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MEETING
STATE LANDS COMMISSION
STATE OF CALIFORNIA

ROOM 444
STATE CAPITOL
SACRAMENTO, CALIFORNIA

ORIGINAL

THURSDAY, FEBRUARY 23, 1984

10:00 A.M.

Cathleen Slocum, C.S.R.
License No. 2822

PETERS SHORTHAND REPORTING CORPORATION

3435 AMERICAN RIVER DRIVE, SUITE A
SACRAMENTO, CALIFORNIA, 95825
TELEPHONE (916) 972-3894

MEMBERS PRESENT

1
2 Leo T. McCarthy, Acting Chairperson,
Lieutenant Governor

3 Nancy Ordway, representing Jesse Huff,
4 Interim Director of Finance

5 Elizabeth Rasmussen, representing Kenneth Cory,
6 State Controller

STAFF PRESENT

7
8 Claire Detrick, Executive Officer

9 James Trout, Assistant Executive Officer

10 Robert Hight

11 Lance Kiley

12 Mike Valentine

13 Robert Faber

14 Judy Markell, Secretary

ALSO PRESENT

15
16
17 No Gregory Taylor, Deputy Attorney General
18
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- Greg Gow
- Harold Meadow
- Allistair Carrel

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ACTING CHAIRPERSON MCCARTHY: Ladies and gentlemen, I apologize to each and every one of you for the tardiness of this Committee meeting.

If it would not greatly inconvenience any of those who are here to discuss Item Number 12, we would like to proceed through the rest of the calendar. There is only one other item on which there will be some comment, and I'm given to understand that that will not take too long. Item 12 will probably bear more discussion and we'd like to proceed in that fashion. If I don't receive a signal from anyone in the audience that they have some great difficulty with that approach, we'll proceed accordingly.

I should mention that Consent Item 7 and Consent Item 8 are off the calendar. They're not on the rest of the agenda now.

EXECUTIVE OFFICER DETRICK: That's correct. They're just moved off today's calendar completely.

EXECUTIVE OFFICER DETRICK: And Item 29 on the regular calendar.

ACTING CHAIRPERSON MCCARTHY: And Item 29 on the regular calendar is also off today's calendar.

Now, if we may proceed -- yes.

MR. TAYLOR: Governor, on Item C6, this is --

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ACTING CHAIRPERSON McCARTHY: Let's use that microphone, if we can, please.

MR. TAYLOR: On Item -- it's dead.

(Thereupon a discussion was held off the record.)

ACTING CHAIRPERSON McCARTHY: All right. Try.

MR. TAYLOR: Item Number 6 on the City of Brisbane, it would either be, the recommendation should be to accept a quitclaim or other appropriate document indicating the termination of the lease. It may be that the State Lands Commission should give something to Brisbane rather than accepting it since we've conveyed the land in trust by a statutory grant. So if the staff could have the alternative of whatever the appropriate document is, that's what we'd like to have the recommendation be.

EXECUTIVE OFFICER DETRICK: Mr. Chairman.

ACTING CHAIRPERSON McCARTHY: Yes.

EXECUTIVE OFFICER DETRICK: We've got a little bit out of order here --

ACTING CHAIRPERSON McCARTHY: We haven't begun!

EXECUTIVE OFFICER DETRICK: -- inadvertently. So maybe we could put that comment of Mr. Taylor's over and remember it when we get on to the Consent Calendar.

ACTING CHAIRPERSON McCARTHY: All right. Is there a motion to approve the minutes of the last

3
1 Commission meeting? Have the members been given the minutes
2 of the last Commission meeting?

3 EXECUTIVE OFFICER DETRICK: I hope so.

4 COMMISSIONER RASMUSSEN: I move that we put that
5 over to the next meeting.

6 ACTING CHAIRPERSON MCCARTHY: All right. Let's
7 put it over.

8 There is no Executive Officer's report --

9 EXECUTIVE OFFICER DETRICK: That is correct.

10 ACTING CHAIRPERSON MCCARTHY: -- at this time.

11 All right.

12 We may proceed on the calendar, then.

13 We have the Consent Items that remain, leaving
14 aside Consent Item 6 for the moment. Are there any
15 questions on the rest of the Consent Items that remain on
16 today's calendar?

17 COMMISSIONER ORDWAY: I'll move 1 through 5 and
18 9 through 11.

19 ACTING CHAIRPERSON MCCARTHY: 1 through 5 and
20 9 through 11 has been moved by Commissioner Ordway.

21 All right. Without objection, they are approved.

22 Now, on Consent Item 6 --

23 EXECUTIVE OFFICER DETRICK: Greg.

24 MR. TAYLOR: Governor, the recommendation there
25 would be that the staff be authorized to issue or accept

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1 an appropriate document indicating that the lease has
2 been terminated since the City of Brisbane now has a
3 trust grant to the area.

4 It's to clean up the record for the City of
5 Brisbane. They didn't have a grant from the state, so we
6 gave them a lease. Then they got a Statutory --

7 ACTING CHAIRPERSON McCARTHY: So you are
8 suggesting some additional recommendation to the two that
9 are now listed there?

10 MR. TAYLOR: Well, it would be in the alternative
11 to the second one.

12 COMMISSIONER RASMUSSEN: It's an alternate
13 recommendation.

14 ACTING CHAIRPERSON McCARTHY: To Number 2?

15 MR. TAYLOR: Yes. It would be to authorize
16 the staff to give or accept an appropriate document
17 indicating that the lease has been terminated.

18 ACTING CHAIRPERSON McCARTHY: Any questions by
19 the Commission membership?

20 COMMISSIONER RASMUSSEN: No, none.

21 EXECUTIVE OFFICER DETRICK: Does that remove
22 the --

23 ACTING CHAIRPERSON McCARTHY: That removes it from
24 the Consent Calendar. We're not considering it.

25 EXECUTIVE OFFICER DETRICK: I'd like to clarify

1 the language, Greg. Do you then delete "and recordation
2 of the quitclaim deed"?

3 MR. TAYLOR: Yes. And to record the appropriate
4 document.

5 EXECUTIVE OFFICER DETRICK: All right. Thank
6 you.

7 EXECUTIVE OFFICER MCCARTHY: Any questions?
8 All right. That request is approved.

9 Now we're finished with the Consent Calendar.
10 We're on Item 13.

11 EXECUTIVE OFFICER DETRICK: Mr. Chairman, Item 13
12 is a request by the staff that you authorize us to release
13 for public distribution a report as to public trust
14 needs in the San Rafael Bay Area. You authorized at our
15 request the staff to hold a public hearing. At the
16 December Commission meeting you gave us that authorization.
17 We held such hearing. We have received some written
18 comments. The area in question is part of the area that
19 was sold where the underwater lots were sold in the last
20 century under the jurisdiction of the Board of Tidelands
21 Commissioners. In 1980 the City of Berkeley, in a Supreme
22 Court case in the City of Berkeley, the Court ruled that
23 the Board of Tidelands Commissioners was in fact an
24 unconstitutional, had unconstitutionally used their authority
25 to give up the public trust which the Legislature does not

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1 have the authority under the Constitution to do. But
 2 since there was detrimental reliance upon an earlier
 3 Supreme Court decision upholding the Board of Tidelands
 4 Commissioners, the so-called Alameda decision, the Court
 5 ruled that the trust was lifted from all filled land
 6 but remained over lands covered by water. Since there are
 7 so many property owners involved in this particular part
 8 of San Francisco Bay, we would like to have more time for
 9 public review of the comments that have come in and
 10 solicit more comments before we come to you with a
 11 recommendation as to the trust needs of the area.

12 ACTING CHAIRPERSON MCCARTHY: Miss Ordway.

13 COMMISSIONER ORDWAY: How much more time are you
 14 asking?

15 EXECUTIVE OFFICER DETRICK: Oh, just till the
 16 end of March, the March meeting is when we get back.

17 COMMISSIONER ORDWAY: And you're simply asking
 18 to distribute the report?

19 EXECUTIVE OFFICER DETRICK: That is correct.

20 ACTING CHAIRPERSON MCCARTHY: I have two present
 21 who would like to make comment at this time, and we
 22 invite both of them to the table, Marilyn Borovoy and
 23 Graham Gettemy. How are you today?

24 MS. BOROVOY: Fine, thank you.

25 MR. GETTEMY: Fine.

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ACTING CHAIRPERSON McCARTHY: Good.

Whichever one of you would like to go first, why don't you.

MS. BOROVOY: How do you do. Glad to see you, Governor McCarthy, Miss Ordway and Miss Rasmussen.

Okay. My name is Marilyn Borovoy and I think that our property is the scapegoat for this report. First of all, I would like to thank the staff. They have done a bang-up job of preparing it and I may not like everything inside, but I appreciate all the work that has gone into it and would like to express my thanks.

I am a little upset. I hope this isn't indicative of what's about to come, but I don't like being Item Number 13.

(Laughter.)

MS. BOROVOY: I don't like to suggest --

COMMISSIONER ORDWAY: Don't worry. It's been my lucky number for 36 years.

MS. BOROVOY: Great. I love hearing that. Okay.

Now, we own this property over in, a little tiny piece of property, really little, over in Bayside Acres and we own it with my husband, a couple of aunts and an uncle who are getting older by the minute and me, too.

This property was originally purchased by my

1 grandfather in the early twenties and in 1972, that's
2 11 and a half years -- and I would like to repeat that
3 for the machine -- 11 and a half years ago, we decided
4 it would be nice to build three homes similar to the ones
5 that are on the waterfront over there. Now, the property
6 was considered as one piece so we had to get a subdivision
7 in order to get permission to build. So three years later
8 and thousands of dollars later for lawyers, whom I have
9 great respect for but we're without them now because
10 we're broke, we received from Marin County Planning
11 Department in February of '75 a lot split. We have
12 three waterfront lots with permission to build and in
13 turn we would deed the marshlands which they called I
14 now learned the saltwater pond to the scenic easement
15 for ten years.

16 Now, for various reasons the family decided that
17 we were not builders and we wouldn't build ourselves. So
18 we sold the option to build to this dear man, Mr. Graham
19 Gettemy, and we have become buddies over the five years
20 that we have worked together in November of 1978. He
21 obtained an option from the family to purchase the
22 three waterfront lots with the proviso that he could get
23 permission to build. Now, back in 1972 we started to
24 pay sewer assessments for the outlets on the three
25 waterfront properties. Also in 1972 we wrote to the State.

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1 Lands Commission asking about our title to the land, and
2 that's before we ever started to build or do anything.

3 We received a very nice letter back from the State Lands
4 Commission saying that part of the things was tidelands
5 and it would be a problem; however, there were exceptions.
6 There was nothing in it that said we shouldn't build, we
7 shouldn't try to build. There are exceptions and we did.

8 Anyway, we have been working on it ever since.

9 The door was not closed and nothing was said about the
10 title to our property. Then the Marin County Board of
11 Supervisors gave Mr. Gettemy permission to build the two
12 houses, two houses. We are now down from three houses,
13 we're down to two houses. Our family in turn would deed
14 the marshlands to the Marine Open Space Foundation and
15 we went to BCDC, and that was back in November.

16 I want you to keep this in mind. This has taken
17 us 11 and a half years to get here. They could not move
18 until you, the State Lands Commission, make a decision
19 re will you exercise the public trust on the three waterfront
20 lots and, two, will you allow housing on the pilings and
21 then, lo and behold, the State Lands Commission has now
22 finally informed us of the very interesting fact that we
23 don't even own the marshland. This was rather a shock
24 since we've been paying taxes for a few years.

25 I only wish that the staff had been around in

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1 1972 when we met with Joe Badovitz of the BCDC. Now we've
2 spent a lot of money and exerted much energy and we're
3 putting ourselves in your hands. That's enough from me,

4 MR. GETTEMY: Ladies and gentlemen and Governor,
5 I came more or less through the back door on this project
6 as an optioner for the purchase of the property. But in
7 order for me to fulfill and exercise my option, part of the
8 agreement was that I was issued building permits. At the
9 time that I started this project, I went down to the County
10 of Marin to find out, number one, that it was a legal
11 subdivision, number two, that it was zoned R-1 first
12 class residential, number three, that it did have sewer,
13 it had a fire hydrant and it had water meters. All of
14 these in place. Through many years of work with my
15 architect, we submitted many different plans to satisfy,
16 number one, the neighbors and, number two, everybody that
17 seemed to be an authority on what was going to go on that
18 property. We finally came up with an agreement that gave
19 one lot away to open space, retained two lots and were then
20 granted on a five to zero vote from the Board of
21 Supervisors two tideland permits to build.

22 Now, during this whole process, and I think this
23 is very important, whether we are ever in agreement on
24 getting our permits through the State Lands Commission and
25 BCDC, I think this is a very important fact that must be

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1 either remedied or changed in the Legislature, and that is
2 this. When I first started this project, I asked for
3 BCDC approval or attention or input and I also asked for
4 Army Corps of Engineers input. There was never one
5 mention ever from the County of Marin that I even had to
6 talk to State Lands. There was never a mention of it.

7 Now, the reason I make this statement is this.
8 During the course of applying for these permits, it has
9 cost me in the neighborhood of about \$35,000. Had I gone
10 to BCDC and was turned down in the very beginning, I would
11 not have spent a dime. I could care less and walk away.
12 So like any other piece of property, if it is not
13 developable, why worry about it if this is the business
14 you're in. But I was forced to go through the whole deal
15 until I finally got my tidelands permit at which time I
16 was then granted the opportunity to talk to BCDC and then
17 got thrown into the State Lands Commission's lap. So
18 whether it ever happens to me, whether I ever get my
19 permit or whether I'm denied permits, I think that it's
20 very important that that law should be changed enabling
21 an applicant to at least find out where he is before he's
22 forced into all of these expenditures.

23 The third thing I want to bring up is in this
24 report that you see that I'm sure you're going to read,
25 you're going to find out that every, well, I'm saying the

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1 Sierra Club and the Audubon Society and all of the
2 people that you people are used to listening to and talking
3 to were at all of our open meetings and hearings. The
4 two houses that we want to build are going to be a group
5 of 25 houses. There are 23 standing now on the water's
6 edge or over the water. Now, any detriment to the wildlife,
7 the geese, the ducks, the clams certainly would have
8 happened when the 23 houses were built. I'm sure that
9 the two new houses are not going to turn this whole
10 environmental thing upside down. I think that should be
11 understood as well.

12 I don't think I have anything else to say. I
13 would be very much in agreement if I could get my permits
14 from you people, I would cut down from a two-story to a
15 one-story. I think the reason that we went two stories
16 was because BCDC asked us to. They said there would be
17 less coverage over the water. As far as I'm concerned,
18 I originally went in for one story in the beginning, then
19 they told us to go two, and we did. Now, we're back to one.
20 We would just as soon stay at one. I think the whole area
21 would be more in conformity to go one story.

22 I think that's about it.

23 MS. BOROVOY: I have one comment I forgot to
24 say. You have a brochure that the State Lands Commission
25 puts out and you say you like these happy settlements.

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1 We would be very happy to have the happy settlement.

2 (Laughter.)

3 MS. BOROVOY: So I hope that you'll keep that in
4 mind. That's all.

5 MR. GETTEMY: Thank you very much for your time.

6 COMMISSIONER ORDWAY: Do you have any questions?

7 COMMISSIONER RASMUSSEN: No, I don't think so.

8 COMMISSIONER ORDWAY: I have one of counsel,
9 maybe two of counsel. How many property owners are involved
10 in this whole area?

11 EXECUTIVE OFFICER DETRICK: In the entire area?

12 COMMISSIONER ORDWAY: In the area covered by the
13 report.

14 EXECUTIVE OFFICER DETRICK: Oh, wow. Mike, can
15 you --

16 MR. VALENTINE: Mike Valentine of the staff.
17 Our mailing list contains 250 names that we notified of it
18 and most of those came from the Assessor's Rolls. I don't
19 know exactly the answer to your question. It's about 200.

20 COMMISSIONER ORDWAY: Would the action to put the
21 staff report out for public comment and for review in any
22 way jeopardize these people?

23 MR. VALENTINE: I don't believe so.

24 COMMISSIONER ORDWAY: Is that the opinion of
25 counsel?

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MR. TAYLOR: It's a way of giving them more notice of an action that's already been taken by this Commission so they'd be better advised when the matter comes back to the Commission for full hearing. This action, no.

COMMISSIONER ORDWAY: This action would not put them in jeopardy?

MR. TAYLOR: The notice of hearing would probably be the part that we've discussed about, but this item, as long as this matter was started, this item will be more in the nature of giving everyone more opportunity to review so they'd be in a better position to comment on it when it comes before the Commission again.

MR. GETTEMY: Miss Ordway, pardon me for interjecting.

COMMISSIONER ORDWAY: Please.

MR. GETTEMY: The 200 mailing list, the 200 people, on Bayside Acres per se proper, which is called Chicken Point, by the way. I doubt whether -- there's another name for it, too --

COMMISSIONER ORDWAY: But you're not going to tell us.

MR. GETTEMY: Right. I think that you're going to find that there would be no more than 50 residential properties on Bayside Acres proper. I'm sure that in the

1 mailing, the mailing took in a good portion of Loch Lomond
2 which is across the street.

3 MR. TAYLOR: I think we're talking about the
4 water coverage. There are other lots similarly situated
5 which there are 200 and some. I don't think that includes
6 the already developed lots. I think that's the water-covered
7 lots. It's the water-covered lots in the area.

8 EXECUTIVE OFFICER DETRICK: That is correct.

9 COMMISSIONER RASMUSSEN: What kind of participa-
10 tion did we have in the public hearing?

11 EXECUTIVE OFFICER DETRICK: It was extensive
12 participation. Mike conducted the hearing and I think he
13 can answer you in more detail than I.

14 MR. VALENTINE: We sent it to all the property
15 owners, sent a notice of the hearing. We also sent it
16 to interested groups that are on our usual list of people
17 who are concerned. The people who showed up were
18 primarily conservation oriented with the exception of
19 Mr. Gettemy and Miss Borovoy, of course, showed up, and
20 maybe two or three other people. There were a total of
21 30, I think 33 people who spoke at the public hearing.

22 COMMISSIONER RASMUSSEN: Thank you.

23 EXECUTIVE OFFICER DETRICK: That testimony is
24 all summarized in the report. As you can see, we are
25 concerned that out of 200 property owners, only one

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1 property owner was aware at least enough to show up and
2 speak. We want to be sure that other people will be on
3 notice at any rate that the Commission staff at least is
4 considering a trust exercise there.

5 COMMISSIONER RASMUSSEN: I think that because of
6 the interest that there seems to be by all the adjacent
7 property owners that we should proceed according to the
8 staff's recommendation and distribute the report.

9 COMMISSIONER ORDWAY: For public review?

10 COMMISSIONER RASMUSSEN: Uh-huh.

11 COMMISSIONER RASMUSSEN: Without objection.

12 The Lieutenant Governor had to leave for a
13 brief period of time. We'll continue with the agenda.

14 EXECUTIVE OFFICER DETRICK: Madam Chairman, we
15 have additional copies of the Item 12 Calendar Item available
16 now that people might want to pick up while we're going on
17 through the calendar.

18 COMMISSIONER ORDWAY: We'll continue with the
19 Regular Calendar.

20 Item Number 14.

21 EXECUTIVE OFFICER DETRICK: Item 14 is the
22 ratification of emergency levee repair contract on some
23 State-owned lands along the Petaluma River. I gave
24 permission for that. We checked with you individually.
25 It was an emergency situation in preparation, trying to

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1 stave off the effects of the high tide in January on
2 neighbors of State lands in that area.

3 COMMISSIONER ORDWAY: Questions of staff?
4 Anybody in the audience would like to speak to this issue?

5 Without objection.

6 Item 15.

7 EXECUTIVE OFFICER DETRICK: This is to deny without
8 prejudice an application for the use of some State land
9 in Lassen County. The reason for the denial is that
10 the staff and the applicant have not been able to reach
11 agreement on the rental price timely enough to meet the
12 884 deadline which is running.

13 COMMISSIONER ORDWAY: Questions of staff?

14 COMMISSIONER RASMUSSEN: I have no questions.

15 COMMISSIONER ORDWAY: Anyone in the audience
16 who would like to speak to Item 15?

17 Without objection.

18 Item 16.

19 EXECUTIVE OFFICER DETRICK: Item 16 is the
20 approval of an exchange agreement between the State
21 Lands Commission and the Bureau of Land Management
22 in the Honey Lake Basin area in Lassen County.

23 COMMISSIONER ORDWAY: Questions of staff?

24 Anyone in the audience who would like to speak
25 to this item?

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1 Without objection.

2 Item 17. I have a note here that Mr. Mayo
3 is available for any questions on Items both 17 and 18.

4 EXECUTIVE OFFICER DETRICK: Item 17 is approval
5 of a termination of a lease to Chevron USA and the
6 establishment or adoption of a new lease which has some
7 changes in the volumetric rental and otherwise brings it
8 up to date in the way we now handle leases.

9 COMMISSIONER ORDWAY: Questions of staff?
10 Any questions of Mr. Mayo? Anybody in the audience who
11 would like to speak to Item 17?

12 Without objection.

13 Item 18.

14 EXECUTIVE OFFICER DETRICK: Item 18 is a
15 permit to Chevron USA to do a proposed shallow soil boring
16 program off of Point Conception for the purpose of
17 determining the safest route for a pipeline from their
18 OCS leases.

19 COMMISSIONER ORDWAY: Questions of staff?
20 Questions of Mr. Mayo? Anybody in the audience that would
21 like to speak to Item 18?

22 Without objection.

23 Item 19.

24 EXECUTIVE OFFICER DETRICK: Item 19 is the
25 statutorily required report to the Legislature we would

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1 like you to approve for our release on the comparison of
2 the actual revenues of 1983-84 fiscal year and the
3 projected revenues based on the recent changes for the next
4 three fiscal years. The revenues for this year are up
5 10 million from our earlier projection and we're projecting
6 an increase in the next fiscal year of 5 million and the
7 third fiscal year is such a large number I don't think
8 we even want to consider it. Forty-five million.

9 COMMISSIONER ORDWAY: That's a nice number.

10 COMMISSIONER RASMUSSEN: Very encouraging.

11 COMMISSIONER ORDWAY: This incorporates all the
12 legislation that took effect January 1st and that will take
13 effect during the course of this year?

14 EXECUTIVE OFFICER DETRICK: Yes. I should say
15 the primary reason for the increase in these revenues is
16 increase in production in the Long Beach field which we
17 were not sure was going to happen, but it did.

18 COMMISSIONER ORDWAY: Questions of staff?
19 Anybody in the audience who wishes to comment on this?

20 Without objection.

21 Item 20.

22 EXECUTIVE OFFICER DETRICK: Item 20 is the
23 approval of a notice of intent by the City of Long Beach
24 to spend a hundred and seventeen thousand dollars
25 repaving a couple of parking lots which staff have

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complies with Section 138.

COMMISSIONER ORDWAY: Questions of staff?

Anybody in the audience who would like to speak to Item 21?

Without objection.

Item 22.

That was 20. 21.

EXECUTIVE OFFICER DETRICK: Item 21 is another notice of intent of the city to spend a hundred and ninety-two thousand four-hundred for construction of an extension on a launching ramp.

COMMISSIONER ORDWAY: Questions of staff?

Any individual in the audience like to speak to Item 21?

Without objection.

Twenty-two.

EXECUTIVE OFFICER DETRICK: Twenty-two is another notice of intent by the City of Long Beach, \$328,000 for the improvement of Bluff Park.

COMMISSIONER ORDWAY: Questions of staff?

Any individual in the audience who would like to speak to Item 22?

Without objection.

Twenty-three.

EXECUTIVE OFFICER DETRICK: Twenty-three is ARCO Oil and Gas Company request for deferment of drilling operations on leases 308, 309, 3120, and 3242 off

1 the Santa Barbara Coast.

2 COMMISSIONER ORDWAY: Questions of staff?

3 Any individual in the audience who would like to speak to
4 Item 23?

5 Without objection.

6 On Item 24 we'll have Mr. Kyle Pickford available
7 for questions.

8 EXECUTIVE OFFICER DETRICK: This is an
9 application by Phillips Petroleum to resume exploratory
10 drilling on an additional lease in Santa Barbara County
11 right off Point Conception. The environmental documentation
12 is finished and in this instance we are certifying an
13 EIR as well as allowing the resumption of drilling.

14 COMMISSIONER ORDWAY: Questions of staff?
15 Questions or comments for Mr. Pickford?

16 Any individual in the audience who would like to
17 speak to Item 24?

18 Without objection.

19 Twenty-five.

20 EXECUTIVE OFFICER DETRICK: This is a ninth
21 modification of the '83-84 Plan and Budget of the City of
22 Long Beach. Staff recommends approval.

23 COMMISSIONER ORDWAY: Questions of staff?
24 Any individual in the audience that would like to speak
25 to Item 25?

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Without objection.

Item 26, is this on calendar?

EXECUTIVE OFFICER DETRICK: Yes. That's an application from Shell to shut in a gas well in the Molino Field for technical reasons. Staff recommends approval.

COMMISSIONER ORDWAY: Questions of staff?

Any individual in the audience that would like to speak to Item 26?

Without objection.

Twenty-seven.

MR. HIGHT: Item 27 is the authorization to settle a condemnation action with the Federal Government for a parking lot at the New Molomes Dam and the result will be a boundary line agreement separating the federal and private land.

COMMISSIONER ORDWAY: Questions of staff?

Any individual in the audience who would like to speak to Item 27?

Without objection.

Item 28.

MR. HIGHT: Item 28 is the authorization to enter into a boundary line agreement to settle the grant boundaries at Bodega Bay.

COMMISSIONER ORDWAY: Questions of staff?

1 Any individual in the audience who would like to
2 speak to Item 28?

3 Yes, sir.

4 MR. SCHROEDER: I would like to ask for an
5 explanation of the, exactly what's going on on that issue?

6 COMMISSIONER ORDWAY: Would you please come
7 forward and identify yourself and staff will be happy to
8 respond.

9 MR. SCHROEDER: Good morning, members of the
10 staff and the State Legislature, and fellow citizens.

11 My name is Hans Schroeder and I own Porto Bodega
12 Fishermen's Marina in Bodega Bay, California, which
13 consists of leased State lands in the amount of 27 and a
14 half acres and the in-fee-owned uplands of approximately
15 17 acres. This issue was of interest to me because in the
16 past I've been a member of the Harbor Commission up there
17 that did redesigning of the uplands potential future
18 uses. I would like to have some kind of an amplification
19 or an explanation of exactly what this issue is about and
20 how it affects the Bodega Local Culture Plan wherein we
21 incorporated and I thought settled all the issues
22 involving boundaries and zoning.

23 EXECUTIVE OFFICER DETRICK: Mr. Taylor.

24 MR. TAYLOR: This is an action which was
25 required by a proposal to develop I guess by your district

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1 or the county, I don't know which, to develop a parcel of
2 property in Bodega Bay where the private parties claim
3 that the boundaries between the uplands and tidelands
4 was different than what the State claimed. It's only a
5 small portion of the total grant map, and it represents
6 an agreement among all the parties to that litigation for
7 that proposal to fix the boundary. The State Lands
8 Commission can survey a line for a grant map and it can
9 record it, but it doesn't have any effect on the claims
10 of upland owners unless they either agree to it or
11 reestablish it conclusively in court. In this area neither
12 of those have been done until the county brought the action
13 to implement these improvements at this particular location
14 and after negotiation it was agreed that the line being
15 fixed by this agreement was the proper line to be used
16 and all parties are signing off to it.

17 EXECUTIVE OFFICER DETRICK: It's strictly a
18 property settlement. It has no bearing on local planning;
19 is that what you're telling us?

20 MR. TAYLOR: That's correct. It's just to fix
21 one segment. If you look at the calendar item, it's to
22 fix only one small segment of the county grant and it's
23 to get all parties to agree that that one segment of the
24 line is where everyone says it is.

25 MR. SCHROEDER: Okay.

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1 MR. TAYLOR: But it's to get all interested
2 parties, both the upland owner as well as the county and
3 the district and the state together and then implement
4 it in that way.

5 Now, what follows from that, I don't know. I
6 think this is something that, this is to allow the county
7 to go ahead with something which was already approved in
8 the master plan. I don't think there's any change to the
9 master plan or anything else. Our only involvement is
10 fix the boundary line.

11 MR. SCHROEDER: Okay. Thank you very much.

12 COMMISSIONER ORDWAY: Thank you for your interest.

13 Any further questions on Item 28?

14 Without objection.

15 Now we'll go back to Item 12. Item 29, I believe,
16 is off calendar.

17 EXECUTIVE OFFICER DETRICK: That's correct.

18 COMMISSIONER ORDWAY: Item 12, we have numerous
19 people who would like to speak to this.

20 EXECUTIVE OFFICER DETRICK: Madam Chairman, would
21 you like us to give you --

22 COMMISSIONER ORDWAY: Would you, please.

23 EXECUTIVE OFFICER DETRICK: Robert Faber, my
24 assistant for mineral resources, has been in charge of
25 this project even from his hospital bed.

1 COMMISSIONER ORDWAY: But we notice he's better.

2 EXECUTIVE OFFICER DETRICK: And can introduce
3 this for us.

4 COMMISSIONER RASMUSSEN: We're glad to see you
5 back, Bob.

6 MR. FABER: Thank you.

7 The item before the Commission is the continuation
8 of a program that was reactivated by the Commission in 1982,
9 two years ago, at which time the Commission modified its
10 regulations to issue permits for all geologic and geophysical
11 activities in State waters. Up to that point in time,
12 the permits had been issued only if explosives were going to
13 be used for geophysical activities and if rotary drilling
14 was going to be used for geological activities. The
15 regulations were changed in February. The permits were
16 issued in August of 1982 pursuant to a categorical
17 exemption which is one of the provisions under CEQA. It
18 was based on the fact that the concerns that were raised
19 prior to the new permits being issued had to deal with
20 fishing gear conflict and those seemed to be resolved on the
21 basis of an extensive notification system that had been
22 put into the permits. After those permits were issued,
23 a number of additional concerns have been raised and worked
24 on by the staff. In particular, questions concerning the
25 grey whales were raised and staff worked with the Minerals

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1 Management Service and the National Marine Fisheries
 2 Service to expand a study that was being conducted in
 3 Monterey. That study was completed last year and the
 4 report came out on it in November or December of last year.
 5 When the permits were issued 18 months ago, each
 6 permit covered geological work, geophysical work, and
 7 turning operations in State waters for data collection in
 8 Federal waters. Because of some of the questions that
 9 have been raised by members of the public in the last
 10 18 months, staff is recommending that the type of permit
 11 be split into three different categories: one, a geological
 12 permit, one a geophysical permit, and one a turning permit,
 13 and that they each be treated separately by the Commission.
 14 Insofar as the geological permits are concerned, we would
 15 recommend that the categorical exemption be used again and
 16 that those permits be reissued to those people that have
 17 applied today. Insofar as the turning permit which would
 18 allow the State Lands Commission to continue to be involved
 19 in the notification of the state's fishermen when operations
 20 are being conducted in Federal waters but turning is taking
 21 place in State waters, we would suggest that those be
 22 issued today under the provision that as the program is
 23 constructed it would not have a significant effect on the
 24 environment. Lastly, with regard to geophysical permits,
 25 staff is in the process of collecting information from

1 interested parties. We sent out an initial study in
2 early February to both State agencies and interested
3 public parties. We have gotten back a number of comments
4 and they are referred to in the calendar item. It is our
5 recommendation to the Commission that staff be directed
6 to complete its environmental and technical evaluation
7 and bring this back to the Commission for reissuance of
8 permits or at least consideration by the Commission in
9 April.

10 A number of people here from the oil and
11 geophysical industry, who want to testify primarily on the
12 issue of the economic impact of having that hiatus between
13 the end of February of this year and April when the
14 operations could be resumed if the Commission reissued
15 those permits in April. We've been led to believe that
16 the loss will be in the vicinity of one to two million
17 dollars per month for the time that they would not be
18 able to operate because permits would not be in hand.

19 COMMISSIONER ORDWAY: Questions of staff?

20 I'd like to proceed maybe a little backwards.
21 It sounds as though the geophysical turning permits are
22 the least controversial, and so let's start with the third
23 part of the permit for the purposes of testimony and
24 work back up to what may be the more critical because
25 I know the Lieutenant Governor would like to be here for

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1 that.

2 Of those who have indicated they would like to
3 speak on this item, since you did not break it up as to
4 which part of the permits you'd like to speak to, who in
5 the audience would like to speak to the geophysical turning
6 permit portion?

7 Going back to up Number 2 -- oh, can you come
8 forward, please, and identify yourself?

9 MR. SAVIT: Hello. My name is Mark Savit. I'm
10 a lawyer with the law firm of Cotten, Day and Doyle. I
11 represent Western Geophysical Company. I'd like to just
12 make a brief remark about the turning permits. I've
13 prepared rather extensive remarks on the geophysical permits
14 and I'll give those when that's appropriate.

15 But with regard to the turning permit, Western
16 Geophysical's position is that the purpose of the permit
17 as we understand it is to allow for notification of the
18 fishermen whose operations might be affected by the
19 cables employed in the geophysical operations being pulled
20 through state waters when the vessels in question turn
21 in federal waters. We've pointed out to the staff on this
22 matter that we notify all of the fishermen under our
23 federal permit that we are required to notify or would be
24 required to notify under the state turning permits. So
25 our sole objection I guess to the state turning permit is

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1 that we would be required to send out dual notifications
2 to an identical set of people for one operation which
3 seems to us unnecessarily duplicative.

4 EXECUTIVE OFFICER DETRICK: Mr. Faber can
5 clarify that situation. Mark is close, but not quite
6 on what is proposed. I think that the dual notification
7 will not occur and not be a problem.

8 MR. FABER: That is correct. It would not be
9 a dual notification. The notifications that they send out
10 for the requirements to meet the federal permit would also
11 comply with ours. This merely allows the state to
12 continue to monitor that program and be involved in it.
13 It doesn't require any duplication of filing on their
14 part.

15 MR. SAVIT: By way of clarification, then all
16 you're asking is we notify you of our federal operation
17 where we might be turning in state water and all other
18 notifications would --

19 MR. FABER: Would remain the same.

20 EXECUTIVE OFFICER DETRICK: As long as the
21 federal notification remains as it now is, there would be
22 no problem. In the event that the federal notification
23 changed, you would then be required to notify the state.

24 MR. SAVIT: Okay. That clarifies it.

25 ACTING CHAIRPERSON MCCARTHY: Any other witnesses

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1 on this turnabout item?

2 COMMISSIONER ORDWAY: Would you like to handle
3 these separately?

4 ACTING CHAIRPERSON McCARTHY: I think we might
5 as well.

6 Is there any dissent from approving this
7 specific recommendation?

8 All right. Hearing none, this part is approved.

9 All right. Now the geological survey permit.

10 EXECUTIVE OFFICER DETRICK: That is page 92.6 of
11 the calendar and page 7 of the green calendar.

12 ACTING CHAIRPERSON McCARTHY: 92.6 on the
13 calendar.

14 EXECUTIVE OFFICER DETRICK: Try page 7 of the green
15 calendar item in front of you.

16 ACTING CHAIRPERSON McCARTHY: Yes, I follow that.

17 EXECUTIVE OFFICER DETRICK: Page 7. Okay.
18 The recommendations are on page, beginning on
19 page 8.

20 ACTING CHAIRPERSON McCARTHY: Any testimony on
21 this part? Is there any question by members of the
22 Commission on this issue?

23 COMMISSIONER ORDWAY: No.

24 ACTING CHAIRPERSON McCARTHY: The recommendation
25 is approved.

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1 Now we have a series of witnesses on the
2 seismic survey issue. If we may, and the folks on both
3 sides of this can arrange in what order they wish to
4 testify: I have Mr. Kirwan -- Mrs. Kirwan. All right.
5 All I've got on here is B. J. I'm safe in making the
6 mistake. Thank you, Mrs. Kirwan.

7 How about T. L. Wright; is that Mr. or Mrs.?
8 That looks like a Mr. Douglas Barman and Bruce Bowen.
9 Bowen or Bowen?

10 MR. BOWEN: Bowen.

11 ACTING CHAIRPERSON MCCARTHY: Mr. Bowen. All
12 right. Would you all like to approach -- we have two
13 seats or more? Two. Have you arranged the order of your
14 testimony among yourselves or is there testimony from
15 any of the four of you?

16 EXECUTIVE OFFICER DETRICK: I would suggest --

17 ACTING CHAIRPERSON MCCARTHY: Are these just
18 to signify attendance rather than testimony?

19 MS. KIRWAN: All of us want to testify, but I
20 believe there are several other people who are hoping to
21 appear before you to speak.

22 ACTING CHAIRPERSON MCCARTHY: I have other slips
23 I have slips from the fishing industry Richill Marine, Inc.
24 Western Geophysical Company, is that the witness you were
25 referring to? If you have your testimony in a certain order,

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1 we'll take it in the order you wish to present it.

2 MS. KIRWAN: I think it would be agreeable if
3 we start with Mr. Wright and then myself and then whoever
4 else anyone wants to proceed is all right.

5 ACTING CHAIRPERSON MCCARTHY: All right.

6 Mr. Wright.

7 MR. WRIGHT: Thank you.

8 My name is Tom Wright. I am Staff Geologist
9 with Chevron in Concord and am appearing today on behalf
10 of the Exploration Committee of the Western Oil and Gas
11 Association.

12 We strongly support the extension of existing
13 geophysical and geological permits, with additional
14 mitigation where there is a demonstrated need, so that
15 surveys can proceed without interruption in California's
16 state waters.

17 I'd like to speak to the financial impacts.
18 These surveys are essential early steps in a continuing
19 program of energy resource development which has already
20 yielded more than a billion dollars in revenues for the
21 people of California, and nearly two billion barrels of
22 oil for California's cars, homes, and jobs.

23 The contribution of offshore oil to California's
24 total production has dropped from 28 percent in 1970, to
25 less than 18 percent recently. California's oil needs

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1 now are supplied only 13 percent from the offshore,
2 but twice that amount comes in imports from foreign
3 countries and other states.

4 Suspension of geophysical permits could stall
5 major energy development projects in state waters, from
6 which the state would receive several million dollars a
7 day in revenue.

8 Suspension of geophysical permits would have a
9 serious financial impact on California firms, and their
10 employees, which specialize in these technical surveys.
11 San Diego companies, Nekton and Pelagos have made
12 consistent efforts to coordinate their activities with
13 commercial fishermen, and they would be severely penalized
14 and without cause.

15 Californians derive more than financial
16 benefits from these surveys and the resulting resource
17 production. The scientific data they provide makes a
18 significant contribution toward reducing the earthquake
19 hazards for coastal residents. For example, results
20 of oil exploration surveys during the 1960's were published
21 by Shell Oil in 1971. That study identified the active
22 Hosgri Fault off the Central California coast and led to
23 a major redesign of the Diablo Canyon nuclear power plant.
24 Many geophysical surveys in state waters are directed
25 toward engineering design of coastal projects. A suspension

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1 of your permits would bring these studies to a halt.

2 The question is why suspend the surveys for
3 the period that the staff's recommendation calls for?
4 These geophysical surveys have been conducted routinely
5 in California's coastal waters for more than 35 years.
6 State Fish and Game initially monitored these surveys
7 to ensure that damage to marine life was minimal. But in
8 the mid-1960's, operators changed the type of source for
9 the acoustic signals used in these surveys from explosives
10 to air gun arrays. Since then, Fish and Game has not
11 been concerned that geophysical surveys might harm the
12 fish or other marine life. These devices, developed by
13 the same people who did the acoustic design for
14 San Francisco's new symphony hall, do not produce the
15 sharp pressure peaks which might injure fish or shellfish
16 larvae. Their acoustic signals, at five to six-second
17 intervals, are produced by the collapse of large air
18 bubbles. Tests have demonstrated their harmless nature.
19 Your staff and other state and federal specialists reviewed
20 this data just 15 months ago and concluded that "little
21 if any physical harm to fish is to be expected as the result
22 of the use of air guns for geophysical research" and "No
23 evidence was found to suggest that air guns and other
24 non-explosive acoustic sources caused injury to marine
25 mammals."

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1 Of course, these air gun pulses, and the higher
2 frequency signals which are generally used in engineering
3 surveys, are only a few of the many sources of sound in
4 the ocean. Ships' propellers, fathometers, fish finders,
5 and other equipment produce a variety of sonic frequencies
6 and intensities. And there are natural sources such as
7 the crash of waves against the shore. Biologists report
8 that the bottle-nose dolphin emits a 228 decibel bark,
9 which compares with the 230 to 240 decibels produced by an
10 air gun array. Obviously, ambient noise is a natural
11 part of the undersea environment.

12 During the past three decades of marine
13 geophysical research along the California coast, the
14 harvest by commercial fishermen, in Santa Barbara and
15 elsewhere, has increased several fold. The population of
16 the grey whale has increased at an average rate of 2.3
17 percent per year during that period and has been restored
18 to about its maximum, pre-exploitation level.

19 Nowhere in all these data or history is there
20 any evidence to support a suspension of geophysical surveys
21 in California's state waters.

22 In recent years the offshore energy industry has
23 worked diligently to identify and resolve environmental
24 concerns of every sort. We have made a strong effort
25 to eliminate potential conflicts with commercial fishermen,

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1 whose industry also harvests resources from our coastal
2 waters for the people of California.

3 During 1981 and 1982, we worked with your staff
4 and the Federal Minerals Management Service to ensure
5 that commercial fishermen had adequate notification and
6 the opportunity to comment and negotiate on marine
7 geophysical surveys before the survey was permitted.

8 Early in 1983, geophysical contractors donated
9 ship time costing more than \$100,000 to a scientific
10 study assessing the response of whales and sea otters
11 to a full sized air gun array. Results of this study
12 have enabled your staff to add fully adequate mitigating
13 conditions to the permit which is before you for renewal.

14 Beginning in April of 1983, we have worked with
15 Santa Barbara and Santa Maria fishermen to establish a
16 Liaison office to ensure that offshore oil activities
17 do not interfere with commercial fishing in these very
18 active areas. Managed jointly by our two industries, but
19 funded by the oil companies, this full-time Liaison Office
20 was finally opened in October of 1983. After less than
21 five months, it has already proven its potential for
22 fostering the amicable sharing of California's coastal
23 waters.

24 Our joint Liaison Committee has organized and
25 funded a scientific workshop, to be held week after next,

1 which will examine the possibility that our acoustic
2 signals could spook the fish in a way that would reduce
3 the fishermen's catch. If that workshop concludes that
4 scientifically designed studies of this phenomenon are
5 feasible and will provide useful results, and the
6 fishermen conclude that they are needed, our industry
7 will fund additional research. And the fishermen, and
8 state and federal agencies, will have majority control
9 of that research.

10 By involving the fishermen themselves in develop-
11 ment of the geophysical permits, the Liaison Office, and
12 the coming scientific panel, the quality and usefulness of
13 these products have been greatly improved. But for that
14 very reason, the process has not gone on as rapidly as
15 all of us had hoped. Because of this, we find your
16 initial 18-month permit are expiring just before next
17 month's scientific workshop, before we can do any research
18 it recommends, and just as the Liaison Office is demonstrat-
19 ing its effectiveness. Our current efforts show every sign
20 of success. To suspend the permits for want of final
21 results would be manifestly unfair to the geophysical
22 contractors and their clients, and will retard the develop-
23 ment of state resources.

24 WOGA and its member companies strongly recommend
25 that the Commission provide for continuation of geophysical

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1 and geological surveys in state waters, through extension
2 of the existing permits. These permits should be for a
3 term sufficient to gather and evaluate any new data
4 relating to potential impacts of acoustic pulses, or other
5 concerns identified in this hearing. Results from that
6 research would then be used to develop long-term permits.

7 Thank you.

8 ACTING CHAIRPERSON MCCARTHY: Rather than hear
9 from a long list of witnesses without any sort of
10 interaction, I think if the staff hears comments that
11 at least may be -- I want to differentiate between
12 misunderstandings of what's being suggested and defined
13 substantive differences on the proposal before us. So if
14 during the course of this testimony anything Mr. Wright
15 said or anything Miss Kirwan might say or the other
16 witnesses, rather than hearing a dozen witnesses and
17 not give them some satisfaction of at least responding
18 to particular points they're making, I would suggest it
19 would be a little bit more logical if you guide whichever
20 staff person you want, Miss Detrick, into responding to this
21 if there are points that have been raised now --

22 EXECUTIVE OFFICER DETRICK: Thank you,

23 Mr. Chairman.

24 ACTING CHAIRPERSON MCCARTHY: -- that appear
25 to reveal a misunderstanding or blurred interpretation of

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1 what the staff of the Commission is recommending.

2 All right?

3 EXECUTIVE OFFICER DETRICK: Thank you, Mr. Chairman.

4 In the main, Bob Faber would be responding as chief on
5 this project. You have no comments?

6 MR. FABER: I have no comments.

7 EXECUTIVE OFFICER DETRICK: Neither do I.

8 ACTING CHAIRPERSON MCCARTHY: All right. Does
9 either Commissioner have a question at this point?

10 Thank you very much, Mr. Wright.

11 Miss Kirwan.

12 MS. KIRWAN: Governor, Commission Members and
13 staff, my full name is Betty Jane Kirwan. I'm with the
14 law firm of McCutchen, Black, Verleger and Shea, and
15 I'm also representing Western Oil and Gas Association.

16 I'd like to very briefly give you our position
17 and then review in a little more detail a few of the legal
18 points. In brief, we believe that conducting geophysical
19 activities offshore isn't a project as that term is defined
20 by the California Environmental Quality Act, and for this
21 reason no EIR or Negative Declaration is required. Others
22 will review with you, and Tom has already told you about
23 some substantial hardship to companies if ongoing work is
24 stopped to allow for completion of the CEQA process. We will
25 have a period of hiatus when there will be no geophysical permits.

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1 There is some new information which has concerned
2 some people calling into question the impact of these
3 geophysical activities on grey whales and other mammals
4 and of course it's important for the Commission to respond
5 to this information.

6 To take account of all these concerns, what we
7 recommend is that the Commission today extend the current
8 permits past their deadline at the end of the months to
9 allow the status quo to continue but not issue new permits
10 until CEQA procedures are completed.

11 Others are going to be giving you more on the
12 important facts I believe you should consider. The only
13 important one I want to review with you is to make sure
14 we're all aware that geophysical surveys have been conducted
15 offshore California for more than 35 years. At the time
16 that the permits were previously issued, the Commission
17 found, as Mr. Faber told you, that issuance of permits
18 were exempt under CEQA, under the categorical exemption for
19 basic data collection, research and resource evaluation
20 activities. We still think that this categorical exemption
21 is available. But because of public concern and
22 controversy surrounding these permits, we do understand
23 if the Commission doesn't avail itself of this exemption
24 for geophysical permits.

25 More important from a legal perspective though,

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1 there is a case made exemption for CEQA compliance whorcas
2 here the governmental approval is a continuation of a
3 long-standing use. The most important case is
4 Simons v. The City of Los Angeles, and I've already given
5 the citation to your staff. In that case the city of
6 Los Angeles was proposing to transfer jurisdiction over
7 some city park land in Elysian Park in Los Angeles
8 for use as police training facilities. The court found
9 there was no proposed project when the action was sought
10 to be enjoined, and they said no EIR was required because
11 the land which was proposed to be transferred had already
12 been used for these purposes, among others, for over 40
13 years without substantially altering the environment.
14 The court held that long-standing and well-established
15 use didn't constitute an environmental change which is
16 what triggers the EIR requirement.

17 I think that these facts are very similar to what
18 we have here. We know that the seismic geophysical work
19 has been conducted for many, many years. No change is
20 contemplated in the work that is ongoing. So I think that
21 the same results should follow. Issuance of the permits
22 doesn't need to wait for the Negative Declaration or an
23 EIR.

24 We couldn't find any other cases directly on point
25 in California. But there are several other cases decided

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1 under the National Environmental Policy Act or NEPA. It's
2 the law in California that cases under NEPA can be used to
3 interpret CEQA because CEQA was modeled after the federal
4 statute.

5 Very briefly -- I apologize and don't want to
6 give you a long legal brief on it --but there are three cases,
7 Swar (phonetic) vs. Harris, which is an Eastern District of
8 Pennsylvania 1977 case where the court held that if there's
9 no significant change in the nature, the magnitude or the
10 design of a project begun before NEPA, NEPA doesn't apply.
11 A more recent case is Burbank Anti-Noise Group v. Goldsmith
12 which is a Ninth Circuit case from 1980. They're an anti-noise
13 group sought to require an EIS before the Burbank Airport
14 could be purchased by the Federal Government, and the court
15 held that an EIS wasn't required because there was no
16 change in the status quo.

17 Finally the same result was reached in a case
18 called CAR, Committee for Auto Responsibility v. Solomon,
19 which was a DC Circuit 1979 case where a suit was brought
20 challenging leasing by the GSA of an area for parking for
21 employees of federal agencies on the grounds, among others,
22 that an EIS was needed. The court there held that the duty
23 to prepare an EIS is triggered when there's a proposal
24 to change the status quo. Without a change in policy,
25 there's no proposal and no environmental compliance is

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1 required, and that's our basic position.

2 Let me close with just these few thoughts. Other
3 speakers, as I said, will be reviewing financial and
4 other hardships if there's a gap in the Commission's
5 permitting of a few months to allow the Commission to
6 complete the CEQA process here. My only point is that
7 I feel it would be inequitable and unnecessary for the
8 Commission to require ongoing work to stop under these
9 circumstances. We're not suggesting that the Commission
10 can't or shouldn't have a permitting procedure for
11 geophysical activity offshore. The Commission I think has
12 a very valid interest in setting terms and conditions of
13 geophysical work. What we're saying though is since no
14 CEQA compliance is required, it shouldn't let the
15 existing permits expire without providing interim relief
16 by way of extending the permits.

17 ACTING CHAIRPERSON MCCARTHY: All right.
18 Mr. Faber, do you want to respond?

19 MR. FABER: Just a couple of quick responses
20 without getting into a long legal debate.

21 As far as the issue of whether or not this is
22 a project, the staff's position is that the regulations
23 when they were adopted two years ago gave the discretion
24 to the Commission to issue these permits. It issued them
25 for a period of 18 months which time they were set up to

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1 expire and I think the real key legal question here is
2 whether or not either an extension or the reissuance of
3 new permits is a new discretionary act by this Commission.
4 Staff is advising the Commission that it is and is therefore
5 a project.

6 As to the case which she cited out of Los Angeles,
7 one of the primary problems that the legal staff has is
8 that it's a 1976 case and the current trend of cases in
9 environmental litigation we think probably indicates that
10 that position wouldn't be followed anymore.

11 Those are our primary responses.

12 MS. KIRWAN: I really apologize for not bringing
13 the federal cases to your attention before. I just
14 remembered yesterday that NEPA cases can be used for
15 CEQA because I just had hit a deadend trying to find any
16 cases pro or con other than that Simons case but we did
17 come up with those other federal cases which I also think
18 are right on point. As I said, the Friends of Mammoth
19 decision in California said that federal cases can be
20 used for CEQA. So I was trying to shed a little more
21 light on how more recent courts have looked at it.

22 MR. FABER: All right. I have no other comment
23 on that.

24 ACTING CHAIRPERSON MCCARTHY: All right. Thank
25 you very much.

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1 Mr. Wright, one question. Part of your testimony
2 indicated that decibels provided by dolphins, snub-nosed
3 dolphins --

4 MR. WRIGHT: Bottle-nosed.

5 ACTING CHAIRPERSON McCARTHY: Bottle-nosed.
6 Bottle short-nosed dolphins.

7 (Laughter.)

8 ACTING CHAIRPERSON McCARTHY: -- is approximately
9 the same as the decibels produced by seismic survey guns.
10 Is that what I hear correctly?

11 MR. WRIGHT: That's what a research study cited
12 by the Office of Naval Research indicates.

13 ACTING CHAIRPERSON McCARTHY: Do you want to give
14 us the citation for that? You don't have to do it this
15 moment. If you would please give it to our staff so --

16 MR. WRIGHT: Right.

17 ACTING CHAIRPERSON McCARTHY: We're not going to
18 have time in the midst of making this decision to try to
19 examine that, but if you would please, depending on what
20 the decision of this Commission is, if you would please
21 give us that so that we could examine the validity of that
22 point.

23 MR. WRIGHT: Certainly.

24 ACTING CHAIRPERSON McCARTHY: Any other questions
25 of either witness by Commissioners?

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1 Thank you both very much.

2 Now, I have Mr. Barman, Mr. Bowen, and I don't
3 know whether, Mr. Kreutzer. All right, sir, I'll call on
4 you next.

5 MR. BOWLES: I'm Larry Bowles. Can we request
6 Mr. Neal Wylie speak next for the trade associations?

7 ACTING CHAIRPERSON McCARTHY: Certainly.

8 Mr. Wylie, do you want to approach the table, please?

9 MR. WYLIE: Good morning, Governor, ladies and
10 gentlemen. My name is Neal Wylie. I'm the President of
11 Grant Geophysical Corporation, a petroleum company. I'm
12 also Chairman of the Board of the International Association
13 of Geophysical Contractors.

14 On behalf of the International Association of
15 Geophysical Contractors, the IAGC--this membership of
16 independent geophysical contractors and geophysical
17 departments of integrated oil companies conduct virtually
18 all of the petroleum finding geophysics in the United
19 States--I welcome this opportunity to bring good news and
20 words of encouragement to the members of this Commission.
21 The good news is that the first 18 months of this
22 Commission's rules for permitting geophysical activity on
23 state waters has been an affirmation that our industry can
24 conduct operations in an environmentally sound manner, that
25 we can work out conflicts with other users of state waters,

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1 and that we can contribute significantly to the information
2 base necessary for encouraging sound management of the
3 petroleum resources located under state waters. I will
4 summarize detail each of these subjects.

5 The environment. Our industry has a long track
6 record on this subject. We have developed technology to
7 respond to public policy priorities concerning environmental
8 protection. For example, air guns as an acoustic energy
9 source. We have participated in biological effects
10 research programs with state and federal agencies, and are
11 presently very actively working in cooperation with
12 commercial fishermen in California to investigate their
13 concerns about possible effects of geophysical exploration
14 on dispersal of commercial important fish. We have worked
15 with the U.S. Minerals Management Service and your staff
16 on investigations of potential effects of our operations
17 on migrating whales. All of this in spite of the fact
18 that our activities have been shown to have no significant
19 adverse impacts by the Minerals Management Service in their
20 environmental impact statements on the Outer Continental
21 Shelf Sale 80, offshore of Southern California, and in
22 their supplemental environmental impact statement on the
23 OCS Sale in the St. George Basin of Alaska, Sale 70.
24 We feel it is important to dispel doubts and to encourage
25 that the imperative for continuing debate on

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1 this subject address the factual knowledge, not just
2 conjecture and emotion. In fact, you may recall that
3 a special interagency task force in a report to the
4 executive officer of your Commission on December 14,
5 1983, concluded that "There is no scientific evidence of
6 harm to marine mammals or to fish" from geophysical
7 exploration operations. That conclusion was based not
8 only on an examination of the literature, and interview
9 of fishermen and of other private parties, but included
10 observation on board geophysical vessels during operations.
11 That report also preceded the publication dates of the two
12 environmental impact statements I mentioned earlier. That
13 report also preceded the release of two other important
14 reports that contain conclusions there are no adverse
15 effects of offshore geophysical operations on California
16 sea otters and that the distance to grey whales before
17 they react to the presence of an operating geophysical
18 vessel is much less than would occur in actual geophysical
19 exploration, and much less than some had charged was
20 pertinent to protection of the whales.

21 Conflicts of other users. The past 18 months
22 have been trying ones for our industry to work out ways
23 to operate compatibly with commercial fishermen offshore
24 California. There must be and has been give and take on
25 both sides, and today we find that space use conflicts with

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1 the fishermen are the exception. The rule is that we are
2 notifying fishermen early about our activities. They are
3 responding in a reasonable manner to these notices, and
4 potential conflicts are avoided or mitigated to the mutual
5 satisfaction of all parties. There is room for improvement
6 in communications and we are working to do just that with
7 fishermen representatives on a unique liaison committee
8 composed of petroleum-seismic industry representatives
9 and fishermen representing nearly all of the fishermen
10 from the Santa Barbara and Santa Maria areas called the
11 Joint Committee. In fact, the members of that committee
12 have prepared a joint communique that describes recommenda-
13 tions for changes to your geophysical exploration permit
14 rules that will enhance the efforts of these two natural
15 resource industries to operate compatibly. The communique
16 was mailed to the Commission earlier this month.

17 Regarding information for sound management of
18 resources, during the past 18 months there have been
19 collected thousands of line miles of geophysical data
20 on state waters that has, along with other data collected
21 during nearly 37 years of geophysical exploration offshore
22 California, contributed to the encouragement of petroleum
23 companies to further explore your coastal waters, or to
24 cease exploration in areas where prospects are poor, and
25 have contributed to the State of California's own knowledge

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1 of petroleum resources for informed and sound decisions
 2 on how to manage the resources entrusted to your
 3 Commission at only nominal costs to the State Treasury.
 4 We anticipate that that substantial benefit will continue
 5 to accrue to your Commission on behalf of the citizens
 6 of California as the petroleum industry continues to
 7 be encouraged by the prospects for oil and gas under
 8 state waters.

9 Now this Commission is faced with the decision
 10 whether to continue rules for permitting geophysical
 11 exploration on state waters. We encourage you to extend
 12 without interruption the effective date of the rules,
 13 with incorporation of the recommendations of the Joint
 14 Committee. Since the path from initial exploration to
 15 leasing and discovery is often a long one, we encourage
 16 you to make the rule effective through the 1st of March,
 17 1989, a period of five years, to establish some measure
 18 of certainty in a business already burdened with
 19 uncertainty. You may be encouraged by our industry's
 20 commitment to continue to work on the concerns about
 21 environmental effects, about relationships with other
 22 users of the coastal waters such as commercial fishermen,
 23 and to continue to contribute to the petroleum information
 24 base necessary for your Commission's wise decisionmaking.

25 Thank you very much.

1 EXECUTIVE OFFICER DETRICK: Mr. Chairman, I'd like
2 to make one very minor --

3 ACTING CHAIRPERSON MCCARTHY: Miss Detrick,

4 EXECUTIVE OFFICER DETRICK: In reference to the
5 study done by the Interagency Task Force --

6 ACTING CHAIRPERSON MCCARTHY: Would you use your
7 microphone.

8 EXECUTIVE OFFICER DETRICK: -- the Interagency
9 Task Force study, the date is 1982, is it not, Robert,
10 not 1983?

11 MR. WYLIE: I beg your pardon. You're right.
12 I stand corrected.

13 ACTING CHAIRPERSON MCCARTHY: Mr. Faber, do you
14 have any comment on the testimony?

15 MR. FABER: Yes. I just wanted to perhaps
16 read for the purposes of all the people present the one
17 paragraph of the calendar item which I think responds to
18 some of the points that were brought up here.

19 The proposed program would amend the permits
20 to add a provision requested by the National Marine
21 Fisheries Services to prohibit startup of geophysical
22 operations when whales are within two kilometers of
23 geophysical boat. That was requested by National Marine
24 Fisheries, and that is the agency in the Federal Government
25 and the only agency which has responsibility for protection

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1 of the grey whale.

2 Secondly, there would be an increase in the basic
3 notice period to the commercial fishermen and other offshore
4 users from five days to fifteen days.

5 Third, there would be a new requirement to
6 specifically scout areas where geophysical surveys are
7 going to be conducted under certain circumstances and,
8 lastly, and most importantly, the permits would specify
9 that they could be modified or revoked on 30 days' notice
10 in response to information collected from ongoing studies.

11 That's the only response that I have.

12 ACTING CHAIRPERSON MCCARTHY: Thank you very much.

13 Any further questions of these witnesses?

14 You, sir, would you identify yourself.

15 MR. BOWLES: My name is Larry Bowles. I'm with
16 Geophysical Service, Inc., and I've also played a role
17 in representing the International Association of
18 Geophysical Contractors in some of the activities that
19 Mr. Wylie described to you, but I'm here primarily to
20 present to you the perspective of an individual company
21 who has submitted a request for a permit.

22 First of all, GSI's history of offshore
23 operations offshore California go back to 1947. In those
24 years we were using dynamite, as other witnesses have
25 pointed out. In approximately 1966 the industry shifted

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1 to the use of the technology we presently use and at that
2 time we were not required then to permit. The primary
3 reason for permitting prior to that time was an
4 environmental concern by the Fish and Game Department and
5 we remained in such a position until about 18 months ago,
6 as you know, when this Commission began permitting.
7 As we understood it, the primary benefit to accrue to the
8 state by this permitting was from the obtainment of the
9 geophysical data which we were collecting. Now we find
10 that the major issues are external to that primary
11 concern and they have to do with environmental effects
12 in relationship to other ocean users.

13 Before I address those concerns, I want to
14 point out some pertinent business facts that should be
15 brought before this Commission.

16 I have submitted to your secretary a copy of
17 materials supplied to you by Don Johnson, our Vice
18 President for Marine Operations. In 1983 GSI conducted
19 business in California state waters that amounted to about
20 2.7 million dollars and we were projecting business level
21 of about \$1.8 million in 1984. As I'm sure you're aware,
22 the 1983 value is a little higher than normal because it
23 was in anticipation of your state sale. Expenditures
24 that benefited Californians of our operations in California
25 amounted to about one and a half million dollars in 1983.

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1 Those are expenses by the corporation. They do not include
2 the salaries and the expenses of the individual employees
3 and the money they spent in California. Obviously there
4 should be applied a multiplier factor on this if you
5 wanted to obtain the full economic benefit of GSI's
6 expenditures in California.

7 If there was to be as little as a two-month
8 hiatus, we anticipate it could have a negative effect
9 of our projected revenues of \$400,000 and we also have
10 given a figure for 10 months which would in effect be
11 this season, would be the entire \$1.8 million. So there is
12 a real, some real business factors that should be taken
13 into account.

14 Let's talk about, also about the environmental
15 and other concerns. GSI and the other corporations
16 involved in the activities here that we're talking about
17 have exercised their operations in the spirit of a good
18 corporate citizen. We realize that there are freedoms
19 involved in operating off your shores and there's
20 concomitant responsibilities to go along with those.
21 Don Johnson's stance on this is that we, right now the
22 data shows that we're not causing harm to the environment.
23 We're trying to work out ways to deal with the
24 fishermen so they can carry out their activities. But at
25 the same time, if we're having an effect, we ought to know

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1 about it. So it's in that spirit that my company has made
2 a commitment of my time to participate on behalf of
3 IAGC in this unique Joint Committee that was explained to
4 you earlier and explain a little bit about something that
5 happened there. There has been give and take. I personally
6 was involved in carrying the message from that Joint
7 Committee and negotiating with the fishermen to my
8 industry about this extension from five days to 15 days of
9 the notification period. Now, there are pros and cons
10 that I could go on quite a long time about extending that
11 period, but the net effect was that there was real give
12 and take by the fishermen and by my industry. It's in that
13 spirit that we're continuing to discuss other issues besides
14 that.

15 In fact, the Joint Committee's Liaison Office is
16 having a major contribution to helping with the space
17 use conflicts in that area and you must remember that
18 that's effective right now just for Region II under your
19 permit regions. We've also entered into a cooperative
20 effort with the fishermen to investigate the fishermen's
21 concerns about potential for dispersal of their commercially
22 imported fisheries. As Tom Wright pointed out, there is a
23 meeting being held that this Commission staff is aware of
24 next month in which we're going to hold a forum and the
25 industry is jointly sponsoring along with the fishermen or

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1 various entities on behalf of the fishermen to have an
2 expert panel of scientists listen to the concerns from
3 industry, from fishermen, from other scientists. This is
4 rather unique in my experience for an industry to
5 make that kind of commitment, and there's probably more
6 risk to our industry than there may be gain. But, again,
7 it's in the spirit of good corporate citizenship that we
8 do that. My company also ended up being the one who was,
9 had an opportunity to participate with the grey whale
10 study and the sea otter study. That cost us, the real
11 cost of that to this company, GSI, was \$40,000. We were
12 encouraged to see that first of all the report about the
13 effects on sea otters showed that the sea otters could care
14 less that we were out there, and we got pretty darn close
15 to them while we were operating our air guns. In addition
16 to that, these studies showed that under the official
17 conditions in which they had to conduct the study because
18 of scientific reasons, we had to be within about two
19 nautical miles of the grey whales before they responded
20 to our presence. An interesting thing about that is
21 that was, again, we were directed by the scientific
22 staff to perform certain maneuvers. We wouldn't normally
23 operate that way when we're collecting geophysical data.
24 So in effect the two kilometers or two nautical miles, I
25 forget which measure you were using, is going to be far and

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1 above more protection than you really need in terms of our
2 actual operations.

3 EXECUTIVE OFFICER DETRICK: For the record I'd
4 like to point out that it is two kilometers.

5 MR. BOWLES: Two kilometers, okay.

6 So, as I say, we have made a commitment to these
7 concerns of the environmentalists and the fishermen and
8 it's continuing and it's in place and we expect to continue
9 it.

10 As far as the concern about environmental harm,
11 obviously, decisions can't be so simple as to put all the
12 information on one scale against and all for on the other
13 side and see which way it tilts. But it really escapes
14 some people's rationale as to why there is so much
15 information that comes in and states there is no harm and
16 yet we find ourselves in a position of wondering if we're
17 really going to get a permit because of this external
18 issue about concerns about the environment. There also,
19 as pointed out by B.J., that there are some legal points
20 that should be considered as to whether indeed the State
21 Environmental Quality Act should even be considered.

22 I think these things should be taken and put
23 into perspective in terms of the real decision and that is
24 generally when a good corporate citizen who has acted
25 prudently and consistent with the law of the land and serves

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1 a valuable role to the society's good, he can expect to
2 receive a permit to conduct business. I realize the
3 decisions often aren't easy. But if you cut through all
4 the intervening apparent complexity and get down to the real
5 issues, you find the decision boils down to basically to
6 this. If you deny us a permit, you will for sure harm a
7 class of people who have acted as responsible corporate
8 good citizens while it is very improbable that you would
9 benefit any other class of citizens or the marine life.
10 Therefore, we recommend an alternative to the staff
11 recommendations and we assert that you have legal,
12 environmental and other public policy reasons in support of
13 a decision to extend our permits and to issue them without
14 interruption to our business and we urge you to do that.

15 COMMISSIONER ORDWAY: Questions?

16 COMMISSIONER RASMUSSEN: Not at this time.

17 COMMISSIONER ORDWAY: Mr. Faber?

18 MR. FABER: I have no comment at this time.

19 MR. BOWLES: Thank you.

20 COMMISSIONER ORDWAY: Thank you very much.

21 Proceed along with the next two witnesses that were on the
22 Lieutenant Governor's list. Mr. Barman. Do you have a
23 preference for who goes first?

24 MR. BARMAN: Okay. My name is Doug Barman and my
25 statement today is on behalf of Texaco.

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1 I'm a Consulting Exploration Geophysicist in
2 our Producing Department in Los Angeles. I'm a Registered
3 Geophysicist and Geologist in the State of California,
4 having served as Vice President, Society of Exploration
5 Geophysicists for the Pacific Coast, including Alaska.

6 In addition, I have served as President of the
7 Society of Exploration Geophysicists during 1982 representing
8 18,000 geophysicists worldwide in over 120 countries.

9 I wish on behalf of Texaco to thank the
10 Commission, Dr. Claire Detrick, and her staff for being
11 given the opportunity to comment on the initial study made
12 by the State Lands Commission, prepared for the geological,
13 geophysical service permit program.

14 We are most heartened to learn from the Riley
15 et al. 1980 study that the population of the grey whale
16 has been increasing over the years from 1968 to '81 at an
17 average rate of 2.5 at a time when marine geophysical
18 operations have increased off California. We're also happy
19 to learn that the National Marine Fisheries Service has
20 reviewed the C. I. Malme study for the U.S. Department of Interior,
21 titled "Investigation Potential Effect of Underwater Noise
22 From Petroleum Industry Activities on Migrating Whale
23 Behavior" and has concluded that the endangered whale
24 populations are not likely to be jeopardized by exploration.

25 We do not see there is a need to consider

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1 mitigation measures for seismic activities, especially
2 prohibiting the start of operations if whales are
3 observed within two kilometers. As we are not aware of
4 any physical harm done to whales by marine air guns which
5 is the most widely used marine geophysical energy source
6 used throughout the world. We therefore do not recognize
7 a need for a study of an implosion system for use during
8 whale migration seasons. To extemporize, there's a
9 technical problem when you merge different signatures of
10 acoustical energy from a limited area, say, like the
11 coastal area, to a larger offshore area if you're studying
12 stratigraphic problems, shall we say.

13 We recognize and support the multiple use of
14 oceans by various industries and groups and we are
15 cooperating with the fishing industries to coexist peacefully.
16 Texaco supports the increase in the number of days notice
17 is required prior to start of marine geophysical operations
18 in a designated area from the present five working days
19 to two weeks. We support this lengthening of the waiting
20 period even though additional time delays and cost runups
21 will result.

22 The geophysical industry is a four billion dollar
23 high tech industry in the United States. To deny
24 geophysical permits to the oil and gas industry in
25 California could lead to the unemployment of many skilled

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1 people. Many tentatively planned wells will not be drilled
2 in California, reducing through delay or outright loss,
3 millions of dollars of revenues from oil and gas
4 exploration development. We believe that to stop offshore
5 exploration pending an environmental study would be
6 detrimental to the State of California in terms of the
7 potential loss of revenues due to the inability to properly
8 survey leased state tidelands. Texaco believes the State
9 Lands Commission should reissue geophysical permits
10 for marine geophysical operations because there are no
11 significant impacts from geophysical activities on the
12 environment and such activities are compatible with
13 environmental and coastal concerns. We are not aware of
14 any evidence that towing a package of instruments behind
15 a boat or releasing compressed air in the ocean introduces
16 any harmful effect. We know of no evidence that would
17 support the need for an environmental impact study of
18 geophysical marine operations prior to issuing a permit
19 and we wish to thank you for allowing us to have this
20 forum.

21 COMMISSIONER ORDWAY: Mr. Faber.

22 MR. FABER: No comment.

23 COMMISSIONER ORDWAY: Mr. Bowen.

24 MR. BOWEN: Madam Chairman, Members of the State
25 Lands Commission, I'm ~~L. Bruce~~ Bruce Bowen of the Alaska Pacific

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1 Exploration Division of EXXON Company, USA. This
2 division is responsible for all of EXXON's exploration
3 activities in the Pacific offshore.

4 I appreciate the opportunity to be here today
5 and present the views of my company on the reissuance of
6 the general permit for geological and geophysical surveys
7 on state lands including the lands underlying state
8 territorial waters.

9 EXXON recognizes the concept of a general permit
10 to conduct geological and geophysical surveys in offshore
11 waters and urges the reissuance of this general permit.
12 A general permit has definite advantages for an operator
13 in that once a permit is issued, there is no requirement
14 for an individual permit application and processing for
15 each survey; operations can commence immediately upon
16 proper notification; and permittees are aware of permit
17 conditions before planning their activities. Advance
18 knowledge permit conditions is important because it allows
19 operators to plan the most efficient use of manpower and
20 equipment. It has been EXXON's experience that the
21 recognition in the general permit of the multiple land
22 use concept also provides a useful vehicle for further
23 cooperation between geophysical operators, commercial
24 fishermen, and other users of state waters.

25 Further, the present regulations in Title 2 of the

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1 California Administrative Code, Section 2100, require a
2 general permit in order to conduct geological and
3 geophysical surveys on state lands. The present permit
4 will expire on February 29, 1984. As you have been
5 notified, EXXON is in the process of mobilizing to
6 conduct geophysical work, which will continue beyond this
7 date, to complete a pipeline study to bring on line an
8 area of potentially commercial production. If no action
9 is taken by this Commission to reissue the permit, all
10 geological and geophysical surveys in state waters will
11 have to stop on that day.

12 Geophysical activities in federal waters, which
13 are immediately adjacent to state waters, will also be
14 severely limited. This is an unreasonable burden to
15 place on those companies conducting exploration and
16 production activities to find and develop America's
17 domestic petroleum resources, particularly those
18 operators, including EXXON, who will be in the process of
19 conducting such geological and geophysical surveys on
20 February 29th. EXXON strongly urges that those surveys
21 in progress on February 29th, which are covered by the
22 current permit, be allowed to be completed.

23 With regard to environmental concerns, EXXON
24 has conducted geophysical operations offshore California
25 for over 15 years, and there has been no known damage or

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1 injury to the marine environment as a result of those
 2 activities. EXXON also believes the environmental study
 3 prepared by the staff of the State Lands Commission for the
 4 general permit program accurately reflects the minimal
 5 effects on marine life, recreational uses and water
 6 quality resulting from these activities.

7 EXXON does not agree with every provision in the
 8 general permit, and we defer to other speakers today to
 9 address some of the problem areas. However, EXXON strongly
 10 urges that the general permit be reissued so that
 11 geological and geophysical activities may continue
 12 unimpeded.

13 COMMISSIONER ORDWAY: Thank you. Mr. Faber.

14 MR. FABER: I have one question. You referred
 15 to federal exploration being curtailed by not issuing these
 16 permits. Would you explain why?

17 MR. BOWEN: They probably wouldn't be able to
 18 make the turnaround.

19 MR. FABER: That's why the Commission took this
 20 action just before to issue the turning permits. So that's
 21 taken care of.

22 EXECUTIVE OFFICER DETRICK: That's also true of
 23 geological permits.

24 MR. FABER: The geological permits are issued
 25 for this Commission and the turning permits. So I don't

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1 see that's a problem.

2 COMMISSIONER ORDWAY: Further comments or
3 questions?

4 MR. BOWEN: Thank you.

5 COMMISSIONER ORDWAY: Thank you.

6 We still have a large list here. I don't know
7 how you all want to organize it. Let me just continue
8 to call them.

9 Mr. Kreutzer, Mr. Paul Kreutzer.

10 I hope I pronounced that right.

11 MR. KREUTZER: Close enough.

12 EXECUTIVE OFFICER DETRICK: Madam Chairman, the
13 Court Reporter would like to take a minute to change paper.

14 COMMISSIONER ORDWAY: Fine. Then we'll take
15 about three minutes to change paper.

16 (Thereupon a recess was taken.)

17 ACTING CHAIRPERSON MCCARTHY: If we may resume,
18 ladies and gentlemen.

19 Mr. Paul Kreutzer, am I pronouncing your name
20 correct, sir?

21 MR. KREUTZER: Perfectly. Thank you.

22 ACTING CHAIRPERSON MCCARTHY: Thank you. Did you
23 write a sonata?

24 MR. KREUTZER: No. I think that was my father.

25 ACTING CHAIRPERSON MCCARTHY: All right. Would

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1 everyone kindly make themselves comfortable and we'll begin
2 the testimony here.

3 MR. KREUTZER: That was written for a gentleman
4 named Rudolph Kreutzer who was a famous violinist from what
5 I remember.

6 ACTING CHAIRPERSON MCCARTHY: All right.

7 MR. KREUTZER: My name is Paul Kreutzer.
8 With the parade of excellent witnesses that preceded me,
9 perhaps I can only present a viewpoint from a little
10 different aspect.

11 I represent a firm named Mesa² who are consulting
12 earth and environmental scientists working in most
13 disciplines in the marine environment, but specializing
14 in the analysis of complex structural settings, seismic
15 stratigraphic depositional sequences and integration of
16 these interpretations with geologic and geotechnical
17 data sets. In other words, we specialize in the
18 interpretation of the data that's brought back by the
19 geophysical contractors. In this aspect we provide reports
20 for siting of offshore structures, selecting pipeline
21 routes and evaluating geologic hazards. We also conduct
22 some seismic surveys offshore and we can see no real valid
23 reason for the proposed suspension of permits authorizing
24 operations in California state waters.

25 The initial study by the State Lands Commission

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1 itself on the permit program offers adequate documentation
2 as to the lack of any significant negative impact on the
3 environment or on any industry involved in offshore
4 operations. Despite claims by several groups little, if any,
5 hard evidence has been presented which refutes this
6 Commission report. Speaking personally on the question of
7 the dolphins, anybody that complains about the effect
8 on the dolphins has never been out on a survey vessel like
9 I have and seen a school of 50 dolphins circling the
10 boat, leaping out of the water and playfully jostling around.
11 I've had some people tell me it looks like they're trying
12 to mate with the hydrophones. They seem to enjoy the
13 experience.

14 ACTING CHAIRPERSON MCCARTHY: What happens?

15 (Laughter.)

16 MR. KREUTZER: I don't know. From my experience
17 they finally got tired of it and they all --

18 COMMISSIONER ORDWAY: No comment.

19 (Laughter.)

20 ACTING CHAIRPERSON MCCARTHY: Seems consistent
21 with all other data on the subject.

22 (Laughter.)

23 MR. KREUTZER: As if from a signal from their
24 leader, they just all take off in one direction and
25 disappear for a while.

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1 During the past year and a half while we've been
2 operating under the present permit policy, our survey
3 vessels have had absolutely no problems or no conflicts
4 in state waters with any fishermen or any other groups out
5 there. The Commission report points out that the number
6 of survey vessels operating in state waters at any one
7 time is almost insignificant. Following the notification
8 procedure already established by the Commission should
9 prevent any conflict over the use of the offshore areas
10 provided there is a mutual spirit of cooperation from all
11 parties concerned. Economically, on suspension of this
12 permit by the Commission would be disastrous to our
13 company. We depend quite a bit on the continuation of the
14 operation of offshore surveys and offshore exploration.
15 We feel that possibly during the time of the permit we
16 would lose 50 to 75 percent of our business.

17 That's all I have to say. Thank you.

18 ACTING CHAIRPERSON McCARTHY: Thank you, very
19 much.

20 Mr. Faber or anyone, are there any questions of
21 Mr. Kreutzer?

22 MR. FABER: No comment.

23 ACTING CHAIRPERSON McCARTHY: All right. Thank you
24 Mr. Kreutzer.

25 MR. KREUTZER: Thank you.

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1 ACTING CHAIRPERSON McCARTHY: Now, I have
2 requests from a number of witnesses here and I'll leave
3 it to these witnesses to guide us as to whether they have
4 some new or different evidence that they would like to
5 present. Each of them of course can be recognized and
6 it will be noted in the record that they are present.
7 Each of them is entitled to testify if they wish to do so.
8 I would merely ask if you would restrict yourself to any
9 new comments so that perhaps we don't repeat the same
10 kind of testimony.

11 The other witnesses I have here now are Allistair
12 Carrez.

13 MR. CARREL: Carrel.

14 ACTING CHAIRPERSON McCARTHY: C-a-r-r-e-l. Thank
15 you, Mr. Carrel.

16 Just a moment, please. Let me go through the
17 rest of these.

18 Richard Slater, Randy Ashley, Greg Gow, G-o-w.

19 MR. GOW: That's correct.

20 ACTING CHAIRPERSON McCARTHY: Thank you, Mr. Gow.
21 Carroll Hoyt, Harold Meadow, and Mark Savit.

22 MR. SAVIT: That's correct.

23 ACTING CHAIRPERSON McCARTHY: Thank you, Mr. Savit.

24 It may be that none of you has had a discussion
25 and you're representing different points of view. I leave

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1 that to your judgment.

2 Out of this list is there anyone who cares to
3 step forward next? Have you arranged any order of the
4 testimony from the rest of the witnesses? Yes.

5 MR. SAVIT: I'll be glad to step forward first.

6 ACTING CHAIRPERSON MCCARTHY: All right.

7 Mr. Savit representing Western Geophysical Company.

8 MR. SAVIT: Members of the Commission, Governor,
9 I've already introduced myself. My name is Mark Savit.
10 I'm with the law firm of Cotten, Day and Doyle and I
11 represent Western Geophysical Company. I have a few
12 matters which are offered in amplification of the legal
13 analysis delivered by Mrs. Kirwan earlier and some other
14 matters which pertain particularly to Western Geophysical.
15 I also have with me copies of a written statement which I'd
16 like to enter in the record at this time. The good news
17 is that I do not intend to read it.

18 COMMISSIONER ORDWAY: Thank you.

19 MR. SAVIT: In addition, let me just launch right
20 in here. In addition to Mr. Bowles and Mr. Wylie, I am also
21 counsel to the International Association of Geophysical
22 Contractors and I think that the legal points that I will
23 bring up should apply equally to everyone.

24 Like Mrs. Kirwan and a number of other speakers
25 before, I believe that the law does not require the

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1 and another or additional discretionary government
2 approval after April 5th, 1973, projects shall be subject
3 to CEQA only if the approval or approvals after April 5th
4 involve a greater degree of responsibility or control of
the project as a whole than did the approval or approvals
6 prior to that date.

7 I point out to you that the approvals prior to
8 that date involve Fish and Game observers actually riding
9 on geophysical vessels or being physically present to
10 observe geophysical operations and these new permits do
11 not involve the actual physical presence of observers
12 watching geophysical operations ongoing. So you're not
13 talking about an increasing control or responsibility.

14 Further, I would point you to Section 15064(e)
15 which speaks to the kinds of changes that are necessary
16 to trigger the CEQA process. That harks back to the
17 cases cited by Mrs. Kirwan. In this case there is no such
18 change and the Code itself recognizes that CEQA does not
19 come into play unless a change has taken place.

20 Even assuming for the purpose of argument that
21 we are subject to CEQA compliance, I have more good news.
22 The work has been done. Under Section 2108.35 of the
23 Public Resources Code, federal environmental statements
24 may be substituted for or used in lieu of state
25 environmental reports or negative declarations. The

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1 Due to an error in page numbering, there is no page
2 number 74.
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1 final environmental impact statement for Sale 80 which
2 I am going to ask to be entered in the record in its
3 entirety specifically addresses -- and I'm not going to
4 read any of it -- specifically addresses the issue of
5 the impact of seismic activity on grey whales and other
6 California marine mammals. Let me enter this in the
7 record however that is.

8 MR. TROUT: We have a copy.

9 MR. SAVIT: I think this is somewhat akin to the
10 act of throwing the book at somebody. Well, that's two
11 books. In any event, it specifically addresses the
12 issue of the impact of seismic activity on marine mammals
13 off the coast of California.

14 ACTING CHAIRPERSON MCCARTHY: Those volumes will
15 be incorporated by reference into the record.

16 MR. SAVIT: Thank you. And it was published
17 after the study data to which has been referred to which
18 may have been cited as being data which may be triggering
19 the current CEQA compliance process and concludes briefly
20 even after reviewing that data: "Overall since Southern
21 California is neither a major feeding, breeding or
22 birthing area for grey and other endangered whales, it
23 is doubtful platform noise or seismic activity due to the
24 proposal will have significant impact." That conclusion
25 I submit to you is applicable to seismic activity

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1 throughout the State of California.

2 Second, a supplemental and final environmental
3 impact statement regarding a lease sale in Alaska in
4 the St. George Basin was prepared specifically for the
5 purpose of addressing the impact of seismic activity on
6 grey whales and I ask that that be submitted in the record
7 in its entirety as well.

8 The conclusions in that environmental impact
9 statement are too lengthy for me to summarize, but I have
10 referenced them in my prepared statement and quoted them
11 to the bounds of propriety as far as length is concerned.
12 But to just summarize in a word, that study also concludes
13 that even considering the study data in question here
14 today, seismic activity does not have a significant
15 adverse effect on grey whales or other endangered whales.

16 Now, having gone through the legal argument,
17 I want to stress a couple of things. In spite of the
18 fact that we feel strongly and I think the law backs
19 our position, that the renewal or extension of this permit
20 is exempt from the CEQA compliance process. I don't want
21 anyone to be confused that we seek exemption from the
22 permit requirement. We're not asking this Commission to
23 relinquish its authority to issue permits to conduct
24 geophysical activity. We may have disagreements with the
25 permit conditions. I stand before you today to say that

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1 we are not seeking to be exempted from that. We merely
2 believe that the continuing environmental studies
3 conducted by the staff need not interrupt our operations
4 as a matter of law. You have complete legal authority
5 to reissue the permits while the continuing environmental
6 studies are going on. Also, as you know, our industry
7 has participated at every turn in the studies and inquiries
8 and symposia and blue ribbon panels and everything else
9 that's come up and we will continue to do so in the
10 future along with our commitment and our past record of
11 working with the fishing industry and other affected users.

12 With regard to Western Geophysical particularly,
13 let me point out the kind of economic impact this will
14 have. Western Geophysical currently has two notifications
15 of work pending for work in state waters. That work
16 has not been begun because it cannot be completed by
17 February 29th. Because of that, we have currently laid
18 up two boats on Long Beach that could be working. We
19 have a job that is scheduled to start Sunday night and
20 we hope we can finish it by midnight on the 29th.
21 If not, we will be forced to pull our gear out of the
22 water and go home.

23 If the permit is not renewed, we will not have
24 work as we see it now for those two boats for those two
25 months. If no other work comes up in federal waters,

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1 that will mean a loss to the company on between a half
2 a million and three-quarters of a million dollars per
3 boat per month. So potential loss of \$3 million. Not only
4 that, the total crew for both boats is about a hundred
5 employees. If we cannot put those boats to work for
6 two months, we will have to lay those people off and we
7 will loss a hundred jobs in California. So I can,
8 on behalf of those hundred people, I ask you to please
9 consider reissuing the permit at this time.

10 Thank you.

11 ACTING CHAIRPERSON MCCARTHY: Thank you. Any
12 questions from Commissioners? Mr. Faber, do you have any
13 questions?

14 MR. FABER: No questions. Just one response.

15 With regard to the grandfathering clause of
16 CEQA that you referred to about the prior authorizations
17 before 1973 and authorizations after 1973, I think the
18 staff's response is that that applies when an authorization
19 for a given project is an authorization which is only
20 required on one occasion, the types of authorizations
21 as indicated by the ongoing geophysical activity and the
22 steps by this Commission and the Fish and Game Commission
23 when they have issued those permits. In the case of the
24 ones that expire at the end of this month, we are looking
25 at an entirely new authorization, the old one having

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1 expired and, therefore, we don't see it as continuation
2 of the same identified projects in quite the sense that
3 you're talking about.

4 MR. SAVIT: I understand that position and I
5 would thank the staff, by the way, for the amount of time
6 and attention they've paid to this problem. I think they've
7 done a really marvelous job even though we haven't always
8 agreed. Without repeating a debate that I think we'll
9 probably have in the future, I just let that remark stand.

10 ACTING CHAIRPERSON MCCARTHY: Thank you. They
11 appreciate the remark even though it may not prompt
12 any salary raises or increases of any kind. Psychic
13 reward is what they're looking for.

14 MR. SAVIT: Probably requires CEQA compliance.

15 ACTING CHAIRPERSON MCCARTHY: Thank you.

16 Now, we have Mr. Carrel, Mr. Slater, Mr. Ashley,
17 Mr. Gow, Mr. Hoyt, Mr. Meadow. Do you want to be
18 acknowledged and put in the record as appearing?

19 Yes, sir.

20 MR. HOYT: I think I would like to make a
21 statement. I have a slightly different view, perhaps.

22 ACTING CHAIRPERSON MCCARTHY: All right. That
23 is welcome. Would you identify yourself for the record.

24 MR. HOYT: Surely. I'm Carroll Hoyt. I'm the
25 President of Nekton, Incorporated, located in San Diego.

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1 Our firm engages in studies of sea floor
2 geology, reflection seismic surveys, biological
3 investigations and environmental reports largely in areas
4 offshore California and Alaska. We were incorporated here
5 in California in 1955 and presently employ approximately
6 110 scientists, marine technicians and administrative
7 personnel.

8 The issue before the Commission here today is
9 the rather narrow question of issuing permits for seismic
10 surveys in state waters. Should these permits be continued?
11 If so, under what terms and conditions? Are further
12 studies needed, and, if so, what studies? But before
13 these questions can be answered, it is first necessary
14 to define some related broader questions. As I see it,
15 there are principally two. First, and in my view, the
16 really fundamental issue here is the problem of space
17 usage. Who shall have access to our public waters, when,
18 under what conditions or restrictions? Should every
19 social group have fair and equal access or should some
20 groups be favored over other groups?

21 The second issue is that of the environment.
22 What negative effects, if any, do seismic operations have
23 on the marine environment, and, specifically, what
24 unacceptable effect do these operations have upon whales,
25 sea otters and commercial fishing?

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1 I'd first like to address the question of usage
2 priorities. I visualize the future when our Continental
3 Shelves will support a myriad of activities. People are
4 farming, fishing underwater habitats, parks and reserves,
5 industrial complexes, facilities related to recreation,
6 navigation, transportation, national defense, mining, yes,
7 and offshore oil and gas production. These things will all
8 evolve in due course, but only if our laws are structured
9 to guide this development within the precepts of general
10 public interest as opposed to reserving some areas for
11 certain kinds of activities while excluding other activities.
12 The fact is that as technical evolution and social change
13 occur in the years ahead, the question of usage of public
14 waters will test the judgment of rational people repeatedly.

15 A usage problem we face currently is that posed
16 by the fishing industry and the oil industry. Seismic
17 survey studies are of course a service function performed
18 primarily for oil companies. But please note that in
19 defining this problem I did not use the word "conflict" and
20 for good reason because I believe there is no conflict
21 or at least there should be none. There are only
22 operational guidelines which need to be developed.

23 Over the past couple of years there have been a
24 number of incidents where seismic vessels have damaged
25 fishing gear, especially fishing gear such as lobster and

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1 crab pots. Similarly there have been numerous incidents
2 of damage to seismic equipment by fishing gear and fishing
3 boats. Our own company has been involved in both types
4 of situations. I would judge that in nearly every case
5 these incidents occurred because of ignorance and/or a
6 lack of communication between the necessary parties.
7 Within the past year much progress has been made toward
8 resolving these problems. In the Santa Barbara and
9 Santa Maria areas a number of conferences between
10 representatives of fishing groups and individual companies
11 has led to greatly improved understanding and cooperation
12 which in turn has permitted the interests of both parties
13 to be served. This beginning paved the way for the
14 establishment of an industry supported Liaison Office in
15 Santa Barbara.

16 While the Liaison Office has no official
17 standing, it's professionally staffed and acts as a central
18 point of communication between local fishing groups and
19 the seismic operators. Although a number of guidelines
20 remain to be fine tuned, I believe the Liaison Office
21 provides a model for resolving time and space usage
22 problems in coastal waters elsewhere. Closely intertwined
23 with the usage problem is the issue of environment.

24 This issue is far more complex because it
25 involves human emotions and politics more than it involves

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1 fact and rational thought. Nonetheless, I will offer my
2 observations.

3 First and foremost I believe that the
4 environmental issues are more and more becoming weapons
5 aimed at preserving the status quo rather than being
6 a reflection of true concerns based upon factual evidence.
7 If you don't want oil rigs or seismic vessels operating
8 in a particular area, allege that they will cause
9 pollution, harm marine life or degrade the environment
10 in other ways. Then let the operators get involved in
11 legal controversies and let these allegations, and let
12 them prove that these allegations are unfounded. That's
13 the way you play the game today.

14 Let's quickly examine the present environmental
15 concerns now being considered.

16 First the grey whales. It is alleged that the
17 noise from seismic surveys disrupts the whales, alters
18 their migration routes and somehow injures their young.
19 No evidence is offered, just the allegations. I'll make
20 two points. In November of 1983 a report by Bolt,
21 Beranek and Newman based upon observations of grey whales
22 during test firing of air guns in their vicinity indicated
23 that the whales responded only mildly to air gun noise.
24 Similar responses were also noted from the variety of other
25 noises including the artificially generated sound of

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1 industrial noises, helicopters and killer whales. There
2 was an especially strong response to the latter.

3 The report offered no evidence of extreme
4 behavior or any suggestion that air guns cause harm to the
5 whales even when fired within a distance of two kilometers.
6 Based upon the BBN report and other evidence, a federal
7 court considering the effect of seismic operations on
8 grey whales in Alaska's Bering Sea declined to uphold the
9 lower court injunction and allowed seismic operations in
10 that area to proceed.

11 I don't believe this is duplicating anything
12 that's been entered into the record. If it is not, I
13 would like to enter into the record the Bolt, Beranek and
14 Newman report Number 5366.

15 EXECUTIVE OFFICER DETRICK: Thank you.

16 MR. HOYT: It is noteworthy also that seismic
17 surveys have been conducted in coastal waters for more
18 than 30 years. This has already been referred to. In the
19 early years dynamite was used in these surveys. But
20 due to occasional fish kills, the use of dynamite was
21 discontinued and sound waves that are much slower in
22 point source energy are now used. The most common
23 of these is the air gun. During this same 35-year period,
24 the grey whale population along the Pacific Coast is
25 reported to have increased in number from 5,000 to almost

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1 35,000 individuals. I've wondered myself whether this
2 can be taken as an indication that seismic operations
3 have some stimulating effect on the sexual appetites of
4 these whales and maybe we should investigate about that.

5 (Laughter.)

6 ACTING CHAIRPERSON MCCARTHY: If anybody ever
7 reads this record they're going to be -- find it very
8 interesting. Usually our testimony is much more dry.

9 MR. HOYT: Next to sea otters. Somehow seismic
10 surveys are supposed to harm these joyful little creatures,
11 but just how is not stated. In the BBN report covering
12 the test referenced above, it was concluded that even when
13 air guns were fired within two kilometers, the otters
14 exhibited normal behavior. You may like this part.

15 One observer, more lucid than scientific, told me even
16 when we fired the guns within a 1,000 feet of the little
17 devils, they continued to play and eat and make love.

18 The other environmental issues are fish dispersal,
19 potential injury to larvae forms of commercial species
20 of shellfish and potential impacts on bottom dwellers in
21 shallow waters. These are rather nebulous but probably
22 warrant investigation over a period of time. Certainly
23 there is no imperative need to interrupt surveys while
24 these things are being studied. It has already been
25 testified here that a panel is presently being formed to

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1 investigate these matters.

2 In summary, I urge the Commission to consider
3 fully the almost certain economic impact that will be
4 visited upon a very large number of companies and people
5 if permits to conduct seismic and geological investigations
6 are interrupted even for a very short time. Seismic surveys
7 provide fundamental information upon which nearly all oil
8 exploration drilling and much development drilling is based.
9 This is where exploration and development cycle begins.

10 If this work is interrupted, the whole mechanism
11 will eventually grind to a halt. First, the very small
12 seismic companies will be damaged, then the larger ones,
13 and if a prohibition against seismic work were lengthy
14 as, for example, a year or more when an environmental
15 statement were being prepared, the effect could spread
16 domino fashion to other industry support groups. In due
17 time revenues from oil production on state lands would also
18 be diminished.

19 I thank you for this opportunity.

20 ACTING CHAIRPERSON MCCARTHY: Thank you very
21 much. Do either of the Commissioners have any questions?

22 Mr. Faber.

23 MR. FABER: Yes. You've referred generally to the
24 impact on industry. What will be the impact on Nekton
25 specifically if there is some kind of a suspension or

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1 postponement?

2 MR. HOYT: We have just reviewed this within the
3 past week and our estimate of potential revenue loss over
4 the next two months is approximately \$500,000. I might add
5 that revenues from work conducted in state waters last
6 year exceeded \$5 million for our company.

7 MR. FABER: Thank you.

8 ACTING CHAIRPERSON MCCARTHY: Thank you,
9 Mr. Hoyt.

10 Of the other witnesses in this group so far,
11 is there anyone that wants to go beyond having their
12 presence acknowledged for the record?

13 Yes, sir.

14 Would you identify yourself for the record, please?

15 MR. ASHLEY: My name is Randy Ashley, and I'm
16 Vice President of Pelagos Corporation out of San Diego.

17 ACTING CHAIRPERSON MCCARTHY: Mr. Ashley.

18 MR. ASHLEY: We are a small business
19 incorporated under the laws of California. Rather than
20 to be redundant in some of the things that have been said,
21 I'd like to present a little bit different twist in that
22 we offer what's called high resolution geophysics not
23 related to the actual exploration but rather to the
24 development of the offshore community. Many of our clients
25 are not only the oil companies but state, Federal Government

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1 as well as private industries.

2 This work is done with a very different system
3 than the water guns and air guns that we're talking about
4 here. It's done with higher frequency, lower power systems
5 in order to resolve some of these features very well.

6 Three of the systems that we use most prevalently
7 are the echo sounders, the side scan sonars and the high
8 frequency sub-bottom profilers. All of these systems
9 I'd like to point out operate in the same frequency
10 band and at about the same power as do the echo sounders
11 and fish finders on both recreational and commercial
12 fishing vessels. As far as I know, there is no sort of
13 regulation regarding their operation. Other than to go
14 into some of my other notes that I have which are redundant,
15 I would just like to say that the financial impact to
16 us as a small business would be very great. Last year
17 approximately 75 percent of our business was done in
18 California state waters. If we were to be shut down,
19 our annual loss of revenue would be, our loss of revenue
20 would be in the neighborhood of a hundred thousand dollars
21 per month.

22 Thank you.

23 EXECUTIVE OFFICER DETRICK: May I ask you a
24 question, Paul?

25 Would this sort of activity that Mr. Ashley has

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1 just described, would that be permitted under the
2 geologic type of permit that the Commission has already
3 approved?

4 MR. FABER: No, it would not. It would be
5 covered by the geophysical type permit which I might just
6 add for the record at this point staff considered the
7 possibility of dividing even the geophysical permits
8 between those dealing with high resolution and those
9 dealing with quote deep seismic, and I've been advised
10 by our technical staff that it's almost impossible to
11 ultimately draw a line between those two although at
12 both ends of the spectrum they're quite a bit different.

13 MR. ASHLEY: I would agree with that.

14 EXECUTIVE OFFICER DETRICK: Thank you.

15 ACTING CHAIRPERSON MCCARTHY: Thank you very
16 much, Mr. Ashley.

17 Now of the other witnesses who had submitted
18 slips, would you like us to acknowledge -- yes.

19 MS. HILL: I'm Carroll Hill. You had my name
20 earlier and I have not heard it recently.

21 ACTING CHAIRPERSON MCCARTHY: All right. Thank
22 you, Miss Hill. Richill Marine, Inc. Thank you very
23 much.

24 All right. With your permission then, we will
25 ask that each of your names be put in the record. Is it

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1 safe to assume -- oh, do you wish to testify? Step forward, please.

2 Would the others who do not testify, are we safely assuming
3 that you are here supporting the view that the permits be reissued at
4 this time?

5 MR. SCHROEDER: I specifically want to testify. My name
6 is Schroeder and with Porto Bodega Marina in Bodega Bay.

7 ACTING CHAIRPERSON MCCARTHY: I haven't gotten to the other
8 side of the issue yet.

9 MR. SCHROEDER: I'm for the issuance of the
10 permits.

11 ACTING CHAIRPERSON MCCARTHY: Thank you for
12 identifying yourself. I'll put you in the correct pile.

13 Would you go ahead, please, Miss Hill.

14 MS. HILL: My name is Carroll Hill, C-a-r-r-o-l-l.
15 The company is Richill Marine, R-i-c-h-i-l-l Marine. I am
16 Vice President.

17 We are a small, family-operated business
18 furnishing support vessels to the offshore oil industry
19 and geophysical, geological survey companies primarily
20 in Santa Barbara, Santa Maria Basin, Santa Barbara Channel,
21 Santa Maria Basin.

22 More than 50 percent of our business is directly
23 related to and income comes from the geophysical and
24 geological community to whom we invoiced over a half-
25 million dollars in the last 12 months. Means invoiced,

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1 not income.

2 (Laughter.)

3 MS. HILL: With more than 20 years experience
4 under our belts, my husband and I and our four teenagers
5 struck out on our own not long ago. One year ago we
6 had one boat and six employees. Today we operate
7 six vessels and support more than 35 crew men and women
8 with a payroll in excess of \$75,000 a month. Thirty-three
9 of those employees are California residents paying
10 California taxes. My point is that cessation of the
11 geophysical surveying permits will have severe and
12 immediate consequences on our business and those who have
13 come to rely upon us for support of their families, to
14 say nothing of the ripple effect on our suppliers and
15 service companies with whom we spend thousands of dollars
16 a month. Furthermore, it follows that no surveying, no
17 drilling, and the remainder of our oil company related
18 business is in jeopardy. More immediate is the question of
19 two vessels currently under contract, one to Woodward-Clyde,
20 one to Pelagos. Not as significant as Mr. Savit's reference
21 to Western Geophysical layoffs unless you're a member of one
22 of the families being laid off. The longevity of each
23 job depends entirely on your decision to extend these
24 permits. If you discontinue the permits, these vessels
25 will be shortly returned to the dock and I will be forced

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1 to lay off nearly half my employees indefinitely. Then
2 comes of course the question of how do I make payments
3 for the vessels and insurance on these vessels if there's
4 no available work, and these vessels are primarily,
5 obviously that's what we use them for at this time. There
6 are other designs applicable to these vessels. The work is
7 not available at this time.

8 If you elect to suspend the geophysical survey
9 permit until April and/or the completion of the EIS, these
10 two vessels and possibly more will sit idle and the
11 crews will have to be released. These crews are especially
12 trained for these particular types of boat handling
13 operations. Layoffs could well mean loss of valuable
14 employees who could be difficult to replace when the
15 permits are renewed. Of course, I must strongly urge you
16 to extend the permits and/or, better yet, renewal of the
17 permits as requested. The uncertainty of continuation is
18 not only nerve-racking but makes the orderly and sensible
19 growth plans for an organization like ours very difficult.

20 As a footnote, I would also like to point out
21 that the sounding equipment that Mr. Ashley just referred
22 to as being within the same decibel perimeters as
23 equipment currently being used by the fishermen and boat
24 operators, I would like to make an example. All of these
25 boats are equipped with fathometers, absolutely necessary

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1 for boat operation. I want to say that they're required
2 by the Coast Guard; is that correct? I'm incorrect. But
3 they are absolutely necessary for safe boat operation.
4 Again, if these have to be, if one hand can't use them,
5 then why can the other? It's that simple.

6 ACTING CHAIRPERSON McCARTHY: Thank you.

7 MS. HILL: Thank you.

8 ACTING CHAIRPERSON McCARTHY: Any questions
9 by Commissioners? Mr. Faber, do you have any questions of
10 this witness?

11 All right. Thank you very much.

12 MS. HILL: Thank you.

13 ACTING CHAIRPERSON McCARTHY: Mr. Schroeder,
14 the owner or landlord of the Porto Bodega Fisherman's
15 Marina.

16 MR. SCHROEDER: Bodega Bay, California.

17 ACTING CHAIRPERSON McCARTHY: Yes, Sir.

18 MR. SCHROEDER: Good afternoon to you --

19 ACTING CHAIRPERSON McCARTHY: Thank you.

20 MR. SCHROEDER: -- Governor and Commissioners and
21 fellow citizens.

22 I'm here today as the major marina owner in
23 Bodega Bay wherein I lease boat slips and low-cost housing
24 and other satellite support facilities to the major
25 fishing fleet in Bodega Bay and in the course and scope

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1 of the year to approximately 5,000 fishermen that fly the
2 coastal waters between the San Francisco Bay Area
3 and the Oregon border. I'm here in support of the
4 extension of this permit to the geologic and geophysical
5 interests primarily because of the fact that I was sitting
6 in the harbor office one day and in comes the Press
7 Democrat and there's a tremendous amount of storied
8 articles on underwater blasting that is allegedly killing
9 fish and disturbing the fish habitat off the coastal
10 waters of Bodega Bay and to the north and south of the
11 coastal waters of Bodega Bay. So immediately I woke up
12 from my problems connected with the effects of El Niño
13 on the fisherman's income and on the fish receiver's income
14 and on the companies that try to make a living out of fish.
15 As you people are aware of, the fishing industry has fallen
16 on hard times the last two years because of the effects
17 of El Niño and fishermen have fallen on hard times in the
18 past two years because of the fact that there's been
19 substantially reduced stocks of fish. Immediately I went
20 out and I started talking to mid-water troll captians and
21 tuna boat fishermen and crab boat fishermen and fishermen
22 that I do business with 24-hours of the day, year in and
23 year out, in both small and large ways, and I asked them if
24 they had any evidence of any dead fish from seismic
25 blasting. I said: "Do you have any evidence of this

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1 dead fish?"

2 "No dead fish."

3 I said, "Have you seen any dead whales?"

4 "No dead whales."

5 "Have you seen any dead dolphins?"

6 "No dead dolphins."

7 "Have you seen any dead great white sharks?"

8 "No dead great white sharks."

9 I said, "Where is this coming from, this type of
10 a problem that I see in the newspaper."

11 They said, "Hans, we don't see any dead fish out
12 there and as far as we're concerned, we don't see any
13 real problems connected with the geologic and the
14 geophysical boat exploration and seismic activities."

15 I said, "How can this get such heavy publicity?"

16 Well, I'm subject to some publicity periodically and very
17 frequently its negative because the media takes opportunities
18 like they do with people that hold public trust as well
19 as private trust and politicians and lawyers and anyone
20 that has to hold positions of trust and they do what they
21 can to stir them up. So then after having interviewed
22 about 15 or 20 of my major fishermen in Bodega Bay to find
23 out if there were dead fish, the conclusion that I reached
24 was there wasn't any.

25 So then I sent out a bunch of inquiries which

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1 I have continued to monitor for about the last 90 days
2 through my harbor master and through my administrator and
3 through my pier operator to find out if we had any evidence
4 of dead fish. No evidence of dead fish. No evidence of
5 fish period.

6 (Laughter.)

7 MR. SCHROEDER: So I'm here primarily to give
8 some very basic evidentiary testimony with respect to the
9 issue of fish and we have problems with fish because
10 there aren't too many fish. I mean, I went out on a
11 crab boat on the opening day of crab season. We dropped
12 10,000 crab pots out of Bodega Bay and a month went by
13 and I don't think we got 500 crabs in. I'm exaggerating or
14 making this, kind of distorting it because we did get
15 10 crabs out of a hundred crab pots, that we pulled on one
16 tow and some of the fishermen are pulling in some crabs,
17 but the fishery resources and the fishery stocks are
18 way down and I don't understand how seismic operations in
19 the last 12 to 15 months could have been killing very
20 many fish since there aren't very many fish being caught
21 period. Since I'm a major port owner in that small
22 historic traditional fishing town, I think that I should
23 be in a position to know. So I wanted to make this very
24 real evidentiary statement for the benefit of those people
25 that are more learned and more scholarly and more

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1 sophisticated in sessions that exist behind closed doors.
2 I have to live pretty much on the waterfront and deal with
3 real problems and solve real fishermen's problems and
4 real operational problems and, therefore, I appreciate this
5 opportunity to speak today. Thank you.

6 ACTING CHAIRPERSON MCCARTHY: Thank you,
7 Mr. Schroeder. Are there any questions? Thank you.

8 Now to Richard Slater, Greg Gow, Harold Meadow,
9 and Allistair Carrel, as well as acknowledging
10 your presence, do you wish to be listed in the record
11 as supporting the reissuance of the permit for the
12 Commission?

13 Yes. Yes. Yes. All right. Thank you. The
14 answer to all four is yes. Thank you very much.

15 Next witness, Mr. Zeke Grader, Executive Director
16 of Pacific Coast Federation of Fishermen's Association.
17 Go ahead, Mr. Grader, please.

18 MR. GRADER: Governor, Members of the Commission
19 and staff, my name is Zeke Grader and I'm the Executive
20 Director of Pacific Coast Federation of Fishermen's
21 Associations. We represent some 16 different commercial
22 fishermen's marketing associations through California in
23 addition to five other fishermen's associations in
24 California and Oregon. Among those groups that we represent
25 are fishermen, the organized fishermen's groups in

1 Santa Barbara, Avila, and Morro Bay, those fishermen
2 most directly affected at present by some of these
3 operations.

4 We have submitted to your staff and to you a
5 copy of a letter and I do not intend to read that here,
6 simply to hit on a couple of areas.

7 To begin with, I think it's fair to say that we
8 would support at least at minimum the staff recommendation
9 for a delay in the reissuance until some of the environmental
10 studies are in. The problem that we've essentially had,
11 and I think the companies have said it here pretty well,
12 is that there historically has been seismic operations
13 going on in these areas. We're however seeing no
14 is to the massive, it seems anyway, increase in the amount
15 of activity going on with the leasing that's been going on,
16 the recent lease sales and the proposed lease sales, boasted
17 both in the federal OCS as well as proposals for the State
18 Lands. I do wish to compliment the staff here and I think
19 that they've been over the past two years have been
20 responsible for, among other things, along with some of
21 the staff of the Minerals Management Service, where a
22 real improvement of the notification process. The only
23 problem we're having with that notification process right
24 now is just to respond to those almost requires an
25 additional staff person with the number of letters coming

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1 in each day with the notifications of new leases going on.
2 I think there has been, and I wish to compliment again
3 the staff here for their concern that was brought to them
4 approximately a year and a half ago by fishermen along the
5 North Coast. It wasn't out of Bodega Bay, incidentally.
6 It was out of Fort Bragg about the possible impacts of
7 seismic testing on species. We still do not know at
8 present whether or not for sure that there is any
9 direct effect on the species other than perhaps some
10 dispersal. There is, however, some concern about egg
11 and larval states and for that reason we would like to see
12 some further study done on this before we go ahead with the
13 reissuance of what appears to be a considerable amount of
14 seismic activity probably over the next few years.

15 I also should say in passing that I want to
16 compliment particularly some of the oil companies,
17 Mr. Tom Wright in particular, for I think a very
18 enlightened approach that they have taken to this issue
19 and a number of the geophysical companies. I think they
20 have attempted to be as one of their persons stated
21 earlier, good corporate citizens. I however think that
22 to alleviate some of our fears and to ensure that there's
23 going to be no damage, that we hold off on the reissuance
24 of these permits perhaps as staff has recommended for a
25 month to a month and a half until some of the final studies

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1 are in.

2 Doug Knapp who is here from Santa Barbara is
3 a Santa Barbara fisherman and I think can speak perhaps
4 more directly in detail to some of the problems that
5 some of the fishermen are having down there. But again, I
6 do want to stress that one of our concerns is not that
7 there hasn't been the seismic activity in the past, but
8 just the intensity that we're seeing it being carried on,
9 just the massive number of vessels involved in this. In
10 fact, it's almost a shame that somehow they could not
11 -- I don't mean to thwart the free enterprise system, but
12 I think it would be nice if there could be some sharing
13 of information so we do not have to have all these
14 surveys being conducted.

15 Other than that, I have nothing further to say.
16 Again, you have a copy of our letter and we would support
17 the staff recommendation here. Thank you.

18 ACTING CHAIRPERSON MCCARTHY: Mr. Grader, the
19 studies that you refer to that you thought should be
20 undertaken, do you have an approximate idea of how long
21 those would take or have you brought those to the attention
22 of our staff and asked their opinion of how long they
23 would take?

24 MR. GRADER: No, we have not specifically.
25 I don't know. I think we're going to be outlining, having

1 some idea at least out of this conference next week or
2 the week after on what can be done as far as the termination
3 on the seismic studies. Obviously if they're going to be
4 lengthy in process, we'd have to take another look at that.
5 At least have the studies identified perhaps before there is
6 a reissuance.

7 ACTING CHAIRPERSON MCCARTHY: Mr. Faber.

8 MR. FABER: Yes, a couple of comments.

9 First of all, I think that it's important to
10 realize that at this point in time we are unaware of any
11 new studies which will come in as a result of waiting
12 for six weeks to eight weeks. What would happen during
13 that period of time would be compliance with the second stage
14 of the environmental review process which staff has begun.
15 It's sent out an initial study and asked for responses
16 by responsible agencies and comments by the public. Those
17 are coming in. We could produce a document that would
18 be circulated for an additional 30 days during the month
19 of March and get additional public comment. At that point
20 in time the Commission could act. But we are not
21 anticipating at this point in time that there are any
22 studies in progress which will have results that will be
23 available during that period of time. If public comment
24 can show us something to that effect, that would be a
25 different story. But we're unaware of anything that is in

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1 that particular mode.

2 Secondly, insofar as those studies which are
3 being investigated, and particularly the meeting which is
4 set up for early March in Santa Barbara to investigate the
5 questions of fish dispersal and damage to the larval
6 stages of fish. As far as we know, that is a group of
7 scientists getting together, an effort we support, to
8 determine if the scientific method even allows meaningful
9 input on the subject. As far as any study that would come
10 from that, it could be six months, a year, two years before
11 any results come out.

12 ACTING CHAIRPERSON MCCARTHY: There are a number
13 of options we have in front of us. One of them is to
14 reissue these permits today for a fixed time period.
15 Another is to divide this decision for, say, 60 days
16 so that the second phase of the legal steps Mr. Faber
17 just outlined, would be filled and then the matter would
18 be before the Commission in 60 days. We could refuse
19 to reissue the permits today or then in 60 days. I think
20 refusal today, if I'm guessing correctly, brings about the
21 likelihood of approval or reissuance probably in 60 days.
22 To put out in public view all of what may not be said here,
23 both sides are weighing all of their options, under what
24 circumstances might we bring lawsuits if the permits are
25 reissued or not reissued today and under what conditions.

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1 Now, it's important to me in trying to gauge
2 what decision I will make as one member of this Commission
3 to determine what additional information is it that's
4 relevant to the decision before us that might be developed
5 within some approximate time frame. Anybody who can
6 address that issue today on this side of the issue
7 following Mr. Grader I think it's important for me to hear.

8 I find myself in a very odd position here. I have
9 some serious concerns about the manner in which some of
10 the oil drilling is proceeding along the coast, both
11 federal and state waters, the amount of physical development
12 onshore, the lack of coordination in many instances with
13 local government, the impact upon other existing economies,
14 including commercial fishing, tourism, other things,
15 but we have here a narrower piece of this problem and
16 I'm trying to see how it relates to these other basic
17 concerns. I think I should say them now so that any, you,
18 Mr. Grader, or any of the other witnesses, might want to
19 address these because I've just heard testimony from some
20 of those engaged in the business of making the seismic
21 surveys that they are on a month-to-month decision basis
22 as far as whether they keep employees or don't keep them.
23 The time frame I decide on as one vote here has some of
24 that testimony in mind. I need to relate the damage,
25 if there is damage, of extending these permits or issuing

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1 these permits for some time frame. I think there's some
2 opinion here that suggests if we don't reissue them today,
3 then we just delay it for 60 days, that will then allow
4 us to complete the rest of the requirements that Mr. Faber
5 just mentioned to you. I need to make a more basic
6 decision than that. The decision is, is this decision,
7 if I refuse to vote for reissuance of permits, is the
8 decision based on some palpable evidence that the use
9 of seismic survey weapons is doing damage to whales, otters,
10 or anything else. I want to hear that from people. I
11 have a great deal of sympathy for the nature of the problems
12 that we're facing. I'll need to hear that or I'll need
13 to hear that there is a prospect of that evidence being
14 developed fairly soon.

15 We have an option of reissuing for some
16 specific time frame, I've asked. It doesn't have to be
17 18 months. It can be some shorter period of time so that
18 we can try to correlate these decisions together. But I
19 think I need to express now my concern that some of the
20 evidence I've heard here from the people that on the
21 assumption we've now been doing this for 18 months before
22 I became a member of this Commission, we've been doing it
23 for 18 months, they did get into this business. They did
24 rely on this process. They did hire people and make
25 expenditures. If I tell them we're going to reduce the

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1 size of their business and put them out of business, I want
2 to have substantive reason for doing that. Maybe they
3 understand that there's a rational process behind that
4 decision. I thought I should mention those things.

5 MR. GRADER: Thank you. I just want to respond
6 I think Mr. Faber was right and I think your analysis was
7 here. As I understood it when coming before you here today
8 there was a staff recommendation and I did not know at
9 that time whether or not you had the option before you
10 of perhaps extending those permits for a shorter time
11 until perhaps during that process of that extension --

12 ACTING CHAIRPERSON MCCARTHY: Well, the staff,
13 as they should do in making their recommendations though
14 to us is also give us some idea of what puts us in a less
15 desirable position in court determining on who may sue us.
16 So we look at the options of all sides in this thing and
17 we try to figure out what makes a sensible decision from a
18 public policy point of view and we must relate the factor
19 in of litigation from either side. Hopefully that won't
20 determine our decision, but at least it's intelligent of
21 our staff to present those options to us. We're well aware
22 of the fact that we could be sued from either side now
23 from any court in the state and we'll take that into
24 consideration, but we'll try to make what is a fair and
25 sensible decision.

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1 MR. GRADER: Thank you. What I would urge,
2 however, is a completion of the environmental review. I
3 think in that time out of the next two weeks we're going to
4 be able to find out not whether or not there is an impact,
5 but whether or not it's even feasible to do that study.
6 Perhaps that would be one of the things that will be taken
7 into consideration in the permit conditions.

8 In addition to that, I think we'd like to take
9 a look. I think most of the conditions that have been
10 specified in the permits, the proposed permit reissuance
11 are good. In addition, I would add that the one recommended
12 by the Liaison Office should be included as well. We do
13 have a few problems with notification right now and I think
14 part of it may be a little bit burdensome on some of the
15 operators and I think perhaps we'd want to look at ways
16 to make that more efficient. But I think perhaps Mr. Knapp
17 can comment further on some of these specific problems
18 that they're having in Santa Barbara.

19 EXECUTIVE OFFICER DETRICK: Mr. --

20 ACTING CHAIRPERSON MCCARTHY: Would you use the
21 microphone, please, Miss Detrick.

22 EXECUTIVE OFFICER DETRICK: Zeke, I have a question
23 following on the Governor's remarks. Would there be, well,
24 given that we accept as I think we all do that the kinds
25 of studies you want, if they can be done scientifically,

1 will take a long time, in your mind is there any real
 2 problem with the Commission issuing a geoseismic permit
 3 today with the conditions attached to it as presented,
 4 one of which gives the Commission the authority or retains
 5 the Commission's authority to terminate or to change those
 6 permits when new information becomes available. What I'm
 7 getting at, is we do have this meeting coming up early
 8 in March. It's probably going to be the beginning of
 9 several meetings and, as Mr. Faber has pointed out,
 10 we really don't expect to get final information of any
 11 sort out of that meeting. If that process were an ongoing
 12 process, we do arrive at some serious scientific study
 13 and get results down the road someplace. Those results
 14 might affect the permit program. We have the power in
 15 the proposed permit program to bring those into the
 16 system. Would your organization feel, would you feel that
 17 that was a satisfactory way to go in light of the serious
 18 testimony we've had earlier of the immediate impacts
 19 on people's lives and incomes? I'm not trying to get you
 20 on both sides. I just feel that the scientific studies
 21 are going to be time consuming and one month is not going
 22 to make one bit of difference to that information if you see
 23 what I mean. I think you have the commitment of this
 24 Commission, clearly, the fishing industry does, and the
 25 commitment now of the oil companies and the geophysical

1 companies to work out this problem and to address the
2 concerns of the fishermen quite seriously. If that were
3 enough insurance, would you then feel that the permits
4 should not be granted today but should be granted in 45
5 to 60 days.

6 MR. GRADER: I think what you've presented,
7 I think given that, and I can only speak for myself and
8 I would of course defer a little bit to Mr. Knapp who's
9 right in the affected area in representing that association.
10 Keep in mind we are a federation. But I think what you
11 have presented here is quite reasonable and we could
12 probably, I suspect, have no problem with that. A couple
13 of things I would add to that or at least one is that
14 I think we do need to work a little bit further on the
15 notification process. It is I think a little bit
16 burdensome on the operators in the nature of the certified
17 letters and I'm not even sure -- it's certainly better than
18 the old process we had, but I think that can be improved.
19 But I think if we left a little bit of leeway there to
20 work out those problems. I would certainly have no
21 problem, but again, I would want to defer to Mr. Knapp and
22 some of his judgments on that because he is from that
23 affected area.

24 EXECUTIVE OFFICER DETRICK: Thank you, etc.
25 In regard to your comments on the conditions of notification,

1 obviously they can be changed by the same authority that
2 everything else does as a better method is developed.

3 MR. TAYLOR: Can I get a clarification.

4 ACTING CHAIRPERSON MCCARTHY: Would you use the
5 microphone please, Greg?

6 MR. TAYLOR: Governor, may I get a clarification
7 of this conversation? Was it that the permits be extended
8 for a limited period of time with the conditions imposed?

9 EXECUTIVE OFFICER DETRICK: No. I didn't make
10 that distinction on limited period of time.

11 ACTING CHAIRPERSON MCCARTHY: I think I made some
12 reference to that as one of the options which I'm actively
13 considering up here as I listen to the testimony.

14 EXECUTIVE OFFICER DETRICK: I was just referring
15 to the proposal that the staff has made in regard to
16 changing the geoseismic permit when that occurs retains
17 the authority of the Commission to make changes in the
18 permit process as new information becomes available.
19 So if the scientific information comes and indicates that
20 some change should be done in operations, the Commission's
21 authority is immediate and apparent. You just plain say so
22 and that change is made. I mean, after a hearing and all
23 that. But the point is this is an open-ended process,
24 Governor, that we're proposing. It's not an all or nothing
25 type of process. The only all or nothing part is obviously

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1 that without any permit, no operators can operate.

2 ACTING CHAIRPERSON McCARTHY: Did you have
3 something to add, Mr. Grader?

4 MR. GRADER: No, I had nothing.

5 ACTING CHAIRPERSON McCARTHY: Greg, did you want --

6 MR. TAYLOR: Could I ask your position with
7 regard to a 60-day extension of the permit with the
8 conditions proposed by the staff? Maybe you'd want to talk
9 to your people about that.

10 MR. GRADER: I would probably want to talk to
11 my people. Offhand I would probably say I think that
12 would be found to be reasonable. But, again, I'd
13 particularly want to confer with the people in the
14 Santa Barbara, Avila, and Morro Bay areas, but I think that
15 might be a very reasonable option that would not put an
16 undue burden on the geophysical operators and at the same
17 time help us resolve some of these ongoing problems.

18 MR. TAYLOR: Could you check with them as the
19 hearing proceeds?

20 ACTING CHAIRPERSON McCARTHY: So that everyone
21 knows this, because I'll confess to you I don't know what
22 my decision is going to be on this issue. This is one of
23 the few times on a highly controversial issue where I
24 didn't have a solid idea of what I was going to do because
25 I don't at this moment because there's some equity to weigh

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1 here and the substantive issues before us are very complex.
2 I'm going to suggest that we have a very, literally,
3 five-minute recess at the end of the testimony so that the
4 members of the Commission can have some conversation up here
5 with Miss Detrick and Mr. Faber and then we'll come in and
6 cast a vote. All right? Maybe that will give a chance
7 for some of the parties on all sides of this to chat a
8 little bit as well.

9 Thank you, Mr. Grader.

10 Mr. Knapp. Mr. Knapp, the Director of the
11 Fisheries Protection Institute.

12 MR. KNAPP: My name is Mr. Douglas Knapp and
13 I'm a fisherman out of Santa Barbara, California, and I
14 would like to concur with a lot of the previous witnesses
15 and the fact that we've been very successful dealing with
16 some of the space use conflicts and the success of the
17 Liaison Office. I also have to commend the seismic
18 industry for their involvement in this and their willingness
19 to try and work these problems out. Of course, some of
20 that came through a little bit of pressure brought to bear
21 politically so.

22 I'm here because there are real concerns on the
23 part of the fishing industry. No fisherman in his right
24 mind takes a day off when the weather's nice. As a matter
25 of fact, in Santa Barbara over the last several years the

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1 increase in oil industry activity, including the seismic
2 research and all the other things that go along with
3 oil development, have come to the point which it's more
4 than the fishing fleet they feel they can bear. Originally,
5 oh, for the last, well, in previous decades I should say
6 the activity in the oil fields wasn't so great that the
7 fishing industry couldn't work around it. There's always
8 some losses sustained. There were claims against lost
9 equipment on pipelines, et cetera, and there's definite
10 loss of space conflicts. What's happened is it's
11 accelerated to the point where the losses are beyond what
12 we can absorb and it's showing up in our bank account,
13 of course, and profits, and it's a business problem for us.

14 As far as the effect of the seismic boats go,
15 and that's the issue we're coming here today, the fishermen
16 see a real problem. I mean, it's there. There's no
17 question in their minds. They see it on their fathometers,
18 the fish finders that we talked about earlier. Fishermen
19 have worked for years on reefs and rock piles fishing
20 rock cod and using a fathometer and there's specific
21 patterns that the fish show up on the paper readout and
22 it's a consistent thing. You go there day after day and
23 you have the same kind of fish pattern showing the schools
24 of fish. On the approach of seismic vessels into the
25 area, you find that the fish sort of melt away. You can

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1 see them dispersing and they show up as little blips above
2 the bottom. They melt into the reef and go off the bite,
3 per se, and each species of fish is affected a little
4 differently maybe than another, but the basic situation is
5 that you have a reduction in catch. Up until a couple of
6 years ago we really didn't have that much in the way of
7 seismic activity concentrated in any one area and a couple
8 of years ago it started to concentrate in the last really
9 good spots that fishing went on where there was really no
10 industrialization which is in the upper channel and the
11 Santa Maria Basin area. Fishermen are reluctant to jump
12 and scream too loud because it costs them a day of fishing.
13 It might cost them a thousand dollars to show up at a
14 hearing. As a consequence, it costs me in the neighborhood
15 of tens of thousands of dollars before I jumped up and
16 started shouting a bit. That's what brought us to the
17 whole permit process that you have today because we were
18 losing fishing gear.

19 The studies that are planned for this next, for
20 the first meeting that's coming up in the next few weeks
21 is addressing the problem of whether or not we can even
22 investigate this and that's because the seismic industry
23 still I don't think really believes there is a problem.
24 Back in the forties when they're using dynamite, they
25 didn't believe there was a problem when the fish were

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1 floating up on the surface. Fishermen in Santa Barbara
2 at that time were screaming loudly and there's reams of
3 newspaper articles to the effect and they were kept on
4 being told that it was no problem. Well, the pictures
5 were taken. The dead fish were brought in. It was to the
6 extent where they sent out boats, Fish and Game boats
7 to pick up the big ones so it wasn't too big a waste.
8 Well, we're having a problem today with the new methods.
9 It's in fish dispersal. It may not be killing the fish,
10 but the problem is there and it reflects in our loss of
11 catch. It reflects in the movement of fish populations.
12 The sole fishermen working out of Avila and Morro Bay and
13 Santa Barbara find that because of the repetitive seismic
14 work the sole populations are moving out of traditional
15 fishing beds that have been worked for 20 or 30 years.
16 This is of major concern because who knows where they're
17 going. They may come back after all this oil development
18 is over, but that could be 60 or 70 years and it's a long
19 time for us to deal with financially. So the problems are
20 real.

21 I see that because of the cooperative effort
22 where we have going we're trying to work out some of the
23 problems. I think the recommendations that we've made all
24 along is that maybe some of this work can be combined or
25 someway as Zeke Grader was saying earlier to limit the

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1 extent of seismic work and not make it such a concentrated
2 effort which is too big a burden for us to bear. We have
3 to share the ocean, I mean. It's not right that we have
4 to be pushed aside. The fishing industry has always had
5 to share with all the other users and there's been no time
6 that we've been allowed to exclude anyone and we feel like
7 we're being pushed aside just because of the economics of
8 it.

9 I'll also mention that the concerns over the
10 larvae of invertebrates, that is a concern that was brought
11 up when we inquired at the University of California at
12 Santa Barbara, went around through the Biology Department.
13 They felt that a bigger concern to the fish populations
14 would be any detriment to the larvae which are very
15 delicate. Most of the invertebrates go through stages
16 of larval development and they're very intricate creatures
17 and they're suspended in the water column. Organisms of
18 that nature, microscopic organisms in the lab they use
19 concussion and sound waves to break up the organisms, to
20 study the parts of the internal organelles. So that
21 particular problem was perceived by several people that we
22 talked with that that was maybe a bigger problem that should
23 be investigated. That's why that's been brought up. It's
24 a secondary issue to the fish dispersal because that poses
25 an immediate economic impact on the fishing industry. It's

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1 a very real impact and I think you'll find with the studies
 2 or the meetings they're going to hold in March coming up
 3 shortly, there'll be a very large number of case studies
 4 being brought forward by the fishing industry. The
 5 fishermen are very enthusiastic of the finding there may
 6 be some attention paid to this problem. They've been
 7 screaming about it, like I say, all the way back into the
 8 days when they used black powder. Now the method's changed,
 9 but there's still an impact.

10 I've been right next to seismic boats and I've
 11 worked next to them and I understand what's going on.
 12 The force I feel through the bottom of my boat is
 13 equivalent to somebody slamming the bottom of the
 14 table. It's like a sonic boom. You hear a jet go over
 15 and boom, the windows sort of pulse. Well, that's what
 16 I feel through the bottom of my boat when I'm a couple of
 17 hundred yards away. You can see the impact it has on
 18 fish when you hammer on the side of a fish aquarium. They
 19 scatter. They zoom around the tank. Well, that's the
 20 problem we're having. It's disrupting their behavior and
 21 the ultimate impact of it is hard to say. If they're
 22 chased out of the area for a long period of time and
 23 we're very concerned with it and we want these studies to
 24 go on and we hope that we get a lot of support on State
 25 Government level as well to investigate this and

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1 possibly the seismic industry will get tired of funding it
2 or proceeding with it and we'd like to see it continued
3 and I'd encourage that also. Anyway, I'm open to any
4 questions.

5 ACTING CHAIRPERSON MCCARTHY: Mr. Faber, do you
6 have any comments.

7 MR. FABER: I have a couple of questions and
8 then also a comment.

9 You referred to tapping on an aquarium as a
10 similar type of a situation. Is it your experience or have
11 you found out whether there's a tendency of the fish to
12 acclimate to a fairly repetitive and long-standing sound
13 that's created by the seismic boats?

14 MR. KNAPP: The reports I get from the trollers
15 and the rock cod fishermen -- I, myself, I'll clarify now,
16 I'm a lobster and crab fisherman. I'm affected by the
17 physical space use conflict. I have been chosen as a
18 representative to explain these problems and come before you.
19 The fishermen have repetitively told me that this problem
20 persists as long as the boats are in the area. It may last
21 a day or two afterwards. The fish will come back on the
22 bite, but with the type of permitting that's going on now
23 where you have a boat there once a week working for three
24 or four days in a given stretch of coast, it gets so you
25 have to abandon a fishing ground. You have to say, well,

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1 I'm not going to fish the North Channel because it's not
2 going to pay. I'm going to go somewhere else. You go down
3 the other end of the Channels, I'm not going to fish there
4 because there's somebody working down there. Unfortunately,
5 you go around the back side of the Channel Islands into the
6 open ocean and the weather's a little too rough. Your
7 boat's not big enough. You need five or six hundred grand
8 to go out and buy a new boat and you could fish out there,
9 I suppose. But I don't see anybody coming up with the
10 money for that. The repetitive problem is there. The
11 fish are not acclimating to it. This has been going on
12 for quite some time now and it's a problem that doesn't seem
13 to, fish aren't acclimating to it. That's basically it.

14 MR. FABER: The type of evidence that you're
15 relying on is primarily relating to the sounders and that
16 sort of thing on your boats or is it fish tickets over
17 two, three, four years' worth of fishing that you're
18 comparing or what is the basic evidence of that sort of
19 activity?

20 MR. KNAPP: The basic evidence of this sort of
21 activity is based on two things. The sign of fish on the
22 fathometer, which is a reliable -- they call them a fish
23 finder -- they're a reliable source of information when
24 you're working rock crevices or any bottom, you can monitor
25 the fish movements with these things. Then the second

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1 thing is the fish, the fact that they don't catch. If you
2 go out and fish a particular reef, you can fish there all
3 day as long as the wind doesn't blow you off and keep
4 catching those rock cod. They're there. There's so many
5 of them you can't catch them all in a day. The fact
6 that a lot of people go out in the ocean and come home
7 with an empty sack is a reason why they're not commercial
8 fishermen. Commercial fishermen maybe have a little more
9 knowledge of what's going on and have the capability of
10 going out and finding those fish over and over again.
11 It takes experience. It takes knowledge to do it. I
12 couldn't go out and find oil, I'm sure, but I can sure go
13 out and find fish. The fish are there. There's just two
14 things alone indicate that the fish have moved out of the
15 area, and it's not something that's correlating to weather
16 or swell conditions or a phase of the moon because these
17 are all taken into consideration when you go fishing.
18 The minute you leave harbor you know where you're going
19 because of those conditions. It has to do with a specific
20 incident that happens that is totally divorced from all the
21 other conditions that normally dictate where you're going
22 to fish. It's caused by that particular seismic activity
23 and the sound source. Now, we assume it's a sound
24 source because that would seem to be the logical thing with
25 normally a freighter going by wouldn't disturb the activity

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1 of fishing.

2 MR. FAER: So what you really wanted to look at
3 are studies which deal with fish dispersal?

4 MR. KNAPP: Correct. That's what we're approaching
5 right now, studies dealing with fish dispersal. It's an
6 immediate impact on the fishing industry.

7 MR. FAER: Is it your suggestion that this
8 Commission not allow seismic activity during whatever time
9 period is necessary to get the results of those studies
10 or is it your advice that they go ahead and issue the
11 permits and support the type of research that you're talking
12 about?

13 MR. KNAPP: I find it difficult to say stop all
14 seismic activity because of the fact I'm one of the
15 culprits that's burning the bill along with all the rest of
16 us of course. I don't imagine anyone came on a bicycle
17 today. I think that I would like to see it limited to an
18 extent until we have completed some of these studies and
19 some of the information that's brought in that might give
20 us a better guideline as to what level of seismic activity
21 is permissible. There is a certain point that I'm sure
22 any activity can be conducted that will provide, what do
23 you call it, an impact that's acceptable, that's not going
24 to be unbearable to either the organisms in the ocean or
25 the fishing fleet that depends on them or whatever or the

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1 whales or the sea otters, whatever. I think that there's a
2 level that has to be maintained. To have this last
3 year boats standing in line to work the same area for the
4 state lease sale was just outrageous. There was so many
5 boats there that the radio channels were bogged down and
6 the traffic was, there was traffic problems with
7 freighters, et cetera. There was just constant
8 navigational problems just because of the intensity of
9 the work. They're working night and day and had to take
10 turns so they didn't interfere with each other. They
11 couldn't even work when they were miles apart. They had
12 to take turns still. The sound sources interfered.
13 So we would like to see that that kind of intense work
14 is greatly reduced. If our studies show that there's a
15 definite impact on the fish populations on a permanent
16 basis, then I think we have to maybe look into further
17 limiting it also.

18 MR. FABER: I don't have any other questions,
19 but I have two quick observations.

20 One of them is as has been alluded to on several
21 different occasions, a task force report was produced by
22 a group of representatives from National Marine Fisheries
23 Service, California Department of Fish and Game, Minerals
24 Management and our staff for the Executive Officer in
25 December of 1982 which reviewed the existing scientific

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1 literature. While not as extensive as I think the
2 group Mr. Knapp is referring to will be looking at it,
3 did talk about the effect of seismic on juvenile species
4 and the conclusions that came out of that particular
5 report at that time with that scientific information was
6 that there did not seem to be a significant impact.

7 The other comment, I would look to Mr. Wright
8 and Mr. Wylie to indicate whether I'm right or wrong, but
9 it's my general impression that with the federal leasing
10 program as it has taken place in the past and state
11 development, that there's a very real possibility that
12 the peak of geophysical activity or the intensity which
13 Mr. Knapp is talking about may have been reached and we
14 may be on a decline side so that we will have less of the
15 type of problem that Mr. Knapp is talking about. But
16 those two fellows, one representing WOGA and one
17 representing IACC, could perhaps respond to that, whether
18 we've reached that peak or not.

19 MR. KNAPP: Could I make a comment before we go on
20 to them? In regards to that task force on investigating the
21 problem, I've read the report and it was basically a
22 literature study and I read the conditions on which the
23 ship went out and made observations as to whether it was
24 fish kills or what not and as the report said, there was
25 gale warnings the whole time that they were out. That's

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1 what the report said. I don't know whether that's true
2 or not. I imagine it is.

3 The fish studied were two fish caught by anglers
4 that day. They were picked up off the dock after they
5 had been clubbed and cleaned. One was a salmon and
6 one was a rock cod. I think that no biologist, marine
7 biologist of any reputation at all would want to put a
8 signature on that kind of a study and claim that it was
9 well done and represented any kind of conclusive --

10 MR. FABER: With all due respect, I have to
11 respond to that. In the first place, those were fish
12 provided by the fishing community to the Department of
13 Fish and Game as examples of damage by seismic equipment.
14 In the second place, these studies I referred to are part
15 of the literature search and have nothing to do with those
16 two particular fish.

17 MR. KNAPP: Okay. I still say that that
18 wasn't well done and I think that we hope to gain some
19 better insight into it by proceeding in a more orderly
20 fashion in scientific methods.

21 ACTING CHAIRPERSON MCCARTHY: Okay. Thank you
22 Mr. Knapp.

23 Susan LeFever.

24 EXECUTIVE OFFICER DETRICK: Mr. Chairman, the
25 Reporter would like to change paper.

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1 ACTING CHAIRPERSON MCCARTHY: Miss LeFever, would
2 you mind waiting just a moment, please.

3 You can sit down, if you want. The Reporter
4 wants to change her tape.

5 (Thereupon a recess was taken.)

6 ACTING CHAIRPERSON MCCARTHY: We can reconvene
7 the meeting.

8 Susan LeFever is our witness. Miss LeFever.

9 MS. LEFEVER: I hope my voice will hold out for
10 this.

11 I'm Susan LeFever and representing Greenpeace
12 today. I wanted to read a statement. I'm going to read
13 parts of it. I don't think I can make it through the
14 whole thing on behalf of 22 individuals and organizations.

15 On behalf of the 22 undersigned individuals and
16 organizations, I urge you to authorize the immediate
17 preparation of a comprehensive Environmental Impact Report
18 on the effects of geophysical operations on California's
19 marine environment. We strongly recommend that the
20 Commission suspend all seismic testing permits until the
21 Environmental Impact Report is completed and mitigation
22 measures are implemented which will ensure the protection
23 of California's marine mammal populations and fish stocks
24 from any harm caused by seismic survey operations.

25 The termination of the State Lands Commission's

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1 geophysical survey permit program on March 1st provides a
2 much needed opportunity to review the little studied and
3 poorly understood environmental effects of seismic
4 activities on California's marine life. Since the state
5 first issued seismic permits in 1982, public concern over
6 potential harm from seismic testing to the endangered
7 grey whale, the threatened southern sea otter, and
8 commercial fishing stocks as well as to the commercial
9 fishing industry has grown dramatically.

10 Recent information indicates that the threat
11 posed to marine life by seismic operations is greater than
12 was first estimated by the state in 1982. A 1983 study
13 by the U.S. Department of Interior provides evidence that
14 grey whales, the state marine mammal, may react to seismic
15 activity by slowing down, turning away, increasing their
16 respiratory rates, and in some cases, hiding in the sound
17 shadow of a rock, island, or outcropping. Potential
18 biological harm to the population from these effects may
19 include increased mortality of newborn calves due to
20 premature delivery during the southward migration
21 and/or separation of cow-calf pairs during the northward
22 migration. Long-term effects have not yet been studied,
23 nor have the cumulative impacts of seismic testing on
24 grey whales, particularly on how these effects may be
25 compounded along the entire route of the migration.

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1 In the 1983 study of the effects of seismic
2 operations on the southern sea otter, researcher
3 Dr. Marianne Reidman did not see any effects on the
4 sea otter behavior within the sound projection vicinity.
5 However, in evaluating the effects from this study, which
6 was of limited scope in that the study was designed primarily
7 to monitor impacts of seismic testing on grey whales and
8 not on sea otters, care should be taken in interpreting
9 the data to predict long-term effects of seismic operations
10 on the sea otter population. There are only about 1200
11 sea otters in California and we know that they are highly
12 susceptible to stress.

13 The case for proceeding with great caution is
14 strengthened by the rapidly accelerating rate of offshore
15 oil and gas development along the California coast. The
16 increasing number of seismic operations by independent,
17 competing companies not only subjects a single area
18 to repeated blasting but also exposes a greater expanse
19 of California's coastline to seismic testing. In state
20 waters, seismic activities are being conducted in some of
21 California's most productive fisheries and most sensitive
22 wildlife habitats. If we do not stop and study the potential
23 effects of these operations now, we may discover in several
24 years that the state's marine mammal populations and fish
25 stocks have suffered irreparable harm.

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1 Clearly, our knowledge of the environmental
2 effects of seismic testing is limited. It is premature
3 to draw conclusions about survey operations based on the
4 few studies that are available. However, it would be
5 irresponsible to allow seismic testing to continue within
6 coastal waters without a thorough examination of its
7 effects on whales, sea otters, fisheries, and the
8 cumulative impacts on the marine environments.

9 We therefore recommend that the State Lands
10 Commission authorize the preparation of a comprehensive
11 Environmental Impact Report on seismic activities before
12 the state geophysical survey permits are reissued.

13 This letter was signed by Jeff Jorgansen,
14 Supervisor, San Luis Obispo County; Bill Richardson,
15 Mayor, Pismo Beach; Tom Rogers, City Councilman, Santa
16 Barbara; Eugene Shelton, Mayor, Morro Bay; Bill Wallace,
17 City Councilman, Santa Barbara; Dr. Steve Swartz,
18 Center for Marine Studies, University of California at
19 Santa Cruz; Central Coast Commercial Fishermen's
20 Association; Citizens Planning Association of Santa
21 Barbara County, Coast Watch, Defenders of Wildlife,
22 Fishermen's Protective Institute, Friends of the Earth,
23 Friends of the River, Get Oil Out, League for Coastal
24 Protection, Los Padres Chapter of the Sierra Club, Marine
25 Mammal Fund, Natural Resources Defense Council,

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1 Oceanic Society, Planning and Conservation League,
2 Sierra Club and the Whale Center.

3 I'd also like to say that the staff of the
4 State Lands Commission has been very helpful to us and
5 I really appreciate the work that they did in putting
6 together the initial study. Based on the information
7 available to them in putting together their study, we
8 feel that the mitigations they've suggested are very
9 reasonable for the overall permit program.

10 We also feel that the report demonstrates how
11 much information is not available and shows the need for
12 an Environmental Impact Report.

13 I would like to add that we are in the process
14 right now, we've been talking to some scientists to try
15 to get from them the information, what information they
16 feel is needed and what studies are needed and we are
17 awaiting letters and responses from Dr. Steve Leatherwood
18 from Hubbs Research Institute and Dr. Peter Tyack of
19 Woods Hole, and Dr. Steve Swartz of U.C. Santa Cruz,
20 Dr. Bill Evans of Hubbs Institute, Dr. Chuck Malme of
21 Bolt, Beranek, and Newman who are all working on the
22 grey whales, and also Dr. Bea Sweaney of U.C. Santa
23 Barbara who has information on the Benthic communities,
24 Dr. Marianne Reidman who I referred to who did the sea
25 otter study and other people.

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1 That's basically my statement.

2 ACTING CHAIRPERSON McCARTHY: Thank you. Mr. Faber,
3 did you have any question or comment?

4 MR. FABER: I have a question for clarification
5 first.

6 You referred to new evidence since 1982. What are
7 you specifically referring to?

8 MS. LEFEVER: Well, especially to the study
9 of the seismic --

10 MR. FABER: The one that has been introduced
11 into the record already?

12 MS. LEFEVER: That's right.

13 MR. FABER: My only comment then would be we're
14 a little short on marine mammal specialists on our staff.
15 So we contacted the National Marine Fisheries Service
16 to get an interpretation of that study. I have a letter
17 dated January 24th, 1984 which is attached to the initial
18 study. So I believe almost everyone in this room has a
19 copy of it already which says that the National Marine
20 Fisheries Services after reviewing that particular study
21 felt that they would remain consistent with their earlier
22 statements about seismic activity vis-a-vis grey whales
23 as was pointed out in the various other pieces of documenta-
24 tion before the Commission. So that they have concluded
25 that there is not new evidence indicating a new problem.

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1 ACTING CHAIRPERSON McCARTHY: All right. Thank
2 you very much, Miss LeFever.

3 MS. LEFEVER: I'd like to add that our
4 interpretation of the Bolt, Beranek study was that there
5 was evidence that particularly the cow-calf pairs were
6 threatened by the seismic operations. While I don't
7 think I could support continuing the permit program, if
8 you were to continue the permit program, I would propose
9 that, let's see, that there be some mitigation in order
10 to protect the cow-calf pairs would be to not have
11 seismic testing within one mile of the coast during the
12 months of April and May which is where the cow-calf pairs
13 are migrating. They seem to be the most susceptible of
14 all the, yes, they're the most threatened of the whales
15 in that regard.

16 ACTING CHAIRPERSON McCARTHY: Thank you.

17 Any questions from the Commissioners?

18 Thank you very much.

19 MS. LEFEVER: Thank you.

20 ACTING CHAIRPERSON McCARTHY: Mr. Bert
21 Schwartzchild. Mr. Schwartzchild, thank you for your
22 patience.

23 MR. SCHWARTZCHILD: I'm Bert Schwartzchild.
24 I'm Executive Director of the Whale Center. Whale Center's
25 position regarding the issues under discussion here have

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1 been expressed in the adjoined letter submitted to the
2 Commission which was just read by Susan LeFever.

3 Our society has been conditioned to accept the
4 necessity of disturbing and often damaging or destroying
5 our habitat. We have allowed this to happen. Sometimes
6 the tradeoff was required as a prerequisite for human
7 survival. An example of such a justified tradeoff needed
8 is the conversion of our forest and grasslands, for
9 example, to agricultural production. However, many
10 developments have impacted seriously on the health of humans
11 and animals because they did not have the vision and
12 foresight to see this or more often because of self
13 interests of developing entities won out over the concerns
14 of the government or of public or other special communities.
15 What guidelines or criteria do we select in the matter of
16 ocean exploration which uses air gun or other explosives,
17 high intensity acoustical and other damaging techniques?
18 The first question we need to answer is whether such a
19 technique is appreciably or consistently injuring
20 living resources of the ocean recognizing that the
21 resources persistently or ultimately are vital to the
22 human species as well. If we find this to be the case
23 as many students of the ocean ecosystem believe, we must
24 ask ourselves if there are available to us other less
25 damaging exploration techniques than air guns and

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1 explosives or whether we can at least limit our use of these
2 techniques in intensity, frequency or timing. In all this
3 discussion relegating the plight of living creatures and
4 things to unemotional technical terms and jargon and
5 dollar signs, and I'd like to say that I come out of the
6 unemotional industry myself. I'm an electronic engineer
7 and ironically you've reminded me today that we represented
8 Bolt, Beranek and Newman on at that time an emerging new
9 technique for oil exploration and of course this is often
10 unique here. The perception that each one of us have is
11 colored by our involvement and I think that everyone who
12 testified here did it with all sincerity. But we see
13 different things often. I'm confessed to being an example
14 of that.

15 We must not forget that we are talking about
16 living and often feeling and thinking creatures or
17 living matter and habitat upon which other sea and land
18 creatures like Homo sapiens are dependent. As it
19 deliberates on this item and makes a decision, I trust
20 that this Commission will think in terms of an ocean
21 ethics in the same way it thinks of land ethics. Francis
22 of Assisi 800 years ago called the animals and other
23 living things his brothers and sisters because he believed
24 that they had a place on earth and a right to enjoy life
25 on this planet. I ask you to think in those terms throughout

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1 deliberations as you listen to seasoned professionals.
2 Incidentally, they are me, too.

3 I'd like to talk for a moment about the dollar
4 investment aspect that has been brought up. As an
5 involved community leader in San Francisco who often was
6 faced with developers who wanted to impact a neighborhood,
7 they always started their presentation with we have an
8 investment and we bought in good faith and we often were
9 frustrated by this. I'd like to say this in all
10 respect to the real dilemma that would occur if the
11 more drastic action is taken. It took us a while to
12 realize that there was a prior investment that a lot of
13 residents had. I think that the same thing applies here.
14 I would like to bring that up as a representative of the
15 ocean constituency, and that is that the consumer of
16 fish and other sea material has a prior investment also
17 or an investment that they potentially can lose. Never mind
18 speaking for the unrepresented constituency which are the
19 sea mammals and the sea life and the last major source or
20 resource that we all have in the future, now and in the
21 future. I'd like to point out that again the concept,
22 the problem we have here is in perception.

23 I have a copy of that Bolt, Beranek and Newman
24 report which was quoted previously and of course we can
25 quote it in any way we see and I hope that you will read

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1 the total report because the report and I'll just quote one
 2 sentence, talks about: "Some possible changes in swimming
 3 patterns of the cow-calf pairs were observed... for the
 4 one mile and 0.5 mile nominal test ranges. The changes
 5 observed typically consisted of confused swimming,
 6 swimming into the surf zone and behind rocks when sound
 7 shadow was available. Rolling and milling behavior was
 8 also observed often followed by rapid swimming to avoid
 9 the source area."

10 So the point is that it's going to be difficult
 11 and I hope the Commission will act in an objective way and
 12 put its margin on protection rather than taking the risk.
 13 Thank you.

14 It's appendix monthly report Number 11. There's
 15 no page number.

16 EXECUTIVE OFFICER DETRICK: That is the reference,
 17 the same reference as the earlier one that we had.

18 ACTING CHAIRPERSON MCCARTHY: Thank you,
 19 Mr. Schwartzchild.

20 Mr. Faber and Commissioners? All right.
 21 Thank you very much.

22 That's the last witness I have on this issue.
 23 Yes, sir.

24 MR. SCHROEDER: Without being burdensome, is it
 25 possible for me to differentiate classes of fishermen?

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1 ACTING CHAIRPERSON MCCARTHY: I think we've
2 really had a good deal of testimony on this today and
3 I think now we ought to deliberate.

4 I think we got the nuance that there is some
5 differences of opinion among those in commercial fishing.

6 MR. SCHROEDER: That's correct, sir.

7 ACTING CHAIRPERSON MCCARTHY: Or rather I
8 shouldn't describe it as a nuance. It was fairly plain.

9 MR. SCHROEDER: There's very sharp cleavages.

10 ACTING CHAIRPERSON MCCARTHY: Shark cleavages?

11 (Laughter.)

12 EXECUTIVE OFFICER DETRICK: I wanted to make
13 one comment --

14 ACTING CHAIRPERSON MCCARTHY: Miss Detrick.

15 EXECUTIVE OFFICER DETRICK: -- on Mr. --

16 ACTING CHAIRPERSON MCCARTHY: Miss Detrick, pardon
17 me. There's a gentleman standing out there. Mr. Hoyt.

18 MR. HOYT: I just wondered if it would be
19 appropriate for me to return and address a couple of the
20 problems that were alluded to by Mr. Knapp, namely, the
21 level of seismic activity which is --

22 ACTING CHAIRPERSON MCCARTHY: Let me, if I may
23 respectfully, let me suggest that we're in the unenviable
24 position where a number of people in the audience would
25 feel the urge to come up and add to their testimony

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1 now and maybe all with some validity. We'll do the best
2 we can to try to weigh and balance. It's obvious there's
3 a lot of conflict in the evidence before the Commission as
4 to the impacts of seismic activity, both as to the patterns
5 of traffic and as to the measurable or not yet measured
6 impact on marine life.

7 MR. HOYT: I think there's some reason or
8 belief that the level of activity may diminish which you
9 might want to consider.

10 ACTING CHAIRPERSON MCCARTHY: Well, we had some
11 testimony on that, but frankly I think what the members of
12 the Commission would want is very hard evidence of the
13 pattern of decline because I think other people who expressed
14 the concern about the amount of seismic activity would want
15 to see that. But rather than suggesting we could handle
16 that in a meeting like this on an ad hoc basis.

17 Do the Commissioners wish any kind of a break
18 now or shall we just discuss this in a very open fashion
19 in front of all the witnesses here? Let's try to do
20 something that makes everyone unhappy.

21 (Laughter.)

22 COMMISSIONER ORDWAY: We probably can do that.

23 ACTING CHAIRPERSON MCCARTHY: Then maybe we'll
24 make a fair decision.

25 //

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1 My inclination at this moment, and I am for
2 talking about it right out in the open, is to reissue
3 the permit for a fixed period of time and without any
4 judgment as to what I'm going to do at the end of that
5 period of time, and I will say for purposes of discussion
6 three months, because I think that there's some credible
7 evidence that the operators of the seismic activity would
8 be seriously damaged if we were not to reissue for any
9 period of time now and leave it open-ended as to what the
10 judgment would be in two or three months. But I would
11 like to see two kinds of information developed. One
12 refers to the point Mr. Hoyt was just raising: What is
13 the pattern of seismic activity? How many companies
14 with how many boats are involved? What areas are they
15 crisscrossing, and what is the projected usage month by
16 month in the future? That information has to be developed
17 in a timely fashion if we proceed in the form that I'm
18 putting on the table for discussion so that all parties
19 may critique it and attack its validity or support its
20 validity because I think that was an important issue
21 that was raised.

22 The other point that I'm less certain about
23 that I wish to discuss is the available data telling us
24 of the effect on marine life, commercial and non-commercial
25 marine life. I know we did that study of the literature

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1 that Mr. Faber referred to earlier and we had testimony
2 from both sides here which I found less than specific and
3 not too useful to me in trying to understand or measure
4 the impacts. If the traffic is intense enough, I would
5 assume that there would have to be some negative effects
6 on the chance of the commercial fishermen in the area to
7 make a livelihood. I don't know if there's any lasting
8 system damage. I've got to believe that there's a
9 reasonable prospect that it reduces their income or their
10 chance to make an income. That's a pretty hard thing to
11 measure and maybe it's not something we can pin down with
12 scientific precision, but I think maybe we need to
13 understand better what there is. I'm not sure exactly what
14 data will be developed that Mr. Grader referred to and
15 Mr. Knapp referred to in the Santa Barbara meeting, so I
16 can't really comment on that. Apparently they and the
17 commercial fishing interests they represent feel that there
18 could be some useful data there. I don't think anybody
19 has understood here that that data is going to be available
20 three months from now if we were to reissue for three
21 months. But maybe it will give us a better handle on what
22 direction we can take in the development of data. One of
23 the requests that I kept hearing was that we haven't
24 really done enough of a job to measure for our satisfaction
25 with the conditions that we face off the Santa Barbara

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1 coast with the intensity there, with the factual situation
2 there. We haven't done as good a job as we should to
3 understand whether we're looking at the commercial impact
4 or non-commercial impact, what the activity will do to
5 marine life there. I think there could be a very valid
6 point there.

7 For both those reasons and probably for others,
8 I would just put out on the table without making a motion
9 here because frankly I don't know what either of the
10 other two commissioners are going to say or feel about
11 this, I would suggest we consider some fixed time frame.
12 Ninety days seemed to me to be reasonable for us to try
13 to make these judgments and 90 days will produce a fair
14 degree of stability for the people that are doing the
15 seismic work and are there right now.

16 Commissioner Ordway.

17 COMMISSIONER ORDWAY: I believe 90 days is
18 appropriate and also your request for information is
19 appropriate. I think my reasons would be different.
20 But if you --

21 ACTING CHAIRPERSON MCCARTHY: Please state your
22 reasons.

23 COMMISSIONER ORDWAY: Well, I'm not sure I can
24 actually verbalize all of them. I think there is a need
25 for some of these questions to be clarified. Ninety days

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1 appears to be an amount of time in which we could not
2 only gather that information that you're specifically
3 asking for, but also have it early enough so that not only
4 we can study it, but for those interested parties to also
5 be familiar with it so that we don't run into the problem
6 of having nonspecific testimony.

7 ACTING CHAIRPERSON McCARTHY: Commissioner
8 Rasmussen.

9 COMMISSIONER RASMUSSEN: I would support the
10 90-day extension also with the understanding that the
11 studies would be proceeding and that the staff would
12 cooperate to the fullest extent. I would also suggest
13 that we would want to use the conditions outlined by staff
14 in their proposed programs, that that would be incorporated.
15 I just wanted to also get a reaction from staff to this
16 90 days. Is that a sufficient period of time?

17 ACTING CHAIRPERSON McCARTHY: I was going to call
18 on staff next. Have you finished your comments?

19 COMMISSIONER RASMUSSEN: Yes.

20 ACTING CHAIRPERSON McCARTHY: All right.
21 Miss Detrick.

22 EXECUTIVE OFFICER DETRICK: I would suggest that
23 in addition to, rather than extending the existing permits
24 as they now are written, that the conditions -- I think this
25 is your intent, but I want to be sure.

1 ACTING CHAIRPERSON MCCARTHY: Yes.

2 EXECUTIVE OFFICER DETRICK: -- the conditions that
3 begin on page 5 of the green section and runs through the
4 first paragraph on page 6 --

5 ACTING CHAIRPERSON MCCARTHY: You want to use that
6 microphone a little bit better, Claire.

7 EXECUTIVE OFFICER DETRICK: I can't seem to
8 get the thing in front of me.

9 -- be added.

10 ACTING CHAIRPERSON MCCARTHY: The suggestion is
11 that the conditions that start to appear on 92.5 of the --

12 EXECUTIVE OFFICER DETRICK: That's correct.

13 ACTING CHAIRPERSON MCCARTHY: -- green
14 information --

15 EXECUTIVE OFFICER DETRICK: 92.4, bottom of
16 92.4, and top of 92.5.

17 ACTING CHAIRPERSON MCCARTHY: All right. 92.4
18 and 92.5. Do you have other comments, Miss Detrick?

19 EXECUTIVE OFFICER DETRICK: Yes. We also
20 think it might be better, rather than to say three months
21 per se, to have a time certain and say they are permitted
22 through May 31st, 1984. That's essentially 90 days, but
23 we think having a date certain rather than a -- it's a
24 very technical point.

25 ACTING CHAIRPERSON MCCARTHY: All right. That's

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1 on the table for our consideration.

2 Are you finished with your comments?

3 EXECUTIVE OFFICER DETRICK: I wondered if
4 Mr. Taylor has --

5 ACTING CHAIRPERSON MCCARTHY: I'm going to call
6 on Mr. Faber next.

7 EXECUTIVE OFFICER DETRICK: Excuse me.

8 ACTING CHAIRPERSON MCCARTHY: Mr. Faber.

9 MR. FABER: My only recommendation is perhaps
10 we should extend the existing permits with the modifications
11 specified as a particular way of handling it.

12 EXECUTIVE OFFICER DETRICK: All right. That's
13 essentially what I said, but different.

14 ACTING CHAIRPERSON MCCARTHY: All right.

15 Mr. Taylor.

16 MR. TAYLOR: Mr. Chairman, I believe it will be
17 necessary for you to make two findings in connection with
18 such an extension. One is that it is an extension of an
19 ongoing operation and, two, that based upon the information
20 which you have heard today and your evaluation of it, that
21 in the alternative --

22 ACTING CHAIRPERSON MCCARTHY: Use the microphone,
23 Greg, so the people in the audience can hear you.

24 MR. TAYLOR: I'm sorry.

25 Based upon your evaluation of the evidence

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1 submitted today and what you've heard, that you find that
2 this activity has been exempted from the requirements of
3 CEQA as a categorical exemption class six which is that
4 collection of data for information purposes were minimal
5 or no disturbance of state land is involved. Both those
6 findings would be necessary based upon today's hearing in
7 the alternative. Then the recommendation would be that
8 you approve the form of the interim or the form of the
9 extension of the outstanding permit substantially on file
10 and as amended by the recommendations in the calendar item.

11 ACTING CHAIRPERSON MCCARTHY: Does making that
12 finding today, if I were to vote for that, require me to
13 make that finding the next time we meet on this issue
14 because I'm not sure I want that as my permanent --

15 MR. TAYLOR: No.

16 ACTING CHAIRPERSON MCCARTHY: I'm having some
17 hesitation right now.

18 MR. TAYLOR: What we're saying is it is based upon
19 the record that you have heard today and you've
20 indicated there is further information that you'd like,
21 but I think that we need those findings in order for you to
22 act today in the alternative. Either it's an ongoing
23 activity --

24 ACTING CHAIRPERSON MCCARTHY: Use the microphone,
25 Greg.

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MR. TAYLOR: It's an ongoing activity and/or in the alternative that it is a class six exemption from CEQA based upon information that you have before you at this time.

ACTING CHAIRPERSON MCCARTHY: All right. I have some latitude on the matter.

Let's say it into the microphone.

MR. TAYLOR: The recommendation was that you make it in the alternative, both that it is an ongoing activity --

ACTING CHAIRPERSON MCCARTHY: All right. It's not one or the other.

MR. TAYLOR: No. You don't have to pick between the two. It's a double-headed finding.

ACTING CHAIRPERSON MCCARTHY: All right. That's on the table.

Do the Commissioners have any questions of staff? Staff have any further comment?

Do one of the Commissioners want to make a motion embodying May 31st, conditions on 92.4 and 92.5 with the findings Mr. Taylor of the Attorney General's Office just outlined?

COMMISSIONER ORDWAY: I would so move.

ACTING CHAIRPERSON MCCARTHY: Commissioner Ordway moves.

1 COMMISSIONER RASMUSSEN: Second.

2 ACTING CHAIRPERSON MCCARTHY: Commissioner

3 Rasmussen seconds and I agree. So it's a unanimous vote
4 of the Commission for that decision.

5 Thank you all for your patience today.

6 (Thereupon this excerpt of the meeting
7 of the State Lands Commission concluded
8 at 2:25 p.m.)

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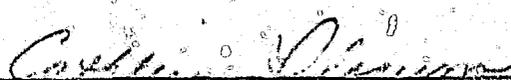
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3 I, CATHLEEN SLOCUM, a Certified Shorthand
4 Reporter of the State of California, do hereby certify:

5 That I am a disinterested person herein; that
6 the foregoing excerpt of proceedings from the meeting
7 of the State Lands Commission was reported in shorthand
8 by me, Cathleen Slocum, a Certified Shorthand Reporter
9 of the State of California, and thereafter transcribed into
10 typewriting.

11 I further certify that I am not of counsel or
12 attorney for any of the parties to said hearing nor in
13 any way interested in the outcome of said hearing.

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 this 27 day of February, 1984.

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19 CATHLEEN SLOCUM
20 Certified Shorthand Reporter
21 License No. 2822
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MEETING
STATE LANDS COMMISSION
STATE OF CALIFORNIA

EXCERPT OF PROCEEDINGS

ROOM 444
STATE CAPITOL
SACRAMENTO, CALIFORNIA

THURSDAY, FEBRUARY 23, 1984
10:40 A.M.

Cathleen Slocum, C.S.R.
License No. 2822

1 My inclination at this moment, and I am for
 2 talking about it right out in the open, is to reissue
 3 the permit for a fixed period of time and without any
 4 judgment as to what I'm going to do at the end of that
 5 period of time, and I will say for purposes of discussion
 6 three months, because I think that there's some credible
 7 evidence that the operators of the seismic activity would
 8 be seriously damaged if we were not to reissue for any
 9 period of time now and leave it open-ended as to what the
 10 judgment would be in two or three months. But I would
 11 like to see two kinds of information developed. One
 12 refers to the point Mr. Hoyt was just raising: What is
 13 the pattern of seismic activity? How many companies
 14 with how many boats are involved? What areas are they
 15 crisscrossing, and what is the projected usage month by
 16 month in the future? That information has to be developed
 17 in a timely fashion if we proceed in the form that I'm
 18 putting on the table for discussion so that all parties
 19 may critique it and attack its validity or support its
 20 validity because I think that was an important issue
 21 that was raised.

22 The other point that I'm less certain about
 23 that I wish to discuss is the available data telling us
 24 of the effect on marine life, commercial and non-commercial
 25 marine life. I know we did that study of the literature

1 that Mr. Faber referred to earlier and we had testimony
2 from both sides here which I found less than specific and
3 not too useful to me in trying to understand or measure
4 the impacts. If the traffic is intense enough, I would
5 assume that there would have to be some negative effects
6 on the chance of the commercial fishermen in the area to
7 make a livelihood. I don't know if there's any lasting
8 system damage. I've got to believe that there's a
9 reasonable prospect that it reduces their income or their
10 chance to make an income. That's a pretty hard thing to
11 measure and maybe it's not something we can pin down with
12 scientific precision, but I think maybe we need to
13 understand better what there is. I'm not sure exactly what
14 data will be developed that Mr. Grader referred to and
15 Mr. Knapp referred to in the Santa Barbara meeting, so I
16 can't really comment on that. Apparently they and the
17 commercial fishing interests they represent feel that there
18 could be some useful data there. I don't think anybody
19 has understood here that that data is going to be available
20 three months from now if we were to reissue for three
21 months. But maybe it will give us a better handle on what
22 direction we can take in the development of data. One of
23 the requests that I kept hearing was that we haven't
24 really done enough of a job to measure for our satisfaction
25 with the conditions that we face off the Santa Barbara

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1 coast with the intensity there, with the factual situation
2 there. We haven't done as good a job as we should to
3 understand whether we're looking at the commercial impact,
4 or non-commercial impact, what the activity will do to
5 marine life there. I think there could be a very valid
6 point there.

7 For both those reasons and probably for others,
8 I would just put out on the table without making a motion
9 here because frankly I don't know what either of the
10 other two commissioners are going to say or feel about
11 this, I would suggest we consider some fixed time frame.
12 Ninety days seemed to me to be reasonable for us to try
13 to make these judgments and 90 days will produce a fair
14 degree of stability for the people that are doing the
15 seismic work and are there right now.

16 Commissioner Ordway.

17 COMMISSIONER ORDWAY: I believe 90 days is
18 appropriate and also your request for information is
19 appropriate. I think my reasons would be different.
20 But if you --

21 ACTING CHAIRPERSON McCARTHY: Please state your
22 reasons.

23 COMMISSIONER ORDWAY: Well, I'm not sure I can
24 actually verbalize all of them. I think there is a need
25 for some of these questions to be clarified. Ninety days

1 appears to be an amount of time in which we could not
2 only gather that information that you're specifically
3 asking for, but also have it early enough so that not only
4 we can study it, but for those interested parties to also
5 be familiar with it so that we don't run into the problem
6 of having nonspecific testimony.

7 ACTING CHAIRPERSON McCARTHY: Commissioner
8 Rasmussen.

9 COMMISSIONER RASMUSSEN: I would support the
10 90-day extension also with the understanding that the
11 studies would be proceeding and that the staff would
12 cooperate to the fullest extent. I would also suggest
13 that we would want to use the conditions outlined by staff
14 in their proposed programs, that that would be incorporated.
15 I just wanted to also get a reaction from staff to this
16 90 days. Is that a sufficient period of time?

17 ACTING CHAIRPERSON McCARTHY: I was going to call
18 on staff next. Have you finished your comments?

19 COMMISSIONER RASMUSSEN: Yes.

20 ACTING CHAIRPERSON McCARTHY: All right.
21 Miss Detrick.

22 EXECUTIVE OFFICER DETRICK: I would suggest that
23 in addition to, rather than extending the existing permits
24 as they now are written, that the conditions -- I think this
25 is your intent, but I want to be sure.

1 ACTING CHAIRPERSON MCCARTHY: Yes.

2 EXECUTIVE OFFICER DETRICK: -- the conditions that
3 begin on page 5 of the green section and runs through the
4 first paragraph on page 6 --

5 ACTING CHAIRPERSON MCCARTHY: You want to use that
6 microphone a little bit better, Claire.

7 EXECUTIVE OFFICER DETRICK: I can't seem to
8 get the thing in front of me.

9 -- be added.

10 ACTING CHAIRPERSON MCCARTHY: The suggestion is
11 that the conditions that start to appear on 92.5 of the --

12 EXECUTIVE OFFICER DETRICK: That's correct.

13 ACTING CHAIRPERSON MCCARTHY: -- green
14 information --

15 EXECUTIVE OFFICER DETRICK: 92.4, bottom of
16 92.4, and top of 92.5.

17 ACTING CHAIRPERSON MCCARTHY: All right. 92.4
18 and 92.5. Do you have other comments, Miss Detrick?

19 EXECUTIVE OFFICER DETRICK: Yes. We also
20 think it might be better, rather than to say three months
21 per se, to have a time certain and say they are permitted
22 through May 31st, 1984. That's essentially 90 days, but
23 we think having a date certain rather than a -- it's a
24 very technical point.

25 ACTING CHAIRPERSON MCCARTHY: All right. That's

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1 on the table for our consideration.

2 Are you finished with your comments?

3 EXECUTIVE OFFICER DETRICK: I wondered if
4 Mr. Taylor has --

5 ACTING CHAIRPERSON MCCARTHY: I'm going to call
6 on Mr. Faber next.

7 EXECUTIVE OFFICER DETRICK: Excuse me.

8 ACTING CHAIRPERSON MCCARTHY: Mr. Faber.

9 MR. FABER: My only recommendation is perhaps
10 we should extend the existing permits with the modifications
11 specified as a particular way of handling it.

12 EXECUTIVE OFFICER DETRICK: All right. That's
13 essentially what I said, but different.

14 ACTING CHAIRPERSON MCCARTHY: All right.
15 Mr. Taylor.

16 MR. TAYLOR: Mr. Chairman, I believe it will be
17 necessary for you to make two findings in connection with
18 such an extension. One is that it is an extension of an
19 ongoing operation and, two, that based upon the information
20 which you have heard today and your evaluation of it, that
21 in the alternative --

22 ACTING CHAIRPERSON MCCARTHY: Use the microphone,
23 Greg, so the people in the audience can hear you.

24 MR. TAYLOR: I'm sorry.

25 Based upon your evaluation of the evidence

1 submitted today and what you've heard, that you find that
 2 this activity has been exempted from the requirements of
 3 CEQA as a categorical exemption class six which is that
 4 collection of data for information purposes were minimal
 5 or no disturbance of state land is involved. Both those
 6 findings would be necessary based upon today's hearing in
 7 the alternative. Then the recommendation would be that
 8 you approve the form of the interim or the form of the
 9 extension of the outstanding permit substantially on file
 10 and as amended by the recommendations in the calendar item.

11 ACTING CHAIRPERSON MCCARTHY: Does making that
 12 finding today, if I were to vote for that, require me to
 13 make that finding the next time we meet on this issue
 14 because I'm not sure I want that as my permanent --

15 MR. TAYLOR: No.

16 ACTING CHAIRPERSON MCCARTHY: I'm having some
 17 hesitation right now.

18 MR. TAYLOR: What we're saying is it is based upon
 19 the record that you have heard today and you've
 20 indicated there is further information that you'd like,
 21 but I think that we need those findings in order for you to
 22 act today in the alternative. Either it's an ongoing
 23 activity --

24 ACTING CHAIRPERSON MCCARTHY: Use the microphone,
 25 Greg.

1 MR. TAYLOR: It's an ongoing activity and/or
2 in the alternative that it is a class six exemption from
3 CEQA based upon information that you have before you at
4 this time.

5 ACTING CHAIRPERSON MCCARTHY: All right. I have
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7 Let's say it into the microphone.

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