long Beach transfers 10  
6 percent of their net income to the tidelands account. The  
7 Port has paid the debt on the aquarium the last few years,  
8 because of the financial problems the city has been under.  
9 They also extended the debt repayment on the convention  
10 center.

11           Yet, right now, what we're seeing is the city  
12 says the tidelands account, their tidelands account, is  
13 going to go broke in 2013. The port this year did two  
14 transfers of the 10 percent net income to help out the  
15 city.

16           We urge the Commission and ask them respectfully  
17 to do an audit of the city's tidelands account. With all  
18 this money going in there, yet the account is going to go  
19 broke. The city says it will be broke in 2013. So we ask  
20 that you do a financial audit.

21           And I thank you for your time.

22           ACTING CHAIRPERSON ARONBERG: Thank you.

23           There's one more card from Robert Shannon.

24           LONG BEACH CITY ATTORNEY SHANNON: Good  
25 afternoon. I'm going to be very brief and very blunt.

1 This staff report is totally inappropriate. Buried in the  
2 document, the memorandum is a statement and I'll read it  
3 as follows:

4 "Proposition D does not, on its face, raise a  
5 Public Trust Doctrine revenue or land use consistency  
6 issue, because any transfer of revenues from the Port's  
7 Harbor Revenue Fund to the city's Tidelands Operating Fund  
8 would remain subject to the Public Trust and still be  
9 required to be expended for Public Trust purposes."

10 The remainder of the body -- of the memo takes  
11 the position of port interests against the Proposition for  
12 policy reasons, never mentioning the needs of the  
13 tidelands, never mentioning the fact that this whole  
14 proposal originated from the office of the City's Chief  
15 Financial Oversight Officer, the elected City Auditor, nor  
16 does it ever mention her reason for proposing the  
17 Proposition. Nothing is said in the memo.

18 Nor does it mention the fact that currently under  
19 the Charter -- and I am the city's exclusive legal advisor  
20 and I interpret that Charter. I've done it for thirty  
21 some years -- that under the city's charter oil  
22 administration, whether it be in the harbor or outside the  
23 harbor, rests with the city and not with the harbor.

24 By formulating what is essentially a political  
25 tract, staff is operating as nothing more than a shell for

1 port-related interests. Let me again emphasize, if this  
2 proposition passes, no money will leave the tidelands.

3 Finally, I'd like to step back for just a second.  
4 The City of course is a trustee for the tidelands -- for  
5 the State tidelands. The city attorney is the legal  
6 advisor to the trustee. We take this job very seriously.  
7 And I'd just like to briefly tell you about myself.

8 I've been in the City Attorney's Office for 37  
9 years. And with the possible exception of Alan Hager, who  
10 I believe joined the Attorney General's office when  
11 California was incorporated into the Union --

12 (Laughter.)

13 LONG BEACH CITY ATTORNEY SHANNON: With the  
14 possible exception of Alan Hager, I think perhaps I bring  
15 no intellect to the store, but I certainly do bring a  
16 historical perspective.

17 For some 37 years, in one way or another, I have  
18 interacted in the City's position of legal advisor to the  
19 trustee with the State Lands Commission. I go back to the  
20 days of Ken Cory, go back to the days when the City  
21 recovered, on behalf of the State, over \$220 million.  
22 That's when \$220 million was real money.

23 We take our position very, very seriously. And  
24 let me just state the obvious, the position of trustor and  
25 trustee presumes a partnership relationship.

1 Unfortunately, that relationship has deteriorated in the  
2 last few years. It has become an adversarial relationship  
3 that is totally inappropriate. This staff report is the  
4 best example of that adversarial relationship. It drives  
5 a wedge between the City and the State.

6 And I would respectfully suggest and request that  
7 this is a very appropriate time, given the fact that  
8 you're considering a new executive director to take into  
9 account what I've just said.

10 Thank you very much.

11 ACTING CHAIRPERSON ARONBERG: Thank you.

12 Do we have any other speakers?

13 Any comments from Commissioners?

14 ACTING COMMISSIONER BRYANT: I just have a quick  
15 comment. I did talk to staff about this. And I'm not  
16 taking a position one way or the other on this issue, but  
17 I find the timing of this item also unfortunate. As you  
18 can hear from the testimony, there's a lot of back and  
19 forth going on. And I would have preferred not to have  
20 had this on the agenda in the middle of this election  
21 season.

22 I think there's issues to talk about here, and we  
23 can do it down the line, but I'm disappointed that we have  
24 it in front of us.

25 ACTING CHAIRPERSON ARONBERG: Okay. Thank you.

1 I think we're going to, at the pleasure of the other  
2 Commissioners, adjourn into a quick closed session. And  
3 should we say 25 minutes? Will that do it? Paul, do you  
4 think that's enough time for a closed session.

5 EXECUTIVE OFFICER THAYER: Yes, that will be  
6 fine.

7 ACTING CHAIRPERSON ARONBERG: Okay. So why don't  
8 we come right back at 1:30 and we'll resume open session.  
9 I need to just have the room cleared for the closed  
10 session. Thank you.

11 EXECUTIVE OFFICER THAYER: Madam Chair, I think  
12 we have a side room, so that we'd be able to recess to  
13 that and people can stay.

14 ACTING CHAIRPERSON ARONBERG: Okay. Great. So  
15 folks are welcome to stay in this room. Pardon me.

16 (Thereupon the Commission recess into closed  
17 session.)

18 (Thereupon a lunch recess was taken.)  
19  
20  
21  
22  
23  
24  
25



1 within the homeowners association in Hobson Park on the  
2 downcoast side, an off-ramp for Highway 101 on the upcoast  
3 end. The first slide there on top it was done last month  
4 showing what the shoreline looks like. These slides in  
5 this series are all done in September or October. And  
6 they were all done when the ocean was at a minus tide.  
7 The first one I think is a foot and a half almost below  
8 mean high water. The second one is about a half a foot  
9 below mean high water, and so forth.

10 So each of these -- and the bottom one is more  
11 than 2 feet below mean high water. And mean high water  
12 being the boundary of where the uplands and sovereign  
13 lands meet.

14 So what we have here are four slides just  
15 indicating that.

16 --o0o--

17 CHIEF COUNSEL FOSSUM: In the next series of  
18 slides, we have -- going back in time again. Now, we're  
19 to, I believe, 2002 -- 1989, I believe. It's a little  
20 hard to read. 1979 and 1972. You'll note that there are  
21 in the last 3 slides -- and these are compilations of  
22 photographs, so that there is some overlap on them, is  
23 before the last 10 homes -- or the last 9 or 10 homes on  
24 the subdivision were constructed.

25 --o0o--

1 CHIEF COUNSEL FOSSUM: The last slide in this  
2 series is right after the Department of Transportation  
3 constructed a revetment at the behest of the property  
4 owners in that area following the construction of their  
5 freeway.

6 Until just a few years ago, these homes were all  
7 under lease from a property owner that owned the entire  
8 property.

9 --o0o--

10 CHIEF COUNSEL FOSSUM: The next slide shows you  
11 what the property looked like in 1969. You'll notice that  
12 there is no freeway off-ramp on the upland -- upcoast end  
13 of the property, but you'll see it's in a very similar  
14 situation. I think I have a cursor here. Do I? No.

15 I don't know where I get my cursor. They said  
16 that there would be a cursor, but -- anyway I'll use the  
17 red light and we'll hope it works to show you what --  
18 okay, in the bottom photo -- this is again right after  
19 1972 -- I can see why you don't like this.

20 You can see the ramp has been built on the  
21 upcoast end, the revetment. On the downcoast side, the  
22 last 10 lots here, the revetment was not yet constructed  
23 in 1972. It was done in 1976. So the next photo here in  
24 '76, CalTrans said it made additional revetment in this  
25 area. Whereas, in 1972, it had not been constructed in

1 that area.

2 --o0o--

3 CHIEF COUNSEL FOSSUM: 1969 photo. And this is  
4 the one I wanted to focus on a little bit, because one of  
5 the arguments that the homeowners association have made is  
6 that CalTrans caused the erosion to their beach, and that  
7 that's why they were responsible for putting in the  
8 revetment.

9 This is in 1969. Again, a summer photograph when  
10 this beach is usually at its widest in California. And  
11 you'll note that there's not much of a beach there either.  
12 And what you'll also note is that there's already splash  
13 walls. And in this vicinity, there's already some  
14 revetment that's been constructed by some of the  
15 property -- or the house -- the people that owned houses  
16 or rented houses or leased houses in this area.

17 But again, it goes to the issue of whether or not  
18 the State somehow is responsible for the erosion that took  
19 place on this property.

20 The next slides are actually ones that were  
21 provided -- I'll get this yet I hope.

22 --o0o--

23 CHIEF COUNSEL FOSSUM: -- provided by the  
24 homeowners association showing -- boy this thing is --  
25 shows you old-school people can't control mouses.

1           December 1963 photographs. And what you can see  
2 is that the houses are already protected by a rock sea  
3 wall of some kind. It's not the large rocks that CalTrans  
4 put out, but there are already rocks.

5           It's a very shallow beach in this area. That's  
6 historical. That's natural, but it's very shallow. The  
7 reports that CalTrans had done by engineers from the  
8 University of California at Berkeley indicated that there  
9 was a thin veneer of sand on the beach there.

10                   --o0o--

11           CHIEF COUNSEL FOSSUM: More photographs of the  
12 same time provided us by the homeowners association. But  
13 what you can see basically, there's no dry sandy beach in  
14 1963.

15                   --o0o--

16           CHIEF COUNSEL FOSSUM: This shows you a photo  
17 that shows you that, again, no wet -- excuse me, no dry  
18 sandy beach, and that there's a rock revetment of some  
19 sort that was -- they were trying to use to protect the  
20 homes as early as 1963.

21           And, in fact, in this area of the beach, we have  
22 surveys that were done in the 1930s showing there was  
23 already significant erosion in the area. And there was  
24 revetment placed in front of properties, not at Seacliff,  
25 but probably within a few thousand feet upcoast, because

1 the erosion was going on in the area, and there were no  
2 homes at this time in that area.

3 --o0o--

4 CHIEF COUNSEL FOSSUM: The next photo is going to  
5 be a series of overlays. This is a 2006 aerial photograph  
6 of the Seacliff area. And what we're going to be showing  
7 here are a number of surveys that have been taken over  
8 time.

9 This one shows in green, we term it the 1879 --  
10 excuse me '71 meanders of the Pacific Ocean. That's based  
11 on the United States General Land Office survey of the  
12 township plats. When the United States conveyed into  
13 private ownership, that's the line that they used to  
14 indicate where the shoreline was in 1871.

15 The next -- and also on this map, I want to point  
16 out, in red, is the proposed design toe of the revetment  
17 as submitted to the Commission by Moffatt and Nichol the  
18 engineers for the homeowners association. So that's where  
19 they'd like to put the base of the sea wall. And that's  
20 also where they've requested in their application to you  
21 or their request to the Commission to agree on the  
22 boundary.

23 On the upcoast end of that, you'll see I believe  
24 it's a white line, right there. And that line says BLA  
25 117. In 1970, January of 1970, the Commission had under

1 consideration a permit to the Department of Transportation  
2 to allow them to fill the upcoast area for the freeway to  
3 expand it. They had to come to the Commission to get  
4 permission to put the revetment and the freeway out into  
5 the ocean and the Commission agreed with that. They also  
6 agreed to enter into a boundary line agreement as to where  
7 the Commission's jurisdiction would be after that fill.

8           And BLA 117 is reflective of that. BLA 117 was  
9 also signed by the property owners at the time, who were  
10 the predecessors in interest to the homeowners. It  
11 stopped however at the -- it included 6 lots. Four of the  
12 lots though, however, were taken later by CalTrans. Two  
13 of the lots, as you can see on this photograph, are  
14 included in the boundary line agreements. So the  
15 Commission already has a boundary line agreement on those  
16 two lots, right there. And so you can see how much it's  
17 inland of the proposed one by the homeowners association  
18 proposal.

19                           --o0o--

20           CHIEF COUNSEL FOSSUM: The next slide -- I went  
21 too fast. 1927 mean high tide line. The first deed we  
22 found for the upland properties in this area was recorded  
23 in Ventura County was a deed that called to the mean high  
24 tide line. And this is the location of that deed in 1927  
25 as to where the boundary was.

1           It's indicated -- again, I'm having trouble with  
2 the color -- green, I believe. It's very close to the  
3 same one as we entered into the boundary line agreement,  
4 if I'm not mistaken again with the coastal -- excuse me,  
5 with CalTrans, and with the homeowner -- or the property  
6 owner in the area.

7           It's also reflected, as you can see, not very  
8 well I'm afraid, but the lot lines that were later part of  
9 a record of survey that the homeowners association also  
10 will be showing you.

11           So this 1927 deed is pretty consistent with where  
12 the boundary has been treated in the past. So the next  
13 survey is a United States coast and geodetic survey from  
14 1933, a topographic map basically. And the high water  
15 line on there is also indicated. All of these lines  
16 you'll note are basically on where the riprap is today.

17                           --o0o--

18           CHIEF COUNSEL FOSSUM: 1953. Now, in 1953, the  
19 State Lands Commission staff went out and surveyed the  
20 mean high tide line. And the field notes indicate that it  
21 was a mean high tide line survey at that time. The  
22 Commission approved and recorded a map indicating where  
23 that mean high tide line was or ordinary high water mark  
24 at the time in 1953.

25           This survey was done because of all the oil

1 operations in the vicinity, and there was issues of  
2 whether or not subsidence was taking place. And so the  
3 Commission staff was directed to do a survey to indicate  
4 where the mean high tide line was at that time.

5 --o0o--

6 CHIEF COUNSEL FOSSUM: The next survey we have  
7 uncovered is one that CalTrans did in 1970, again, prior  
8 to the construction of the freeway, and prior to the  
9 placement of revetment in 1972 and '76 in front of the  
10 homes. This survey by CalTrans was not only a survey of  
11 the shoreline and the vicinity, but also we've uncovered  
12 in recent days cross sections that give us another picture  
13 of what all this looked like to CalTrans before they  
14 placed the revetment and before they constructed the  
15 freeway.

16 --o0o--

17 CHIEF COUNSEL FOSSUM: Here's a cross section  
18 that reflects that. We have 2 photographs at the bottom.  
19 One from 1972 right after the riprap revetment was put in,  
20 and a current one from just this month, in fact, on the  
21 left.

22 It's a little hard to see, but he's indicating to  
23 you there where the cross section was done by CalTrans.  
24 And then in 1972 the same lots, same upland -- the homes  
25 have changed quite a bit from being one-story little

1 things to many of them are three stories or more today.

2 But what's important about this photograph is the  
3 cross section you'll see above. On the far right is the  
4 1871 federal government survey of where the lots were at  
5 the time. The next one over is the 1927 deed of the mean  
6 high tide line. I believe the next one over -- I should  
7 probably look at the thing, because my eyes are not as  
8 good as they should be.

9 The next one is a CalTrans 1970 survey. Now, one  
10 of the things I'd like to say is that over the years, in  
11 1970 the Commission did, in fact, have a hearing. There  
12 was testimony taken. There was opposition by the property  
13 owner as to CalTrans freeway, but there was support by the  
14 local legislators who came forward and said how important  
15 it was to have the freeway put in.

16 CalTrans indicated that their experts said they  
17 didn't believe there was going to be any erosion, but they  
18 were taking it into consideration in their plans.

19 The Commission approved the agreement, approved  
20 the lease, and approved the boundary line agreement at  
21 that time. Now, what we didn't know is that subsequent to  
22 that, in 1972 after they had built the freeway, the  
23 homeowners were able to convince the -- and they weren't  
24 homeowners, because they were lessees, but the property  
25 owner in the area was able to convince CalTrans to build

1 this revetment.

2           And what the concern here is, is that if you look  
3 at it, in 1970 -- again, if you could point to the 1970  
4 line of where the survey was by CalTrans at the time and  
5 the intersection with the approximate 2-foot contour,  
6 there's a line across. It's near the blue. That's where  
7 the mean high tide line was -- excuse me, where the  
8 intersection is there. That's where the intersection and  
9 the boundary was in 1970 based upon CalTrans survey.

10           And you can see, even at that time, to the right  
11 of that is our riprap rocks. CalTrans gave us two dates  
12 on that in February and May of '72, before they put the  
13 riprap in. It is that arrow at the intersection at the  
14 bottom was the base of the rock at that time. And then  
15 the riprap before August of 1972 is shown there.

16           So that's before. That's the riprap you saw  
17 really something substantially the same as in those 1963  
18 photographs of the rock on the wall.

19           What CalTrans did is then built out to that next  
20 line, the magenta line. And that's what they built for  
21 the homeowners at that time. The problem was, their own  
22 surveys indicated that the 1970 mean high tide line was  
23 the State's boundary.

24           Now, they've come up with some -- we've just seen  
25 some evidence that they have of correspondence between the

1 property owners' attorney and CalTrans indicating that  
2 they thought State Lands was going to be okay with this.  
3 And that's maybe what they did believe. And maybe that  
4 was their honest belief on both parties' side.

5           The concern is that neither party contacted the  
6 Commission or its staff with this revetment project. And  
7 so when it came up in subsequent years for repair, we had  
8 none of this evidence. And when the staff responded in  
9 1976 to the upcoast project, the Corps of Engineers plans  
10 submitted to us show that it was above the mean high tide  
11 line. And frankly, our evidence to this day suggests that  
12 that was not placed on State Lands Commission property at  
13 that time in 1976 for the downcoast area.

14           In 1983, there was another project -- or excuse  
15 me, the surveyor who was going to -- who wanted to record  
16 a map contacted our staff. And he was informed in his  
17 letters that we didn't know where the boundary was at that  
18 time, and that they may need a lease in the future, if  
19 evidence came forth that this was on State property. So  
20 that happened again in a couple of subsequent events when  
21 the Commission staff notified, either the engineers  
22 working on the projects or the property owners, that they  
23 would potentially have to have a lease if evidence ever  
24 came forward.

25           Now, in 2006 the Commission staff gave another

1 letter saying we didn't know where the boundary was. And  
2 the response to that was they were very pleased, I'm sure.  
3 But the Coastal Commission had before them an application  
4 for this project, and they required that Moffatt and --  
5 they required that the homeowners provide evidence of the  
6 project, detailed plans for the project. Those plans  
7 indicated to the Coastal Commission that it was, in  
8 fact -- that their proposed project was on State property.  
9 In fact, the existing project was on State property.

10 At that point, CalTrans -- excuse me, the Coastal  
11 Commission contacted the State Lands Commission staff and  
12 questioned why we thought it was not in our jurisdiction.  
13 We had not seen any of those plans, at that point in time,  
14 in 2000, because those plans were not made until 2007, and  
15 we had commented in 2006.

16 Upon receipt of those plans in early 2008 and  
17 having reviewed them, we did contact the homeowners  
18 association and indicated to them that their own plans  
19 suggested this was going to be on State property, and we  
20 sent them an application. And subsequently, we've had it  
21 on the agenda 3 times to issue them a lease.

22 However, the homeowners didn't believe that it  
23 was on State property. At least they asserted that they  
24 believed the 1953 line, which you can see on this map, and  
25 which we saw, would be considerably out into the ocean was

1 the boundary, and therefore didn't want to enter into the  
2 lease and did not accept it at that time.

3 The rent we initially asked the homeowners to pay  
4 was a discounted rent, because of the fact that CalTrans  
5 had been involved in it, and the fact that they were  
6 providing some public access. The Coastal Commission was  
7 requiring access paths for the public to get out to the  
8 beach whenever that's possible.

9 And so the staff felt confident in being able to  
10 recommend to the Commission that we not charge a full  
11 rental value on that.

12 The problem with what happened subsequently is  
13 that in opposing the Commission staff's conclusion that  
14 there was this small area -- and do I have an arrow here?  
15 Yes.

16 This small area between those two lines --  
17 between the second and third line, that's the area the  
18 Commission staff was asserting they needed to lease.  
19 However, because they opposed it and said that's not the  
20 boundary, we did further research. And that's what turned  
21 up the 1970 survey indicating that the greater part of  
22 that revetment had now been placed on State property.

23 In trying to reach negotiations, we've had  
24 several settlement proposals and negotiations with their  
25 representatives. And we believe that the Commission staff

1 had come up with a solution that would be acceptable to  
2 them. We had every indication that was going to take  
3 place.

4           However, we were also informed that their board  
5 found it not acceptable. So they have now proposed this  
6 toe of their proposed revetment that would go -- actually  
7 fill existing tidelands based upon their own survey, their  
8 own surveyor and expert.

9           So the staff is recommending a denial of that.

10                           --o0o--

11           CHIEF COUNSEL FOSSUM: On the next slide -- we'll  
12 go past that slide. On this slide is the record of survey  
13 that was done by -- to actually create those lots. There  
14 had been a prior one done in 1953 at the same time as the  
15 State Lands Commission. Each of those lots went all the  
16 way out to that 1953 line.

17           When the engineer for the property owner at the  
18 time actually did the survey in 1972, those lots that went  
19 out to that '53 line suddenly were pulled all the way back  
20 to where basically it was in 1972.

21           So the homeowners association is seeking to  
22 assert that that line out in the ocean was the boundary  
23 where, in fact, the lot lines that are drawn on that map  
24 reflect the conditions at the time that he actually did  
25 the survey. He did not survey the ocean. He was

1 reflecting the record of survey -- or the recorded survey  
2 the Commission had done.

3 --o0o--

4 CHIEF COUNSEL FOSSUM: And this is another slide  
5 there.

6 And what you'll see the purpose of his survey in  
7 1972 he recorded was to establish those property lines of  
8 the unrecorded leases at Seacliff. And he also references  
9 the unrecorded map that I just mentioned, the one that  
10 previously had shown those lines all the way out to the  
11 1953 line, which by 1972 he had pulled back.

12 --o0o--

13 CHIEF COUNSEL FOSSUM: The other thing that I  
14 didn't mention on this map is that in the area out beyond  
15 those lots, it basically says that that land is proposed  
16 to be dedicated to the State of California. But we know  
17 at the time having looked at the photographs and the  
18 surveys, it was already into the ocean.

19 --o0o--

20 CHIEF COUNSEL FOSSUM: The next thing is the  
21 deed, their current vesting deed for this property. I  
22 believe they're going to explain that to you, how if you  
23 look at the legal description in the deed, it talks about  
24 that lot out in the ocean. But if you look very carefully  
25 at it, it says accepting any portion of the

1 above-described property, basically anything below the  
2 line of natural ordinary high tide and also accepting any  
3 artificial accretions that might attach to that.

4           So what we have is basically a disclaimer in the  
5 deed itself as to those lands out in the ocean.

6                           --o0o--

7           CHIEF COUNSEL FOSSUM: And this is my final  
8 slide. And basically, it's showing again the proposed  
9 boundary line agreement that the homeowners association  
10 would like the Commission to establish. It's also showing  
11 the 1970 line where the Commission staff believes the  
12 support is of where the boundary is at the time of 1970  
13 when this was filled. And just to get quickly to the  
14 legal aspect of this.

15           The proposal that the homeowners association have  
16 used is a section of the Public Resources Code that  
17 authorizes an exchange of lands. And that exchange  
18 requires a number of findings by the Commission, including  
19 having done appraisals, and that the lands have been  
20 filled and reclaimed and no longer useful for Public Trust  
21 purposes and cutoff from water, cutoff from the shoreline,  
22 cutoff from the ocean.

23           And the problem, in this instance, is that  
24 they're not cutoff. They're actually underlying the  
25 ocean, portions of them. And it's been the practice of

1 the Commission that in most instances the Commission  
2 preserves public access along these areas. And, in fact,  
3 in many instances, when we're dealing with governments and  
4 doing exchanges, we preserve, you know, 100 feet or more  
5 of public access on many of our exchanges.

6 So we don't believe that either 6357, which is  
7 the boundary line agreement section, applies because of  
8 the proposed location, unless they wanted to agree on the  
9 1970 line, or 6307, which authorizes changes, would apply.

10 And I believe that concludes my presentation, but  
11 I'm happy to answer any other questions you might have.

12 EXECUTIVE OFFICER THAYER: Before we move on, let  
13 me just summarize one aspect about that. So, in general,  
14 we believe that the applicants are relying on a survey  
15 that doesn't represent when the facts were when the sea  
16 wall went in. It was a survey that was done in 1953 and  
17 bears no relationship to where the mean high tide line was  
18 at the time the sea wall went in. And it's significant to  
19 find the mean high tide line that existed closest in time  
20 to the construction of the sea wall, because the sea wall,  
21 in effect, froze the mean high tide line.

22 And as the Commission knows, the mean high tide  
23 line moves back and forth. And that, in effect, moves the  
24 property line back and forth. But once the sea wall goes  
25 in, it freezes where that line is and so it's important to

1 determine where that is.

2           And you do that by looking at the most current  
3 survey at the time the sea wall went in. And the 1953 one  
4 bore no relationship to the state of the mean high tide  
5 line at the time the sea wall went in the early 1970s.

6           So our view is that what's proposed -- because  
7 the applicant's proposal is based on this outdated survey,  
8 which only described where the mean high tide line was in  
9 '53 and not in '72, that to approve it would be to give  
10 away the tidelands that were Public Trust Lands at the  
11 time in 1972.

12           The flip of this, of course, is that we're also  
13 recommending that the Commission approve a lease, which is  
14 consistent with the last negotiation we had with the  
15 representatives for the association. The amount of rent  
16 charged is very low. It's 13,000 a year -- and it is  
17 heavily discounted over what we'd normally charge -- with  
18 the idea that even if they don't want that now, if at some  
19 point an emergency arises and they need the authority to  
20 start work out there immediately, they don't have to wait  
21 for a new Commission meeting to start work. They could  
22 sign that lease and proceed.

23           Again, it doesn't force them to do it, but it  
24 gives them that option.

25           CHIEF COUNSEL FOSSUM: And staff would like to

1 amend its recommendation in that regard. We have a 60-day  
2 window for the applicants basically to agree to enter the  
3 lease after today. We'd like to extend that to 6 months.

4 EXECUTIVE OFFICER THAYER: That will give them  
5 the whole winter where they can take advantage of it.

6 ACTING CHAIRPERSON ARONBERG: Thank you.

7 Commissioners, any comments before we take public  
8 comment?

9 I have 7 speaker cards. Ms. Stone, I think  
10 you're the representative for the group. And in all  
11 fairness, I think you're probably going to want more than  
12 2 minutes. About how much time would you say you'd need.

13 MS. STONE: Four of the speakers are yielding  
14 their time, so there will just be 2 speakers beside myself  
15 who will be very brief. Two lawyers who might want to put  
16 their two cents in.

17 ACTING CHAIRPERSON ARONBERG: Thank you.

18 MS. STONE: I should be able to conclude within  
19 10 minutes. I have a PowerPoint.

20 Here it is.

21 ACTING CHAIRPERSON ARONBERG: Thank you very  
22 much. Please proceed.

23 (Thereupon an overhead presentation was  
24 Presented as follows.)

25 MS. STONE: There are a few things in the staff

1 report I'd like to correct, at this point.

2           One is, the staff report says that the proposed  
3 repairs to the revetment would extend beyond the 1972 and  
4 1976 construction of the revetment. That's absolutely not  
5 true. The engineers have been told to keep it within the  
6 footprint of the original revetment. And the proposed  
7 lease requires that, as well as the coastal permit.

8           The second major mistake is that the staff report  
9 says that the 1972 lawsuit, brought by the landowners,  
10 only applies to the southerly 10 lots. That's not true,  
11 if you read the complaint, which is in your large packet  
12 from staff. It refers to the tidelands in front of the 40  
13 houses, as well as the southerly 10 lots.

14           There are a number of other mistakes, but they  
15 weren't repeated here, so I'm not going to go into them  
16 all.

17           Our position is we would like to enter into some  
18 kind of a boundary line agreement or exchange to resolve  
19 this issue once and for all. Staff now concedes that once  
20 the revetment was put in, the mean high tide line does not  
21 move anymore. That's important to understand.

22           Originally, they took the position that it did  
23 move, and that the 2006 Moffatt and Nichol actually  
24 changed the mean high tide line. The staff report this  
25 time says that that 2006 drawing is irrelevant. That's





1 in, designate it. It wouldn't have to go through the  
2 bureaucracy, and would go directly to helping fix the  
3 parks. We think this might establish a good precedent.

4 --o0o--

5 MS. STONE: This is actually the last survey  
6 before the revetment was put in. It was in early 1972.  
7 It's a record of survey. It's recorded. It was provided  
8 to the State Lands Commission. It's signed by the Ventura  
9 County Surveyor.

10 This one says -- it establishes parcel B for the  
11 purpose of putting the revetment on there. So it did pull  
12 back the lot lines, but of course the whole property was  
13 owned by the Hoffman family, so he could do what he wanted  
14 with it, at that point.

15 But parcel B is where the proposed revetment is.  
16 And it says, "Proposed dedication to the State of  
17 California". That was to be dedicated to CalTrans.

18 --o0o--

19 MS. STONE: Subsequent correspondence between  
20 CalTrans and the homeowners revealed that CalTrans didn't  
21 want to own the property where the revetment is or  
22 maintain it. And they said we're not going to maintain  
23 it. We're not going to take any responsibility for it.  
24 The homeowners may maintain it, if they want to. But  
25 that's the last survey. It shows the 1953 line.

1           And we think it's the most authoritative one, and  
2 would be much more persuasive to a court than this 1970  
3 aerial photograph, which was interpolated by staff and  
4 never approved by the Commission, never used in any  
5 official document. Just something that was made up.

6                           --o0o--

7           MS. STONE: Okay. The 1972 record of survey  
8 shows the 1953 ordinary high water mark. The individual  
9 lots from parcel B. Not the shore. Parcel B was private  
10 property. The 1953 ordinary high water mark is the last  
11 official ordinary high water mark survey by the State  
12 Lands Commission, and used in every official document.

13                           --o0o--

14           MS. STONE: This is some comments on the 1970  
15 topographic survey prepared by CalTrans or its expert Joe  
16 Johnson. There were numerous surveys and photographs made  
17 before and after the revetment to document what was  
18 happening. There was concern that there would be erosion.  
19 But what also happened, and what is in the report in your  
20 files, provided by staff, is that period of time from 1969  
21 through the 1973 was a period of extraordinary storms. At  
22 the end of the documents provided by staff, you'll see the  
23 damage that occurred in Ventura and Santa Barbara county  
24 from those storms. The Biltmore Hotel was falling down.  
25 All sorts of things were really taken out. 1969, every

1 bridge in Ventura County went out. The harbor went out.

2 So that's an avulsive action. That was not  
3 ordinary erosion, ordinary processes. It was avulsive.  
4 And I think any expert would, based on the photographs,  
5 and materials provided by CalTrans, would agree.

6 The next two I already said.

7 --o0o--

8 MS. STONE: This is some of the stuff prepared by  
9 CalTrans. And it has this very insightful comment. It  
10 talks about first how you do an ordinary high water mark.  
11 It's worth reading page 13. It's a period of over 18  
12 years measured at specific intervals at certain  
13 elevations. And it says here, "When a tide water is the  
14 boundary in a deed, the title to the ordinary high water  
15 mark is conveyed. Due to the constant change in coast  
16 lines, any survey picture...", such as the 1971 relied on,  
17 "...is good only for the moment for which it was made".

18 That's one of our main points.

19 --o0o--

20 MS. STONE: The association's deed to Parcel B  
21 references the 1972 record of survey, which references the  
22 1953 line.

23 --o0o--

24 MS. STONE: So the State Lands Commission has  
25 known about the revetment since 1970. At the hearing in

1 1970, CalTrans engineer said that Professor Joe Johnson  
2 had recommended a design for additional rock slope  
3 protection down coast from our CalTrans project in front  
4 of Seacliff homes.

5 Now, it was designed, but it wasn't built until  
6 it became an emergency situation in 1972, due to the  
7 combination of the extreme storms and the installation of  
8 the on- and off-ramps.

9 --o0o--

10 MS. STONE: There are numerous property  
11 references in the documents concerning the revetment.  
12 I'll let you read them.

13 There's more.

14 --o0o--

15 MS. STONE: There is a general lease agreement  
16 and settlement of the lawsuit, which basically warrants  
17 that it was built on private property. And CalTrans has  
18 stated many times, they thought they built it on private  
19 property.

20 --o0o--

21 MS. STONE: To open this up now would cause such  
22 a problem between State Lands and CalTrans and the  
23 homeowners, who's going to take care of it? Who's going  
24 to be responsible for it?

25 --o0o--

1 MS. STONE: There's more.

2 --o0o--

3 MS. STONE: We believe that after all these  
4 years, 40 years, a court would find that the State Lands  
5 Commission is estopped to assert jurisdiction of some  
6 photos and having accepted the revetment for all these  
7 years. It was 1970, 1972, 1976, 1983, 1996, 1998, 2006.  
8 All these times declining to assert jurisdiction, and then  
9 coming back with a new theory at this late date.

10 --o0o--

11 MS. STONE: We think the conditions for an  
12 exchange are met here as to resolve boundary title  
13 disputes. The money value of the lands are interest is  
14 equal to or greater than the lands in the Trust exchange.

15 And we think that even if the boundary were  
16 landward of where we think it is, by adding giving some  
17 money for Public Trust interest, we would compensate  
18 adequately. I don't see how the lands under the sea wall  
19 have any tidelands value. They're filled. You can't  
20 access them.

21 And besides, all of the land in front of the sea  
22 wall is dedicated -- is deeded for public access, as well  
23 as the pathway behind the sea wall on the landward side.  
24 So it certainly meets the criteria for a land exchange,  
25 and we also think it meets the criteria for a boundary

1 line agreement.

2 --o0o--

3 MS. STONE: There again is a picture of our  
4 proposal. The green being what would be given up all  
5 water, and the orange being what's under the sea wall  
6 currently.

7 --o0o--

8 MS. STONE: Here are some pictures, more pictures  
9 of the sea wall falling down. Now, this was in 2005.  
10 We're five years later, five storm years later, and it's  
11 getting pretty bad. We say let's settle this case. Let's  
12 be done with it.

13 I wonder if you get the letter from our  
14 Supervisor Steve Bennett. He's been out there. He's  
15 concerned. And did you get the two-page revetment repair  
16 letter --

17 EXECUTIVE OFFICER THAYER: When did that come  
18 out.

19 MS. STONE: I think it was last week, but there  
20 were some -- it was that article about the condition of  
21 the parks in Ventura and Santa Barbara county, and it has  
22 another copy of our proposal. Thank you very much. Do  
23 you have any questions of me?

24 ACTING CHAIRPERSON ARONBERG: Any questions,  
25 Commissioners?

1           ACTING COMMISSIONER FULKERSON: I'm unclear as to  
2 what Seacliff's proposal actually is.

3           MS. STONE: You're not clear on what?

4           ACTING COMMISSIONER FULKERSON: On what the  
5 homeowners' proposal is in counter to the staff  
6 recommendation.

7           MS. STONE: Our proposal is a land exchange or a  
8 boundary line agreement at the design toe of the  
9 revetment, and some money. But we've thrown out \$250,000  
10 to be used for some tideland purposes. We have suggested  
11 something to help repair beach parks in Ventura and Santa  
12 Barbara counties.

13           The State Park in Ventura can't even pay its  
14 water bill and it's got leaky water. There's just a  
15 terrible need there.

16           ACTING COMMISSIONER FULKERSON: I should have  
17 been more precise. I understand the boundary line  
18 agreement you're looking for. But what I am interested in  
19 more details is is this fund that you're proposing. So do  
20 you have any specifics or you're saying about 250,000 to  
21 parks.

22           MS. STONE: Yeah, we think 250 is an  
23 approximation of the present value of the leasehold. And  
24 we suggest using it for something very related to tideland  
25 Trust purposes such as beach parks in Ventura county,

1 State beach parks.

2 ACTING COMMISSIONER FULKERSON: Okay. Thank you.

3 MS. STONE: There is Emma Wood is falling in the  
4 ocean. They're highly used. There are campers. They're  
5 low cost recreation for families. They're always full.  
6 And they could use some money, even to pay their water  
7 bills.

8 ACTING COMMISSIONER FULKERSON: Thank you. No  
9 further questions.

10 ACTING CHAIRPERSON ARONBERG: Okay. Thank you.  
11 You said that you have two more representatives that wish  
12 to speak?

13 MS. STONE: Do you want to speak?

14 MR. TEMPLEMAN: Good afternoon, Commissioners.  
15 My name is Al Templeman. I've been a homeowner at  
16 Seacliff for 20 years. I'm a former Naval officer, and  
17 now I'm a trial attorney. One of my specialties is  
18 representing landowners in flooding and subsidence cases,  
19 and rivers. Mrs. Stone is the expert when it comes to  
20 tidelands.

21 However, I have tried many cases to juries and  
22 have obtained injunctions on behalf of homeowners and  
23 landowners against public and private entities.

24 I guess it was this background why I was named to  
25 be the chairman of a litigation committee, which I hope I

1 will not have anything to do. But as a lawyer and having  
2 been before judges and juries, I just had to take one look  
3 at Exhibit O, which is the release on page 3 and page 4.

4 And by way of background, there was an inverse  
5 condemnation suit brought by the landowner at the time.  
6 In order to settle that case, the State of California made  
7 a promise to the landowner that they would build a  
8 revetment on the plaintiff's and the county property.  
9 That was a promise made by the State back in the  
10 seventies. There is no reason for the State to break that  
11 promise at this time.

12 Thank you.

13 MR. HARBISON: Commissioners, thank you for your  
14 attention to all of this. My name is Steve Harbison. I  
15 too am an attorney and live part time at Seacliff. I'm  
16 semi-retired at this point in time.

17 I want to talk not as a lawyer today, but as a  
18 homeowner. Looking out at the angry sea from time to time  
19 and wondering when it's going to come and impact our  
20 houses.

21 The rock revetment was put in place to protect  
22 the houses. It was put in place by the State of  
23 California. According to the staff of your Commission,  
24 CalTrans, then the State Department of Transportation,  
25 Division of Highways, put it on the wrong land. If that's

1 true, there ought to be a fix that doesn't involve us  
2 having to risk danger to our homes, cost out of our  
3 pocket.

4           If anything, if you take the best case that your  
5 staff offers to you, it was a legitimate mistake by one  
6 State agency affecting another State agency, this one,  
7 that claims now, after more than 30 years that this  
8 revetment has been in place, that claims ownership of the  
9 rock wall.

10           I talk to people casually and describe our  
11 predicament. They can't believe it. It doesn't make  
12 sense. It's just not logical or fair to us. Our Coastal  
13 Commission permit to do these relatively minor repairs to  
14 restore the wall to its existing contours, the way it used  
15 to be, as high as it used to be, no wider than it used to  
16 be, were all set with the Coastal Commission. And at the  
17 last minute, we have this assertion of sovereignty by the  
18 State of California that is preventing us from doing it.

19           It's not fair. Please allow us to do it in a  
20 fair compromise that we've proposed.

21           Thank you.

22           ACTING CHAIRPERSON ARONBERG: Thank you.

23           Commissioners.

24           Ms. Bryant.

25           ACTING COMMISSIONER BRYANT: I am trying to

1 understand exactly how the staff's proposal prevents the  
2 homeowners association from fixing the revetment.

3 CHIEF COUNSEL FOSSUM: If I could just interject.

4 MS. STONE: The Coastal Commission is delaying  
5 issuance of the permit, even though it's been authorized,  
6 until this issue is resolved. And both the Coastal  
7 Commission and staff have said they would not issue an  
8 emergency permit.

9 ACTING COMMISSIONER BRYANT: But if you accept  
10 the staff's proposal, you could fix the revetment.

11 MS. STONE: If we accept the lease, but the  
12 homeowners -- and we are going to see them again Sunday,  
13 but they unanimously have said they don't want a lease,  
14 because they're afraid it will affect their property  
15 values, they're afraid it will affect their ability to get  
16 a loan. They know what it's like to be under a lease.  
17 They were under a lease until 2005. And disputes with the  
18 landlord resulted in very expensive litigation, over \$2  
19 million litigation.

20 ACTING COMMISSIONER BRYANT: But that was a  
21 dispute with a private landowner.

22 MS. STONE: Right.

23 ACTING COMMISSIONER BRYANT: That's different  
24 than a lease on Public Trust land, which is really common  
25 in these kinds of -- in this type of land area.

1 MS. STONE: This is a really unique situation.

2 Sure, there are lots of leases for wharfs and  
3 piers and beach fronts, but none that I know of involving  
4 a revetment that was built 40 years ago by the State to  
5 compensate for erosion.

6 You know, it's admitted that the beach was eroded  
7 in 1970. There's no dispute. That's in the lawsuit. It  
8 says the beach was denuded of sand, because of the  
9 building of the revetment -- excuse me the off-ramp. And,  
10 of course, there were the well documented storms at that  
11 time.

12 So that's the position of the homeowners now, and  
13 they're not afraid to litigate. Wouldn't be my  
14 recommendation, but --

15 ACTING COMMISSIONER BRYANT: Can I ask staff.  
16 Okay, so we have here, if you look at the homeowners'  
17 proposal, we're talking about the 1953 boundary line that  
18 was recorded, but do we always rely on -- I mean, it seems  
19 like -- I just feel like all the things I've seen here, we  
20 don't -- it's not always necessarily about what's  
21 recorded. There's all -- I mean, is that definitive for  
22 any reason.

23 I mean, the homeowners are also relying on the  
24 1970 settlement, which included the other description that  
25 may or may not have been recorded. I just --

1 EXECUTIVE OFFICER THAYER: I think that the slide  
2 that Kathy Stone showed, which had a quote, something to  
3 the -- I don't have the exact language, but something to  
4 the effect, a survey is a picture in time is only good for  
5 that time. And she said that based on that quote, you  
6 know, we shouldn't necessarily rely on the 1970 survey.

7 But in point of fact, the 1970 survey is so much  
8 more likely to represent the state that the beach was in  
9 at the time the sea wall went in than 1953, which is  
10 when -- is the survey line that they're using for their  
11 swap. They're basically saying take that line. They'll  
12 give us some land on the out board of that line and take  
13 land in board of that line to end up with a compromise.

14 But things are exactly as you say, that the fact  
15 that a line is recorded doesn't give it any special  
16 status. There's no boundary line agreement that we agree  
17 that hence forth that will be the line. That just means  
18 that that was the line, just as her quote -- we agree with  
19 the quote she put up there. That's a picture in time. It  
20 was accurate at the time it was taken, and you need to  
21 look at what it was at the time the sea wall went in.

22 ACTING COMMISSIONER BRYANT: Would staff have  
23 felt differently about the homeowners' proposal of a land  
24 swap if it was to do a boundary line adjustment to the  
25 1970 boundary line?

1 EXECUTIVE OFFICER THAYER: Absolutely, because  
2 then we'd be basically adjusting the line on either side  
3 of the line in a way that reflected the situation at the  
4 time the sea wall went in. The one other point I would  
5 add is that, you know, I understand that the property  
6 owners went through that litigation with the prior lessor,  
7 and that that was difficult for them.

8 But in terms of these kinds of leases, we have  
9 leases for sea walls up and down the state. We don't have  
10 any evidence that they depreciate the value of the land.  
11 The amount we're charging is \$13,000, which is greatly  
12 discounted -- I'm almost afraid to say that in a public  
13 hearing with the audit pending -- of what it otherwise  
14 would be.

15 And so we're attempting to be reasonable as many  
16 ways as possible. And that's why we're asking the  
17 Commission to approve this lease, so if they should change  
18 their mind they have the opportunity to use it right away.

19 MS. STONE: You know there's another thing in  
20 that '76 report from CalTrans that has some graphs showing  
21 the variation in the mean high tide line over a period of  
22 years. It was tremendous. It was like this.

23 Now, if the revetment had gone in a couple  
24 months, it would have been a different place, or if we'd  
25 had a picture, a little closer in time, it might have

1 been in a different place.

2 EXECUTIVE OFFICER THAYER: I agree. And it may  
3 very well be that if somebody had done a survey in 1971 or  
4 taken a picture in, you know, January of '72, that might  
5 have been different, but we're using the best evidence we  
6 have. I mean, if the applicant -- if the association has  
7 better evidence to offer us -- you know, we've looked at  
8 all their information, but that was the survey closest.  
9 If there had been a closer one, we would have used that.

10 CHIEF COUNSEL FOSSUM: And in fact, it's not just  
11 the survey. Those cross sections that I showed on that  
12 one graph were done just months before in almost weeks  
13 before the construction of the revetment. And so they  
14 show where that -- where the existing conditions were. So  
15 it's not just a mean high tide line survey, you had a  
16 cross section that actually showed you the entire slope.  
17 So that's the most damning, if you want to call it that,  
18 evidence that exists. And the Commission looks for its  
19 facts to be able to apply the law. If we had facts that  
20 said it was somewhere else, that's what we'd be relying  
21 on.

22 ACTING CHAIRPERSON ARONBERG: Okay. Comment.

23 ACTING COMMISSIONER FULKERSON: May I ask a  
24 question of Curtis. I would like for you to refresh my  
25 memory and address the accusation that this is quote

1 CalTrans mistake. Can you please remind me again of where  
2 we stand on this?

3 CHIEF COUNSEL FOSSUM: And, in fact, we've just  
4 received some recent evidence from Ms. Stone in part of  
5 the PowerPoint that indicates that there was  
6 correspondence back and forth between the homeowners  
7 association -- excuse me, the property owner and their  
8 attorneys at the time indicating that they -- that  
9 CalTrans may have thought that the State Lands Commission  
10 wasn't going to have a problem with this.

11 Well, CalTrans had just been through a long  
12 process with the Commission over establishing the boundary  
13 and getting a permit from the Commission to build the  
14 revetment and the freeway up coast. So for a staffer  
15 within CalTrans to think that they wouldn't even need to  
16 provide us with any plans or notice or anything else to do  
17 a project seems kind of, you know, strange.

18 But we don't have any of that correspondence. We  
19 were not in the loop. The Commission -- none of our  
20 records reflect that the property owner or CalTrans  
21 communicated with the Commission at all until 1976 when we  
22 got a notice from the Corps for those last lots down the  
23 beach, and that the Corps noticed with a cross section and  
24 a boundary sketched on the diagram indicating that the  
25 project was going to be above the mean high tide line.

1 Staff relies on information it's given. And so when the  
2 project is proposed to be above the mean high tide line,  
3 we rely on that. We don't have hundreds of people to go  
4 out in the field and check all of these projects.

5 So we rely on surveyors who do this information  
6 and people's honesty in submitting those plans. And when  
7 in 2006 we -- excuse me, in 2008, when we received the  
8 plans from the homeowners association indicating that the  
9 revetment was going to be on the Commission's property,  
10 that's when we suggested they get a lease from us and put  
11 it before the Commission. We had that -- you know, a  
12 discounted lease, as Paul said, less than \$14,000 a year,  
13 which comes to about \$23 a month for each property owner  
14 there, and thought that that was a more than reasonable  
15 one at the time.

16 And since then, we've seen even more evidence  
17 that there's even more State property involved. So it's  
18 really getting difficult for the Commission staff to  
19 recommend anything beyond what it has already. We  
20 certainly empathize with them. We are dealing all up and  
21 down the coast, from San Diego all the way up to the north  
22 with people in similar situations. It's not the State or  
23 CalTrans that are causing erosion. It's the ocean. We  
24 have sea level rise. We have storms every year. Every  
25 year there's a storm that takes sand off the beach. It's

1 a natural phenomenon that exists since the beginning of  
2 time and it will continue to.

3 We're trying to work with property owners up and  
4 down the coast to protect their property, but we're also  
5 trying to protect the State's property and to be  
6 compensated when the State contributes that property to a  
7 private project.

8 ACTING COMMISSIONER FULKERSON: Thank you.

9 MS. STONE: Just one little point there. The  
10 staff report, and Curtis has admitted, the mean high tide  
11 line is not going to erode anymore because of the  
12 revetment, unless of course it falls down. So we're not  
13 like all those other ones that are having erosion and  
14 changes. It's fixed in time.

15 The only question is where is it fixed in time,  
16 and whether the 1970 photograph is an accurate fixture or  
17 whether the 1972 record of survey is, but we're proposing  
18 a compromise that does not involve a lease. And I think  
19 it would work.

20 ACTING CHAIRPERSON ARONBERG: I'm inclined to go  
21 with staff's recommendation, but I also want to assure the  
22 homeowners that I've sat here for 11 years and approved so  
23 many leases for shoreline protective devices of all sorts  
24 including sea walls, and I don't think we've ever heard,  
25 just like Paul said, of anyone having it harm property

1 values or harm loans or anything like that. This is the  
2 first I've ever heard of that.

3 CHIEF COUNSEL FOSSUM: Two elements in  
4 negotiations with the property owners about their  
5 concerns. One of them they expressed that they were  
6 concerned that the 5-year rent reviews that are standard  
7 in our leases was in there and that the Commission could  
8 raise rents at anytime, which obviously that is a concern  
9 to people.

10 The staff was willing to take their suggestion of  
11 tying it to a CPI. They didn't want just 25 years. The  
12 staff agreed to recommend to the Commission 35 years. So  
13 the current lease would run till 2045 with just a CPI  
14 adjustment on the rent.

15 So, you know, we empathize and we understand and  
16 we don't know what's going to happen in the next 35 years  
17 to sea level rise in California, but they're not alone.  
18 And it's going to be a struggle for this Commission and  
19 for property owners for a long time to come.

20 ACTING CHAIRPERSON ARONBERG: What's the pleasure  
21 of the Commission?

22 ACTING COMMISSIONER BRYANT: Because the lease  
23 option allows the homeowners to fix the sea wall, I will  
24 move the staff recommendation.

25 ACTING CHAIRPERSON ARONBERG: And I will second.

1 CHIEF COUNSEL FOSSUM: And only two of you may  
2 vote on this particular item.

3 ACTING CHAIRPERSON ARONBERG: Right. So you've  
4 got two.

5 EXECUTIVE OFFICER THAYER: And just to confirm  
6 then, that would be the Chair and Commissioner Bryant were  
7 the two who voted for our records here?

8 ACTING CHAIRPERSON ARONBERG: Correct.

9 EXECUTIVE OFFICER THAYER: Thank you.

10 ACTING CHAIRPERSON ARONBERG: For the audience's  
11 information, Ms. Fulkerson or I may vote, but we may not  
12 both vote when our principals are absent.

13 Okay, so that takes care of that item.

14 Thank you. We understand there's a gentlemen  
15 from WSPA here, David Smyser, so why don't we hear that  
16 item, if he's still in the room.

17 EXECUTIVE OFFICER THAYER: That item would be  
18 Item 63, which was the staff recommendation on the oil  
19 spill prevention and off-shore oil operations. And that  
20 presentation will be made by Greg Scott.

21 (Thereupon an overhead presentation was  
22 Presented as follows.)

23 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

24 SCOTT: Good afternoon, Madam Chair and Commissioners. My  
25 name is Greg Scott. I'm the Division Chief of the

1 Commission's Mineral Resources Management Division.

2 And today I am presenting for your consideration  
3 and support recommendations that will maintain and enhance  
4 the overall effectiveness of the State Lands Commission's  
5 oil spill prevention programs for oil production and  
6 marine terminal operations in State waters.

7 At its August 20th, 2010 Commission meeting,  
8 staff reported, as an informational item, the oil spill  
9 prevention programs that State Lands Commission has in  
10 place, pertaining to off-shore oil production operations  
11 and marine terminal operations. And that report is  
12 provided as Exhibit A in the package.

13 Included in that report were recommendations --  
14 let me change the slide here. I'm sorry.

15 --o0o--

16 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF  
17 SCOTT: Included in that report were recommendations for  
18 program enhancements which staff presented to the  
19 Commission at that meeting.

20 The Commission requested that staff return at the  
21 next scheduled meeting with specific recommendations which  
22 the Commission could consider.

23 Also, at the August 20th meeting, Commissioner  
24 Maldonado issued a policy memorandum to Commissioners and  
25 with a copy to Executive Officer Paul Thayer addressing

1 the oversight responsibility the Commission has for  
2 off-shore production leases in State waters, and the  
3 importance of protecting California's waters and coastline  
4 from potential harm of off-shore oil activities.

5           As an outcome of Commissioner Maldonado's trip to  
6 the Gulf of Mexico during the Deepwater Horizon oil spill,  
7 the memorandum included proposals that blowout prevention  
8 inspections and certifications by third-party experts be  
9 performed on State wells, and that contingency plans be  
10 revised to increase the worst case oil discharge scenario  
11 from the current 7-day period to 30 days.

12           Staff has analyzed the value of applying  
13 third-party certification of blowout preventers to State  
14 off-shore wells, and has concluded that additional  
15 benefits can be derived that will enhance current State  
16 Lands inspection programs.

17           Staff believes that third-party inspections can  
18 provide a more in-depth assessment of the blowout  
19 preventer's condition, preventer functions, and certify  
20 that closure capability have been personally observed, and  
21 that design factors are compatible with the pressure  
22 conditions that the well is expected to -- may expect to  
23 encounter. The staff report of that analysis is included  
24 as Exhibit B to this agenda item.

25           Those two recommendations and others that the

1 Commission was informed of at the August 20th meeting are  
2 listed on the next three slides, which staff requests  
3 Commission authorization to pursue implementation of.

4 --o0o--

5 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

6 SCOTT: The first two recommendations are those proposed  
7 in Commissioner Maldonado's memorandum, which we recommend  
8 Commission support.

9 Regarding third-party certification of blowout  
10 preventers, we propose to implement this initially on an  
11 interim basis by obtaining agreements from lessees to  
12 adopt this policy. Our lessees have adopted Commission  
13 proposals in the past and they have indicated to us their  
14 willingness to conform to this practice as well.

15 The State Lands Commission will include this  
16 requirement as part of our update to the existing  
17 regulations, which should be ready for Commission approval  
18 by -- hopefully by summer of 2011.

19 We are at a temporary delay in this regulation  
20 upgrade, however, pending the outcome of federal  
21 legislation that is currently being considered addressing  
22 this requirement, which could occur before January 1,  
23 2011.

24 The federal legislation may address State water  
25 operations, and we want to be consistent with the federal



1 several staff retirements recently in our engineering  
2 ranks, many of whom have been an integral part of our Oil  
3 Operations Oversight Program.

4 Staff has already identified qualified candidates  
5 for these vacant positions, and plans to fill at least  
6 four of them, if feasible, given current budget  
7 constraints.

8 In addition to those vacant engineering  
9 positions, staff will continue in its attempts to upgrade  
10 our oil field inspection program to include technical  
11 specialist positions, who would provide a higher level of  
12 oversight of off-shore platforms and their increasingly  
13 complex operating systems and facilities.

14 Staff will also be pursuing through the budget  
15 process the creation of two engineering inspector  
16 positions in the Marine Facilities Division to oversee the  
17 marine oil terminal engineering and maintenance standards  
18 program as well as the creation of a system safety audit  
19 group for marine terminals to oversee the operator's  
20 process safety and risk management programs.

21 The final bullet on this slide refers to  
22 requiring project applicants to provide oil spill  
23 trajectory information currently required for  
24 environmental analysis in a standard GIS format that can  
25 be accessible for future use in the event of oil spills.

1                                   --o0o--

2                   MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

3   SCOTT:   And the final slide of my presentation addresses  
4   recommendations which staff believes could be achieved  
5   through legislation, and which staff requests Commission  
6   authorization to pursue implementation of.

7                   First is to give the State Lands Commission cease  
8   and desist authority over oil and gas marine terminal  
9   operations in State waters.

10                  Next to provide legislation to increase the oil  
11   spill prevention administration fund per barrel fee to  
12   cover both the State Lands Commission and the Office of  
13   Spill Prevention and Response programs, including the  
14   costs associated with the previously mentioned increases  
15   in staff.   And that was brought to your attention earlier.

16                  Staff also requests authorization to pursue  
17   legislation allowing for adjustments in lease bonding and  
18   insurance requirements as operating conditions change, and  
19   to review these requirements every 5 years to determine if  
20   further adjustments are needed.

21                  The contemplated adjustment would include  
22   sufficient bonding for complete facilities removal.   And  
23   finally, the voluntary third-party certification of BOPs  
24   and/or drilling plans cannot be agreed to or if problems  
25   arise updating Commission regulations, then staff requests

1 authorization to seek legislation to enact a new State  
2 statute to require third-party certification of blowout  
3 prevention equipment and drilling plans.

4 And that completes my presentation. I understand  
5 there are at least one member from industry here to speak  
6 on this item.

7 ACTING CHAIRPERSON ARONBERG: Okay, is that Mr.  
8 Smyser?

9 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF  
10 SCOTT: Yes.

11 ACTING CHAIRPERSON ARONBERG: Commissioners, you  
12 have no comments, let's have the public comment. Please  
13 approach the podium.

14 MR. SMYSER: Madam Chair, before I address my  
15 comments, I did submit a speaker's slip for Item 68, and I  
16 would ask the opportunity to address that issue in this --  
17 since the OSPAF fund has been mentioned to address those  
18 comments as well.

19 ACTING CHAIRPERSON ARONBERG: Please.

20 MR. SMYSER: It may actually extend the period of  
21 time a little bit.

22 My name is David Smyser. I'm a Senior  
23 Coordinator for Marine Issues with Western States  
24 Petroleum Association. I appreciate the opportunity to  
25 share with the Commission our view on these issues, and

1 especially to reiterate the petroleum industry's  
2 commitment to fully embrace and internalize the lessons  
3 that have been learned from the accident this spring in  
4 the Gulf of Mexico.

5           The Deepwater Horizon accident was a tragedy. BP  
6 and other entities continue to investigate the cause of  
7 the accident and what changes need to be made in  
8 technology, equipment, and practices to ensure that an  
9 accident like this does not happen again.

10           This focus on lessons learned and constant  
11 evaluation and improvement is one of the reasons the  
12 petroleum industry has an outstanding safety record  
13 off-shore California.

14           Our members will continue to monitor the findings  
15 of the various investigations to ensure the safety of the  
16 men and women who work on off-shore platforms, and the  
17 precious marine environment in which they operate.

18           In that context, we believe the stepped up safety  
19 provisions proposed by the Lieutenant Governor fall within  
20 the realm of reasonable improvements to existing  
21 safeguards. We understand the rationale for the expansion  
22 of the spill response plans from a 7-day to 30-day worst  
23 case scenario spill, and third-party inspections of  
24 blowout prevention equipment, especially in light of the  
25 Gulf accident.

1           We are prepared to work with the State Lands  
2 Commission staff and others to implement these safety  
3 enhancements as quickly as practical. We cannot endorse,  
4 at this time, the proposed staff authorizations numbered  
5 1, 3, and 9.

6           Recommendation 1 requires third-party  
7 certification of all drilling programs, including routine  
8 operations, far beyond the inspection and certification of  
9 blowout prevention safety equipment.

10           Recommendation number 3 would authorize an  
11 unwarranted staff allocation of time and resources to  
12 completely review and revise all oil and gas drilling and  
13 production regulations.

14           Recommendations 1 and 3 should be restated to  
15 address the scope of the Executive Order S-1610 of October  
16 12, 2010.

17           Recommendation 9 is premature -- is a premature  
18 legislative proposal that appears in sharp conflict with  
19 the conclusions reached by the State Lands Commission  
20 following a review of safety programs in August of this  
21 year.

22           The review found, and I quote, "The low volume  
23 and infrequent incidence of spills is a testament to the  
24 commitment and dedication to safety by our lessees, and  
25 the effectiveness of the California State Lands

1 Commission's safety and pollution prevention regulations  
2 and programs". If the regulations are working, why do we  
3 need to fix them?

4 Recommendations 1, 3, and 9 are unwarranted in  
5 light of these findings.

6 I will have further comments just very quickly  
7 concerning the OSPAF fund.

8 Our industry believes in the importance of the  
9 Oil Spill Prevention and Response Fund, and has the  
10 highest regard for the administrators and staff that work  
11 for OSPR, under the Department of Fish and Game. They are  
12 dedicated and skilled professionals, and they assist our  
13 industry to safely produce the oil and gas that California  
14 needs while protecting the precious marine environment in  
15 which we work.

16 Since 1970, our industry has provided all of the  
17 funding for oil spill response organizations, such as  
18 Clean Seas and MSRC. And since 1991, we also provide the  
19 funding stream, not only for the Oil Spill Prevention  
20 Administration Fund, but also for the Oil Spill Response  
21 Trust Fund. All of these funds are in addition to the  
22 individual bonds and insurance securities supporting our  
23 off-shore operations.

24 The result of this dedication to spill prevention  
25 and response has been an exemplary safety record for our

1 industry and off-shore California.

2 We cannot endorse, however at this time,  
3 proposals by Commission staff calling for an increase in  
4 fees collected for the purpose of supporting the Oil Spill  
5 Prevention Administration Fund. An audit of the  
6 administrative fund performed by the Bureau of State  
7 Audits found that significant percentages of OSPR's staff  
8 time was being paid for from the Administrative Fund, but  
9 expended on purposes not authorized under the  
10 Administrative Fund's statutes.

11 A follow-up report in January 2010 by the State  
12 Auditor found that the Department of Fish and Game had not  
13 yet fully implemented the Auditor's recommendations to  
14 ensure that the Admin Fund does not pay for unrelated  
15 activities.

16 It is also generally the practice that any  
17 proposal to increase a regulatory fee be based in part on  
18 thorough engagement with the affected fee payer and that  
19 has not yet happened.

20 It is our view that before fees are increased,  
21 there must be an accurate, complete, and transparent  
22 accounting of how the fund currently is being used. We  
23 also feel it is essential that fundamental questions  
24 regarding what are appropriate expenditures for the fund  
25 must be discussed and resolved.

1           For this reason, we believe an increase in fees  
2 to support the Administrative Fund is premature. Having  
3 said that, our industry strongly supports the Oil Spill  
4 Prevention Admin Fund. We ask the Commission to allow us  
5 to fully engage in a process with OSPR and your staff to  
6 address this issue.

7           Thank you.

8           ACTING CHAIRPERSON ARONBERG: Thank you.

9           EXECUTIVE OFFICER THAYER: Just to respond  
10 quickly to those points, and not wanting to waste your  
11 time, I understand that in all likelihood the Commission  
12 will delete number 9 anyway from the recommendation. So I  
13 won't respond to comments about legislation.

14           But with respect to 1 and 3, again the Lieutenant  
15 Governor did ask for third-party certification of not just  
16 the blowout prevention, but of oil operations, not to be  
17 limited to one aspect of the oil operations with respect  
18 to bringing in a third party.

19           And we agree that that's the case, that there's  
20 been the most discussion around third-party certification  
21 for blowout prevention devices, but there is also -- there  
22 are parallel concerns with whether or not a third set of  
23 eyes can improve the safety for the other kinds of  
24 operations that are ongoing. And I think the Lieutenant  
25 Governor's memo got into that issue.

1           The second with respect to number 3, which the  
2 gentleman from WSPA objected to, this will not cause the  
3 adoption of those regulations. You can't tell from this  
4 report exactly what the regulations are going to say. And  
5 there will be an opportunity for WSPA and anyone else  
6 concerned about the regulations to have input on what  
7 those are to the Commission before they're adopted.

8           So to say that we shouldn't even be looking at  
9 revisions to our regulations seems inappropriate. And in  
10 point of fact though, what this probably reflects is some  
11 history that's occurred over the last 10 or 15 years.  
12 There was an attempt to do joint regulations with the  
13 Department of Conservation, so that we'd end up with one  
14 set of regulations that personnel from either office could  
15 implement. And WSPA was involved heavily with the  
16 development of those regulations.

17           Ultimately, that effort failed, because it was  
18 eventually determined by the lawyers that we couldn't  
19 enforce Department of Conservation law and vice versa,  
20 even if we had joint regs, so we abandoned that effort.  
21 But much of what we did, at that time, was still useful,  
22 in terms of improving our regulations, and we're likely to  
23 bring back.

24           And frankly, the debate point, I believe, was  
25 over best achievable protection of the standard, which is

1 the standard set in the Lempert-Keene-Seastrand Oil Spill  
2 Prevention Act from -- what was it? -- 1990. And WSPA and  
3 State Lands Commission staff never reached agreement as to  
4 whether or not that standard should be the standard.

5 Of course we'll be consulting with WSPA and other  
6 interested groups in developing these regulations. And of  
7 course, those regulations would have to come before the  
8 Commission in a public hearing and can be commented on  
9 further.

10 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

11 SCOTT: I would just like to add that regarding the  
12 recommendation -- the third recommendation, the State  
13 Lands Commission staff has continually been upgrading our  
14 programs, our safety programs. We feel that it's probably  
15 the strongest program of its type, certainly in the State,  
16 possibly in the country. It hasn't gotten that way  
17 without continued improvements to the type of work we do.  
18 That includes methods and ways to enhance our regulations.

19 We're learning all the time from things that we  
20 do, events that have occurred outside of the state,  
21 including the Deepwater Horizon incident. And we have  
22 analyzed what we feel are legitimate benefits from  
23 applying third-party certification to those regulations.

24 We feel it's certainly appropriate. We have not  
25 yet completely determined what criteria should be applied

1 for third-party certification for all wells, including  
2 workovers and abandonments. But that is something that  
3 staff is presently pursuing, determining what those  
4 criteria should be, as well as qualifications of those  
5 inspectors.

6 So that is a ongoing process presently, but we  
7 will be arriving at what we feel are appropriate  
8 applications for State operations.

9 ACTING COMMISSIONER BRYANT: Can I ask a quick  
10 question. When was the last time our regulations were  
11 updated?

12 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF  
13 SCOTT: The regulations that are in place now are vintage  
14 1980. As Paul Thayer mentioned, we had made an attempt to  
15 meld the Division of Oil and Gas, as well as ours, to, you  
16 know, combined regulations. From that process, we had  
17 identified a number of improvements that we feel we could  
18 add to our own.

19 ACTING CHAIRPERSON ARONBERG: Thank you.

20 ACTING COMMISSIONER FULKERSON: A few comments  
21 and a question, if I may.

22 First of all, on behalf of the Lieutenant  
23 Governor, thank you for taking our recommendations under  
24 very serious consideration, spending the staff time on  
25 them and bringing them back to us in your proposals. We

1 appreciate that.

2 I do want to say, for the record, that on, number  
3 1, the Executive Order issued by then Governor Maldonado,  
4 on when it concerns third-party certification, the intent  
5 of the Executive Order was to limit the scope to blowout  
6 prevention. We would have to go back and look at the  
7 draft of the text, but I read the thing 20,000 times, so I  
8 I'm pretty sure that it was focused on blowout prevention.  
9 And we would support number 1, as long as it was limited  
10 in that scope without absolutely no discussion.

11 Number 3, again there is a scope issue there.  
12 It's definitely something that we would support, hoping  
13 that we could then bring the updated regulations back to  
14 the Commission for a final vote. So that today's vote  
15 isn't final on that.

16 I'll default. I do want to ask a few questions  
17 regarding the staff positions, and how the current State  
18 Lands Commission budget impacts those decisions, and if  
19 those decisions are traditionally brought to the  
20 Commission or if that's something done at the Executive  
21 Officer level.

22 And then I would say I think number 8 is  
23 definitely something that I could support today.

24 Number 9, I would just say for the record, I  
25 expressed the same concerns I expressed earlier regarding

1 the fund and the management of that fund, and wanting to  
2 ensure that the recommendations of the 2008 audit have, in  
3 fact, been implemented and what the results of those are.

4 So with that, I would ask staff about the funding  
5 of the positions and what the traditional method of adding  
6 or filling new positions at the State Lands Commission  
7 under your jurisdiction is? That that normally comes to  
8 the Commission or if that's just been included in here  
9 because it's related to oil spill prevention?

10 EXECUTIVE OFFICER THAYER: I think this has been  
11 brought here just because it relates to the oil spill  
12 prevention. We normally don't bring the BCPs that we  
13 propose to the Commission. You know, obviously for the  
14 last 5 at least years, we've been in a position where  
15 instead of getting new staff, we're generally retrenching  
16 and responding to budget cuts, and figuring out where  
17 we're going to eliminate staff positions.

18 We have gotten some additional staff for our  
19 ballast water program as that's developed, paid for out of  
20 the ballast water fee. There have been one or two other  
21 places where we've had some success where we could  
22 demonstrate the position would be reimbursable, and so it  
23 wouldn't cost more general fund.

24 But for the most part, we haven't been able to do  
25 that. We're bringing them to you now to indicate the

1 Commission's support, should we have to get additional  
2 funding.

3           Frankly, as Greg Scott mentioned, those minimum  
4 four positions that we want to be able to fill, that we  
5 had filled before, we probably won't be able to fill all  
6 of those. And that's why I asked that he add the language  
7 about, if feasible given budget constraints, because I'm  
8 not sure we've got the money to do that. And we will  
9 undoubtedly put in BCPs to ask for additional funds to  
10 make sure that we can fill those positions.

11           And we get in line with all the other agencies in  
12 terms of whether or not there's money available for our  
13 proposals.

14           ACTING COMMISSIONER FULKERSON: And my second  
15 question. Is this item something that needs to be  
16 approved in total or is it something that the Commission  
17 can approve pieces of and hold off?

18           EXECUTIVE OFFICER THAYER: It's for your  
19 consideration and you can amend it in any way, shape, or  
20 form you want to.

21           ACTING COMMISSIONER FULKERSON: Understood.  
22 Thank you.

23           EXECUTIVE OFFICER THAYER: And specifically to  
24 bore in on one of the issues, number 1, about whether or  
25 not third-party certification applied just to blowout

1 prevention or whether it also applied to oil operations.  
2 I think the memo from the Lieutenant Governor referred  
3 generally to the blowout prevention, but I think that the  
4 Executive Order made reference to oil operations. And so  
5 I think that's why it went in here --

6 ACTING COMMISSIONER FULKERSON: Understood.

7 EXECUTIVE OFFICER THAYER: -- was in response to  
8 that.

9 And there's some value to it as well. It wasn't  
10 just a knee-jerk response, but we looked at that and  
11 thought okay this has some value.

12 ACTING COMMISSIONER FULKERSON: Thank you.

13 ACTING CHAIRPERSON ARONBERG: Okay. So do we  
14 have -- it sounds like some folks want to split the  
15 question and that's great. Do we have action?

16 ACTING COMMISSIONER BRYANT: Why don't I -- I can  
17 try to make a motion here. Obviously, only one of you can  
18 vote on it.

19 But I would say that we would take all of the  
20 recommendations in here, except for Item 9, mainly because  
21 I'm not prepared to vote on any legislative proposals,  
22 except for making a change on 1 to only talk about the  
23 blowout prevention. And I'd like to also just finesse a  
24 little bit the question of the positions. I'm in an  
25 awkward position in the BCP process that -- so I'd like to

1 say that work with the Department of Finance and the new  
2 Governor, because it will be his or her Jan 10 budget  
3 proposal on that. I don't want to be putting my  
4 imprimatur on their budget. And that would be my motion.

5 EXECUTIVE OFFICER THAYER: So we would add the  
6 words work with the Administration and Finance with  
7 respect to -- it looks like specifically 4 and 6?

8 ACTING COMMISSIONER BRYANT: Right. I think the  
9 important thing -- I mean, I'll just -- commenting on my  
10 own motion. I think the important thing here is that the  
11 Commission is saying that we're going to work and make  
12 sure that we have the right people in place to have -- to  
13 perform these activities adequately. I think that's  
14 why -- I mean, it kind of -- when you read the memo --  
15 when we read the staff report last time, it seemed as  
16 though the staff was just looking to fill positions. But  
17 what that is really reflecting is a policy direction of  
18 making sure these activities are done by the Commission.

19 And so we could just phrase it that way as  
20 opposed to saying hire two new people. So I'm willing to  
21 support that we're going to emphasize these activities  
22 that may or may not be able to be done through a BCP and  
23 getting you new positions. Does that make sense?

24 EXECUTIVE OFFICER THAYER: So perhaps one way to  
25 deal with that, and just to be totally responsive to the

1 input, would be to delete 4 and 6, which I think are the  
2 ones that talk about specific positions and say direct  
3 staff to seek appropriate staffing level to assure, you  
4 know, appropriate oil spill prevention programs.

5           ACTING COMMISSIONER BRYANT: That's why you're  
6 the Executive Officer.

7           EXECUTIVE OFFICER THAYER: Does that work?

8           ACTING COMMISSIONER BRYANT: That's my new  
9 motion. I mean, that's what I'm trying to get at.

10           EXECUTIVE OFFICER THAYER: And as part of that,  
11 right, we would be seeking and working with the new  
12 Administration and Director of Finance to do that.

13           ACTING COMMISSIONER BRYANT: Exactly.

14           ACTING COMMISSIONER FULKERSON: I'll second that.

15           ACTING CHAIRPERSON ARONBERG: Okay. And the  
16 motion passes without me voting.

17           EXECUTIVE OFFICER THAYER: Without you voting, I  
18 understand.

19           ACTING CHAIRPERSON ARONBERG: Correct.

20           So Paul, what do you suggest we take as the next  
21 item, the Owens Lake item?

22           EXECUTIVE OFFICER THAYER: That would be good. I  
23 know there's a couple here that want to testify on that.

24           And so that's calendar Item --

25           ACTING CHAIRPERSON ARONBERG: 66.

1 EXECUTIVE OFFICER THAYER: -- 66.

2 (Thereupon an overhead presentation was  
3 Presented as follows.)

4 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

5 Good afternoon, Commissioners. My name is Colin  
6 Connor. I'll be giving the presentation on calendar Item  
7 66, which is an update of Owens Lake.

8 And in the sake of time, I can do this two ways.  
9 I can bring us all the way from -- you know, with a little  
10 bit of background to where we are now, or just take off  
11 from where we are now? Okay.

12 Can you bring up the slide of Owens Lake. It's  
13 Calendar Item 66, please. And I'll just get going into  
14 this.

15 Basically, we've had eight planning committee  
16 meetings. The last one was October 20th. We've had two  
17 agency forum meetings. The last one was September 29th.  
18 The planning committee members are the stakeholders. They  
19 are going to be the voting body for the actual master plan  
20 itself. The agency forum is the government agencies  
21 involved. And that is to try and coordinate efforts among  
22 the agencies regarding what they have to do to approve the  
23 final master plan.

24 Recently, the master plan has gotten into -- has  
25 been subdivided into work groups to identify the various

1 planning zones and the type of zones those are. The key  
2 from the State Lands Commission's perspective, our Public  
3 Trust interests, are habitat, viewshed, and public access  
4 and recreation. And those are going to be represented in  
5 a variety of different zones.

6 But right now, the master plan, the work groups  
7 are looking at a habitat zone. And the habitat area is  
8 the cross-hatched area. It's in various colors, light  
9 blue, green, that grayish color. And you can see it's  
10 concentrated up to north and to the lower part of the lake  
11 as well, the lower southeast part.

12 There's also a dust control zone, and that's kind  
13 of the area -- all those colored areas are currently dust  
14 control. And right now, there's three types of dust  
15 control. There's shallow flood, which is the blue and the  
16 green. Actually, almost all that is shallow flood right  
17 now. There's managed vegetation, which I believe is off  
18 the screen to the bottom there. It's that pink area.

19 And there is also gravel cover, which is only a  
20 very small portion at the very top of the lake, a narrow  
21 strip. So we've got a habitat -- some of the dust control  
22 areas now are going to become habitat areas. We're also  
23 looking at a mining and grazing zone. The mining is right  
24 in the middle. That's called the brine pool, and they  
25 mine Trona and some other minerals there.

1           The grazing is along the western side of the  
2 lake. There's going to be -- there is a solar work group.  
3 The solar work group is trying to find areas that are  
4 close to existing power lines, so they can tap into those  
5 and also have suitable soils for the foundation of the  
6 arrays.

7           These are some of the work groups that are  
8 breaking down and trying to identify where those uses go  
9 best. And right now, as you can see, the habitat area  
10 is -- the habitat work group has already identified some  
11 areas.

12           We have brought on an environmental consultant to  
13 prepare the EIR for that. They've just gotten started.  
14 That process will probably carry us into the next year.  
15 The whole master plan process was hoped to be wrapped up  
16 by the end of this year. But right now, because there's  
17 so much detail work to be done with respect to where the  
18 actual zones are, we're probably looking at the first part  
19 of next year, you know, January, February, perhaps even  
20 March. Once that is done, the environmental consultant  
21 will take that plan and finish up their work probably  
22 later on in the year, towards the end of the year.

23           We're looking at probably bringing this to the  
24 Commission for approval of a master plan hopefully  
25 sometime next year, probably late next year. I just want

1 to emphasize size that as part of State Lands  
2 representation here is we want to see an overall  
3 enhancement of the Public Trust values. We're trying to  
4 reach a balanced master plan, but we also want to see  
5 habitat enhanced -- you know, preserved and enhanced, as  
6 well as public access.

7           And the viewshed, we don't want to see any major  
8 impacts to the viewshed, either from the lake looking  
9 outward, because you have the eastern Sierras there, or  
10 from the various roads looking in.

11           I think that's pretty much the highlights of it.  
12 I know that at least one person from the City of Los  
13 Angeles, Department of Water and Power would like to speak  
14 on this as well.

15           Thank you all. And I'm available for questions.

16           ACTING COMMISSIONER BRYANT: Okay. She's letting  
17 me be in charge for a minute. We have two commenters,  
18 Ericka Novotny and Martin Adams.

19           MR. MARTIN ADAMS: Ericka had to leave.

20           ACTING COMMISSIONER BRYANT: No Ericka. Okay.

21           MR. MARTIN ADAMS: Good afternoon. I'm Marty  
22 Adams, Director of Water Operations for LA Water and  
23 Power. And I'll be brief, because I know it's getting  
24 late for everybody.

25           I just wanted to tag along with what Colin said

1 about the master planning process. We believe it is going  
2 very well. And I would like to thank Paul for -- I know  
3 this is his last meeting. He's been instrumental in  
4 helping this effort move forward. And I appreciate the  
5 fact that he's allowed a lot of staff time to be dedicated  
6 to this. It's a hard trip to get from Sacramento to the  
7 Owens Valley. And so it's very time consuming to make  
8 that trip and to participate.

9           But we thought that State Lands participation was  
10 critical to this being successful, and I think we're on  
11 the right track. Two of the things that got passed on  
12 consent today by the Commission were important for this  
13 effort.

14           One was the solar pilot geotech lease. And so  
15 now we will be able to move ahead on proving that solar is  
16 viable -- hopefully viable on the lake, particularly in  
17 the northern area where we think the soils are compatible  
18 and where it also seems to be compatible with the  
19 direction that the master plan is taking.

20           And the other is the ability to complete the  
21 groundwater monitoring wells on the lake beds, so that we  
22 can find out if there is viable groundwater resource to be  
23 used as part of the habitat for the lake itself.

24           Just to update you on our activities. We are  
25 continuing to negotiate with Great Basin on the stipulated

1 order of abatement for dust compliance. We, as I said  
2 last month -- or two months ago, we have not been in  
3 compliance with our Phase 7 obligations, the former Moat  
4 and Row areas. And so we are preparing to enter into a  
5 stipulated order of abatement, by which we'll negotiate  
6 the terms of that completing that dust control. And we  
7 are concerned that as we negotiate that, we do bring State  
8 Lands into that, so that we don't enter into another  
9 agreement, as we have in the past, without this body being  
10 involved and being on board with what the plans are. So  
11 it's important that we make that a three-party agreement  
12 not a two-party agreement.

13           So the exact mechanism for that, I'm not sure how  
14 to do that, but we want to make sure that we're all  
15 together moving ahead.

16           And also two months ago I mentioned that we had  
17 submitted an M&D, an application for a gravel lease for  
18 Phase 8. I understand there's a good chance we'll see  
19 that we're working to negotiate the terms of that and  
20 hopefully we'll see that on the agenda for the December  
21 meeting.

22           We have that, we think, as a key component moving  
23 ahead with the only approved waterless method on the lake  
24 for dust control, so we think that's a critical element  
25 that we'd like to see at the December meeting. So unless

1 you have any questions.

2 ACTING CHAIRPERSON ARONBERG: Thank you. Thanks,  
3 Marty.

4 Pardon me. Commissioners.

5 ACTING COMMISSIONER BRYANT: I just want to ask a  
6 quick question. So that is going -- that will come back  
7 you think, the gravel?

8 EXECUTIVE OFFICER THAYER: We're doing our best  
9 to make that happen.

10 ACTING COMMISSIONER BRYANT: Okay. Because  
11 again, I'm really into the -- you know, me the dustless --  
12 I mean, the waterless dust control out there.

13 ACTING CHAIRPERSON ARONBERG: Okay, is that --

14 EXECUTIVE OFFICER THAYER: That's an information  
15 item, so there's no vote necessary on it.

16 ACTING CHAIRPERSON ARONBERG: Okay. Great.  
17 What's next on the agenda?

18 EXECUTIVE OFFICER THAYER: There's a  
19 resolution -- the Controller's resolution, which is file  
20 Item 65. And Mario De Bernardo will make the presentation  
21 on that.

22 LEGISLATIVE LIAISON DE BERNARDO: I'll keep it  
23 short.

24 Good afternoon, Ms. Chair and Commissioners.  
25 Mario De Bernardo, Legislative Liaison for the State Lands

1 Commission. It is likely during the next couple of months  
2 that Congress is going to vote on a national renewable  
3 electricity standard, S-3813, which is a bill that will  
4 likely do this. It has a standard of 15 percent. This is  
5 lower than California's renewable electricity standard,  
6 which was adopted in September by CARB.

7 This resolution urges Congress to follow  
8 California's lead and adopt a standard that is comparable  
9 to California's standard, while opposing any effort to  
10 further weaken the proposal in S-3813.

11 I respectfully request that you support this  
12 resolution.

13 Thank you.

14 ACTING CHAIRPERSON ARONBERG: Commissioners.

15 ACTING COMMISSIONER BRYANT: I'll move approval.

16 ACTING COMMISSIONER FULKERSON: I'll second.

17 ACTING CHAIRPERSON ARONBERG: Okay. And the  
18 motion is approved with me not voting.

19 EXECUTIVE OFFICER THAYER: Great. All right,  
20 thanks very much.

21 That completes our regular calendar. However,  
22 there's one item that you'll recall we took off of  
23 Consent. The --

24 ACTING CHAIRPERSON ARONBERG: 55, right.

25 EXECUTIVE OFFICER THAYER: -- 55, the 22nd

1 Agricultural District. And that presentation will be made  
2 by Kathryn Colson.

3 Kathryn is one of our newer staff counsel.

4 (Thereupon an overhead presentation was  
5 Presented as follows.)

6 STAFF COUNSEL COLSON: Good afternoon,  
7 Commissioners. My name is Kathryn Colson, staff counsel  
8 with the Commission.

9 Commission staff respectfully requests your  
10 consideration of Calendar Item 55, the title settlement  
11 and exchange agreement with the 22nd Ag District.

12 The purpose of the agreement is to resolve  
13 longstanding title uncertainties in and along the San  
14 Dieguito River and the Del Mar Fairgrounds.

15 --o0o--

16 STAFF COUNSEL COLSON: The subject property is  
17 located in the cities of Del Mar and San Diego and  
18 stretches from the I-5 to the Pacific Ocean. The  
19 agreement is between the State, acting by and through the  
20 State Lands Commission, and the State, acting by and  
21 through the 22nd Ag District.

22 The agreement will effectuate a land exchange by  
23 terminating the State's sovereign interest claims in the  
24 Trust termination parcels, which are commonly known as the  
25 Del Mar Fairgrounds. In exchange, the Commission will

1 acquire four Public Trust parcels in and along the San  
2 Dieguito River.

3           Significant title uncertainties exist, because  
4 this area was originally surveyed and sold as swamp and  
5 overflow lands. Commission staff has been studying this  
6 area since the 1970s and has historic evidence that shows  
7 that up to 32 acres of land in the Trust termination  
8 parcels may have been tide and submerged lands, based on  
9 topographic surveys conducted in 1889 and 1933.

10           The statutes which authorize the sale of swamp  
11 and overflow land did not authorize the sale of submerged  
12 lands, or lift the Public Trust easement from the  
13 tidelands. A compilation of these historic claims are  
14 shown on this slide and also Exhibit B of the staff  
15 report.

16           Further complicating this situation is that the  
17 Trust termination parcels were filled and developed in the  
18 1920s and 30s and have been operated by the 22nd Ag  
19 District, and other State agencies as a race track and  
20 county fairgrounds since 1936.

21           There have been discussions for many years and  
22 prior attempts to settle this dispute, but no final  
23 settlement has been reached until now.

24   --o0o--

25           STAFF COUNSEL COLSON: The agreement, if

1 approved, will bring lands that are valuable for Public  
2 Trust uses into the Trust for wetland restoration,  
3 wildlife habitat and public access. The 22nd Ag District  
4 will quitclaim its interest in 37 acres of Public Trust  
5 parcels, which are the parcels shaded in gray here. And  
6 these parcels include wetlands, and our lands along the  
7 water.

8 --o0o--

9 STAFF COUNSEL COLSON: Then the Commission will  
10 quitclaim its interest free of any Public Trust in the  
11 Trust termination parcels, and that's this area here to  
12 the 22nd Ag District.

13 As part of the agreement, the Commission would  
14 enter into a rent-free lease -- a 49-year rent-free lease  
15 with the 22nd Ag District for the management of the Public  
16 Trust parcels.

17 Under the lease, the 22nd Ag District is  
18 authorized to maintain the existing uses, such as open  
19 space, a public access trail, and flood control  
20 improvements.

21 --o0o--

22 STAFF COUNSEL COLSON: Parcel 2 is this small  
23 parcel here that is just north of the San Dieguito River  
24 and west of Jimmy Durante Boulevard. It is a narrow  
25 parcel that's been designed to be developed into a public



1 these lands subject to the State Constitutional  
2 prohibition of alien nation of tidelands.

3 And finally, the agreement settles very complex  
4 and longstanding title issues. Commission staff and the  
5 Attorney General's office have reviewed the proposed  
6 agreement and believe all necessary legal elements have  
7 been met.

8 Staff recommends that the Commission approve the  
9 title settlement and exchange agreement and 49-year lease  
10 with the 22nd Ag District, and the findings listed in the  
11 staff report, and authorize its execution and the  
12 recordation of all documents necessary to implement it.  
13 That concludes my presentation, and I'm available to  
14 answer any questions.

15 ACTING CHAIRPERSON ARONBERG: Thank you. We have  
16 two speaker cards. Do the Commissioners have any  
17 comments?

18 How about Jacqueline Winterer, are you here? And  
19 she'll be followed by Rebecca Bartling.

20 MS. WINTERER: Madam Chairperson, Madam  
21 Commissioners, my name is Jacqueline Winterer. I'm a  
22 former mayor of the City of Del Mar, and I'm entrusted by  
23 the present Mayor and Council to present you these  
24 comments.

25 I think you've received a letter.

1 EXECUTIVE OFFICER THAYER: (Nods head.)

2 MS. WINTERER: I'm bringing to you a request from  
3 the City of Del Mar to delay taking action on the title  
4 and boundary settlement agreement between the State Lands  
5 Commission and the 22nd Agricultural District for the  
6 following reasons:

7 The soon-to-be issued 22nd DAA master plan EIR  
8 will address these issues at the request of several  
9 agencies, and respondents who asked that the EIR examine  
10 the Public Trust issues on the fairgrounds property, which  
11 is entirely located in the floodplain at the mouth of the  
12 San Dieguito River.

13 We have documents not examined by the State Lands  
14 Commission in support of asserting broader Public Trust  
15 claims than those spelled out in the agreement before you.

16 This evidence is not being considered in the  
17 proposed 22nd DAA and State Lands Commission settlement.  
18 In particular, there is an 1854 San Diego County  
19 Assessor's map that was not considered, and there is a  
20 1903 United States Geological Survey Map, which covers  
21 extensive submerged maps. We hope that you will consider  
22 these documents.

23 We also ask that you reconsider the lease-back  
24 option and limit to a shorter timeframe than 49 years.  
25 And by the way, there is a no-rent lease on this land

1 lease at a time where you keep telling us that the State  
2 is starving for funding.

3           The fairgrounds property lies in the jurisdiction  
4 of the City of Del Mar. And yet, the City was not  
5 consulted on this issue. We ask that you allow the City  
6 of Del Mar to confer with your staff on these matters  
7 before final recommendations are presented to the State  
8 Lands Commission.

9           In summary, the City of Del Mar is raising issues  
10 with the scope of Public Trust claims at the fairgrounds  
11 and its compatibility with many of the master plan uses.  
12 We request that you delay action on this matter.

13           Thank you for your attention.

14           ACTING CHAIRPERSON ARONBERG: Thank you.

15           Next speaker?

16           There you are. Okay.

17           MS. BARTLING: Thank you. Rebecca Bartling,  
18 Deputy General Manager and Chief Operating Officer of the  
19 22nd Ag District.

20           And I'm here today to ask you to approve this  
21 settlement. We have been working at least for 2 years  
22 with your staff on this and think that it's fair. We  
23 think that we've actually given up more property than we  
24 ever intended to, but we are happy with the settlement.  
25 You may or may not know this has gone on for, gosh,

1 probably 20 years, at least if not more -- yeah, more.

2 So we're hoping that we can get this settled.

3 It's been analyzed. I know your staff has looked upside  
4 and down at this in every way. So I'm just here today to  
5 ask for your support and answer any questions.

6 Thank you.

7 ACTING CHAIRPERSON ARONBERG: Thank you.

8 Commissioners?

9 ACTING COMMISSIONER BRYANT: I'll move approval.

10 ACTING CHAIRPERSON ARONBERG: I'll second.

11 We have a motion that passes without Ms.

12 Fulkerson's vote.

13 EXECUTIVE OFFICER THAYER: I understand. Thank  
14 you.

15 This concludes all the items, except that I  
16 believe when we talked in closed session, we were going to  
17 return to Item 69 for the Commission to take a look at  
18 that.

19 ACTING COMMISSIONER BRYANT: Yeah. I'd like to  
20 move that we make Curtis Fossum the Interim Executive  
21 Director and direct staff to conduct -- to open an  
22 application period for a very short period of time to see  
23 if there's any other applicants, and we'll consider the  
24 matter further in December.

25 ACTING CHAIRPERSON ARONBERG: And I'll second

1 that motion.

2 EXECUTIVE OFFICER THAYER: Presumably the  
3 effective date would be November 9th for him to become the  
4 interim.

5 (Laughter.)

6 ACTING COMMISSIONER BRYANT: Yeah, I meant to say  
7 that. You can stay till the 8th.

8 (Laughter.)

9 EXECUTIVE OFFICER THAYER: Thanks.

10 ACTING CHAIRPERSON ARONBERG: Okay. So we have a  
11 motion that passed without Ms. Fulkerson's vote.

12 Any other items on the agenda?

13 EXECUTIVE OFFICER THAYER: I think that  
14 concludes -- I don't think there are any public comments  
15 slips. We might ask.

16 ACTING CHAIRPERSON ARONBERG: Except that I see a  
17 hand.

18 Can you please approach the podium.

19 CHIEF COUNSEL FOSSUM: There was a speaker's slip  
20 for item -- on the Consent Calendar that apparently didn't  
21 come forward. And so if the Commission wants to  
22 reconsider that item, or whether you want to just go with  
23 the vote you had.

24 There was a speaker's slip.

25 ACTING CHAIRPERSON ARONBERG: Should we reopen

1 it.

2 MS. HUNTER: They want to increase my lease over  
3 300 percent.

4 ACTING CHAIRPERSON ARONBERG: Why don't we --  
5 what do we need to do to have a brief hearing on this  
6 item?

7 EXECUTIVE OFFICER THAYER: Why don't we say that  
8 the vote -- we don't have a reconsideration process, but  
9 why don't we say that the vote was taken in error, because  
10 we didn't have the speaker's slip, or didn't notice the  
11 speaker's slip and our practice is not to approve  
12 something on the Consent Calendar when we have someone who  
13 wishes to speak.

14 So I would just say that that vote was invalid  
15 perhaps to approve that, because it shouldn't have been on  
16 the Consent Calendar.

17 CHIEF COUNSEL FOSSUM: Well, I think the  
18 Commission, at this point, can reconsider if it so  
19 desires. You haven't approved your minutes. And given  
20 that somebody was asking to speak and has not had the  
21 opportunity, I would go ahead and let them make their  
22 presentation.

23 ACTING CHAIRPERSON ARONBERG: Thank you.

24 MS. HUNTER: I may have ticked the wrong box. I  
25 was in -- I wanted to speak, but I didn't want the

1 revision of rent as it stood. I wanted to revise it  
2 downwards.

3 My name is Juliette Hunter. I handle most of the  
4 record keeping and accounting for the Sheldon Family  
5 Limited Partnership.

6 My husband, his 3 siblings, their spouses and  
7 their children who are Gene Sheldon's 8 grandchildren  
8 comprise the Sheldon Family Partnership.

9 When I received the letter dated September 23rd  
10 from Cheryl Hudson informing me of the increase in our  
11 annual rent, I felt as though I had received a visit from  
12 the Sheriff of Nottingham.

13 Last year our lease for our pier and buoys was  
14 \$732. The new proposal lease is \$2,713. This is  
15 approximately a 370 percent increase in one year. This  
16 comes at a time when we are staggering under the weight of  
17 massive property taxes and decreased and discounted  
18 rentals.

19 I might be able to understand a 10 percent  
20 increase, if we were a deepwater pier. This tremendous  
21 rental increase comes at a time when the value of the pier  
22 has dramatically diminished. In fact, the pier is a pier  
23 in name only.

24 Last week, my husband and I were in Tahoe  
25 preparing the house for winter. Anticipating this

1 meeting, I decided to measure the depth of water at the  
2 end of our pier. I brought a couple of photos to document  
3 this effort.

4           Using my kitchen broom as a measuring device, I  
5 was able to measure the depth of the water at the very end  
6 of the pier at 2'5". At this depth, not even a dingy is  
7 very useful. Yet, without your intervention, the rent  
8 will be increased 370 percent.

9           I'm told that if we held the title to the  
10 property in a trust rather than a partnership, our lease  
11 would be zero. This I do not understand. The title of  
12 partnership offers us no tax relief or financial benefit  
13 of any kind. I feel it's the case of legal semantics that  
14 exposes us to the burden of this lease.

15           We currently incur an average of \$20,000 a year  
16 in debt trying to hold on to this property, which has been  
17 in the family for approximately 40 years.

18           I believe this proposed rental increase is an  
19 unfair and unwarranted burden, and I implore you to  
20 reconsider it and disapprove it.

21           I do have my little photos of pretty much dry  
22 pier. There's my little kitchen broom. I really  
23 appreciate your attention.

24           Thank you so much.

25           I'm standing at the bottom wrung of the ladder

1 holding the broom in the water. And then we -- see the  
2 little blue tape. Then we measured from the bottom of the  
3 broom to the blue tape and that was 2'5" of depth at the  
4 end of the pier.

5 The second picture just shows the pier pretty  
6 much on dry land. And beyond the pier, there's a little  
7 sand bar. So it really is for boating, not very useful.

8 And, you know, it still is a pier, so I can see  
9 having a lease, but to have it increase 370 percent in one  
10 year is, for us, devastating.

11 Thank you.

12 ACTING CHAIRPERSON ARONBERG: Thank you.

13 Ms. Fulkerson.

14 ACTING COMMISSIONER FULKERSON: I would like to  
15 ask staff a question. When was the last time this lease  
16 was revised or the rent was revised?

17 EXECUTIVE OFFICER THAYER: In terms of the rent  
18 review?

19 ACTING COMMISSIONER FULKERSON: Yes.

20 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:  
21 I could answer that, Paul.

22 Well, first of all, the rent is -- the big  
23 increase is based on the new Delta -- or excuse me, Tahoe  
24 benchmark, which went into effect in 2007. You may recall  
25 at the last Commission meeting, we had a similar issue

1 with -- I want to say it was an Agate Bay homeowners  
2 association. But it wasn't a homeowners association, so  
3 it was one of those same type legal type things.

4 This lease was apparently they held it as a  
5 family trust originally. And it was previously rent free.  
6 And then in 2005 it was transferred into a limited  
7 partnership, and that's when rent was incurred. At that  
8 time, the benchmark hadn't been updated, so it was at a  
9 lower level.

10 Whenever we get something like this, we basically  
11 vet it through our staff counsel to see what the effect  
12 is, because the Public Resources Code states that in order  
13 to be eligible for a rent-free lease, you have to be a  
14 natural person or basically a homeowners association.

15 So when we have a situation where something is in  
16 a gray area, we try to run it through our counsel to get a  
17 determination on that.

18 As you recall, from the Agate Bay one, at the  
19 last Commission meeting, I think we went into some level  
20 of detail regarding the basis for that rent increase. The  
21 prior Tahoe benchmark was set in 1992, and had not been  
22 updated until 2007.

23 During that period, our survey found that rents  
24 for slips and mooring buoys in Lake Tahoe had jumped  
25 almost 400 percent, you know, 371, as she cited. So

1 basically that's the reason for that.

2 I can't not tell her how to hold her property,  
3 but you know, the way she held it -- or her family held it  
4 before, qualified her for a rent-free lease.

5 CHIEF COUNSEL FOSSUM: And that really raises  
6 three issues. And one is the fact that the Legislature  
7 has directed how the Commission is to charge rent on this.  
8 And then, of course, Colin mentioned the fact that the  
9 rent review was -- or the benchmark was revised a few  
10 years ago.

11 This is one of the things that, of course, the  
12 audit was -- the suggestion in auditing the Commission was  
13 that we weren't doing that enough, and that we should be  
14 upgrading that.

15 And then finally, I think her photography  
16 indicated that the majority of her pier actually is high  
17 and dry. And today or about this time, where the lake is  
18 is about where the Commission's jurisdiction, as far as  
19 leasing, begins. So the majority of her pier isn't even  
20 being leased by the Commission. It's on their private  
21 property, subject to the Public Trust easement, but we  
22 don't charge any rent for that.

23 And in addition to there being a pier here,  
24 there's also 2 buoys, and that, of course, adds to the  
25 value and increases the rent.

1           ACTING COMMISSIONER BRYANT: So can I just ask a  
2 question about the nature of the property. And this is  
3 just a family home, with a family pier only used by the  
4 family?

5           MS. HUNTER: When my mother-in-law died, and the  
6 property went from a trust into a partnership, the  
7 property tax was stepped up. We're just normal people.  
8 There's no way we can afford -- I'm sorry, my voice is  
9 quivering because I'm nervous. We cannot afford \$38,000  
10 property tax from our livelihoods.

11           So we rent out the property, which might be a  
12 determining factor.

13           CHIEF COUNSEL FOSSUM: It's another issue.

14           MS. HUNTER: But once again, like he said, the  
15 boat slips, the rents went up. Well, that's not a boat  
16 slip anymore. That's something you can walk to the end of  
17 and look at the lake. You can't really tie up a boat to  
18 that.

19           But we do have the 2 buoys, which we're willing  
20 to pay the increased rent on, but I don't see that there's  
21 a validity to increase the rents so high on this pier,  
22 which is pretty high and dry.

23           CHIEF COUNSEL FOSSUM: It's a dilemma for all the  
24 property owners along the lake, because of the number of  
25 drought years, that whole beach area between high and low

1 is exposed today, and many people are having more  
2 difficulty using their piers, but the leases still exist,  
3 and so --

4 EXECUTIVE OFFICER THAYER: And again, one could  
5 say that in actuality, they got a break on the rent prior  
6 to the revision of the benchmark. It was much too low.  
7 The only possible --

8 MS. HUNTER: At that time, it was held by a  
9 Trust, so we didn't really get a break. It was held by a  
10 trust. The rent would have been zero whatever the rate  
11 was.

12 CHIEF COUNSEL FOSSUM: At the last 5 years.

13 EXECUTIVE OFFICER THAYER: Right. I'm saying  
14 though that the rent increased. The setting the rent  
15 initially when it went -- became a partnership, \$700 was  
16 less than that otherwise would have been charged or should  
17 have been charged.

18 The only possible way that this rent could  
19 be -- and you know, it's the staff's position that, you  
20 know, we take this benchmark figure, which is so many --  
21 it's a charge of so much per square foot and we apply that  
22 throughout the lake. And that determines what the rent  
23 is. The only possible way that this rent could be  
24 incorrect is if somehow we've incorrectly measured the  
25 square footage. And if the Commission would like us to go

1 back and double check that, we'd be glad to do it.

2 But, you know, in general, this is the same  
3 amount of rent that's being charged to everybody else.

4 ACTING COMMISSIONER BRYANT: Yeah, I mean, I was  
5 less sympathetic about Agate Bay last time, because that  
6 was -- you know, that was -- they weren't a homeowners  
7 association. Not all the residents use that pier. It was  
8 different.

9 This is so much of a character of a single family  
10 home, where -- but you know, you do make a choice of how  
11 you hold your property. And just so you really  
12 understand, and Cindy said this last time and I'll say it  
13 this time to you, is that this Commission has been soundly  
14 criticized by the State Auditor and by the Legislature for  
15 not charging adequate rents. Because we have a  
16 responsibility to the rest of the taxpayers of California  
17 to make sure that we -- that we get out adequate rents,  
18 and that's why they rebenched these Tahoe rents several  
19 years ago.

20 You are in a bad position. And I have a couple  
21 suggestions. I think I'd like the staff to take another  
22 good look at this.

23 MS. HUNTER: I would so much appreciate that.

24 ACTING COMMISSIONER BRYANT: And another thing  
25 is, is that I suggest to you that you speak -- you look --

1 talk to your local -- your representatives, your Assembly  
2 Member and your Senator about looking for a law change.  
3 And there might be a way to make a law change that they  
4 could treat you like an actual person. I don't know if  
5 that's possible, but you know, you're kind of in -- you  
6 have made a choice. I mean Colin made the point in the  
7 staff presentation, you chose to become a Limited Partner  
8 for some other reasons that are none of our business,  
9 but --

10 MS. HUNTER: I don't know why. Just legal -- the  
11 person doing our estate planning said well, this is how  
12 you'll do it.

13 ACTING COMMISSIONER BRYANT: And they didn't know  
14 that --

15 MS. HUNTER: They had no idea.

16 ACTING COMMISSIONER BRYANT: -- this was going to  
17 create this conundrum for you, but it did. We didn't  
18 force that on you, but we have a responsibility to enforce  
19 the law. And the law requires us to collect a fair market  
20 rent.

21 MS. HUNTER: I understand that, and -- I  
22 understand the fair market rent idea. And I'm happy to  
23 pay that for the buoys. They are serviceable and we do  
24 use them in the summers. But the pier is pretty unusable,  
25 and it seems -- it just doesn't seem fair to increase the

1 rent on something that the value has diminished.

2 EXECUTIVE OFFICER THAYER: But it still occupies  
3 the State lands.

4 ACTING CHAIRPERSON ARONBERG: You could remove  
5 the pier possibly. I don't know, is that an option?

6 MS. HUNTER: It would be a lot cheaper to pay the  
7 370 percent rent increase than remove the pier.

8 ACTING CHAIRPERSON ARONBERG: Or possibly speak  
9 to your attorney about the way that the property is held.

10 CHIEF COUNSEL FOSSUM: But, as she indicated,  
11 they've also been renting it out. And that's another  
12 dilemma, because once it becomes a commercial operation,  
13 then it also wouldn't qualify.

14 So even if it was a private property owner  
15 holding it as a single-family residence, if you rent it  
16 out, and you're making money off of it, then the State  
17 wants to be compensated for that, because you're making  
18 money on State property.

19 MS. HUNTER: What if you're losing a great deal  
20 of money on it?

21 CHIEF COUNSEL FOSSUM: A lot of people are  
22 losing -- you know, it's a bad time for everybody in  
23 California, and we certainly empathize. And we will look  
24 at this particular one again and see if there's a mistake  
25 made of any kind, and let you know.

1 MS. HUNTER: Thank you very much.

2 ACTING CHAIRPERSON ARONBERG: Is there any other  
3 public comment?

4 Anyone else who wants to speak?

5 Okay, if not, let's adjourn this meeting.

6 EXECUTIVE OFFICER THAYER: Thank you.

7 (Thereupon the California State Lands Commission  
8 meeting adjourned at 4:06 p.m.)

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