MEMBERS PRESENT

Gray Davis, Lieutenant Governor, Chairman
Kathleen Connell, Ph.D., State Controller, Commissioner
Theresa Parker for Russell S. Gould, Director of Finance

Staff:
Robert Hight
Executive Officer
James Trout
Assistant Executive Officer
Jack Rump
Chief Counsel

Also Present:
Jan Stevens
Deputy Attorney General
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CHAIRMAN DAVIS: Call this meeting of the Lands Commission to order; note that all three Commissioners are present, and ask for a motion to approve the minutes of the last meeting.

COMMISSIONER CONNELL: Motion to approve.
CHAIRMAN DAVIS: That motion is approved.

Let's move to the consent calendar.

EXECUTIVE OFFICER HIGHT: Mr. Chairman, Items C21, 39, 45, and 79, and 58 are removed -- pulled from any further action by the Commission. And we would like to remove from the consent calendar Item No. ---

COMMISSIONER PARKER: 62.

COMMISSIONER CONNELL: 73.

EXECUTIVE OFFICER HIGHT: 73, Yes. And as soon as the consent calendar is approved, we'd like to take up Item 73 first.

COMMISSIONER CONNELL: Yes. I'll move the consent calendar.

COMMISSIONER PARKER: I concur.

CHAIRMAN DAVIS: Okay. That's unanimous.

EXECUTIVE OFFICER HIGHT: Item 73, Mr. Chairman, is an issue at Lake Tahoe involving the bankruptcy of a marina lease from the Commission called K & C Marine.
The specific issue before the Commission today is whether or not the Commission should approve the sale, pursuant to the bankruptcy court, of the K & C Marine lease to the Marina Investment Group, which was previously called the Danville Group.

It is the staff's recommendation that the Commission should reject the sale of this lease until or unless the Marine Investment Group can prove, either through agreement of parties or through litigation, that they have littoral rights and upland access to the marina.

There is conflicting testimony and evidence as to whether or not the Marina Investment Group has an easement right and littoral access. In the event that they do not, it would be difficult, if not impossible, for them to operate the marina lease, therefore placing the Commission and the Commission's lease in a very difficult position.

So, it is staff's recommendation that until that issue is resolved, the Commission reject the application to sell the marina lease.

CHAIRMAN DAVIS: Well, this would seem to be a question of fact. Has the staff made any independent determination?

EXECUTIVE OFFICER HIGHT: The staff -- this issue only -- we're working on it is the easy answer. At this point, we have not -- this issue only surfaced late last
week, and it contains voluminous title records. And at this point, we do not have an opinion one way or the other.

CHAIRMAN DAVIS: It doesn't sound like it's ready for adjudication today.

EXECUTIVE OFFICER HIGHT: That would be the staff's recommendation.

COMMISSIONER CONNELL: I actually, having read the staff report, unless there are people --- are there people now in the audience on this issue?

CHAIRMAN DAVIS: Well, Senator Leslie wants to speak. I think we should hear from him. I note there's several parties to this dispute that want to be heard, but I don't know how we can adjudicate the matter without a recommendation on these two critical points from the staff, because that is our obligation as the Commission to resolve those two issues.

EXECUTIVE OFFICER HIGHT: Yes. The Commission's existing lease requires the lessee have littoral and riparian rights. And if, in fact, those rights don't exist in the Marina Investment Group, it would violate the -- I mean the Danville Investment Group -- the Danville and Marina Investment Group are one and the same. It would violate the terms of the Commission's lease.

COMMISSIONER CONNELL: Bob, can I get clarification? Does the Commission have to take formal
action of no action in order to preserve our legal mandate
in this situation? I'm concerned, Mr. Chair, that we not
just delay it; that if we need to take no action so that the
bankruptcy court gets a firm understanding of the issue and
this Commission's position on that, do we need to take no
action formally? If so, I would like to --

CHAIRMAN DAVIS: Let's ask the Attorney General
for his guidance.

MR. STEVENS: Mr. Chairman, if the Commission
fails to approve the assumption and assignment and its
meeting today, I think we would report that to the
bankruptcy court on the 10th, and the court would then take
action pursuant to its own jurisdiction accordingly.

So, I guess the simple answer is, no, that formal
action would not be required if that's the Commission's
feeling that it's not ready to take such action.

COMMISSIONER PARKER: Mr. Chairman, can I ask a
question?

CHAIRMAN DAVIS: Sure.

COMMISSIONER PARKER: It's my understanding that
the bankruptcy court had, to some extent, changed their
position relative to the State Lands Commission action. In
other words, at one point in time, I thought their response
was, pending no action on our part, they would assume that
we were okay with whatever happened in the court, and they
would move accordingly.

EXECUTIVE OFFICER HIGHT: Originally, the bankruptcy court conditioned on approval of the Commission.

COMMISSIONER PARKER: Okay.

EXECUTIVE OFFICER HIGHT: That has been changed slightly to a position that now states --

COMMISSIONER PARKER: If we don't say no, they're going to proceed.

EXECUTIVE OFFICER HIGHT: They have the option --

COMMISSIONER PARKER: Have the option.

EXECUTIVE OFFICER HIGHT: -- to proceed.

CHAIRMAN DAVIS: Well, the Chair will certainly entertain a motion, if this becomes appropriate at some point, that there's insufficient evidence for us to provide the necessary concurrence, and we're denying the application without prejudice. Wouldn't that cover all the bases?

EXECUTIVE OFFICER HIGHT: I think so.

CHAIRMAN DAVIS: Jan?

MR. STEVENS: Yes, it would.

CHAIRMAN DAVIS: All right.

COMMISSIONER CONNELL: Is there a second issue as well about the continued operation of the marina in the interim?

EXECUTIVE OFFICER HIGHT: There is. Yes, there's an issue of who will operate the marina, and we have been
advised that the Marina Lessee Owners Association is willing to operate the marina in an interim basis until the parties resolve their dispute as to who has access and littoral rights.

CHAIRMAN DAVIS: Does there need to be any formal contract or understanding with the Commission? Does that --

EXECUTIVE OFFICER HIGHT: I think that if the Commissioners authorize staff to negotiate and enter into a management agreement, in the event that would be necessary, that that would cover that aspect.

CHAIRMAN DAVIS: Okay. Let's hear from -- if there's no objection, let's hear from Senator Leslie.

SENATOR LESLIE: Thank you, Mr. Chairman. I think the fact that I would be first, you would have questions that maybe would be better to hear from the proponents and opponents, and maybe towards the end I could add --

CHAIRMAN DAVIS: The Commission is of the view that this matter is not right for our determination, and it's come to us so late that, while we may give people the courtesy of saying something, it's very unlikely that we're going to approve it.

SENATOR LESLIE: Okay. Let me go ahead, then.

CHAIRMAN DAVIS: But we'll hear you as a courtesy to you, sir.

SENATOR LESLIE: Thank you. Well, I appreciate it.
very much. This area is in the 1st Senate District.
Obviously, it's one of the most important areas around the
edges of Lake Tahoe. And the disposition that's finally
taken is critically important to the entire North Tahoe
community.

It is exceedingly important that the people with
the littoral rights -- hopefully, I'm pronouncing that word
right; I just learned it last week -- that they have the
control of the marina operation. It will not function
properly if this is divided.

My understanding is that's your long-standing
policy here anyway. And so, I just came to support the
staff recommendation that this be denied if you do without
prejudice, or whatever your policy is. I think that's fine.
But I think it's very critically important that you do go
along with the staff recommendation on this, and I just
wanted to make that view known.

Thank you for giving me an opportunity to be here.

CHAIRMAN DAVIS: Thank you for being here.
The Chair would be willing to hear one- or
two-minute presentations, not to exceed that, from the
people who come to speak to try and briefly say why you
think upland access or littoral rights attend, you would be
helping guide the staff to come to a determination as to
whether or not those rights do exist.
And, as the Commission, we're obligated to find that you either have upland access or littoral rights before we can consider an applicant to handle these responsibilities.

So, it's not necessary that people speak today, but I know that people have come and are prepared to speak, and I don't want to deny you that opportunity.

So, we'll be willing to hear people for, say, two minutes to just briefly guide the staff so that we can make a determination.

And I have before me the following people that want to speak. And I'd be inclined to take them in this in this order. We've heard from Senator Leslie.

Mr. Hoffman has asked to speak; Greg Lien, I believe, has asked to speak; Tom Willoughby has asked to speak; Beverly McFarland has asked to speak.

Those are the four people. So, again, nobody's obligated to speak, but if, I'll take them in this order.

Mr. Hoffman, if you want to say something, you're welcome for two minutes.

MR. HOFFMAN: Mr. Chairman, members of the Commission. I'm Larry Hoffman. I'm the attorney for the Boat Owners Association.

And just very quickly, so you can understand the dynamics, this association runs much like a homeowners
association. Each of the boat owners has a sublease of the little piece of sand beneath their dock. The dock floats above it. That’s the system of the common property around.

So, the Commission’s aware of it -- I don’t know if there’s any good pictures going on -- but if you look at this drawing up here, everything you see inside the marina wall is occupied by our association members.

On the side closest to the gentleman up there is a gas pump, which is not operating right now, and a place for a turbo, which is not operating. And then, lakeward, out towards where it says K & C Marine, there’s 31 buoys. The association has no interest in those buoys.

I do want to say to the Chairman and the Commission that I, first of all, want to commend the staff on the homework they’ve done very quickly here, and they have gotten on top of this.

It’s our view, as the association -- and we’re the, I think, really the real parties of interest in terms of how this marina is operated. We’ve looked very closely at the two competing interests here and what’s not only in the interest of the association, but in the interest of how do you do a sort of a safe and sane management of a marina?

And it makes absolutely no sense to us to have a landlord, which would your lessee under your lease, a landlord who really doesn’t have control of the back shore.
All of the services for the marina -- gas pump and boat entry, maintenance, and all of that -- for those of you that have been to Lake Tahoe, that's in the buildings that are adjacent to the Roundhouse Mall are in that back shore area. So, it's critically important to us that we have a back shore owner that's capable to operate.

We also are aware of the track record of the two competing parties. One of the parties that's before you to have the lease assigned is essentially the same player. It's reworked again. And they brought the lease into default and we're now underneath that default trying to cure it because we're the sublessees who have the right to cure it.

Having watched this very closely, I was in court the other day when the judge was hearing this, as was the Attorney General's Office and your attorneys, and I think that it is important that the Commission take definitive action.

I note that the Chairman has indicated a motion to deny without prejudice, and I think that might work.

The staff's language is to reject approval of the assumption. And frankly, I think that's even a clearer message to the judge. And I would encourage that kind of language. I think if the judge gets a mixed signal, then he has the power under the Federal Bankruptcy Law to step in
and do what he thinks right.

So, I think if the Commission says that there are strong policy reasons why the lease ought to be rejected now, even though the parties could come back in and explain those to the judge, it's my sense the judge -- on the basis of comity -- would honor the Commission's view on that and, therefore, we would encourage the staff language -- staff approach to this with the Attorney General, or whoever represents the Commission, to make the appropriate comments to the court.

If that were to occur and the lease is rejected, we're confident from the association's standpoints that our members are adequately protected. We've also indicated to Mr. Hight a willingness on a short-term basis here to enter into a management agreement to manage it until the ownership issue's can be shaken out. And, as a practical matter, that's what we do anyway. We've got -- there are 159 slips, and they're our members. That means security, and trash, and all those kind of things. And we'll take care of that.

So, we're prepared to work with the Commission on that. We're not necessarily saying, you know, who's right or wrong on the access issue, but we do believe it's important that the back shore owner be the ultimate person that is responsible for the marina.

Be glad to entertain any questions.
CHAIRMAN DAVIS: Do we have any? Thank you very much, Mr. Hoffman.
The next name that was given to me was Mr. Lien. How do you pronounce that?
MR. LIEN: Lien.
CHAIRMAN DAVIS: Lien. Okay.
MR. LIEN: Thank you. For the record, Gregg Lien, representing the Gibb Trust. And I had wanted to thank your staff as well. There's a lot of material they've had to go through over the past week or so.

But I'd like to reiterate a couple of points. The first thing is that the applicants -- in this particular case, the proposed buyers -- have completed failed in their burden of proof. They have a burden of proof under Section 2000 of the Administrative Code to prove that they are either the littoral owners or that they are the best qualified applicants.

In this particular case, they have very clearly shown neither. And what's needed here is, as staff has suggested, an outright rejection of their application at this juncture.

I trust your secretary has handed to you a package that we prepared. If we had more time, we'd lead you through this step by step to show you quite clearly that the Gibb Trust is the littoral owner and there is no question
about that, really, in our mind.

If I might very briefly just show you the issue --
and the backup documents are now of record, I trust, in your packet.

This is the meander line of Lake Tahoe. As you can see, these alleged shoreline parcels that are over here on your exhibit in red here are created by the movement of the meander line across the shore.

According to the law, the meander line does not set forth where the boundary between littoral property and the body of water is. That does not occur by that mechanism. Under State law, Civil Code Section 830, as well as well-settled decisional law, the low water mark sets the boundary.

So, it's not this line at all. That really is just smoke and mirrors. And, again, unless some contrary intent is shown in deed or otherwise, it's very clear that my client, the Gibb Trust, owns all the way to the low water mark of Lake Tahoe.

And by the way, on that intent point, we have -- and I believe it's Exhibit F -- we have an exhibit from the original surveyor -- excuse me, that was Exhibit E -- saying that there was no intent here to create any intervening parcels such as those that are shown in red here.

In other words, our clients clearly are the
littoral property owners.

The other pole of the test that you, as the Commissioners, here are charged with is finding who may be best qualified if you can't reach an issue -- reach a decision on the issue of littoral ownership. Clearly, Mr. Gibb is the best qualified. He owns all of the upland property. It would be totally impractical for anyone, other than Mr. Gibb, who owns this property, to really support a marina.

The boat lift accesses are here. Unless you've got control of those, you can't even get boats in. The parking is back up here (indicating on map). The gas tanks, the fuel, the fuel stop here at the marina are back here. Clearly, you just can't run a marina without that.

and in terms of your precedent, I don't believe this Commission has ever come anywhere close to granting a lease under such a thin level of proof that you have before you today. It would be absolutely unprecedented.

Finally, the last exhibit that I've presented to you is a letter from the Port of Oakland on behalf of Mr. Gibb from Charles Foster, who's the Executive Director. Mr. Gibb has run marinas for over 30 years, has an exemplary record in that regard, and you can review that letter at your leisure.

To conclude, again, for reasons related to
bankruptcy law and so on, it is absolutely critical from our judgment that this application be rejected, quite clearly, as your staff has suggested, not an equivocal come-see-us-later; but at least, insofar as today, it is clear they have failed to meet their burden of proof -- either as to littoral ownership or as to being the best qualified perspective lessee.

And on that basis, we would ask you to reject the lease.

Any questions?

CHAIRMAN DAVIS: Yes, I have a question.

It may not go directly to the issue before us, but it's a matter of interest to me, and I suspect to my colleagues.

Mr. Gibb -- the Gibb Trust was initially chosen as the successful bidder and subsequently withdrew. Can you tell us if there are any plans for them to resubmit a bid, or does he have any interest in facilitating the appropriate bidder to come forward to discharge these responsibilities?

MR. LIEN: Mr. Gibb is willing to discharge responsibilities under the lease; however, because of the number of players -- and this gets -- it's a complex situation, as I'm sure your staff will agree. There are a number of players involved. One of them is the Bank of the West, which holds the paper. In this particular regard, it
was strictly a business decision that the dollars had gotten too high, a number of things that happened.

K & C, for example, had leased the property from Mr. Gibb for a number of years. And during that period of time, it had a fuel spill that contaminated the property that now will cost a pretty penny to clean up. There’s a large amount of deferred maintenance and so on, and the dollars were just getting too high.

And on that basis, Mr. Gibb withdrew his bid. Perhaps if he had known some of the terms that had been offered to the new group that’s coming before you today, perhaps he would have reconsidered, but he wasn’t offered the same terms.

So, again, a lot of this has been fast and loose. But what we do know is, today, he cannot proceed, and this is before you.

CHAIRMAN DAVIS: And another question, probably best put to the Attorney General or staff.

Do we have any liability issues if we were to permit the boat owners to essentially operate the marina for us during the interim period of time?

MR. STEVENS: I think this would best put to the staff, Mr. Chairman, because it’s a question of adequate insurance coverage or indemnification.

EXECUTIVE OFFICER HIGHT: Yes. We have discussed
that option and we understand that the homeowners
association and the slip owners association would be willing
to basically provide insurance, so the Commission would not
be placed in any liability.

CHAIRMAN DAVIS: Okay. Any questions from my
colleagues?

All right. Thank you very much.

MR. LIEN: Thank you.

CHAIRMAN DAVIS: Next to speak is Mr. Willoughby.

MR. WILLOUGHBY: Mr. Chairman, could I defer to my
client, Ms. McFarland, the Chapter 11 -- soon to be Chapter
7 -- trustee first?

CHAIRMAN DAVIS: Sure.

MR. WILLOUGHBY: And I can answer any legal
questions second. Would you like me to come up?

CHAIRMAN DAVIS: Why don't you both come up.

MS. MC FARLAND: Good afternoon, Chairman and
members of the Committee (sic). My name is Beverly
McFarland. I'm the Chapter 11 trustee, and have been of
record, as appointed through Federal Bankruptcy Court, since
March 30th of 1995. The debtor is called K & C Marine,
doing business as Halva (phonetic) Boat Company.

The debtor has been in bankruptcy since March 7th
of 1994, and was a debtor in possession, operating this
marina.
Since my appointment, I was entrusted by the U.S. Bankruptcy Court to manage the property. It was subject to financial constraints, which would be obviously fairly expensive to manage such a property over the length of time, such as I’ve been of record.

My main purpose in this case was to continue the business of the subject debtor for the benefit of maximizing any dollars that they could derive for the purposes of the creditors, including Mr. Gibb, who is also a creditor.

My involvement extended to working through many of the defaults, which with the State Lands Commission and their staff members -- predominantly Mr. Jim Frey and Judy Ludlow -- which I have done.

There still remains a default pertaining to the general repair of the marina, which is in process.

I’m here today to request, please, that the Commission consider two things when you are considering what you will do with this marina, and who this lease will be ultimately transferred to.

The first one would obviously be, on behalf of the estate, that you approve the transfer of the State Lands Lease No. 706.1 to Tahoe Marina Investments, Inc., which is a new group of individuals. It was somewhat erroneously stated by the previous counsel that these are the same individuals that previously defaulted on the lease. They
are not.

The debtor was a general -- was represented by a general partner by the name of Mr. John V. Kerns. He is not a part of this investment group and never planned to be. This investment pertains to a group of outside investors, number one; and, number two, a group of investors that represents in excess of between 25 and 30 percent of the slip ownership and are actually a part of the same association that is disputing the transfer of this lease.

The people have invested and will invest in excess of a million dollars total in this package. Mr. Gibb has invested zero. Mr. Gibb is the uplands owner or purports to be. We purport that we do have access. And I find it very interesting that the gentleman that presented their case did not mention the fact that the declaration of Tahoe Boat Company, Harbor Protective Restrictions, was recorded in 1982. And it is the declaration on behalf of the association, as stated right here that clearly states that there is access along the entire seawall of this marina for 15 feet.

It also states that there is access of ingress and egress for vehicles and boats. It also states that there is provisions for launching. It also states that normal marina activities will be carried forth. And then you have to defer to your lease, and it's subject to the approval of the
State Lands Commission pertaining to things like concessions, et cetera, et cetera.

These are recorded documents, ladies and gentlemen, and we have title reports to evidence that. There was a mistaken transfer of land that you were given a presentation of. It amounts to four flags. We do not recognize that. We feel that may be a quiet title action; however, there is still access beyond that.

I would like to say that the new entity has already provided insurance. I have it in my hand -- one million dollars liability. And as far as the bankruptcy court and the trustee is concerned, I also have adequate protection on the underlying personal property to this estate.

I would appreciate it that, in the event -- as I say, I wanted to ask, with respect to the Commission, if you would consider two items today. If you would consider, number one, the approval of this land lease; two, this new entity, the Tahoe Marina Investment, Inc. And, number two, if you do not approve the lease today, if you would simply not object to our transfer of the lease to this entity in the U.S. Bankruptcy Court at our hearing on July 10th at 3:00 p.m. in the afternoon here in Sacramento in Judge David E. Russell's court.

I thank you for your time, and we'd be willing to
answer questions. And I would like to defer to counsel for a moment.

MR. WILLOUGHBY: Would you like to have questions or --

CHAIRMAN DAVIS: Did I understand you correctly, Ms. McFarland, that you said that about 30 percent -- phrase it another way -- that this new group, the Tahoe group, includes about 30 percent of the slip owners who, in turn, have come here opposing this -- the approval of this assignment?

MS. MC FARLAND: No, sir. This new group represents people that own slips to the tune of about 30 percent, which would also include that which K & C owns. In other words, the new group representing this are not represented amongst the people you see in the second row. They are a part of the new investment group. And it deletes Mr. Kerns. He is not a part of this investment group, who was the original general partner of the debtor.

COMMISSIONER CONNELL: I have a question, Mr. Chair, regarding the land. Could show us on a photo of the land or on the chart that's up here where you maintain you have access?

MS. MC FARLAND: Yes. It's quite easily seen. It essentially is the aqua portion. And that is stated in the declaration for the association as written by the original
declarant, which was the debtor.

COMMISSIONER CONNELL: And that goes across the shoreline. How do you have access back to Road 28, or do you maintain that you do?

MS. MC FARLAND: Yes, ma’am. There is -- there are two facets of that access. Number one, the declaration itself states that vehicles and boats shall have access from the main road to the marina. And the upper portion of that road was abandoned to K & C Marine. The lower portion of the road is simply an easement to the marina. And it also includes a pedestrian easement, both to the marina and cross-ways from the marina.

It essentially follows the aqua line as you see it.

I would be happy to submit these documents for the Commission; however, we did have a meeting with your staff, and we did produce a full packet of these documents and others for them to review last week.

CHAIRMAN DAVIS: Theresa?

COMMISSIONER PARKER: I’m fine.

CHAIRMAN DAVIS: I have a question of the staff.

What is your response to Mrs. McFarland’s response to the Commissioner’s question and their representation that they have access to Road 28?

EXECUTIVE OFFICER HIGHT: There are counter-
documents that, until we dig to the bottom of, would seem to indicate that those rights either don’t exist or exist in favor of the slip owners association and their personal rights with them rather than something that can be transferred.

And that’s the issue that we haven’t gotten to the bottom of yet. And that issue is, we think, murky enough to cause us concern that there may not be access.

COMMISSIONER PARKER: Mr. Chairman, I think you had started this out by saying that it seemed to be an issue of fact. And I guess the dilemma we have before us is whether or not we have enough factual basis to make any decision.

I’m personally uncomfortable from the standpoint of what the staff was telling us, and I think the concern about the ongoing maintenance of the marina is a secondary issue, but we need to determine these matters of fact before we can then make the determination from the standpoint of the lease. I would be uncomfortable having to make a decision today based on facts that are not available to us today.

COMMISSIONER CONNELL: I share your concerns. I am still not clear on the Attorney General’s comment earlier to my question. I just want to clarify. If we take the action that is recommended by the staff, we’re taking a
definitive position, as I read it, there’s a motion to take
no action and a motion to allow the marina association to
operate the slips in the interim period.

If we don’t take that specific language, are we
still giving enough direction to the bankruptcy court to do
what the Chair initially suggested, which was to basically
delay action of this Board?

CHAIRMAN DAVIS: No, I don’t -- I think we should
make it clear that we are rejecting the application;
however, in my judgment, that would be without prejudice if,
at some future time, additional information came to us that
persuaded us they did have littoral rights and did have
access and/or they were the best qualified candidate.

Right now, we have the staff position to advise us
on the first issue, so I don’t see how we can act. But
counsel has suggested that we need to act decisively to
communicate to the court that we are rejecting this
application. That’s what I’m trying to accomplish.

COMMISSIONER CONNELL: Then I would move the staff
recommendation with the additional language that we’re
moving it without prejudice, which I think is important.

MR. WILLOUGHBY: Mr. Chairman, could I just
address it before you move, just one second about the
bankruptcy?

CHAIRMAN DAVIS: Sure.
MR. WILLOUGHBY: I think one point that has not been brought out here is that this is a disaster case. I don't know how much experience the Committee has had -- the Commission has had with bankruptcies, but this is a terrible case that has been winding out of control in the bankruptcy court for over a year now.

We would have liked to sell this property to Mr. Gibb, because it would have been the easiest possible sale. But selling this property to Mr. Gibb became impossible when he withdrew his offer. Basically, the only other entity that has enough economic interest to step into this case to solve the problems are the owners of this 24 to 30 slips, this other group, it's called --

Mr. Bill Robothan (phonetic) owns over 20 slips. Basically, if you do not take action and if the bankruptcy court does not confirm this sale, what will happen is that everything will go back to the debtor. The million-six lien will remain on the marina. The bank will have to try to put a receiver in. You're going to have litigation between the bankruptcy estate and the parties that were here today, probably for violations of the automatic stay.

This is going to be a litigation mess for months and years to come.

What we see is that this marina has operated with this status of easement and with those parcels mistakenly
deeded for over six years. The only logical thing is to sell it. We are trying to solve it. Ms. McFarland has not only a fiduciary duty to the creditors, but a fiduciary duty to try to continue the operation of the business under the Bonner Mall case, which is a 9th Circuit decision.

And this sale, unique, solves the million-six bank loan. As a condition to the sale, they have to buy the bank loan for 800,000.

So, they’re going to come in and pay 800,000 for the bank loan, 200,000 to the estate to basically solve litigation that we have against the buyers for preferences.

And the marina goes forward and operates as it always has. I mean, I see that if this sale is not confirmed on Monday, you’re going to see litigation forever over this thing. But if it’s confirmed on Monday, my feeling will be that the judge will determine whether there’s access, whether there’s littoral rights, whether the deed was mistakenly deeded (sic), and that will solve the litigation. Because Gibb has already opposed this sale, the Gibb Trust. They will be collaterally estopped, if the judge decides it on Monday, is our view.

And they will have the full opportunity to put all the evidence that they want to put on on Monday.

Now, they’re the ones that are stepping in here and trying to do whatever they’re trying to do today. I
don’t really know. They didn’t ask for a new lease in the Gibb Trust’s name.

But I don’t know who the new lessee is going to be. The master lease is the master lease. It’s owned by K & C Marine. You know, the subleases are subject to the master lease. The subleases may have a right to cure the master lease, but they don’t have a right to substitute in as the master lessee.

My view is that if you terminate the master lease, you will have terminated all the subleases, and you will have created $4.5 million in damages for all the subtenants, all the slip owners who paid good money to K & C Marine and who were taken.

I mean, I think that we cannot terminate this master lease, because that would cause damages that we could never fathom to try to sort out.

CHAIRMAN DAVIS: We’re not terminating anything.

MR. WILLOUGHBY: No, I understand.

CHAIRMAN DAVIS: You came to us with very little time and you’re asking us to make a judgment, which our staff is not ready to make.

MR. WILLOUGHBY: No, I understand that.

CHAIRMAN DAVIS: Now, if the court wants to continue on the 10th, it’s going to be their action that precipitates all of ours that you have just suggested, not
our action. But we’re willing to act decisively when the
staff can come back and tell us, in their judgment, whether
there’s access or ownership of littoral rights.

And you have to cross that barrier. We can’t
cross that barrier.

MS. MC FARLAND: We certainly do ask that you
consider making no decision today, if you don’t feel
prepared to make it, rather than a decision that may not be
in the best interest of the public good, or the U.S.
Bankruptcy Court.

MR. WILLOUGHBY: And we would ask that you let the
Gibb Trust and the association put on their evidence on
Monday, and let us put on our evidence, and let the judge
decide.

MS. MC FARLAND: The court has spent substantial
dollars and volumes of time, and the trustee has done the
same doing due diligence on this matter. We apologize for
the short timeframe, but there is no money to run an estate
under a trustee under these circumstances. We had no choice
but to defer to the federal court.

And we ask that, if you don’t feel qualified and
complete with your information at this time, that you not
make a decision, and let the federal judge make the
decision, and not oppose our action at this time. Because
we definitely, strongly feel that if Mr. Gibb so intended to
own this property, he would have come forward instead of creating obstacles. And, you know, he has not.

CHAIRMAN DAVIS: Well, I respect your point of view. We have to be responsive to what our attorney advises us, the Attorney General and what our staff advises us. And they both are suggesting that we cannot approve this application because we don’t have a factual basis upon which to make a final. Am I stating that correctly, Jan?

MR. STEVENS: Yes. I think a denial without prejudice, which is what I understand is before the Commission at this time, would not amount to any kind of — even a quasi-adjudication that either the bidder is unqualified or that he — the bidder lacks littoral status.

I think, secondly, it amounts — and it might lead us to a conclusion that this time there was inadequate evidence before the Commission to justify the assignment of the lease. And the burden, of course, is upon the applicant in this case.

MS. MC FARLAND: Thank you, sir.

MR. WILLOUGHBY: Thank you.

CHAIRMAN DAVIS: All right.

MR. LIEN: (From the audience) May I have some time to respond?

CHAIRMAN DAVIS: No. I think we’re basically making this decision on procedural grounds. We’re not
making any substantive decision today. We’re saying we
don’t have the information to make a decision; therefore,
we’re rejecting the application that’s before us.

MR. LIEN: So, in other words, they’ve failed to
meet their burden of proof, and that’s what you’re
indicating to them today.

CHAIRMAN DAVIS: They failed to meet it today.
they may be able to meet it at some subsequent point. When
do we meet next, in August?

EXECUTIVE OFFICER HIGHT: Probably not in early
August, mid-August.

CHAIRMAN DAVIS: Anyone else want to speak to the
motion? All right.

COMMISSIONER CONNELL: I don’t think the motion
had a second.

COMMISSIONER PARKER: You have a second.

CHAIRMAN DAVIS: Jan, could you maybe phrase the
motion so we all understand it?

MR. STEVENS: It incorporated the staff
recommendation. Reject approval of the assumption and sale
with adequate assurances of future performance of Lease PRC
706.1 from K & C Marine to the Marina Investment Group,
unless and until the parties agree, or a court of competent
jurisdiction rules that the Marina Investment Group has
littoral ownership or use rights and adequate or appropriate
access rights across the uplands, and the Marina Investment Group can assure the Commission staff of its ability to cure the lease defaults and adequately perform the lease covenants in the future, with the condition that approval is rejected without prejudice.

Authorize the staff and Office of the Attorney General to take whatever steps, including entering into an interim management agreement, as are necessary, to assure that the defaults of the lease are cured or, in the alternative, to terminate the lease.

CHAIRMAN DAVIS: That's the motion before the Commission.

Will you call the role here?

COMMISSION SECRETARY: Commissioner Connell?

COMMISSIONER CONNELL: Yes.

COMMISSION SECRETARY: Commissioner Parker?

COMMISSIONER PARKER: Yes.

COMMISSION SECRETARY: Chairman Davis?

CHAIRMAN DAVIS: Yes.

All right. That deals with Item 73.

EXECUTIVE OFFICER HIGHT: The next item, Mr. Chairman, is Item 86, which is the Tuscarora Gas pipeline issue that was before the Commission at its last meeting.

And I'd like to ask Jane Sekelsky, who is Manager of the Commission's Land Management Section, to present that
MS. SEKELSKY: For the record, I am Jane Sekelsky, Chief of the Land Management Division.

Item No. 86 before you today involves a proposal by the Tuscarora Gas Transmission Company to construct a four-inch diameter gas line across State-owned lands in the bed of the North and South Forks of the Pit River in Modoc County.

As you will recall, these proposed crossings were before you at the May 3rd meeting as part of a larger package, which included three other river crossings and eight school lands crossings.

In response to objections by the adjoining upland owner, Mr. Talbott, the Commission deferred action on the two crossings which are before you today in hopes that Tuscarora and Mr. Talbott could resolve their differences.

Staff has since met with Mr. Talbott, his attorney, representatives of Tuscarora, and our EIR consultant. It is our understanding that all but two of Mr. Talbott's concerns have been addressed.

Mr. Talbott remains concerned that the project will adversely impact wildlife which frequent his property.

On the exhibit, you can see the area of greatest concern is the area shaded in yellow. But Mr. Talbott's property does extend south of that area.
Mr. Talbott argues the location of the pipeline on his property will encourage the placement of other utilities in the same corridor, increasing the burden on wildlife and their habitat. He further fears that in the event a pipeline rupture occurs and construction activity is necessary to complete repairs, that resident wildlife will be injured or killed, particularly if this happens during the antelope kidding season.

Mr. Talbott has recommended an alternate route, shown in green on the exhibit, which would avoid his property and which he believes would be potentially less harmful to wildlife. Mr. Talbott is here today to present you his position.

Tuscarora continues to favor the proposed route, shown in purple on the exhibit, which crosses Mr. Talbott’s property. And their preference is based both on engineering and fiscal perspectives.

We understand that Tuscarora has commenced condemnation against Mr. Talbott and has been granted an order of immediate possession entitling them to enter the property effective June 19th of 1995.

Tuscarora is also represented here today to explain their position and answer any questions you may have.

Staff has reviewed the positions and concerns of
both parties and, on balance, has concluded that the
proposed route -- that advocated by Tuscarora to cross Mr.
Talbott's property, shown again in purple -- is preferable.
We believe the risk of accident during the limited antelope
kidding season, while there, is remote.

In order to pursue the alternative route,
additional analysis of possible environmental and cultural
resource impacts would be necessary. Tuscarora would have
to obtain an amendment of their FERC license and would have
to obtain rights-of-way over properties owned by Modoc
County, the City of Alturas, and at least one private
property owner.

The alternative route poses the possibility of
additional expense up to $215,000 over the proposed route,
which cost will ultimately be passed along to customers in
the Alturas area.

Based on these factors, staff has recommended
approval of the route proposed by Tuscarora and shown on the
exhibit as the proposed route.

CHAIRMAN DAVIS: It seemed to me we had a very
lengthy discussion on this before. Was any progress made
during their last meeting to resolve any of the differences?
What’s changed since this issue came before us?

MS. SEKELSKY: My feeling is that the progress we
had made was to better refine the remaining issues. Mr.
Talbott --

CHAIRMAN DAVIS: Have we solved any issues? Was there any agreement on anything?

MS. SEKELSKY: Yeah, I think that there was. I think that one of the --

CHAIRMAN DAVIS: I've really lost my patience with this issue for the record.

MS. SEKELSKY: Mr. Talbott, in both of his responses to the draft EIR and before you in May, indicated some concern about the potential future use of his property for growing wild rice or for creating irrigation systems. And Tuscarora has agreed to accommodate any such needs on his part; in fact, to help him design and implement an irrigation system should that be necessary.

Other than that, I would say very little has been agreed upon. Mr. Talbott has agreed that the southerly portion of the route shown in purple is not objectionable to him on his property. But he is still --

CHAIRMAN DAVIS: Doesn't that represent progress since our last meeting?

MS. SEKELSKY: I believe that it does represent progress; however, the crux of the matter is that he still strongly objects to the northerly portion of the route. And that is the portion which I understand is most critical to the project from Tuscarora's perspective.
COMMISSIONER PARKER: That’s the portion that would require a new EIR, the extension into the green?

MS. SEKELSKY: No, the routes shown in purple require no further analysis. On the green, yes. Yes, on the green, there are two issues that would have to be addressed. We have in the existing environmental impact report, we have, in fact, analyzed the biology of the area and the baseline information about the area through which the green route would travel -- but for one thing, and that is the cultural resource issue. We have preliminary evidence that in the northerly half of that area, there could be very well be the existence of an historic Indian village with the possibility of burial grounds involved.

Survey work for that same issue was done on Mr. Talbott’s property, and it was found that there was nothing to preclude the use of the purple route. However, we would have to go out and do that survey work on the green route to assure that there is no problem there.

If a problem is identified, it could impact how the route is developed, and it could also actually preclude the use of that area, depending on what resources are identified.

In addition, if the method of crossing the river must change in moving to the alternate green route, then additional environmental analysis would have to be done as
to that construction method.

COMMISSIONER CONNELL: I had a question, Mr. Chair.

Let me understand. Mr. Talbott is saying that everything south of Road 54 would be agreeable to him now as part of the whole route.

MS. SEKELSKY: That is my understanding, yes.

COMMISSIONER CONNELL: Why is that acceptable to him, if it's on his land, if north of Road 54 is not acceptable? Is it just the elk grazing issue or the elk kidding issue?

MS. SEKELSKY: Yeah, my understanding is that it is the habitat value that exists in the upper northerly portion that concerns him, yes.

COMMISSIONER PARKER: Can I ask a question?

What is the approximate distance between where the purple line is and the green line on either side of Route 54 where you have the greatest bend into the yellow area? Is that a mile, miles?

EXECUTIVE OFFICER HIGHT: It's less than a mile.

COMMISSIONER PARKER: Okay. Are there antelope that are grazing on the other side of Road 54, or are they between the green line and the purple line and on the other side of the green line?

EXECUTIVE OFFICER HIGHT: Antelope kind of
predominate the area from the wildlife refuge east to past where Jim is standing.

COMMISSIONER PARKER: So, I guess if Mr. Talbott's concerned about the impact to antelope kidding, isn't that going to happen no matter where the line is? I mean, isn't that going to happen whether it's the green line or the purple line?

EXECUTIVE OFFICER HIGHT: That would be our belief, yes.

MS. SEKELSKY: We understand that that would be true. There is a possibility that there would be less likelihood of damage with the green line in that northerly stretch, because there is already disturbance of that land. Construction work has already occurred there. There some improvements, some buildings.

However, the type of disruption that might occur is largely because of noise, which would cause the antelope to abandon the young before the young are able to travel on their own.

And if there were heavy construction equipment, the noise of that could easily disturb the antelope in the area shown in yellow. However, if the construction equipment is not in that area, it theoretically wouldn't run over the young.

CHAIRMAN DAVIS: Has there been any discussions
about compensation for any taking that occurs on Mr. Talbott’s property?

MS. SEKELSKY: We have not been involved in those discussions. That is a matter for Mr. Talbott and Tuscarora through the condemnation proceeding.

COMMISSIONER CONNELL: What is the timing of the delay if we were to suggest that we wanted the line realigned north of Road 54 on the green, and kept the line south of 54 in the purple, what are we talking about in terms of time delay?

MS. SEKELSKY: I would like to ask Tuscarora to address that. My understanding is that it could be a matter of a month or so or it could be considerably longer.

COMMISSIONER CONNELL: Are they here?

MS. SEKELSKY: Yes. Yes. Tuscarora is here. They would need to apply to FERC for an amendment to their license. That process normally would take a minimum of two weeks, probably longer.

The assessment of cultural resources, I can’t tell you how long that would take. I would prefer that they answer that question.

CHAIRMAN DAVIS: All right. Let’s do this. Since we’ve heard this issue ad nauseam at the last meeting, I’m going to limit everyone to -- there’s only three speakers here, so I’ll limit them to three minutes each.
We’ll start with Mr. Talbott. Let’s see, there’s Curtis Talbott and Robert Talbott.

MR. TALBOTT: Yes. My son is going to help me -- we have some pictures to show you.

CHAIRMAN DAVIS: All right.

MR. TALBOTT: My son’s going to pass them -- walk ‘em past so you can take a look. What it depicts is the west side of the road where I recommend to be taken, which is all owned by public lands.

CHAIRMAN DAVIS: Okay. You’re going to be the only one that’s going to address the issues and your son will assist you.

MR. TALBOTT: Right. Exactly.

CHAIRMAN DAVIS: All right. Then you have three minutes. Go ahead.

MR. TALBOTT: And the other side of the road, which is my land, these pictures are taken opposite each other so you can get an idea what we’re looking at.

I don’t want to challenge anybody here, but I don’t see any possibility for antelope grazing or birthing on the side where the dumps are and the city sewer plant, and all the buildings, and all of the landfill, and all of the gouging of dirt that’s taken place over there. I’ve never myself seen an animal over there.

On the other hand, you can see in those pictures,
there are 25 animals out there right now. There was at the
time these pictures -- these pictures were taken right
before our meeting about a month and a half ago.

   This is the other side. You can see that these --
besides the noise, there's not really -- antelope are very
skittish animals, and they're not likely to spend any time
on that sided. I've never seen them over there.

   Okay. Now, the next set of pictures is going a
little further north. This is near the sewer plant.

   (Thereupon, the reporter requested the
witness to speak into a microphone, but
he did not comply and, in fact, walked
away from the witness table.)

   MR. TALBOTT: This is near the sewer plant over
here. This is the west side of the road. Again, I would
wonder why animals would want to be anywhere along that side
of the road.

   This is, again, city and county owned property.
This side is my property. The Pit River runs right along
here. The National Wildlife Refuge -- in fact, you can see
Canadian geese out in the fields. They're there with the
babies in the nests. And the last set of pictures, I think
it's kind of dramatic. This is the actual South Fork of the
Pit. And, again, you can see this is the sewer plant over
here. You can see all the landfill that's taken place. You
can see the mountains that have been gouged down in the
background. I wonder how anybody could find any Indian
relics here when you've seen all the abuse that's taken
place on this land. I can't imagine there being anything
left there.

This is the other side of the road that runs
through my property. You can see the waters flood up very
high. This is wetland. You can see the well I've got
there. I just can't -- to me, it's just amazing how anybody
could imagine there would not be that wildlife to run
through those prime lands.

To back up my statements, I've had two letters --
well, one letter and an offer for a second. The manager of
the National Wildlife Refuge, Dave Johnson, has written a
letter here stating basically -- you know, -- it was sent to
us last night. And no one has had a chance to read this
other than Curt.

But, basically, it says in here that -- he doesn't
see that the pipeline on either location is going to impact
the National Wildlife Refuge, but he strongly recommends
that the pipeline be placed over on the green side or the
alternate side, particularly down in the wetlands area. He
uses those terms, wetlands area, to prevent any further
encroachment. And he also points out, which is true, that
I've been working with the National Wildlife Refuge.
I’m involved with a program called Partners in Wildlife. And what we’re going to do is we’re going to fence off portions of this river on both sides to look to protect the wildlife. And, of course, the manager of that refuge is concerned about that, because of the fact that we’re putting work in to improve the habitat and this is eroding it away.

I’d like to say one little thing before I get into the meat of this thing. I look at encroachment -- my whole argument here is not because I want to grow rice or this or that. It’s mainly because I look at encroachment like snowflakes. It just comes down a little bit at a time here and there, and pretty soon the whole ground’s covered, and it never melts away.

And that’s how our wildlife have been driven onto these small little refuges. The antelope count in this area has gone down from what it used to be. And I, as a landowner, am trying to bring some of that back by donating large portions of my land just for that purpose.

So, that’s where I’m coming from.

There was a lot of issues about the dollars that Tuscarora would have to spend if they took the alternative route. And I think that we kinda stuck ourselves in the foot here with a problem. The whole issue comes down to directional drilling versus open cut. Open cut, according
to Tuscarora's own geologist, is the normal method for crossing rivers.

Directional drilling always comes with a risk factor. You've heard risk, risk, risk. In their own report they state that there is 12 to 15 feet on their proposed route on my property of base rock, or what they call consolidated material, above the bedrock, which -- and, again, in their own report directional drilling contracts prefer 20 feet of coverage over the top. So, the big issue is -- the bit problem with directional drilling is they pump a slurry down through to get the chips out as they drill this hole underneath. And if they should have an eruption up into the streambed -- by the time this occurs -- they pump this at 500 psi, which is really high pressure -- the streambed is just immediately polluted.

The Fish & Game Department, California Fish & Game, I spoke with this gentleman in charge of this area. He pointed out to me that the Fish & Game does not favor directional drilling over open cut. In fact, they have big concerns with directional drilling.

I guess the biggest problem with directional drilling is that you don't know, when you go into this thing, -- it's a roll of the dice -- if you're going to have an eruption or not. There's no -- it's not an open cut type work. Whereas, the open cut, there's opportunities to
observe what’s going on and do something about it while it’s happening.

The whole issue with dollars -- yes, if Tuscarora should have a failure when they do the directional drilling either on my property or on the alternate route -- which, in both cases, there’s a risk factor here, and all these letters indicate that. Then they’ll have to go with open cut, which is a double-dip for them; it’s twice as much expense.

I keep asking myself -- I’ve been to these meetings. I’ve listened to their -- this is one of my first meetings up at there at the land -- and Barry Singleton there, the chief engineer, made a big issue about the fact that even on my property it wasn’t really deep as they’d like to happen. There was a risk there.

And then at our last meeting here at the State Lands Commission meeting, they brought another geologist in. They’d done further reports, and discovered that on the other side of the road there was, yes, about the same kind of bottom, but there was some additional problems with the other side of the road.

The bottom line is that he pointed out again that there was a risk involved. And I keep asking -- I’ve been asking all along why are we insisting on directional drilling? It seems to me that with the open cut method
there is no risk. It's a slam/dunk in everybody's terms.

Yes, there's disturbance of the streambed, but the Fish & Game's remarks are that they intend to monitor both cases very closely to make sure they meet the standards. And should they fail, then they're going to shut the program down till they get it corrected.

So, I guess I'm trying to point out that I think we've kind of got ourselves stuck in this hole. We can't move it over because they claim there's more risk on the other side. But, in fact, it's risky on both sides. And the open cut method is used -- in fact, they're using it on some of the other parcels and some of the other rivers.

I'd just kind of like to run down the upstream crossing to the downstream, the alternate crossing --

CHAIRMAN DAVIS: Can you do that in about a minute?

MR. TALBOTT: Yeah. I'm just about done.

On the down -- on the upstream crossing, which is across my land, there's encroachment on the wildlife. Just the very act of having that thing there, possible rupture in the future, the period of time that it's tore up is an encroachment.

Going on the other side, there'd be no encroachment.

Possible failure of the drilling process -- with
the open cut, there is no possible failure. With the directional drilling, there surely is. And, of course, there's the doubling of the cost if they have to do it twice. And there's every possibility they're going to have a failure.

There's a possibility, if they do the downstream drilling, again, you have the National Wildlife Refuge. Dave Johnson's offered -- he has two dams on his refuge, diversion dams, and he said that, to enhance the open cut method, which is where they've got to pump the water around to dam the river for a few hours to make this pipe trench, he can reduce the flow of Pit River down to substantially lower levels to help them facilitate that. And he's offered to do that.

And, of course, we've heard about the kidding ground, should there be a break during the kidding time, the mother antelopes usually abandon their young. That would not happen if it was on the other side.

And I guess that's about all I really need to cover.

CHAIRMAN DAVIS: Okay.

MR. TALBOTT: So, I'm proposing that we do the -- oh, one last point.

The Fish & Wildlife -- the Fish & Game Department, who is really the people that have to monitor this stream,
has offered to come back and do a pros and cons study of both
sides.

CHAIRMAN DAVIS: Wait a second. Is anybody here
representing Fish & Game's point of view? Are there any
letters from them?

MR. TALBOTT: There's a letter here.

EXECUTIVE OFFICER HIGHT: I think there's a letter
in your packet.

MR. TALBOTT: And he's documented everything I've
said.

CHAIRMAN DAVIS: Okay.

MR. TALBOTT: So, all I want to say is that he's
offered to come and do a study to determine if, in fact,
what I'm saying is true. Now, we've already got the input
from Dave Johnson, who manages the National Wildlife Refuge,
they would prefer the pipe be on the alternate route and not
disturb the wetlands habitat that we have here.

So, my suggest is, if there's any way possible, to
go back and do these studies. I really don't think we're
going to find any Indian relics, although that's a
possibility I suppose. But, certainly, we need the input of
the Fish & Game Department as to what they recommend.

CHAIRMAN DAVIS: All right. Does anybody have any
questions?

COMMISSIONER CONNELL: Mr. Chair, I have a
question of Bob, if I may.

Do we, as the Commission, have any authority over this issue of directional digging versus open cuts?

EXECUTIVE OFFICER HIGHT: That is probably one of the major issues that the Commission has authority over, because it's that issue that the Commission can direct on how to cross the State-owned land.

COMMISSIONER CONNELL: Could you respond on the testimony we've just heard on this issue?

EXECUTIVE OFFICER HIGHT: Yes.

It's my understanding that a committee of all the affected agencies -- the Fish & Wildlife, Fish & Game, BLM-- met onsite in various areas where there would be crossings. And they determined that directional drilling was the most appropriate means here on these two particular crossings.

Staff is concerned that the trenching method will create, in effect, a weaker bank system, which is conducive to erosion during flooding times. So, that's the reason that directional drilling was chosen on this particular site.

COMMISSIONER CONNELL: Thank you.

CHAIRMAN DAVIS: Theresa?

COMMISSIONER PARKER: No. I'm anxious to hear from the gas company.

CHAIRMAN DAVIS: Okay. Thank you.
Let's see. I think, actually for the record, Curtis, we gave you both your three minutes and Robert’s. So, we’ll give Mr. Galbraith up to six minutes, since I assume you’re the only one speaking on your side.

(Thereupon, there was a pause in the proceedings to allow the reporter to replenish her paper.)

MR. GALBRAITH: Good afternoon. Thank you for the extra time.

My name is Greg Galbraith. I represent Tuscarora Gas Transmission Company.

At the risk of stating what’s already been stated, I would like to go ahead and just clearly restate our reasons for wanting to stick with our proposed route. First of all, it is, in fact, the best engineering and construction alternative. We’ve gone back and reexamined that many times and come always to the same conclusion.

Second, all the environmental work is done. The route has been approved by FERC, and that was a major milestone, an important one, not one that we have to want to go redo on another route.

Tuscarora, on this proposed route, has all the right-of-way lined up and we are, in fact, ready to start. As of June 19th, we even got the title to the property.

All previous attempts to come to arrive at a
compromise solution with Mr. Talbott have failed, almost miserably I might add.

We have tried to meet and address every one of his concerns and without success.

The other is schedule and cost. Taking a look at schedule, I talked to our cultural resources coordinator today to get a little better handle on what exactly is going on on the alternate relative to cultural resources. What he told me basically was that it was a hot locus of cultural resources out there, and it's very unpredictable what we may, in fact, find.

Although one thing is certain, we will find sites and we will have to treat them. In treating those sites, getting a determination of eligibility and noneligibility, would take a minimum -- he said two and a half to three months. And he said, well, the way things have been going, better figure three months.

And then, assuming that we may not have to do any more work, and maybe we're only talking about three months at that point. But there's a very good likelihood we will have to follow through and do data recovery. Data recovery would take another month at a substantial cost increase there as well.

So, we could be looking at a schedule out four months; if we started today, we're into October already, and
that jeopardizes our 1995 construction schedule on this particular lateral.

Okay. On the cost, the route that Tuscarora proposes holds right now at $825,000. I might add that that's more than we estimated initially. The Alturas City is not a large load, and the revenues off of that are not large, so the economics of following through with this lateral are shaky at best. And, however, Tuscarora recognizes that serving the City of Alturas is the right thing to do. We've always shown that to be one of the major benefits of the project, even at the risk or -- even knowing and accepting the fact that the main line construction is, in fact, subsidizing the portion of the Alturas lateral.

However, every dollar increase just makes those economics look even worse and makes it a more difficult decision for Tuscarora to proceed with construction of that lateral.

Just to give you a rough -- let me just throw these numbers out. We're looking at -- if we had -- if all the risks proved to be unsubstantiated, we're looking at least another 75,000 to go to the alternate route. That would push it up to about 900,000.

Failure on one of the crossings would add 70,000; so we're at 970. A second failure, which there's a possibility of two failures on the downstream or the
alternate route, that’s another 70,000. And pretty soon, we’re up to a million.

Now, if you throw in the testing at $15,000 for the alternative route, there’s additional dollars. The data recovery could be anywhere from 50 to $100,000.

So, Tuscarora finds itself in the position of having to ask itself is it really worth it? And maybe we say, no, and wait for Alturas to come back with a greater load at some point in the future and something that we can justify a little better economically.

Now, the flaw there -- if I can just take a few more minutes here -- is that, if we do not construct this lateral with this main line construction, what would happen is Alturas would essentially have to pay for the incremental cost of that lateral at some future point.

Right now, at this point in time, we have the ability or we have -- well, we have the ability to roll in the cost of that lateral, even accepting the fact that it’s more expensive than it’s worth, we can roll that into our main line construction and the dollars somewhat get lost in it. Maybe a better way to put it is the current customers would have no objection to that at this point in time.

If we have to go back in a year and add this, there is an incremental cost, and there is a chance -- I can’t tell you right now what those chances are -- but there
is a chance that the City of Alturas would have to pay an
incremental increase in their rate to take gas off the
Tuscarora pipeline.

I did ask the general manager of Tuscarora this
morning what that might mean in real dollars, and it could
be as much as a $200,000 adder in total the first year, and
then it would increase every year thereafter if that did, in
fact, happen.

So, I just throw that out for your consideration.
That’s not much in the way of factual, but it is there and
something to think about.

So, with that, I guess Tuscarora is at the point
right now where we just -- given that we cannot come to a
compromise after repeated efforts and, you know, the
inflexibility on the part of Mr. Talbott to let us pursue
the route that we want. We don’t even -- at this point,
we’d just like to go with the route that we have permitted
and the one that we do have the ability to construct on
tomorrow. That’s the one we’d like to stay with, although
we will still stand by our previous commitments to Mr.
Talbott and to the Commission staff to look at a -- well,
we’ve already looked at a compromise. I would hope we could
come to a decision today.

With that, I guess I’d like to finish.

CHAIRMAN DAVIS: You may have covered this while I
was out of the room. If so, forgive me.

Where does this issue stand procedurally? Does the City of Alturas approve this project? When you were last before us, I don't think they had. Have they in between our Commission meetings?

MR. GALBRAITH: The City of Alturas, they don't have any approval authority for the project. What they are is a customer. They did, in fact, sign in 1993, a precedent agreement, which is a preliminary contractual arrangement to take 500 dec therms per day load off the Tuscarora pipeline.

Due to the local politics, they have not, as of this date, executed a TSA or what we call a transportation service agreement. However, like I say, it was mostly local politics that has delayed that.

Some things have happened. They have had a recall of the City Council. The new City Council is very enthusiastic about the lateral and about the prospects of getting natural gas into the community of Alturas.

They have approved a prison, which is a load. They're looking to the other large commercialized -- the hospital, for instance, and, in fact, see the possibilities of taking gas very quickly to selected customers, and those would be the large commercial.

They will sign an agreement. My boss told me basically 30 to 60 days. You know, if the question comes
up, say 60 days. But we do expect we'll get a
transportation service agreement executed with them in the
near future.

CHAIRMAN DAVIS: Bob, do we need special action
from any other body before we act on this?

EXECUTIVE OFFICER HIGHT: No.

CHAIRMAN DAVIS: When they originally came here,
they needed some other official action, but they wanted to
stay on track, so they were bringing the matter to the Lands
Commission to save time.

EXECUTIVE OFFICER HIGHT: There is no other action
necessary.

COMMISSIONER CONNELL: Mr. Chair, I have a
question.

CHAIRMAN DAVIS: Sure.

COMMISSIONER CONNELL: You say there hasn't been
any compromise, but maybe it's naivete on my part, but I
think that there has been a compromise. I mean, from what
I'm hearing Mr. Talbott say, if I recorded my notes
correctly, Mr. Talbott is willing to have you build your
pipeline on his property; in other words, following the
purpose course indicated on this map in front of us on
Exhibit B, south of Road 54.

Now, he was not willing to do that prior to our
discussion -- our prior discussion at this Commission
meeting. So, I do think there has been some compromise there. I guess my question to you is, seeing how Mr. Talbott has compromised on the southern part of the route, what would you suggest as a compromise north of Road 54? What would you entertain with Mr. Talbott as a possible compromise?

MR. GALBRAITH: Okay. I guess the way I’d like to respond to that is that, unless I’ve missed something here, and that’s entirely possible, I believe that was our compromise on the southern end of 54, to move out. I believe.

Now, north of 54, we would like to maintain the, you know, the river crossings, because that’s at the heart of -- other than scheduling costs, that’s basically the heart of the engineering and construction best solution.

North of Highway 54, I suppose we could -- you know, we would be willing -- certainly willing to take that a little further north. The trouble is, is still want to hang with the river crossings. Those are important to us.

COMMISSIONER PARKER: Could you show us what that would be?

(Thereupon, Mr. Galbraith approached a chart away from the witness table and away from a microphone.)

MR. GALBRAITH: Sure. We would be willing to --
again, you know, it would be kind of a compromise on this route. Of course, that doesn’t help the cultural resources problem, which could be significant.

I suppose we would be willing to try and extend this a little further, a little further down to the extent possible to stay along the road. At some point, we’d have to work our way back into the pipeline at these two crossings.

Something tells me and I’m reasonably certain of this, the reason for this jog here that you see in the purple route is because of rock outcropping there.

COMMISSIONER CONNELL: Would the rock outcropping, would that be more expensive then for you to go the purple route rather than the green route north of 54?

MR. GALBRAITH: No, because what happens is, as you move easterly, you move off of what we call a rock bench down to the silt or sediment. And the lowland there is filled with sediment, which allows the directional drilling to take place.

Like I said, you’ve got about 15 feet of dirt fill, and then when you get into rock, the basalt, that’s the stuff that’s very difficult to fight with.

So, that’s the reason why you want these crossings; that’s not to say that our crossings will not rip through.
(Thereupon, Mr. Galbraith continued to speak up on the dais in front of the chart outside the hearing of the reporter.)

COMMISSIONER CONNELL: How rapidly will it take you to go this route starting at the bottom of the chart, moving north.

MR. GALBRAITH: We planned to start that around the first week of September and finish about the first of November.

COMMISSIONER CONNELL: So, that if you were delayed into the month of October, using your schedule, you would lose effectively a 30 days construction period when you would have been in the field. You would have to halt construction?

MR. GALBRAITH: What I can't tell you is if there are any biological restrictions, so that would become a time thing with winter coming on.

COMMISSIONER CONNELL: I guess I'm trying to understand if we can evoke a compromise here that gives Mr. Talbott some satisfaction north of Route 54 and doesn't delay you at some level of cost that it becomes prohibitive. Because I've heard your numbers regarding the costs that are going to be passed on to the users.

I am trying to figure out what that delay range might be, realistically, if we were to discuss going your
route south of 54, your alignment, which would be the purple is my understanding, and then look at the situation of moving -- if environmentally it is safe to do so -- to the green route north of 54, to delay and study the route north of 54, if you took until October, what would that do to your timing in the field?

It's my understanding that the Commission gave you authority last time to build north of this area and south of the area, so that you're moving in both directions now to this site; is that correct?

MR. GALBRAITH: Yes.

COMMISSIONER CONNELL: Right. So, your construction crews are somewhere approaching this site as we continue this discussion. My question, I guess, is at what point will we interrupt the construction crews from moving further north?

At what point were they expected to be in the area north of 54?

MR. GALBRAITH: This lateral is four-inch -- is short; it wouldn't necessarily take -- to answer your question, it would probably just delay that. We would delay the construction until the following year if we couldn't start on. If you start in October, you start to push winter.

COMMISSIONER CONNELL: You would delay that
segment, but you will have completed the other segments leading up to that; is that correct?

MR. GALBRAITH: Our main line is going to proceed. The lateral is pretty much a stand-alone project. Now, you can look at it in terms of --

COMMISSIONER PARKER: So, if that were to occur, would the dollar value of that particular portion of the line then have to be compensated for on a stand-alone basis if you waited until the following year to construct it?

MR. GALBRAITH: That's right.

COMMISSIONER PARKER: So, if you construct now, the dollar value of the line is incorporated into the rates being paid by all of the consumers on the line?

MR. GALBRAITH: Yes. I can't tell you -- here's what we've tried to do. We still try, even if we constructed next year, we would try to get those dollars rolled into the main line. But that's a FERC decision, not ours. That's not our decision.

Now, when FERC gave us our certificate May 31st, they gave us one year to construct, and we have to go back to them. Now, we wouldn't want to construct this thing in the spring or even during the summer. We would go back to FERC and try and get those rates rolled in, but they may say no. I can't predict with any certainty what those folks will do. If they get a complaint by one of the other
customers that says, hey there’s a million dollar project you’ve got out there and we’re paying for it? No way. Right now, it’s something we can do. It’s acceptable and it’s all part of the big picture of the main line project.

So, I guess your question is, it’s not real certain. There’s a possibility. It’s something -- and if I could just add to that just a bit, the City Counsel of Alturas are very concerned about the cost as well. It could still have an impact on their decision as well.

COMMISSIONER PARKER: You’re saying that, at a minimum, if I heard you correctly, to do the delay, because of the additional work of looking at that -- extending the purple line up to the green line. you’re saying that there aren’t mitigation issues; that it would be approximately 75,000. It would add about a 10 percent cost to the cost of the line. And if I heard an upper end, it was somewhere in the 250,000, 250,000 range, which would be almost a 25, 30 percent increase in the cost of the line?

MR. GALBRAITH: That’s the worst case scenario. But that just depends on many times you fail in the crossings. There’s a possibility of failing once there and there’s a possibility of failing twice there.

COMMISSIONER PARKER: And so, all of those costs could be added -- the best case scenario -- to all the consumers on the line; worst case scenario, those costs
would be all to the consumers in the Alturas area.

MR. GALBRAITH: That's right. Assuming that we proceeded with the line at that point.

COMMISSIONER CONNELL: Mr. Chair, I don't know that I'm going to get a second for this, but I might as well throw it out in the interest of moving on.

I would like to suggest that we approve today the route indicated by the gas company south of 54, and that we ask that there be the additional study for the alternative route north of 54, given the information presented regarding the wildlife and the disturbance of that habitat.

CHAIRMAN DAVIS: How long would such a study take, Mr. Hight?

EXECUTIVE OFFICER HIGHT: Range of two months to four months, depending upon what they find in the initial field search as to whether or not there is any kind of Indian resources there.

CHAIRMAN DAVIS: Who would conduct it? Would it be Fish & Game?

EXECUTIVE OFFICER HIGHT: No, it would be the consultant for the applicant would do it, and they would have to report to the appropriate agencies -- the State of California Native Heritage Commission, Fish & Game.

If they find nothing, then probably three months, two to three months, probably three months to be the short
of it, and that would be the end of it. If they find
something, then -- depending on what they find -- those
issues become larger.

COMMISSIONER PARKER: A couple of questions, Bob.
We would need an environmental impact report before we could
come back. Would we still be in a situation to decide
between the purple line and green line north Road 54? Would
we still have the option of either of those two --

EXECUTIVE OFFICER HIGHT: Yes.

COMMISSIONER PARKER: -- based on what we found?
EXECUTIVE OFFICER HIGHT: Yes.
COMMISSIONER CONNELL: Yes.
COMMISSIONER PARKER: How much it cost the gas
company, how much of a time delay it would have, those kinds
of concerns.
EXECUTIVE OFFICER HIGHT: Correct.
COMMISSIONER CONNELL: That's why I'm requesting
the study.

COMMISSIONER PARKER: I personally am not prepared
to vote for doing the green line today. I have some
concerns about the property owner because of the concerns
that he brought up. They're very important ones. I'm
concerned about the cost. And I guess I would be more
willing to make a decision if I knew what the impact would
be from the report on the cost.
COMMISSIONER CONNELL: That's why I'm requesting
the study, because I feel that there have been some very
compelling issues raised today. And I don't feel we have
adequate information. So, I was hoping that we would not
delay the gas company in moving forward south of 54, because
there doesn't seem to be, as I understand it -- and correct
me if I'm wrong, staff -- there does not seem to be an
outstanding issue now south of 54.

We seemed to have Mr. Talbott agree; is that
correct, Mr. Talbott?

MR. TALBOTT: Absolutely correct.

COMMISSIONER CONNELL: That south of 54, we might
go with the proposed route by the gas company. And north of
54, though, I thought there were some issues that I remain
unconvinced as to the completeness of the information.
That's why I made the motion to have the study, and delay
the decision north of 54.

COMMISSIONER PARKER: Mr. Galbraith, could you
respond to that -- I guess you'd come back one more time,
but it would give us the opportunity, in essence, to be in a
better position of understanding the cost implications to
you.

MR. GALBRAITH: I guess what I'd have to say is
that we've come to a point here --

(Thereupon, the reporter requested
the speaker to approach the microphone.)

MR. GALBRAITH: We've come to a point where we know what the cost of this lateral is going to be if we construct it today. We have the contract, our bids in. This thing is running a couple hundred thousand dollars, as it sits, higher than we initially projected. It's a low revenue operation. Tuscarora Gas Transmission Company is a partnership. We have two partners. I know our partner is very nervous about spending the dollars to date on this thing.

We're very leery about spending another nickel. While I understand what you're saying, I suppose what we'd do is, you know, we have to go back and take a look at the economics.

We would hate to have to spend more money. The cultural resources is a schedule problem. That scares me even more, because that looks -- has the potential to push us out into 1996. But, I guess, beyond that, it's your decision. I just ask you to consider all the facts and leave it with your decision. I guess that's not much of a response. That's just a comeback I suppose.

CHAIRMAN DAVIS: Well, you know, I think there has to be some finality to the process. Staff has basically recommended that we approve the proposed route.

EXECUTIVE OFFICER HIGHT: Yes, Mr. Chairman.
CHAIRMAN DAVIS: And the proposal is that we approve that portion of the proposed route south of 54. And the question is whether the interim activity she's proposing will increase the cost to the ultimate consumers or whether the study will be complete in a timely fashion that would allow the project to be completed without additional cost.

I guess nobody knows the answer to that.

EXECUTIVE OFFICER HIGHT: If the applicant was amenable to doing the cultural study around the intersection of the green line and 54, and report back to the Commission within, you know, as quickly as possible -- if there's a major a problem there, I'm assuming then that that is a major determining factor. If there is no problem there, then the issue is how much more would it cost to do the other two crossings.

And if the applicant perhaps would be willing to do the cultural study -- which I don't know how much it would cost -- but it probably would be 50,000 -- and then have the bids on the other two sites, which would give the Commission some sort of ball park parameter as to how much more this will cost, is it doable, then we can look at this one more time.

CHAIRMAN DAVIS: Mr. Talbott, if I call on you, would you promise not to exceed one minute?
MR. TALBOTT: I can do it in about 20 seconds. I would just like to remind the Commission of my recommendation to take a look at open trench versus directional drilling. All these added costs are the result of if that high risk directional drilling is a failure, you have to do it twice.

And I really think that we've shot ourselves in the foot here by insisting on doing directional drilling and not taking open trench.

The Fish & Game said that they would be happy with either one. They'd be monitoring both.

CHAIRMAN DAVIS: Didn't we just speak to that earlier, that several agencies got together and assumed that that was the best approach.

EXECUTIVE OFFICER HIGHT: Right.

CHAIRMAN DAVIS: And we're litigating these issues forever, and I'd say the Supreme Court has said it's final because it's right. Right, it's final.

I'm sympathetic to Mr. Talbott's concerns, but I also don't want to be the reason that the customers get socked with a huge bill.

Let me suggest an amendment to your proposal. What if we did the cultural study near the intersection of the river crossing near Road 54, and then -- and see if that changes -- the results of that change the Commission's
recommendation. If it didn’t, maybe we’d just vote up or
down on the project then.

If the applicant is agreeable to that, then it’s
not quite as ambitious as the Controller has suggested, but
it’s a shorter study that will give us more information on
the cultural impacts.

MR. GALBRAITH: Well, we’d be willing to go back
and take a -- you know, do a pedestrian survey and try and
get a -- what we don’t want to do is get into an expensive
testing program.

We’d certainly be willing to take a look at that,
sure.

CHAIRMAN DAVIS: I guess I take it that Mr.
Talbott is aware that we’re getting close to a yes vote on
this project. So, if you want to negotiate something with
these folks, I respect your tenacity and respect your
integrity, but I suggest that it would be done between now
and the next meeting, assuming there would be a compromise
on this.

MR. TALBOTT: I just want to understand, we’re
going to proceed with a cultural study. And if they don’t
find anything on the site, then what are we going to do?

CHAIRMAN DAVIS: We’re going to vote the project
out.

MR. TALBOTT: Vote in favor of my --
CHAIRMAN DAVIS: Vote in favor of -- well, we'll have to see how we vote.

COMMISSIONER CONNELL: We'll vote as the evidence would suggest at that point. What we're trying to do, Mr. Talbott, is get the information regarding the cost factor here and whether there are any reasons why we could not move the route into the alternative.

COMMISSIONER PARKER: Mr. Chairman, one question. It gets back to what Bob had suggested. It seems to me that the company has raised two considerations for cost. One of them is the cultural area, but also there may be additional costs because of the crossings being on the green route as opposed to the purple route.

EXECUTIVE OFFICER HIGHT: Right.

COMMISSIONER PARKER: So, I guess they're going to be looking into the costs, which I'm concerned about, too. Shouldn't we also have some sense about whether or not that is -- those, in fact, create greater costs?

EXECUTIVE OFFICER HIGHT: Yeah, if the applicant could get a bid on what those costs would be, that would certainly provide the Commission with adequate information to go either direction.

COMMISSIONER CONNELL: Is that information readily available? Could you bring that back before us?

EXECUTIVE OFFICER HIGHT: It would be up to the
MR. GALBRAITH: Sure, if you're just looking for an estimate to go do a pedestrian survey across that north of 54?

COMMISSIONER CONNELL: Right.

EXECUTIVE OFFICER HIGHT: And the cost for the crossing the Pit River on the green, what additional cost that will create.

MR. GALBRAITH: So, you'd want us to go do a drilling, do a core drilling.

EXECUTIVE OFFICER HIGHT: You've got to do a core drilling to get that answer?

MR. GALBRAITH: Yes.

EXECUTIVE OFFICER HIGHT: How much does a core drilling cost?

MR. GALBRAITH: That's going to be between five and ten thousand, a minimum of five. Geotech has said as much as 10.

MS. SEKELSKY: That's per core?

MR. GALBRAITH: No, that's total. The expense is mobilizing and getting out there, and then you can -- and then, once you're out there, you can drill more.

Now, the reason we didn't core this time was there was an access problem. However, what we did do is we did do enough ground -- we used seismic refraction, but we tested
it against the corings that had already taken place on the
Talbott property to kind of get a baseline so that we could
get a reality check on the ones that we did most recently.
So, we did "truth" those, and we're confident that
bedrock is where we think it is. And we're not, you know,
to spend $5,000-plus to go find out something we already
know is a little bit unpalatable, especially in light of the
economics of the project already.

Although we want this resolved, too. And --

CHAIRMAN DAVIS: Do I understand you to say you
could do the surveys in the neighborhood of $10,000?

MR. GALBRAITH: Yes.

CHAIRMAN DAVIS: To gather the information we're
looking for?

MR. GALBRAITH: Well, that would give us the
corings on the downstream or the green route. The
pedestrian survey for cultural is probably going to be
another 5,000 assuming we do no testing.

Now, if testing is required, that's -- my cultural
coordinator says -- he estimated that at 15,000. You may
have to do testing to find out if you have to do data
recovery. Data recovery, he estimated to be anywhere from
50 to $100,000.

Now, what he said was, it's unpredictable and you
don't know till you go out and start digging around.
COMMISSIONER PARKER: We know that in order to do the EIR -- if you had to do the green route, at a minimum, it would cost you in the neighborhood of $75,000?

MR. GALBRAITH: Yes. Construction -- just construction costs. Now to go out and permit all this, you have additional costs here. There's a few dollars in there for some cultural testing -- excuse me, cultural pedestrian survey.

I didn't realize when we pulled those numbers together, that it was a hot bed of cultural resources out there. This is new information for me today.

COMMISSIONER PARKER: So, at a minimum, to meet the requirements of the green line, you probably would have to spend somewhere in the neighborhood of $75,000 in order to do appropriate reports to get approval by us.

MR. GALBRAITH: I would say, if we went out and did the pedestrian survey, the testing, and the coring, and nothing else, just those field tests, no embarking on an environmental assessment or whatever, we're probably talking closer to 50,000.

CHAIRMAN DAVIS: But then, if we did suggest that the green route north of 54, that would be another 75,000, right?

MR. GALBRAITH: Yes. Yes, in construction costs.

So, let me see if I can put this -- pull this
together.

Just to give you folks the ability to make the decision, we will probably go spend, let's say, $7,000 on the coring of the downstream location. We would probably spend another 5,000, let's say 7,000 there, too, for the pedestrian survey north of 54. So, we're up to 15.

If you -- what I'm anticipating is that we'll have to go out and test that, actually do some drilling and testing; our estimate on that was 15,000. So, you're up to 30.

So, maybe we're really looking at -- and then engineer's time to go out and just make sure everything's right there where he wants it.

I can see this easily going to, you know, 35, 40,000, maybe as much as 50. Let's just say 40,000 for the sake of argument.

Now, if that sways your decision to go for the green route all the way, it would cost us a minimum of another 75,000 to construct that. Okay. And then depending how much risk -- how many failures we had, that cost could go up. And I can't predict that. I don't want to say that's going to happen. The potential's there.

EXECUTIVE OFFICER HIGHT: In addition, Mr. Chairman, there's the issue of -- depending on what they find in the cultural study, and what they find in the core
drillings, supplemental environmental documentation may be required -- staff is indicating probably -- which would kind of put the thing off track, depending on how long that would take.

That would probably put them in the neighborhood of another -- if they ran simultaneously, that's another four to six months.

COMMISSIONER PARKER: Mr. Chairman, I'm just concerned about -- and I appreciate the Controller's proposal; it certainly would provide more information. I just need to think about having to go out and spend some more money for us to find out that it is more -- you know, substantially more expensive to use the green route than the purple route. So, they will have spent that money on top of what it would cost to construct the purple route.

We need to really think about requiring the gas company to spend more money. I would suggest that if we do make that motion, we may be coming back approving the purple route, because we're requiring them to spend 50, $75,000.

It sounds like, based on the staff's recommendation, they know that it's going to cost us more money today.

COMMISSIONER CONNELL: Let me ask the gas company a question, and perhaps you can't answer this in public.

What are you going to have to pay Mr. Talbott for
access through his land?

    MR. GALBRAITH: I believe it’s --

    COMMISSIONER CONNELL: Because we’re talking about how much the green route is going to cost you additional. I want to know how much the purple route is going to cost you taking into account the money you’re going to be paying Mr. Talbott. Because there is a factor that we have not discussed today. You’re not going to get access to this land for free.

    MR. GALBRAITH: I don’t mind telling you what that is if Mr. Talbott doesn’t mind.

    MR. TALBOTT: I have no objection.

    MR. GALBRAITH: I believe it’s ten-thousand three.

    COMMISSIONER CONNELL: So, that’s all you’re going to be paying?

    MR. GALBRAITH: And 6,000 of that is damages.

    COMMISSIONER CONNELL: Pardon me?

    MR. GALBRAITH: And 6,000 of that is what we call damages.

    COMMISSIONER CONNELL: So, that’s 10,000 that you would have as a charge on the purple route.

    MR. GALBRAITH: That’s correct. Unless he can convince some judge in some court later down the road that he does, in fact, have greater damages through the combination process.
Now, what I was going to suggest as a compromise, and maybe you were going to beat me to it here -- and maybe Mr. Talbott would like to contribute -- if we fail, maybe that 10,000 could support the cost of the expense we have in trying to make a determination up front. It wouldn't pay it all; it wouldn't pay half. But it would be better than nothing.

MR. TALBOTT: I didn't hear all that.

(Laughter.)

CHAIRMAN DAVIS: The gas company's inviting you to share the cost.

MR. TALBOTT: I should help the gas company -- the oil and gas companies with money?

MR. GALBRAITH: Maybe I shouldn't have even raised that, but I --

CHAIRMAN DAVIS: We don't have a second for the Controller's Motion. That's where we are. And I appreciate what she's trying to do.

MR. GALBRAITH: I would -- if I could just take one minute, something I did forget about. It's something I did forget about a little bit earlier. In addressing the wildlife issue, our four-inch gas pipeline is not incompatible with wildlife. That thing, once it's in the ground, is gone. And so, we'll have some reclamation, but we should never be out on that property ever again unless
there's an emergency. And, frankly, I just -- there's more chance for damage to that pipeline on the green route than there is on the purple -- excuse me, on our route, because it's near a road, and that's where work happens is near roads.

CHAIRMAN DAVIS: Would you say that again?
There's more chance of damage to the pipeline on your proposed route than on --

MR. GALBRAITH: No, on the green route.

CHAIRMAN DAVIS: Okay.

MR. GALBRAITH: Anytime you put a pipeline, one of the routing criteria is not to lay these things in road ditches, and the reason being that you never know when some county, or telephone company, power company is going to get out there and dig a hole and be into it.

We purposely try to avoid following roads for just that very reason, at least stay out of their immediate right-of-way.

But the point I was going to make was relative to antelope kidding and all the other wildlife concerns that Mr. Talbott has raised. You know, we can put this thing in the ground in six weeks, you know, we come through and reclaim it, and then we're out of there.

We may come back and spot check, but all the aerial patrols -- all the patrols or subsequent patrols are
done by helicopter or from the road. And the only reason
for those patrols is to make sure no one's digging into our
pipeline.

So, I don't see that this facility is incompatible
with antelope kidding or anything else. I think the
environmental impact report has beared (sic) that out.

CHAIRMAN DAVIS: Well, all right. If there's no
further discussion, we have a motion before us. Do we have
a second on the Controller's motion? Hearing none, the
Chair would entertain a motion either to approve the staff
recommendation or to approve the staff recommendation up to
the crossing at Road 54.

COMMISSIONER PARKER: What about a motion that we
would -- to the extent that this is our purview, which I
would ask the staff, a motion to approve the conditioning of
our approval up to -- on the purple route up to Road 54 to
see whether or not there would be any further -- to give
some further opportunity for -- based on your conversation
to see if anything can happen between the gas company and
the landowner between now and our next meeting to make a
decision on the route.

My problem is, I guess I would be willing to make
a recommendation to -- a motion to adopt staff
recommendation. I just would be willing to entertain some
additional time if I thought it would be useful between the
two parties to come to any sort of more reconciliation. But I don’t know how that would happen.

I’m still concerned about the cost. I think, if we don’t adopt the route proposed, it’s going to cost the ratepayers more money. And so, I guess I’ll try. I’ll make a motion to move the staff recommendation.

MR. TALBOTT: Do I get to comment on this?

CHAIRMAN DAVIS: Well --

MR. TALBOTT: I only got six months.

CHAIRMAN DAVIS: Six minutes? I wish you only had six minutes. We have a motion. All right. Go ahead.

MR. TALBOTT: It would be beneficial to stay off this item on the last section of the route and give Tuscarora and myself an opportunity to negotiate this. Obviously, if this goes on the way it has today, I’m not going to have much a chance to negotiate anything.

And I agree with putting everything on the table here, hoping that I would win. It looks like things are not going my way. So, I would definitely like to have more time to discuss it with Tuscarora.

COMMISSIONER CONNELL: Well, that’s my motion without the study.

Our next meeting is next month, right? That gives them potentially a month.

COMMISSIONER PARKER: I would make a motion that
we take an action today to approve the route up to — along the purple route to Road 54, and that we consider the balance of the route at our next meeting.

COMMISSIONER CONNELL: I'll second that. We won't have any more information, but I'll second it.

CHAIRMAN DAVIS: And I will make it unanimous, although I think you can tell that I'm hoping Mr. Talbott negotiates successfully in the next 30 days, because there are some other items that this Commission has to deal with.

So, that's unanimous.

EXECUTIVE OFFICER HIGHT: Thank you, Mr. Chairman. We have two more items, and we will do them very quickly.

We have Item No. 87, which is the certification of an environmental impact report for a Unocal marine terminal. We have a picture, just got it from Hercules just to show you. This is the Unocal refinery, and Mark will point out the marine terminal. And this is an ongoing lease negotiation with Unocal. And staff believes the EIR is adequate and recommend certification of the EIR.

CHAIRMAN DAVIS: Is there anyone here who opposes this project?

I don't have any letters in opposition.

COMMISSIONER CONNELL: I move the staff recommendation.

COMMISSIONER PARKER: Concur.
CHAIRMAN DAVIS: I agree. I concur. It's not reflected as being part of the motion, but it's suggested that Unocal make another phone call to the citizens of Crockett. There's one person --

EXECUTIVE OFFICER HIGHT: Ruth Blakey (phonetic).

CHAIRMAN DAVIS: That they please call her and be nice to her.

EXECUTIVE OFFICER HIGHT: Unocal is going to meet tomorrow with the -- an organization to try to resolve those problems.

CHAIRMAN DAVIS: All right. Next?

EXECUTIVE OFFICER HIGHT: Then we'll go to Item No. 63.

CHAIRMAN DAVIS: That's approved unanimously.

EXECUTIVE OFFICER HIGHT: 63, Mr. Chairman, which is the lease of land for a dam across the Russian River in Sonoma County. And we received one letter of comment, which Jane Sekelsky promised to read into the record; however, in the interest of time, you could direct us to submit that into the record.

And her major concerns relate to the Commission's public trust responsibilities, and she's also concerned that this creates some problems for shad.

This is an ongoing project that is CEQA exempt, and staff recommends it.
COMMISSIONER CONNELL: I move the staff recommendation.

CHAIRMAN DAVIS: Is there anyone here who's opposed to the project?

MS. SEKELSKY: First of all, a technical correction. I think this is Item C62.

CHAIRMAN DAVIS: Yes.

MS. SEKELSKY: And the letter is in opposition to the project on the basis that Bob has stated. She is concerned with the public trust implications relative to fisheries and navigation in the waterway. And she is generally frustrated with the approach that's been taken.

But this is a structure that has been in place every year since 1962. It precedes CEQA and, as such, is exempt from CEQA. So, we don't get into a CEQA analysis of it.

CHAIRMAN DAVIS: Any further comment?

We have a motion.

COMMISSIONER PARKER: I concur with the staff recommendation.

CHAIRMAN DAVIS: It's unanimous.

That's all the business?

EXECUTIVE OFFICER HIGHT: Yes, sir.

CHAIRMAN DAVIS: The meeting stands adjourned.

Thank you for coming.
Thereupon, the meeting was adjourned at 4:10 p.m.)

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CERTIFICATE OF SHORTHAND REPORTER

I, Nadine J. Parks, a shorthand reporter of the State of California, do hereby certify that I am a disinterested person herein; that the foregoing meeting was reported by me in shorthand writing, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, nor am I interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of July, 1995.

Nadine J. Parks
Shorthand Reporter