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MEETING
STATE LANDS COMMISSION
STATE OF CALIFORNIA

ORIGINAL

STATE CAPITOL
ROOM 447
SACRAMENTO, CALIFORNIA

THURSDAY, MAY 28, 1987
10:00 A.M.

Nadine J. Parks
Shorthand Reporter

MEMBERS PRESENT

1
2 Ed Fishbein, representing Leo T. McCarthy, Lieutenant
Governor, Chairman

3 Russ Gould, representing Jesse R. Huff, Director of
4 Finance, Commissioner

5 Jim Tucker, Acting Chairman, representing Gray Davis,
6 State Controller, Commissioner

STAFF PRESENT

7
8
9 Claire T. Dedrick, Executive Officer
James Trout, Assistant Executive Officer
10 Robert Hight, Chief Counsel
Jan Stevens, Deputy Attorney General
11 Lance Kiley
Dwight Sanders
12 Lorna Burks, Executive Secretary
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I N D E X

	<u>Page</u>
1	
2	
3	Proceedings 1
4	Confirmation of Minutes of April 23, 1987 and Special Meetings of May 4 and 6, 1987 1
5	Consent Calendar, C-1 through C-17, with the 6 exception of C-1-E 2
7	<u>Agenda Items</u> (Regular Calendar)
8	Item 18 2
9	Item 19 2
10	Item 20 3
11	Item 21 (Off Calendar)
12	Item 22 4
13	Item 23 (Off Calendar)
14	Item 24 4
15	Item 25 4
16	Item 26 5
17	Item 27 5
18	Item 28 5
19	Item 29 6
20	Item 30 6
21	Item 31 7
22	Item 32 7
23	Item 33 8
24	Item 34 8
25	Item 35 8

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	<u>Page</u>
1	INDEX, continued. . .
2	Item 36 9
3	Item 37 9
4	Item 38 10
5	Staff Presentation by Dwight Sanders 11
6	Comments by Acting Chairman 12
7	Mr. Charles Darden, President, International Association of 8 Geophysical Contractors 13
9	Discussion 15
10	Zeke Grader, Executive Director of Pacific Coast Federation of 11 Fishermen's Associations 16
12	Discussion 17
13	William Douros, County of Santa Barbara Resource Management 14 Department, Energy Division 18
15	Discussion 23
16	Rober Faber, International Association of Geophysical 17 Contractors 25
18	Discussion 26
19	William Douros, County of Santa Barbara 27
20	Vote on Item 38 29
21	Adjournment 29
22	Certificate of Reporter 30
23	
24	
25	

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P R O C E E D I N G S

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ACTING CHAIRMAN TUCKER: The State Lands Commission will now come to order.

The first order of business is the confirmation of the minutes, which will be confirmed by unanimous consent.

We have a consent calendar. If there are any items anyone wishes to remove from the consent calendar, they should indicate at this time, otherwise, any members --

EXECUTIVE OFFICER DEDRICK: Item C-1-E is off the consent calendar.

MR. HIGHT: Mr. Chairman?

ACTING CHAIRMAN TUCKER: Yes?

MR. HIGHT: For the record, I will state that you will be acting in a voting capacity for the State Controller, and Ed Fishbein will be sitting in a nonvoting capacity for the Lt. Governor, and Russ Gould will be sitting for the Department of Finance.

ACTING CHAIRMAN TUCKER: And who is sitting in for you?

MR. HIGHT: Jan.

(Laughter.)

ACTING CHAIRMAN TUCKER: If there are no items

1 to be taken off the consent calendar, any objections from
2 the members, the consent calendar is approved.

3 The first item on the normal calendar is Item
4 18, Pacific Gas and Electric Company.

5 MR. TROUT: This is a reciprocal road easement,
6 in which we would grant PG & E a right-of-way and they, in
7 turn, would grant us a right-of-way across their property.
8 This will facilitate a timber harvest on PG & E land.

9 ACTING CHAIRMAN TUCKER: Any comments from
10 anyone on this, from the members? Item 18 is approved.

11 Incidentally, if any individuals in the
12 audience wish to speak on any of these items, fill out a
13 form that we have here; it would be helpful. Otherwise,
14 we're liable to zoom right by you, and you'll realize
15 about three items later that you wanted to say something.
16 We'll still be glad to hear you, of course.

17 EXECUTIVE OFFICER DEDRICK: Mr. Chairman, you
18 may wish to announce that Items 21 and 23 have been
19 removed from the calendar.

20 ACTING CHAIRMAN TUCKER: That's Bank of
21 America, applicant, and River Bank Village --

22 EXECUTIVE OFFICER DEDRICK: Marina.

23 ACTING CHAIRMAN TUCKER: -- Marina are removed
24 from the calendar.

25 Item 19, Waldo --

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1 EXECUTIVE OFFICER DEDRICK: Item 19 is an
2 approval of a five-year general permit for an annual
3 seasonal dam on Lagunitas Creek at Pt. Reyes in Marin
4 County. The permit requires -- coincides with a Federal
5 Corps of Engineers' permit. It requires some environmental
6 work be done. And prior to the next season in which the
7 dam is installed -- it's somewhat of an emergency
8 situation in the sense that the dam -- this is a dry year
9 and the dam needs to go in early enough to keep the fresh
10 water in the area of Lagunitas Creek, which assists
11 the North Marin Water District's water situation.

12 ACTING CHAIRMAN TUCKER: Mr. John Nelson? Do you
13 wish to speak to this item, sir?

14 MR. NELSON: I only wanted to talk if you had
15 some adverse testimony, then I'd like to rebut that. I
16 don't think you're going to have that. We would recommend
17 staff's approval.

18 ACTING CHAIRMAN TUCKER: Any questions from the
19 members?

20 Item 19 is approved.

21 No. 20?

22 EXECUTIVE OFFICER DEDRICK: No. 20 is the
23 Department of Corrections and its agreement between the
24 State Lands Commission, as the School Land Bank trustee,
25 which you are sitting as in this capacity, to sell and

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1 subsequently issue a patent to the Western Municipal
2 Water District of Riverside County for an easement --
3 permanent easement on some school land there in the Norco
4 area.

5 ACTING CHAIRMAN TUCKER: Any comments from the
6 public, the members? Item 20 is approved.

7 Item 22, Sierra Pacific Industries?

8 EXECUTIVE OFFICER DEDRICK: Item 22 is an
9 authorization fo accept a bid for \$188,791.10 for a
10 timber sale in Beckworth in Plumas County. That revenue
11 passes to the State Teachers Retirement System.

12 ACTING CHAIRMAN TUCKER: Don't tell the
13 Governor.

14 Any comments from the public, members of the
15 Commission? Okay. 22 is approved.

16 23 is withdrawn. 24, East Bay Regional
17 Park District.

18 EXECUTIVE OFFICER DEDRICK: This is a request
19 for approval to reduce the public liability insurance
20 requirement to two and a half million from five million
21 on a 49-year lease for a public agency lease in Pinole
22 County (sic) to the East Bay Regional Park District.

23 ACTING CHAIRMAN TUCKER: Any comments from the
24 public, members of the Commission? 24 is approved.

25 Item 25, Chevron?

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1 EXECUTIVE OFFICER DEDRICK: This is an amendment
2 of a dredging permit in San Francisco Bay at Chevron's
3 facility at Richmond to change the royalty rate to comply
4 with the recent change in policy by the State Lands
5 Commission.

6 ACTING CHAIRMAN TUCKER: Any comments from the
7 public, members of the Commission? 25 is approved.
8 26, Edgington Oil.

9 EXECUTIVE OFFICER DEDRICK: This is a sell-off of
10 a royalty oil sale in the Long Beach Unit. The winning
11 bidder bid 72.37 cents.

12 ACTING CHAIRMAN TUCKER: Any comments from the
13 public, members of the Commission? 26 is approved.
14 27, Caljet?

15 EXECUTIVE OFFICER DEDRICK: This is a royalty
16 oil sale in Santa Barbara County. Caljet was the high
17 bidder at 51.59 cents over posted price.

18 ACTING CHAIRMAN TUCKER: Comments? 27 is
19 approved.

20 28.

21 EXECUTIVE OFFICER DEDRICK: Another royalty
22 oil sale. Lunday-Thagard is the winning bidder at 68.8
23 cents at the Ellwood Field in Santa Barbara County.

24 ACTING CHAIRMAN TUCKER: Any comments? 28 is
25 approved.

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1 29, Chevron.

2 EXECUTIVE OFFICER DEDRICK: 29, Chevron. It's
3 a deferment of drilling on four leases in Santa Barbara
4 County. This is a quarterly report that the Commission
5 requires Chevron to give as to their activities at that
6 location.

7 ACTING CHAIRMAN TUCKER: And they've indicated
8 what?

9 EXECUTIVE OFFICER DEDRICK: They've asked for
10 another deferment of drilling. We are recommending that
11 you grant it.

12 ACTING CHAIRMAN TUCKER: Are they doing
13 anything on these leases?

14 EXECUTIVE OFFICER DEDRICK: Well, they've been
15 working on getting permits. And this is quite a
16 complicated situation, because it involves those four
17 leases. It will be part of the area -- the numbers of
18 leases that we'll be looking at in this new study.

19 In the meantime, to comply with the law and the
20 terms of their lease and the Commission's requirement, they
21 do need your authorization to defer drilling; otherwise,
22 they're required to do something. Okay?

23 ACTING CHAIRMAN TUCKER: Okay. Any comments?
24 29 is approved.

25 30, Pacific Gas and Electric Company.

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1 EXECUTIVE OFFICER DEDRICK: This is for dredging
2 at the Moss Landing Power Plant. And this is where we
3 do not charge for disposal of spoils if they dispose in an
4 approved Corps of Engineers dump, which they will be
5 doing.

6 ACTING CHAIRMAN TUCKER: Any comments from the
7 public, members? Okay. 30 is approved.

8 Go to our legal items.

9 EXECUTIVE OFFICER DEDRICK: Mr. Hight will
10 handle the legal items.

11 ACTING CHAIRMAN TUCKER: Item 31.

12 MR. HIGHT: This one, Mr. Chairman, is the
13 approval of a sublease and of an agreement on the
14 operation of the wharf, which is granted to the City of
15 Capitola.

16 ACTING CHAIRMAN TUCKER: Okay. We have the
17 City Manager and the City Attorney here from Capitola.
18 Do you gentlemen wish to be heard?

19 UNIDENTIFIED VOICE FROM AUDIENCE: No. We'd
20 just like to support the staff's recommendation.

21 ACTING CHAIRMAN TUCKER: Any comments from the
22 public other than that? Okay. From the members? All
23 right. 31 is approved.

24 32?

25 MR. HIGHT: 32, Mr. Chairman, is a settlement

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1 of litigation involved geothermal rights in the Geysers,
2 whereby the State will receive one-sixteenth general
3 reservation.

4 ACTING CHAIRMAN TUCKER: Any comments from
5 the public on this? Okay. Item 32 is approved. 33.

6 MR. HIGHT: 33 is a consent to pooling of
7 the State's one-sixteenth mineral reservation in the
8 preceding item.

9 ACTING CHAIRMAN TUCKER: Any comments? 33 is
10 approved.

11 34, City of Petaluma?

12 MR. HIGHT: It's a compromise title and
13 settlement agreement in Petaluma that will allow the
14 City of Petaluma to build a marina and some commercial
15 buildings.

16 ACTING CHAIRMAN TUCKER: Any comments? 34 is
17 approved.

18 35, Browning-Ferris.

19 MR. HIGHT: Is the authorization to enter
20 settlement agreement in Redwood City, whereby the
21 Commission is acting as Kapaloff Land Bank Trustee to
22 accept \$40,000 in lieu of the State's sovereign interest
23 in this parcel.

24 ACTING CHAIRMAN TUCKER: Any comments? 35 is
25 approved.

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1 36, Chevron?

2 MR. HIGHT: 36 is a settlement with Chevron of
3 some royalty gas claims. Chevron is paying the State
4 \$727,663.

5 ACTING CHAIRMAN TUCKER: Thank you. Any
6 comments on 36? That's approved.

7 37.

8 MR. TROUT: Mr. Chairman, on Item 37, this is
9 mostly a housekeeping measure to allow the Commission
10 staff to move ahead with things such as blueprinting,
11 contracts with the Reclamation Board, certain other of our
12 regular ongoing activities.

13 The only change that we wish to make is that on
14 Item 1 -- not Item 1 -- the Attorney General item, which
15 is, I think, Item 4. It is shown as \$324,000. The
16 Attorney General's budget shows the reimbursement of
17 \$700,000, which is their estimated cost for this item.

18 We ask your approval to change that figure to
19 \$700,000, and then approve the entire item. I should
20 note, that because our figure is \$324,000, we will have to
21 come to the Department of Finance with a Section 28
22 letter to raise it to \$700,000.

23 We will not sign a contract for an amount
24 above 324 until the Section 28's approved.

25 ACTING CHAIRMAN TUCKER: That's fine. And then

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1 in No. 1, the contract, you think there's no objection
2 to raise it to 250 maximum instead of a hundred?

3 MR. TROUT: Item 1?

4 ACTING CHAIRMAN TUCKER: Yes.

5 Okay? All right. Item 37 is approved.

6 38, Western Geophysical.

7 EXECUTIVE OFFICER DEDRICK: Item 38 is the
8 consideration of an extension of our nonexclusive
9 Geophysical Survey permits on lands under the jurisdiction
10 of the State Lands Commission.

11 State law requires that operators must hold a
12 permit from the State Lands Commission to operate in State
13 water. It is discretionary with the State Lands
14 Commission whether such a permit is granted or not.

15 The existing program is coming to its end
16 at the end of this month, and certain permits will
17 expire at the end of May.

18 Staff is requesting an extension of time of 90
19 to 180 days at the discretion of the Commission to give
20 us time to hold some more meetings with interested
21 parties, including the County, the fishermen, and the
22 geophysical operators. And we hope to receive during that
23 period the results of several studies of the effects that
24 are ongoing, primarily by the Mineral Management Service,
25 so that we can incorporate whatever mitigations those

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1 studies suggest into a permit program.

2 We would like to be able to have that time
3 period in order to gain more information, and meet with
4 people, and be sure that we are satisfying within the
5 concern.

6 Dwight Sanders has been in charge of this
7 program for some time. And I don't know whether you have
8 other things you'd like to present at this point,
9 Dwight?

10 MR. SANDERS: Yes, I do.

11 There are two letters that have been
12 distributed to the Commission and to staff concerning
13 this particular item, one of which is from the Mediation
14 Institute which has been working with the members of the
15 Joint Oil and Fisheries Committee. The other is from
16 Mr. Chase Mellon, who represents some commercial
17 fishermen in the Santa Barbara area.

18 With the Commission's indulgence, I would like,
19 pursuant to the Joint Oil and Fisheries Committee's
20 request, I'd like to read their letter into the record
21 at this time.

22 ACTING CHAIRMAN TUCKER: You don't have to read
23 it.

24 EXECUTIVE OFFICER DEDRICK: Why don't you just
25 summarize it.

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1 MR. SANDERS: Okay. In essence, the
2 members of the Joint Committee recommend that the State
3 Lands Commission readopt the current permit program
4 without any changes, which is incorporated within the
5 staff's recommendation before you.

6 ACTING CHAIRMAN TUCKER: Okay. Before we hear
7 from members of the public on this, I'd just like to
8 comment briefly.

9 All of the members of the Commission and
10 myself, Miss Ordway, and Susan Wallace, have individually
11 talked with all of the parties concerned in this matter.
12 And I think everybody's attempting to fashion a solution
13 that is sensitive both to the concerns of the county,
14 the fishermen, and the geophysical operators.

15 The 120 days, it seems to me, is a reasonable
16 compromise that allows the operators some predictability
17 in terms of their business arrangements, and at the same
18 time, it does not allow for just a continuation of
19 business as usual, but gives us the opportunity to try
20 and address the problems that have been raised. And
21 that will be my motion at the time this matter comes up
22 for a vote. That is, to extend this matter 120 days
23 and to assure anyone who's interested that we will be
24 carefully considering any reports or studies that are
25 completed within that time period.

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1 With that in mind, Mr. Faber, do you or any
2 of your people wish to be heard at this time?

3 MR. FABER: There are several of us here.
4 Mr. Darden is the President of the International Association
5 of Geophysical Contractors, and he'll take a
6 minute to make a statement.

7 ACTING CHAIRMAN TUCKER: Sure. Okay.
8 Mr. Darden?

9 MR. DARDEN: Thank you. Mr. Chairman, members
10 of the Commission, and staff. I'm Charles Darden, the
11 President of the International Association of Geophysical
12 Contractors.

13 Our trade association represents the geophysical
14 research companies that carry out virtually all of the
15 petroleum geophysical work in the U.S. and about 95
16 percent of this work in the world.

17 Our organization has been a full participant
18 with the Joint Oil and Fisheries Committee for four years
19 now. And we believe that a tremendous amount of progress
20 in mitigating potential conflicts and resolving problems
21 that have taken place through that group.

22 Mr. Sanders mentioned a letter that the
23 Mediation Institute submitted to the Commission on behalf
24 of this Committee. If I might, I'd like to excerpt a
25 couple of sentences from that letter.

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1 Quoting:

2 "The members of the Joint Committee
3 recommend that the State Lands
4 Commission readopt the current permit
5 program provisions without any changes.
6 These provisions afford our industry
7 the flexibility of developing voluntary
8 measures for avoiding conflicts that
9 might result from the interaction
10 between geophysical operators and
11 fishing interests.

12 "In addition, the language which
13 specifies that the issuance of permits
14 can be reconsidered pending resubmission
15 of relevant new data or the completion
16 of ongoing studies, addresses any
17 unforeseeable issues that might emerge
18 in the future."

19 As you may already know, both of our industries
20 are participants with the State Lands Commission and other
21 State and Federal agencies in several of the ongoing
22 studies.

23 Mr. Chairman, that's essentially our statement
24 and our position. We have specifically, as Mr. Faber
25 indicated, asked a number of knowledgeable industry people

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1 to be with us today to handle any questions that you
2 might have about the program and the activity.

3 As we understand it, this hundred-twenty days
4 is needed by the Commission staff to fine tune this
5 program.

6 While we would be supportive of a six-month
7 extension to the existing permits while the details are
8 being worked out, we're hopeful that the information will
9 be out and dealt with during this period so that we can
10 resume normal operations at the completion of that six-
11 month time frame.

12 ACTING CHAIRMAN TUCKER: Any questions? One
13 thing I would indicate is that I think that all the
14 parties need to use this 120 days to continue to work
15 together to try and come up with an agreement that meets
16 everyone's needs to the extent that that's possible.
17 I mean we shouldn't view this 120 days simply waiting for
18 these reports to come in and then for us to read them.

19 It's a good opportunity for the discussions that
20 have gone on to continue, accelerated if necessary, in
21 order to get this issue resolved from everybody's
22 perspective.

23 MR. DARDEN: That would certainly be our goal.

24 ACTING CHAIRMAN TUCKER: The other thing I
25 wanted to ask you is -- this is really an unrelated matter.

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1 But since I have you here, I'll ask Mr. Grader,
2 too. You might keep in mind that the Commission is going
3 to be undertaking a study of the cumulative impacts
4 of oil development on our offshore areas. And it seems
5 to me that the expertise that some of your members have
6 might be very helpful to us in conducting that study. So,
7 you might want to keep that in mind, that any help that
8 you and also the fishermen can provide us in terms of
9 conducting the study -- fashioning and conducting it --
10 would be very helpful.

11 MR. DARDEN: We'd look forward to that.

12 ACTING CHAIRMAN TUCKER: Thank you. Anybody
13 else, Mr. Faber, from your --

14 MR. FABER: Not at this time, unless there are
15 additional questions.

16 ACTING CHAIRMAN TUCKER: Mr. Grader?

17 MR. GRADER: Yes, Mr. Chairman, members of the
18 Commission, my name is Zeke Grader, and I'm the Executive
19 Director for the Pacific Coast Federation of Fishermen's
20 Associations. We represent 22 different commercial
21 fishermen's organizations here within the State of
22 California.

23 We're here this morning to ask your support of
24 your staff recommendation for the 90 to 180 day extension.
25 I think it is important for us both to look at some of

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1 the studies that we hope will be coming in as well as
2 to develop some possible windows that will be helpful to
3 us to avoid conflicts between geophysical operations and
4 fishing operations. So, again, we're in support of
5 your staff's recommendation.

6 ACTING CHAIRMAN TUCKER: Okay. Mr. Grader, I'd
7 like to make the same statement to you about using this
8 time period in order for you and the operators -- your
9 group and the operators to continue your discussions.
10 One of the things that I found in the meetings that I've
11 had so far is that there do seem to be some factual
12 disputes. And it seems to me some of those factual
13 disputes can be resolved. I mean either certain things
14 are happening or they're not happening.

15 And it's very difficult for me to sit in an
16 office and have two people describe the same phenomenon
17 in very different ways and know how to resolve that.

18 You know, I'm not out there. I have no reason
19 to disbelieve either person, but obviously they're
20 perceiving the same event in a very different way. So,
21 to the extent that we can -- all our people get together
22 and talk about those factual disputes so that we can try
23 to understand them better and hopefully reduce to a
24 minimum the number of those, I think we will make a lot
25 of progress.

MR. GRADER: We'll certainly commit to that.

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1 And I think we have made some progress already. --

2 ACTING CHAIRMAN TUCKER: I think you have.

3 MR. GRADER: -- in eliminating some factual
4 disputes, and I think there'll be some further progress
5 made. I don't know if it will eliminate each and every
6 one of them, but we'll certainly narrow this down.

7 ACTING CHAIRMAN TUCKER: Good. Thank you very
8 much.

9 Somebody else like to be heard on this item?

10 EXECUTIVE OFFICER DEDRICK: Mr. Douros, County
11 of Santa Barbara, has some comments.

12 ACTING CHAIRMAN TUCKER: Okay.

13 MR. DOUROS: Thank you, Mr. Chairman, members
14 of the Commission.

15 I'm Bill Douros from the Energy Division of
16 the Santa Barbara County Resource Management Department.

17 I thank you for the opportunity to comment on
18 the geophysical permit program. Due to the late
19 noticing of this hearing and late receipt of the staff
20 calendar item, this testimony is presented on behalf of
21 Santa Barbara County's Resource Management Department
22 rather than the Board of Supervisors.

23 Our Department objects to the extension of the
24 existing permit program for a number of reasons. First,
25 the project originally proposed by the staff involved

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1 reissuance -- extension of the existing geophysical
2 permit program for three years.

3 Your Commission staff proposed environmental
4 review including public circulation and subsequent
5 certification of a draft negative declaration to which the
6 county provided comments on January 20th, 1987 and April
7 15th, 1987.

8 To this date, the county's, the Coastal
9 Commission staff, and others' comments have not received
10 response, and the draft negative declaration is apparently
11 no longer being proposed for certification.

12 Yet, in the most recent State Lands calendar
13 item, staff's proposing that the existing permit be
14 extended anyway. This extension is inappropriate because
15 of the environmental document -- because the environmental
16 document proposed for the project has not been completed,
17 and substantial public comments have not been addressed.

18 The project description has now been modified.
19 The three-year extension has been changed at the last
20 minute to an extension of 90 or 180 days. This does not
21 preclude the necessity for review of public or interested
22 agencies (sic).

23 An extension of the program for any length of
24 time is a new project requiring environmental review and
25 public comment prior to your approval.

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1 Procedural issues aside, any extension of
2 existing permits without environmental review is
3 inappropriate, because substantial new information has
4 arisen regarding the extent of effects from geophysical
5 activities. Two multimillion dollar studies germane to
6 this very issue have been conducted with the cooperation
7 and involvement of the geophysical industry and their
8 results are due for imminent release.

9 Early indications from a study performed by the
10 Minerals Management Service are that geophysical activities
11 have a significant effect on dispersing fish schools,
12 frightening adult fish, and reducing a fisherman's catch,
13 all consistent with the results of a similar Norwegian
14 study.

15 A second study, in which the State Lands
16 Commission participates, examines the effect of geophysical
17 activities on fish and crustacean eggs and larvae and
18 appears likely to show significant effects as well.

19 Because of the preliminary results of these
20 studies and substantial public controversy, and based on
21 CEQA guidelines, Section 15064(h), which states that an
22 environmental impact report must be prepared, quote, "if
23 there is serious public controversy over the environmental
24 effects of a project. . ." or "if there is disagreement
25 between experts over the significance of an effect. . .,"

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1 unquote, it will be impossible for the Commission to make
2 finding 2 in the calendar item.

3 That finding requires the Commission to, quote,
4 "Determine that there is no substantial evidence that the
5 program under which issuance of the permit is proposed, as
6 revised and approved, will have a significant effect on
7 the environment," unquote.

8 Should the Commission extend the existing
9 permits allowing geophysical surveys to occur and make
10 proposed Finding 2, they may be subjecting the State to
11 serious legal challenge and possible litigation.

12 For these reasons, Santa Barbara County has
13 requested that an EIR be prepared for this project. If
14 the Commission chooses, nevertheless, to continue the
15 geophysical permit program at this time without additional
16 environmental review, we believe there are a number of
17 feasible mitigation measures which would reduce this
18 potential for significant adverse effects of the program.

19 Mitigations, some of which we have had success
20 with on development projects, have been presented
21 previously to the State Lands staff by the county and by
22 other agencies, and are summarized in an attachment to
23 this testimony. Some of these include:

24 One, required consultation with all commercial
25 fisheries in each region. From this, establish time

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1 periods when geophysical activity -- activity will not be
2 allowed in order to avoid peak fishing seasons.

3 Two, a required substantial buffer zone, perhaps
4 five kilometers, from all vessels actually engaged in
5 fishing.

6 Three, prohibition of geophysical activities
7 during the peak whale migration seasons in each of the
8 four regions. Require a three to four kilometer buffer
9 should marine mammals be present.

10 And, four, reduce the modification, suspension,
11 revocation time period from 30 days to 24 hours.

12 Without adopting these and the other mitigation
13 measures in Attachment A, the finding necessary to adopt
14 the negative declaration necessary to extend the existing
15 permit, as proposed by staff, cannot be made.

16 Without these measures, we believe the entire
17 geophysical permit program, including issued permits, should
18 be halted until the results of both the MMS and eggs and
19 larvae committee studies are released.

20 At that time, an EIR should be prepared, unless
21 a negative declaration can identify mitigation measures
22 which would eliminate all significant adverse effects of
23 the program.

24 After certification of the environmental
25 document, the Commission would be in a position to develop

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1 and approve an environmentally sensitive geophysical
2 permit program which balances the needs of competing
3 resources entrusted to you.

4 Thank you.

5 ACTING CHAIRMAN TUCKER: Thank you. Any
6 questions?

7 MR. HIGHT: Mr. Chairman, I guess that it is
8 the position of staff that the procedure under which the
9 Commission is proceeding, using the previous negative
10 declaration, is a valid procedure. And I guess that's
11 the only thing I'd like to comment on in regard to the
12 County's testimony.

13 ACTING CHAIRMAN TUCKER: Well, it seems to me
14 that what's even more relevant is that the position of the
15 Commission is that there's sufficient facts based on the
16 120 day continuance that would justify the finding of
17 no substantial effect.

18 I did want to ask -- aren't there conditions
19 now, Mr. Sanders, on the permits?

20 MR. SANDERS: Yes, Mr. Chairman, there are
21 conditions on the permit. I can give you some examples
22 from the mitigation that the county has proposed. For
23 instance, No. 1 required consultation with all commercial
24 fisheries in each region, et cetera. That is ongoing
25 through the Joint Oil and Fisheries Committee. In

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1 addition, the permit requires geophysical operators to
2 consider peak periods, peak fishing periods when scheduling
3 geophysical activities.

4 Again, it's an example. No. 3, prohibition
5 of geophysical activities during peak whale migration
6 seasons for each of the four regions; require a buffer
7 zone, et cetera, we have worked with the Federal agency
8 involved or given the responsibility of protecting the
9 marine mammals, the National Marine Fisheries Service,
10 which has recommended that no geophysical operations begin
11 if marine mammals -- particularly whales -- are sighted
12 within 2.5 kilometers. That is a condition of the permit.
13 It is a condition that was worked out with the agency
14 having sole responsibility for the protection of these
15 mammals.

16 So, there are conditions within the permit.
17 And those condition may or may not need to be revised
18 based upon the information that comes to us.

19 ACTING CHAIRMAN TUCKER: And that's the purpose
20 of the 120 days, one of the purposes is for you to
21 consider comments such as this?

22 MR. SANDERS: That's correct, Mr. Chairman.
23 And to receive results that have been alluded to here but
24 have not been released to the public.

25 ACTING CHAIRMAN TUCKER: Any other comments from

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1 the public? Mr. Faber?

2 MR. FABER: My name is Robert Faber. I'm here
3 on behalf of the International Association of Geophysical
4 Contractors. I'd just like to make a couple of brief
5 statements about the testimony by the county.

6 The studies that were primarily referred to that
7 are upcoming, which I think are a major impetus for this
8 extension period, are studies which all of the parties
9 have been participating in over the last couple of years.
10 But the studies themselves are not yet released. And my
11 understanding is that those studies are being conducted
12 within a confidential context until the information becomes
13 available to the public. And the information has not,
14 in fact, been made available to the public. So, for
15 instance, our association wouldn't have had an opportunity
16 to review that information to justify the various
17 mitigation measures which the county has suggested here
18 this morning.

19 Consequently, it makes a good deal more sense
20 to us to wait until that information is out and all the
21 parties have had an opportunity to look at it.

22 The action of the Commission this morning to
23 base its extension on the prior circulated negative
24 declaration -- we concur with staff -- is an accurate and
25 appropriate method, because the scientific evidence that

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1 has come out since that is largely consistent with the
2 amount of information that we had up to that point in
3 time. And I think it would be premature to say whether
4 these new studies, which are still under final stages,
5 have any particular result as we said.

6 COMMISSIONER GOULD: Just a question in
7 relation to that. Do you expect them to be released
8 within the 120 days?

9 MR. FABER: My understanding is they have --
10 they've been working on them, and what is referred to as
11 the MMS dispersal study, is supposed to be out within
12 the next couple of weeks.

13 The one that deals with the eggs and larvae
14 question will be done sometime after that. I can just
15 ask one person in the audience -- Dee (phonetic)?

16 VOICE IN AUDIENCE: Yes.

17 MR. FABER: Do you expect that within the 120
18 days?

19 VOICE IN AUDIENCE: Yes, our comments --
20 (Thereupon the reporter requested the speaker
21 to speak louder, but was not successful
22 in doing so.)

23 VOICE IN AUDIENCE: Yes. (Partial transcription
24 of comments) Hopefully, we will have a completed draft
25 and a final within a month or so.

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1 MR. FABER: Okay. So, it looks like both
2 of those studies should be out within the time period.

3 ACTING CHAIRMAN TUCKER: Would you identify
4 the --

5 MR. FABER: Yes. That is Dee Chamberlain.

6 So, we think that there is not the difference
7 of opinion on the record that the county alluded to and
8 that, in fact, the action by the staff would be
9 appropriate.

10 ACTING CHAIRMAN TUCKER: Any other comments of
11 the public?

12 MR. LOUROS: Bill Douros from the county. I just
13 want to make two clarifications.

14 The mitigation measures that we do cite in
15 Attachment A are measures which the county has imposed.
16 Some of them are measures that the county has imposed on
17 development projects, and they aren't from any document
18 to date. And some of the other ones come from ones that
19 we have generated in terms of solutions to these problems
20 based on the Coastal Commission, which I believe their
21 comments are in the record.

22 The other clarification is in the first
23 mitigation measure, we're looking for much more than a
24 consideration of the peak fishing seasons, rather a
25 window of time where they would be allowed -- a requirement

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1 of the Commission rather than -- more than just a
2 consideration.

3 So, I agree the requirement to consider the
4 seasons, but we're looking for a step beyond that, which is
5 a requirement. Thank you.

6 ACTING CHAIRMAN TUCKER: Anybody else like to
7 be heard on this matter?

8 Any comments from the Commission?

9 I just wanted to close by indicating that --
10 for myself, the action of the Commission today does not
11 represent a commitment to go either way in 120 days.
12 That is, it seems to me that in 120 days, we have the
13 options of extension for three years under the same
14 conditions, an extension for some other time with other
15 conditions, or ending the program entirely.

16 And the reason I say that is that I want to
17 try and put the fear of God into everybody to please
18 utilize the time period to try and work out these problems.
19 Because, again, it's very difficult for us to sit here and
20 know what's going on at the bottom of the ocean hundreds of
21 miles away.

22 All of you have the knowledge, the expertise,
23 and hopefully the good faith to resolve this. So, please
24 use this time period. Okay.

25 Is there a motion on the item?

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1 COMMISSIONER GOUND: I move that we extend it
2 for 120 days.

3 ACTING CHAIRMAN TUCKER: Any comment?

4 Okay. The item is adopted as amended.

5 Any other comments from members of the public
6 or other items to be brought up by the staff?

7 EXECUTIVE OFFICER DEDRICK: No other items,
8 Mr. Chairman.

9 ACTING CHAIRMAN TUCKER: Okay. Thank you very
10 much. The meeting is adjourned.

11 (Thereupon the meeting was
12 adjourned at 10:45 a.m.)

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