MEETING OF THE
CALIFORNIA STATE LANDS COMMISSION

PORT OF SAN DIEGO
BOARD ROOM, FIRST FLOOR
3165 PACIFIC HIGHWAY
SAN DIEGO, CALIFORNIA 92101

CRUZ M. BUSTAMANTE, LIEUTENANT GOVERNOR, CHAIR
KATHLEEN CONNLELL, STATE CONTROLLER, MEMBER
B. TIMOTHY GAGE, DIRECTOR OF FINANCE, MEMBER

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TRANSCRIPT OF PROCEEDINGS

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BARNEY, UNGERMANN & ASSOCIATES 888 326-5900
APPEARANCES

COMMISSIONERS PRESENT

Cruz M. Bustamante, Lt. Governor, Chair
Kathleen Connell, State Controller, Member
B. Timothy Gage, Director for Finance, Member

COMMISSION STAFF PRESENT

Robert C. Hight, Executive Officer
Paul Thayer, Assistant Executive Officer
Jack Rump, Chief Counsel
Curtis L. Fossum, Senior Counsel
Michael R. Valentine, Assistant Chief Counsel
Robert L. Lynch, Chief Land Management Division
Hap Anderson, MAI, Assistant Chief Land Management Division
Dave Plummer, Regional Manager Bay, Delta and Central Coast Region
Paul Ideker
Sharon Shaw, Administrative Assistant II

REPRESENTING THE ATTORNEY GENERAL'S OFFICE

Dennis Eagan, Deputy Attorney General

PUBLIC SPEAKERS

Paul Spear, Port Commissioner
Dan Wilkins, Senior Director, Port of San Diego
Dean Rundel, Refuge Manager, US Fish & Wildlife Services
Laura Hunter, Director Clean Bay Campaign, Environmental Health Coalition
Nohelia Ramos, Student
Jim Peugh, San Diego Audubon Society
Letecia Ayala
Dr. Mike McCoy
Mrs. McCoy, City Councilwoman, Imperial Beach
H.L. Young
Wendel Gayman
William Claycomb
Dennis Bouey, Executive Director, Port of San Diego
Bruce Hollingsworth, Treasurer, Port of San Diego
Bruce Williams, SPG&E
David Chapman, Port Attorney, Port of San Diego
MR. BUSTAMANTE: We'll call the meeting of the Lands Commission to order. All the representatives of the Commission are here. My name is Cruz Bustamante, and with me is the Director of Finance, Tim Gage, and Controller, Kathleen Connell.

For the benefit of those in the audience, the State Lands Commission was established to administer the sovereign tide and submerged lands of the State, consistent with the principals of the Public Trust Doctrine. An element of the Commission's authority is an oversight responsibility of the major ports of the State, including San Diego, which have been the subject of specific legislative statutes.

We are here to consider several proposals by the Port of San Diego under the Lands Commission oversight responsibility. It's a pleasure to be here in San Diego. Thank you to the Port for allowing us the use of your facilities. It seems like every time I'm in San Diego it's always sunny, and today has not broken the string.

In fact, I was in Denver a couple of weeks ago, it was sunny in Denver. I was in Saint Louis at the beginning of this week, and it was sunny in Saint Louis.

MS. CONNELL: Is there something to be said about sun and the environmental community?

MR. BUSTAMANTE: I do come from Fresno, so
I'm used to a lot of sun. I'd like to thank them for their gracious hospitality. First item of business will be the adoption of the minutes from the Commission's last meeting.

MS. CONNELL: I move the adoption of the minutes, Mr. Chair.

MR. GAGE: Second.

MR. BUSTAMANTE: If there are no concerns or questions regarding the minutes, we will just assume that the minutes are adopted unanimously. Next order of business will be adoption of the consent calendar.

Mr. Hight, Executive Director, are there any concerns with regard to the consent calendar?

MR. HIGHT: Thank you, Mr. Chairman. Item number C33 and C35 have been pulled from this agenda and will be taken up at a later date.

MR. BUSTAMANTE: There a time certain on that?

MR. HIGHT: No.

MS. CONNELL: Mr. Chair, I move the consent calendar, with the omission of C33 and C35.

MR. BUSTAMANTE: Second?

MR. GAGE: I would second.

MR. BUSTAMANTE: Assuming that there are no other concerns -- are there any concerns by anyone in the
audience regarding any of the consent items? Seeing none, no discussion or debate, we will deem the consent calendar adopted by unanimous vote. Next order of business will be the issue of, I believe, number 40.

MR. HIGHT: 5, Mr. Chairman.
MR. BUSTAMANTE: 45. Mr. Hight, would you like to give us an overview?

MR. HIGHT: Yes. Thank you, Mr. Chairman. Item 45 is the subject of one of the major Commission actions here today. And Curtis Fossum, Senior Staff Counsel from the Commission, has a presentation. As he proceeds with his presentation, it will appear in the monitors in front of you. The Port is very sophisticated.

MR. BUSTAMANTE: Wow, very high tech.
MR. FOSSUM: Chairman Bustamante, Commissioner Connell, Commissioner Gage, good morning. This item requests your approval of the settlement agreement, including the proposed expenditure of Public Trust funds by the Port of San Diego for the acquisition of lands adjacent to south San Diego Bay from the Western Salt Company.

Agenda Item 45 represents the culmination of decades of dreams by citizens groups and public agencies. With the years of public input and many months of negotiations and analysis, there is considerable
excitement and anticipation surrounding this important step in acquiring nearly all the privately-owned, undeveloped property bordering south San Diego Bay.

On this photograph you'll notice the northern tier of salt ponds that are presently owned by the State. The southern salt ponds are presently under the ownership of the Western Salt Company.

The proposal before you today involves the acquisition of the ponds owned by Western Salt. The light blue areas shown on this map are State owned, and the dark area -- the dark blue area indicates the lands that will be transferred to the State.

The goldenrod areas are lands that the Port will acquire as part of this transaction. And the pale yellow area is an area that will have any claims of the State cleared in the transaction.

This transaction is considered by many to be one of the largest and most significant steps ever taken in the protection of wetlands and wildlife habitat in Southern California. Serious interest in preserving the habitat values in south San Diego Bay began in 1973.

In that year, the Commission staff began a study of boundary issues and management options relating to the salt ponds. However, funding to implement the findings of those studies has not taken place.
The Commission has assisted several of California's major ports in the critical need for expansion of trade and transportation facilities and infrastructure by facilitating mitigation projects.

The Port of Los Angeles funded acquisition and enhancement of critically needed fish and wildlife habitat in Batiquitos Lagoon in San Diego County. And the Ports of Los Angeles and Long Beach also provided funding for additional acquisition and enhancement at Bolsa Chica in Orange County.

In each instance, the Commission facilitated the acquisition and enhancement project by serving as the trustee of the lands to be purchased and enhanced with Public Trust revenues. In doing so, the Commission has ensured that proper use of trust revenues and the permanent protection of public-property rights would take place.

Commission staff has worked cooperatively with federal, state, and local jurisdictions, as well as public-interest groups and the public at large to ensure the positive outcome of these important attempts to preserve endangered species and restore thousands of acres of wetlands lost in the last 150 years.

That brings us to our present opportunity. As part of the base relocation and closure process, 25
acres of land at Camp Nimitz at the Naval Training Center in San Diego is scheduled to be transferred to the Port.

Ten acres of that property, that you see in the center there, has been identified as habitat for the California least tern. Because of the critical location of the site for the expansion of facilities -- excuse me, of Lindbergh Field facilities, the Port and the Fish and Wildlife Service have negotiated an agreement for the acquisition of lands at south San Diego Bay to mitigate the critical habitat needed for the least terns in San Diego Bay.

Following months of discussions and negotiations between the Service and the Port and Western Salt, the Port and Western Salt entered into an acquisition agreement. This agreement provides for the purchase of all of Western Salt's interests in the salt ponds in south San Diego Bay.

The purchase of the property was conditioned on the results of several studies and contingencies, including the approval of the cooperative agreement with the Service and the approval of the purchase by the Commission.

In a major step towards realizing the long-held desire to create this national wildlife refuge in San Diego Bay, the service and the Port last year
entered into that cooperative agreement. It provides for
the protection and enhancement of nesting and foraging
habitat for the California least tern at the salt ponds in
the South Bay.

The agreement also obligated the parties to
work with the Commission to implement the mitigation of
the Naval Training Center site by the addition of 1400
acres to the proposed wildlife refuge, and gave the Port
specific rights for future mitigation within the acquired
lands.

It also provided $900,000 to the Service for
biological monitoring, predator control, development of
habitat-restoration plans, and nesting and foraging
habitat.

There are three important goals the title
settlement agreement before you today seeks to
accomplish. Protect the endangered California least
turn. It also allows for expansion of airport -- needed
airport facilities at Lindbergh Field. And finally, it
settles long-standing title and boundary issues in south
San Diego Bay.

This acquisition will bring into public
ownership nearly all of the shallow-water habitat in south
San Diego, and facilitate the placement of over 2200 acres
of State-owned Public Trust lands within the proposed
Some people may ask, what's so important about South San Diego Bay? South San Diego Bay holds a large --

MS. CONNELL: Only those people who would be misinformed would raise that question.

MR. FOSSUM: Many members of the public, who probably are not here today.

MS. CONNELL: Certainly none of the members of this board.

MR. FOSSUM: I'm glad to hear that. South San Diego Bay does hold a large share of the remaining estuarine wetlands, shallow waters and coastal habitat existing on the south coast of California.

It plays a pivotal role in ecosystem functioning on a regional scale, and it is of international importance as a critical link in the Pacific Flyway, providing habitat for hundreds of thousands of migratory shorebirds and wintering waterfowl.

The proposed settlement agreement is an essential part of the creation of the proposed San Diego National Wildlife Refuge. It will allow the protection and enhancement of over a thousand acres of valuable habitats at the southern end of the bay, including eelgrass beds, shallow water, mud flats, salt ponds, dikes...
and salt marsh.

On this map, you will notice the eelgrass is in green, mud flats in tan, shallow water in blue, and the salt ponds in orange. These salt ponds contain many species of food for the endangered birds that use the area, and will continue to do so after the transaction.

The high ground of the dikes shown here in this slide is critical nesting habitat for at least nine species of ground-nesting birds. The nesting species include the state and federally-listed California least tern, the federally-listed threatened Western snowy plover, as shown in this slide.

The salt ponds in the South Bay are one of the only two nesting sites in the United States for Elegant terns, and they are one of only three primary locations for Black skimmers in the United States. Both of those species are areas -- are considered California species of concern.

Lastly, the dikes and narrow fringes of saltmarsh found along these slopes also provide nesting areas for the state-endangered Belding's savannah sparrow. Feeding or nesting waterbirds are often observed in congregations of hundreds or even thousands, providing the public with spectacular viewing experiences from public observation points on the southern and western
perimeter of the ponds. And for those of you who haven't been there, it is a spectacular view. I encourage you to see it.

The proposed transaction is of immense importance, and will enable the planning and implementation of appropriate management and conservation measures to protect threatened and endangered species, and expand the valuable habitats in that area.

With the approval of the Commission, the Port will buy out Western Salt's interest in approximately 836 acres of lands and the final years of a 612 acre lease for 20.5 million dollars.

Approximately 722 of those acres, shown in the dark blue here, will be vested in the State of California and held by the State Lands Commission, subject to the Public Trust. The remaining 114 acres of the purchase from Western Salt will be vested in the Port and subject to the Public Trust, as well as the statutory provisions providing for the Port's operations. That area is in goldenrod on these pictures.

The entire 722 acres vested in the State, together with an additional 1485 acres of State-owned Public Trust lands is proposed to be leased to the Service for inclusion in the South Bay unit of the National Wildlife Refuge.
The refuge is presently in the planning and NEPA review stage. And at such time as the Service has completed its environmental processing, the Commission will be asked to implement the plan by leasing the lands to the Service. The outline of the proposed refuge is shown there in red.

The staff of the Commission has conducted an extensive study of the area. It's reviewed the complex issues of title and boundary questions involved. In an effort to determine the location of the tide and submerged-lands boundaries, it has examined historical maps and other evidence concerning the area.

Historical evidence suggests the existence of some tidal sloughs within the lands sold and patented as swamp and overflow lands. This evidence has been evaluated by the Commission staff and used in conjunction with appraised values to assure that the Public Trust funds being expended are for the value of the privately-owned property rights, not for lands already subject to the trust.

In closing, I would like to thank all the public interest and environmental groups and individuals for their tremendous support for this project. I would also like to recognize the crucial help provided by the staffs of the U.S. Fish and Wildlife Service, Port of San
Diego, and the courteous cooperation of the Western Salt Company.

Finally, it is my privilege to state that the Commission staff has reviewed the proposed agreement and believes it is consistent with the Public Trust needs in the area, the transaction is in the best interest of the State, and recommend that the Commission approve the findings, authorizing the execution of the agreement and the proposed expenditure of the Public Trust funds by the Port.

Thank you very much. I'll be happy to take any questions.

MR. BUSTAMANTE: Is there anybody else from the Port or Wildlife Service?

MR. HIGHT: Yes, Mr. Chairman.

Mr. Paul Spear, Vice Chairman of the Board of Port Commissioners would like to make a brief presentation.

MR. SPEAR: Mr. Chairman, welcome to San Diego. I am here on behalf of our chairman, Chairman Patricia McQuarter, who's in Washington on official business. But we just want to welcome you to San Diego once again, and welcome you to our facilities here at the Port, which are pretty nice now that we moved into this room over here.

MR. BUSTAMANTE: Very nice.
MR. SPEAR: Want to say that -- am I on the
air?

MR. BUSTAMANTE: Yes.

MS. CONNELL: There you are.

MR. SPEAR: Am I on the air? Okay. By
approving this transaction today, you'll help us create
what I'm told is one of the largest wildlife refuges
within the confines of a port district anywhere in the
United States.

And you will also help us -- as you heard
from the very fine briefing you had, you will help us here
at the Port do some mitigation, so that we can take
advantage of the property that will be coming to us near
Lindbergh Field, in expanding our passenger
capabilities -- or our capabilities at that field to serve
the public in the future.

I'd like to thank, personally, a couple of
people. Mr. Mike Spear and also Mr. Dean Rundel -- I
believe Dean is here today from U.S. Fish and Wildlife
Service -- because they went a long way towards helping us
in putting this together. Dean, are you here? Dean is
back here.

And with that said and with welcoming you,
I'd like to introduce for further comment on the Port's
position, Mr. Dan Wilkins. And then we'll be prepared to
answer questions after that is done. Thank you.

MR. WILKINS: Thank you,

Commissioner Spear. Commissioners of the Land Commission, welcome to San Diego as well. I too would like to extend our sun-filled greetings to you, and please come back often.

My duty today is to try to give you a little bit of an overview of what we did, and what the public benefits, and how this all works together. And they say that success has a thousand parents. I'm sure you've heard that. And I know you know the correlary to that. There are many parents to this. Many people contributed to this.

First of all, the vision and leadership of our board, and certainly our board's leadership, working in partnership with many of the environmental community that are here today, who probably will want to address you in terms of their view. I won't attempt to speak for them. But I will tell you that there are some individuals that you need to understand their long work in this effort.

One is Laura Hunter from the Environmental Health Coalition. Another is Mr. Jim Peugh with the Audubon Society. Another is Mr. and Mrs. McCoy -- and if I may, Doctor and Mrs. McCoy. Mrs. McCoy is a city
counsel member for one of our member cities, Imperial Beach.

And I know when you name people, you run the risk of leaving people out. There are many others, but certainly those three, in my tenure on this issue in the last several years, have been at the forefront of bringing this forward, and sometimes holding my personal feet to the fire when I needed it. And I respect that. And other times, pushing us in the direction we needed to go.

If you take a quick look here, you understand the wildlife refuge is in the southern part of the bay. The airport property is in the northern part of the bay.

It's basically an historic act in which we, the Port, will acquire this acreage, as Mr. Fossum briefed you on; subsequently conveyed, we hope by your actions to the US Fish and Wildlife Service.

What we will get out of this will be mitigation, if you will, for those least terns at the airport, and the opportunity to work with the U.S. Fish and Wildlife Service on some future mitigation efforts. We will -- next slide, please -- we will be helping the Service in terms of that development by funding a $250,000 refuge restoration plan.

We're contributing $500,000 to essentially...
an endowment for management expenses, as well as $150,000 for immediate enhancement for least tern nesting in the property with the U.S. Fish and Wildlife Service. We get the mitigation rights at the airport.

We get the exclusive rights to mitigate for airport and future Port projects in concert with that restoration plan and, of course, the least tern habitat is removed from Lindbergh Field, allowing the use of that property by the airport.

Quickly, we'd just like to tell you a little brief commercial about the Port. And it will only take 30 seconds. We are a large contributor to the economy in our region. Recent analysis by Source Point here -- part of our regional planning agency -- indicates that we create through indirect and induce jobs, over 100,000 jobs in our region, 2.4 billion dollars in payrolls, 7.2 billion in regional business output.

And for example, the airport alone contributes almost -- over half those jobs, about half the payrolls, and right at half of the regional-business output. Our maritime business -- which is growing by leaps and bounds, thanks to the leadership of our board and our staff -- is a hundred and eighty-two million dollar input in our region, and 52 million dollars in regional impacts.
In short, this is the proverbial win-win-win for all parties. I think you will hear from others that will tell you that.

At the risk of upstaging some of my friends in the environmental community, I would invite them to remind you, if they have time, to address the issue of a major South Bay Bird Festival that is soon to be launched on these properties and in the general area of the Tijuana River Valley, in which the Port this year, for the first time, is cosponsor of that.

And I believe it's the fourth year they've had this organized South Bay Bird Festival to allow people to go down for guided tours. And the people who I named earlier, plus many others, are the responsible party for that wonderful event. I'm sure they will been pleased to talk to you about that.

It's my pleasure now to introduce Mr. Dean Rundel of the U.S. Fish and Wildlife Service, who would like to say a few remarks for you.

MR. RUNDEL: Thank you very much, Dan. Good morning, Mr. Chairman and members of the State Lands Commission. I'm Dean Rundel. I'm the refuge manager of the South San Diego National Wildlife Refuge Complex, U.S. Fish and Wildlife Service, and I appreciate the opportunity to address you this morning.
Curtis Fossum and Dan have covered many of the important wildlife resources of south San Diego Bay, and I'm not going to carry on with a further description of that. These are truly significant national, international wildlife resources.

The Fish and Wildlife Service has been concerned and desirous to aid in the protection of those resources for many years because of the significance of the federal trust for wildlife, the endangered species, and migratory birds. The creation of a national wildlife refuge in south San Diego Bay has been a dream of many people in this community for a long time.

My agency has been working with the community, trying to make that a reality for at least the last ten years. So it's been a long process. We just this week are completing all the administrative requirements we need to do to establish that national wildlife refuge boundary.

I would like Michael Spear, who is our former regional director of Region 1, is currently the California/Nevada Operations Manager in charge of all Fish and Wildlife Service business in the State of California, who was unable to make it this morning, but I would like to quickly read a letter from Mr. Spear to you.

"Dear Lieutenant Governor Bustamante and
members of the Commission. I regret being unable
to attend your meeting in San Diego today.

However, I want to take this opportunity as
California/Nevada Operations Manager to strongly
encourage your approval of the acquisition of the
Western Salt Company properties in South San Diego
Bay, by the Port District.

The acquisition of these lands and
protection of the State tide lands of California,
and eventual management as part of the National
Wildlife Refuge System, is an example of
government at its very best.

For several years, the Service has been
working diligently with the Port District, local
governments, the business community, and the public
to resolve difficult issues related to wildlife
resources, conservation and infrastructure
development in San Diego County.

Some of the most difficult issues we faced
have been the conflict in needs for airport
expansion, endangered species protection in and
around Lindbergh Field in our proposals to
establish a National Wildlife Refuge in south
San Diego Bay.

Thanks to outstanding leadership, and I'd
Mr. Spear singles out special leadership from former Port Commission Chairman and current Commissioner David Malcolm; County Supervisor, Greg Cox; and many people in the environmental community; Port Staff, Dan Wilkins, whose negotiations were successful last fall.

"Who in cooperation with Western Salt Company, the Service and Port District crafted a solution best described by Mr. Jim Peugh of the Audubon Society as elegant.

The acquisition of these lands by the Port District, and subsequent cooperation between our agency and the State Lands Commission, for permanent protection of those habitats will allow the Port to expand Lindbergh Field operations onto current Naval Training Center, San Diego.

And the agreement also provides for perpetual management of endangered species in the South Bay, planning for comprehensive habitat restoration and enhancement, and potential for mitigation credits the Port needs for future maritime infrastructure development.

This arrangement is truly a winning solution for all parties, has the widest possible public
support, and there are no losers.

In over three decades of public service, I've rarely seen or enjoyed the opportunity to be part of such a perfect solution to such a difficult set of problems. Your action to approve the Port District's acquisition on January 29th is an essential element in realizing the vision of many people in San Diego's business, governmental and environmental communities.

I sincerely hope you act affirmatively and join those of us at all levels of government who are working to meet the needs of San Diego Bay, its people, and its wildlife."

And I would just like to add one final thing. This has truly been a cooperative effort. We have planned a refuge with deep, full involvement by citizen groups, the five cities around San Diego Bay, the business community, the Port District, State Lands, other State agencies.

And my pledge to you as refuge manager, is that we will continue to do our comprehensive planning, restoration planning, public use planning, in an open and public process cooperatively with you and with many other interested parties. Thank you.

MR. BUSTAMANTE: Thank you, Mr. Rundel.
MR. WILKINS: Mr. Chairman, members of the Commission, that concludes our presentation. With your indulgence, I would like to introduce Frank O'tasin from the Board of Port Commissioners representing the City of Imperial Beach who joined us. We'd be pleased to answer any questions you may wish of us.

MR. BUSTAMANTE: We have several members of the public for testimony. If the members have any questions, you can ask them at any time. But if not, we will go into the public testimony. We have one organized presentation, and we also have Patricia McCoy from Imperial Beach.

Is the council member here? Would you like to make your presentation or are you going to be a part of the organized --

MRS. MC COY: I'll wait.

MR. BUSTAMANTE: You'll wait?

MRS. MC COY: Thank you.

MR. BUSTAMANTE: The organized presentation, there are several members. There are five members; Laura Hunter, Nohelia Ramos, Jim Peugh, Leticia Ayala, and Mike McCoy. If we could take them -- do you have a particular order?

MS. HUNTER: You just announced the order. I'll be happy to introduce as we go. And we'll try to
move quickly through this.

Thank you very much, Lieutenant Governor and the Commissioners. We are delighted to have you here. We want to welcome you to San Diego for your first meeting, and we're honored that you're here to help us with this very historic event for San Diego Bay.

My name is Laura Hunter. I'm the director of the Clean Bay Campaign for the Environmental Health Coalition. We're a local environmental organization that's worked along with many, many others, very, very hard on this issue.

Mr. Fossum says there's some excitement in the environmental community. I think that's an understatement. Delirious is more accurate. In terms of the significance of this and what it represents, both in environment protection and a coalescing a community that, you know, sometimes is divided on things. But we have really all come together, and it's been very exciting.

We have a number of people that would like to speak to you that represent both organizations and residents from the South Bay. We'd like to start first with Nohelia Ramos, a member of the next generation who this action will really benefit. And I mean the future's generations is why we need to protected these areas. I broke the rules and got her out of school. So we'll have
to send her right back quickly. But, Nohelia, could you come up and make a couple of comments?

    MS. CONNELL: I hope you're getting appropriate independent credit for this in your science class. If not, you may need to speak to your teacher.

    MS. RAMOS: No, I'm not getting credit.

    MS. CONNELL: Maybe we could send a note to your teacher.

    MS. RAMOS: Oh, thanks. Please do. Well, good morning. My name is Nohelia Ramos. And I'm the founder and president of an environmental club in my school in National City. I'm in a high school. I'm also representing the City of National City.

    And I would like to tell you that a lot of our members did not know what this was and what the wildlife refuge was. So I would think that by being able to have this with us, we would have -- my generation, generations after me being able to enjoy and explore what San Diego has, and the natural resources that we can give them.

    Also, National City does not have a lot of green areas to explore and enjoy. So I think that, if this wildlife refuge is open, we would all be able to benefit from this. So that is all I want to say. Thank you.
MR. BUSTAMANTE: Thank you.

MS. HUNTER: Thank you, Nohelia. Next is Mr. Jim Peugh from the San Diego Audubon Society.

MR. PEUGH: Hello. Welcome to San Diego.

The San Diego Audubon Society strongly supports this transfer, and we appreciate the work of the Fish and Wildlife Service and the Port to bring it about. The Fish and Wildlife Service will be a great custodian of this valuable public resource. Matter of fact, we'll make sure. We'll watch them like a hawk.

MS. CONNELL: Is that a pun?

MR. PEUGH: Yes.

MS. CONNELL: I'm surprised you didn't use one of the environment -- what was the name of the bird that we saw on the screen?

MR. GAGE: The least tern.

MS. CONNELL: You should have said that, "We'll watch them like a least tern."

MR. PEUGH: That wouldn't carry over as well, because they're not very mean.

MS. CONNELL: Oh, dear.

MR. PEUGH: This will provide tremendous value in terms of habitat conservation, endangered-species protection, national reserve-based recreation, education, research, and economic benefits from ecotourism.
You heard from Mr. Fossum what a valuable habitat it is now. But the potential refuge would improve management. And with restoration improvement, actually just dwarfs its current activity. When you think of what can be there in the future, and if you look a few decades down the road, it's really awesome.

The coolest birds that uses -- that we see in our area -- it's not endangered. It's not even rare. It's called an eargrede, a little muffin-like bird with a little, teenie neck that sticks up. And they earn their living swimming under water great distances, hundreds of feet, and burrowing and digging through the mud and trying to find invertebrates in the mud, and then eating them.

The neat thing about them is, during their nesting season, the little muffin-like bird sort of puts its wings up part way. And all the clutch of chicks will be riding on the back of it as it paddles around, looking for food. It's kind of neat. I saw one chick actually half fell off, and so its wing was caught in the adult's wing. And the little chick was being towed along backwards, really upset. And finally the adult stopped, and the chick got back on top.

The largest concentration I've ever seen was at the salt ponds. And, you know, allowing people to be able to see things like that will be immense. So we
strongly urge you to implement this action. I think
you'll really appreciate what you see in the future.

MR. BUSTAMANTE: Thank you.

MS. HUNTER: Next is Leticia Ayala, who is
one of the primary organizers for garnering support and
talking to folks to support the wildlife refuge.

MS. AYALA: Hi. Good morning. Thanks for
coming down to San Diego. I can actually see face-to-face
some of the people that I voted for. So, it's very
exciting.

MS. CONNELL: A rare opportunity. Perhaps
even more rare than the endangered species. Yes, there
are moments when we think of ourselves as endangered.
Isn't that right, Cruz?

MS. AYALA: Well, thank you so much. My
name is Leticia Ayala. I'm a resident of Chula Vista.
I'm also staff with Environmental Health Coalition. And
over the past two years, I was really involved in all the
door-to-door canvassing, talking to people from all over
San Diego, especially at community events in the South
Bay.

And we all feel strongly that, you know,
our -- our wildlife and our -- and all of our natural
resources are in critical need of protection. And it's a
life-or-death situation for our South Bay. And we need to
do something now to protect what little is left.
And, you know, we're just here, hopefully,
to just get moving on the designation of this wildlife refuge, because it's very important. South Bay is my home. It's home to a lot of people. It's our neighborhood. We want to see it taken care of and protected.

And for Spanish media, I would like to say some few words in Spanish.

(Comments followed in Spanish.)

MS. HUNTER: Thank you. And then, batting last -- sorry. I'm not good at baseball analogies --
Mike McCoy, from Southwest Wetland Interpretive Association.

DR. MC COY: Lieutenant Governor, Commissioners, I appreciate this opportunity. I want to say too, that the Tijuana River just to the south of south San Diego Bay, and the connection with this south San Diego Bay National Wildlife Refuge will culminate in an important junction for feeding of wading and shorebirds which migrate between the two areas day and night.

This is a momentous occasion, culminating in the effort of citizens, private sector, government agencies, the San Diego Port Commission, the environmental community, and local jurisdictions over the past 25 years.
This will lead us to further protection of Pacific Flyway and a new opportunity and economic vision for south San Diego Bay cities, especially Imperial Beach.

I want to particularly thank people who have taken leadership roles in bringing this agreement to fruition. Some of the names that stand out over the history of this endeavor: Ralph Pasapia, United States Fish and Wildlife Service; Leo McCarthy, State Lands Commission; Laura Hunter, Jim Peugh, environmental community; Allen Jones, Western Salt; David Malcom, Dan Wilkins, Port Commission; and Dean Rundel of the United States Fish and Wildlife Service.

The work accomplished and the partnerships that we've developed will be appreciated by generations to come. Thank you very much.

MR. BUSTAMANTE: Is that the end of the organized presentation? Welcome.

MRS. MC COY: Thank you.

MR. BUSTAMANTE: We're going to have to get you a box or a Barbara Boxer box.

MRS. MC COY: I was going to say. Usually I have something in my pocket. This must be built for giant people. I think this is a very momentous occasion, as my husband said. Because sometimes we can all come together from the various points of view and do the right thing,
and actually get it done.

Imperial Beach is a poor community economically, but we're rich in natural resources. And we support this magnificent plan. We have hopes for ecotourism. You may have with your handouts something on the very festival that opens today. And it has grown over the past three years.

I think people, in general, in the population are appreciating more and more natural things to do, places to go. And they don't necessarily want the artificial, the canned entertainment. And we're finding that more and more people come from all over the nation, and indeed from all the over the world.

And I wanted to thank you today for your vision. And also to give you thanks of the community from Imperial Beach. Thank you very much.

MR. BUSTAMANTE: Thank you. There is a few other letters that were received -- letters of support: Eric Bowlbee, Chair Executive Committee, San Diego County Chapter of the Sierra Club; Denise Ducheneey, Assembly Member, 79th District; Anne Ewing, Planning Director, Endangered Habitats League; Michael Klein, Senior, President Nature Festivals of San Diego County; and Patricia Zabrukey, I believe -- I'm sorry if I mispronounced your name -- Ocean Awareness Club, UCSD.
There are several other individuals, but these were the other organizations that also sent letters of support. Are there any questions yet of the members of the Commission?

MS. CONNELL: Mr. Chair, I have some just comments, not questions. I want to thank our staff and certainly members of all of the groups that made presentations this morning.

And I would just ask that we direct our staff -- the presentations that were made here this morning were great. I'd like to see them available to the schools of California. Not only the schools in San Diego, but the schools throughout the state.

Mr. Chair, in the past, when we've had presentations like this, we've tried to release information to the schools. As a parent of two children in California schools, the restrictions on funding science-related activities is so severe that, if we can do anything we can to make materials available, I think we should always encourage that.

And I would hope that we could transfer some of this information, Bob, to the schools in a format where it could be used. And unfortunately, the young woman who was here earlier may not get credit in her science class. But maybe other children can benefit from the information.
and gain a greater sensitivity to the resources that we have here. I would like --

MR. BUSTAMANTE: Do we have a web site?

MS. CONNELL: Yes, we do.

MR. BUSTAMANTE: And is it this kind of information that could be placed on there specifically for classrooms?

MR. HIGHT: Yes.

MS. CONNELL: Yes, I think it would also be available in just pamphlet form, as we have done in the past for schools.

This to me, Mr. Chair, represents, I think, the -- the conclusion of what has been an extended effort on the part of many levels of government, many sectors of government, many aspects of the community -- both the environmental community, and members of the general population here in San Diego.

And I think the only other time I've seen a similar coming together of this magnitude has been in Bolsa Chica where we had a like victory, I guess about a year and a half ago, where we were able to save some very valuable land in Orange County, and it really represented the culmination of well over ten years of work by local community activists there.

I want to congratulate the members of the
community who've worked on this for so long. I really think it does represent one of the largest wetlands in Southern California. I'm a resident of Southern California. I'm a biker -- not a motorcycle biker. I do not have tatoos. Let me clarify that for the media present.

I particularly am intrigued when we've been able to conclude an agreement like this. Because it does open up -- and I agree entirely with members here, that I think there are people seeking to have an opportunity to connect with the environment. And certainly preservation of this land will do that.

I think it not only creates a significant wildlife refuge and protects environmentally-sensitive lands, which obviously is the priority here of the Land Commission. But I also think it's important that it secures the economic advancement of this area with the expansion of Lindbergh Field.

And I think that that unique partnership of being able to pull together the environmental component with the economic component is something that is one of the true capacities of the Land Commission. And all of you who made it possible to bring this -- this completion together should really feel a victory today.

I think this is good for the environment. I
think it's good for San Diego's future. And I think it's
good, as a parent, of what we can do throughout
California. And I would only ask that all of you who
worked so hard to bring it together would serve as
voluntary advisors as we find other opportunities in
California.

If we can connect you through phone numbers
and through web sites to other environmental groups as we
struggle to find similar solutions to problems throughout
the state, I would be deeply appreciative of it. And I --
again, I can't extend my thanks for all that you have
done.

MR. BUSTAMANTE: Thank you. Yes?

MR. GAGE: Mr. Chairman, just one quick
question, more out of curiosity than anything else. And
perhaps the -- either the Port staff or the Fish and
Wildlife Service staff can speak to this.

I was curious about how the nesting area is
located on the airport land now. Is that actually moved
or do the birds simply move to the nesting site
themselves? I'm not familiar with those issues,
certainly. I was just interested in getting a sense of
how that's -- is the Port required to undertake
instigation in that respect?

MR. RUNDEL: Well, the agreement that we're
involved with today in south San Diego Bay involves the
least tern nesting site on the Naval Training Center land
that is going to the Port.

We have been working for many years to find
a place to relocate the site where the birds aren't moved,
but a new site is enhanced and prepared that would attract
them. Hence the Port -- the monetary contributions they
are making to make the South Bay sites that much better.

That would make up for any lost production
that would occur at the current Naval Training Center
site. This does not involve the other least terns on
Lindbergh Field. It allows for the expansion on the Naval
Training Center site. Does that answer your question?

MR. GAGE: Yes, thank you.

MR. BUSTAMANTE: We do have a couple of
other members of the public who are interested in making a
presentation. Is there a H.L. Young in the audience?

Welcome, sir.

MR. YOUNG: Good morning. Mr. Chairman and
Commissioners, I moved to San Diego from Seattle in 1962.
I've never looked back. The -- my two children -- two of
my children grew up in San Diego, and I've -- I'm
approaching retirement now.

For the last couple of years, I've been
working as a volunteer at the Tijuana Estuary Visitor
Center and the Chula Vista Nature Center. I'd like to speak on behalf of another bird that would benefit from the creation of this refuge in South Bay.

While I can't speak for the Chula Vista Nature Center, I know that the brant is important to that center. The brant is a small goose of the ocean and bays. It's smaller than the goose that we're used to. It's larger than the mallard. The color is predominantly black.

If we could go -- we could have gone to South Bay -- the south San Diego Bay on this date a hundred years ago, we could have seen 100,000 brant on the bay. They feed primarily on eelgrass, and they winter in Southern California and Baja California.

If we go down there today, we could -- we would be likely to find a hundred brant in the South Bay area. The creation of this refuge will restore that -- the eelgrass beds and bring back the brant.

So on behalf of the brant, and on behalf of the grandchildren of all California, especially of San Diego, I urge the Commission to adopt the recommendation and bring these brant back. We may see -- someone in the future may see 10,000 of them in San Diego Bay. Thank you.

MR. BUSTAMANTE: Thank you, sir. We also
have Wendel Gayman. Welcome, sir.

MR. GAYMAN: Good morning. As an environmentalist, I am inclined to strongly endorse any plan which will -- designed to preserve the South Bay wetlands for wildlife habitats. And I'm also quite pleased that the Port is willing to spend 20 million dollars worth of their funds to help preserve the environment of the area.

However, as an oceanographer, a geologist, and a taxpayer, I'm somewhat unhappy about the settlement. I do believe that it makes a difference whether this case or other cases we pay 5 million or 10 million or 20 million or 40 million dollars or nothing in order to preserve these lands for environmental purposes.

In the past several decades, I believe there have been a great many other cases throughout the state where the State and the local government has spent large sums of money to purchase tide lands which, I believe, already belonged to the State.

In 1850, many -- perhaps most of these cases resulted from bad law. That is the redefinition by the courts of the ordinary high-water mark, equating it to the mean high-tide line. The concept of the mean high-tide line did not really exist in 1850 when the State joined the union.
According to this definition, most vegetation portions of the coastal salt marshes -- perhaps all vegetated portions are above the mean high-tide line. And thus, they are not now in the State tide lands. This seems to me to be a ridiculous conclusion. How else could the salt marshes obtain their salt if not by frequent inundation by the tide.

I don't expect you to change the state law and the court precedents today or this year. But I do think that the State Lands Commission should at least institute efforts to get the state law changed or at least change the interpretation of the ordinary mean high-water mark in order to ensure that all of these lands, which are ordinarily submerged by the tides, are returned to the Public Trust.

Such changes would return many hundreds of millions of dollars in property to the State. Also I think there's been some hanky-panky or corruption involved in several title litigation cases settled in San Diego County in the past six to seven decades. For this reason, I believe all parties in such litigation in relation to land-assessment issues should be carefully scrutinized.

If the State and/or other parties continue to purchase tide lands or other wetlands at excessive and unreasonable prices for environmental purposes, I believe
this sets a very bad precedent, and it encourages misuse of public funds and perhaps bribery and corruption.

For this reason, I am highly suspicious of any land-assessment programs that were to be carried out by private properties for wetlands being considered for purchase for environmental preservation. I strongly urge that such assessments be made only by government personnel or by government contract, and that the full details of these assessments be made public.

In 1960, the courts gave the Coronado Towers some accretal beach land in Coronado, which clearly is -- I believe is illegal. And that land is worth somewhere between a hundred and 500 million dollars today.

In 1939, there was a lawsuit on Mission Bay which determined the tide lands. And it excluded the Famasa Slough, which was clearly below the mean -- the ordinary high-water mark in 1850. And several years ago, the City paid four and a half million dollars for that.

On the other hand, it's my understanding that the -- in 1972, a graduate student did a tidelands litigation study for San Elijo Lagoon. And this resulted in the State acquiring or retaining a large portion of the lagoon without any purchase required, for zero money involved.

Also in the late 1970s -- the early 1970s,
one or two environmental organizations joined with the State Lands Commission to sue the Irvine Company in upper Newport Bay, and they retained large areas of land for the public without any purchase cost. And I think this -- the land retained is probably worth many millions of dollars today. Thank you.

MR. BUSTAMANTE: Thank you, sir.

MS. CONNELL: Mr. Chair, could we ask our staff to respond to some of those statements?

MR. BUSTAMANTE: Mr. Hight?

MR. HIGHT: Yes. Thank you,

Mr. Chairman. I'll give a kind of a brief response, and then the attorney general's office can respond, as well as our legal staff. The commission staff, in analyzing this transaction, has taken into consideration the applicable law on the books today and has found, in essence, the State is not buying anything that is now State-owned. I understand Mr. Gayman's issues and concerns. But as the facts -- as they apply to this particular case, the State is not buying anything that it now owns. Dennis Eagan from the attorney general's office can amplify on that, if necessary.

MR. BUSTAMANTE: Please.

MR. EAGAN: The lands that are being purchased from Western Salt, historically, were patented
in private ownership as swamp and overflow lands, which were lands granted to the states in the latter part of September, 1850, a few weeks after California became a state.

They are distinct from tide and submerged lands. S.O. land -- swamp-and-overflow lands are not held subject to any Public Trust obligations. They are capable of sale into private ownership, free and clear of any retained public interest.

Now, there are some slough areas in some of the swamp and overflow lands at issue here today, and those are subject to State claims of ownership because, at least there's a possibility that certain of those slough areas were tide and/or submerged lands, and subject to the Public Trust.

That circumstance, however, has been taken into consideration, both in the lands that are being purchased by the Port and also with regard to the exchange aspect of this transaction. So the distinction has been observed.

And as Mr. Gayman pointed out, at least in California and also in the federal court system, the mean high-tide line established the boundary between overflow lands and tide lands. And that, generally speaking, is -- lies somewhere landward of the inner edge of marsh, in
most situations.

MR. BUSTAMANTE: So this is exempt from the
issue that was -- that was talked about by Mr. --

MR. EAGAN: Swamp and overflow lands are
subject to full, private ownership free and clear of any
retained Public Trust interest in the State.

MS. CONNELL: Thank you.

MR. BUSTAMANTE: Any other questions?

MR. GAGE: I guess an additional follow-up
question for staff. Is there a dispute with the gentleman
who just spoke as to -- is the dispute a legal dispute or
is it a factual dispute as to whether or not these are
swamp and overflowed lands?

MR. EAGAN: The gentleman can perhaps speak
best for himself. But I think it's beyond dispute that
the vast majority of the lands that are being purchased
from Western Salt are swamp and overflow lands.

Conceivably that consensus might not exist
if we had a different definition of where this boundary is
between the tide lands and S-and-O lands. But it is well
established in California that it's the mean high-tide
line. So I'm assuming that there's no dispute about that.

And I'm not aware of any dispute about where
the existing areas of state claims could be. And those
have been given full value. And that has been factored
into -- to both the purchase and exchange elements of this transaction.

MR. GAGE: Thank you.

MR. BUSTAMANTE: What about the larger issue that he raises with respect to where, in fact, those lines ought to be? If this one is -- is exempt from that -- from the issue of mean high-tide line, is the larger issue that there are other properties up and down the coast that, in fact, could come under this?

MR. EAGAN: This is not an exceptional transaction from the standpoint of what historically the State Lands Commission has done by way of State settlements. And staff is expert, if you will, in terms of evaluating these situations, and is virtually not a calendar item or a calendar before a meeting of the State Lands Commission where some such title-settlement agreement doesn't come before the Commission for approval.

So in no sense, this is a one-of-a-kind transaction. A lot of the legal principles and factual inquiries that have been applied here by staff are routinely applied in title settlements of this type.

MR. BUSTAMANTE: Okay. Any other questions? We have one other person, Mr. William Claycomb. Did I say the name right? Good morning.
MR. CLAYCOMB: Good morning.

MR. BUSTAMANTE: Welcome, sir.

MR. CLAYCOMB: Commissioners, my name is William A. Claycomb. I'm speaking on behalf of Save Our Bay, Inc. I furnished you a copy of this testimony. But I want to read some into the record.

We urge you to use extreme caution and consider all the facts before approving expenditures of twenty and a half million dollars of Public Trust funds by the San Diego Unified Port District to purchase approximately 836 acres, many of what may already have ownership reserved for the people of California by its 1850 constitution.

The reservation in the constitution is that all lands below the mean high-tide line as it was located in 1850. Since 1850, at least two huge floods have come down the Otay River and deposited so much eroded-earth material, and even downed cattle at and beyond the river's mouth, that the mean high-tide line was relocated a considerable distance to the north and west into what is now the salt-pond area.

This change in location of the mean high-tide line, however, did not change the area public's ownership. We sent Governor Gray Davis on November 30th, 1998, 26 pages of information concerning the salt-pond area.
area in south San Diego Bay.

On January 23rd, 1999, we sent the same material to your office, care of Linda Small. We also sent a copy of the January 7th, 1999, San Diego County Grand Jury letter to Save the Bay, Inc., and a copy of our January 15th, 1999, certified letter, reply to the grand jury. Of all this material --

MR. BUSTAMANTE: Mr. Claycomb, excuse me, sir. Need to interrupt you. Are you opposed to this project?

MR. CLAYCOMB: Not opposed to it. We're opposed to paying for acres that we think maybe the State already owns. And we're certainly opposed to the price being paid for it.

MR. BUSTAMANTE: All right, sir. Thank you. Go ahead.

MR. CLAYCOMB: And I don't like being the skunk at the garden party either.

MR. BUSTAMANTE: Couple minutes. Go ahead.

MR. CLAYCOMB: Of all material furnished to the California State Lands Commission, we wish to read two sentences from a California State Land Commissioner to Norman J. Williams, Community Development Director of City of Imperial Beach, and three sentences from a California State Lands Commissioner to Ms. Julie Hawking, Chair, San
Diego Club -- Sierra -- San Diego chapter of the Sierra Club. They sum up the Public Trust tideland-ownership problem in south San Diego Bay.

The letter to Imperial Beach Community Development Director was dated October 19th, 1989, was signed by Debbie Townsend, Land Agent. The pertinent paragraph is:

"Lastly, the review of the in-house title evidence, including historical maps and surveys, reveals to the Commission, may have undetermined ownership interests within the project area. The extent of these interests will need to be defined and settled prior to the approval of specific plans for development."

The second letter to which I referred to the Chairwoman of the San Diego Chapter of the Sierra Club, was dated August 3rd, 1992, and was signed by Curtis L. Fossum, Senior Staff Counsel. The pertinent sentences are:

"The precise nature, extent, and location of the State's Public Trust interest in many portions of south San Diego Bay are undefined by court judgment or settlement agreement. Generally the boundaries of the State's interests must be resolved before development can proceed."
Unfortunately, given the limited resources, we are unable to initiate studies necessary to research these title issues without reimbursement of staff costs."

As to the title settlement agreement, we note on page 5, paragraph 2, the word "appraisal." We understand that all or nearly all of the lands under discussion are in the Otay River flood plain and under California Costal Commission jurisdiction as well.

As such, the potential for development is next to nothing. In fact, the City of San Diego agreed with the U.S. EPA to stop development in flood plans. Was this fact considered in the appraisal? Was sea-level rise considered?

And on the advice of our attorney, we spent an hour this morning looking at the appraisal. Because what he told us was, an appraisal was no good if it doesn't have a title search -- the title search of the land you're proposing to buy. And we spent that hour, and there's no evidence at all that a title search has been done. So that puts the question on the other side of the page.

As to the TSA, page 6, paragraph 4, we note the word "compromise," and results of such litigation would be uncertain. As to compromise, it appears that the
public has compromised on everything and Western Salt has
compromised on nothing.

As to uncertain litigation results, we refer
the Lands Commissioners to the very certain outcome of use
of public -- the doctrine of Public Trust to preserve San
Elijo Lagoon prepared for John Laboratory for Cal Poly
Pomona, by Barbara G. Crowley, 615 Linda Vista, Pasadena,
California, January 29th, 1972. This 35-page document was
used to save the lagoon from a private duck-hunting club.

As to the TSA, page 7, paragraph 1, unless
the staff has done core drillings and other field
investigations to correctly locate the mean high-tide line
as it was in 1850, it has not done a satisfactory
job.

It has been suggested too that the City of
San Diego expenditure of several million dollars to
acquire Famosa Slough, when it was known to be
Public-Trust tidelands justifies similar action in this
case. We do not agree --

MR. BUSTAMANTE: Mr. Gayman, we're talking
about this one -- this one project, though; correct?

MR. CLAYCOMB: I'm sorry?

MR. BUSTAMANTE: You're raising a lot of
issues concerning many projects. We are talking about
this one project?
MR. CLAYCOMB: Yes.

MR. BUSTAMANTE: Can we keep it to this one project?

MR. CLAYCOMB: I have one paragraph. We see here an opportunity for the California State Lands Commissioners to not complete this settlement agreement as written, and to restore some of the public's lost faith in their government by acting on their behalf, rather than that of a special interest, in this case, Western Salt Company.

MR. BUSTAMANTE: Thank you, sir. Staff, would you speak briefly to the appraisal, title search, and the settlement agreement?

MR. FOSSUM: Yes, Mr. Chairman. I'd like to speak on several issues raised by both of the last two speakers. The Commission staff, as the attorney general's office points out, does this on virtually every Commission meeting. You're looking at a similar type of settlement agreement that the Commission staff has investigated historic evidence of title claims, has looked at the values of the property with our professional appraisal staff we have, and have studied this.

As to the letter that was read that I signed several years ago, at that time, we had not conducted a final study of these lands, and we did not have the staff
and the money to do so.

We have a reimbursement agreement from the Port of San Diego that has helped fund the last three months of our staff time to be able to do a more indepth analysis than had previously been done for this property.

And the conclusions of that study were that there was some interest in the lands sold as swamp-and-overflow lands. We evaluated those acreages. We discounted those acreages from the appraised values. Our appraisers did independent studies of the appraisals. And the value that the appraisal was done for, this was discounted by several millions of dollars.

So the tax payers of California have, in fact -- but luckily it didn't have to be discounted, because the Port District had negotiated an agreement that was much less than the appraised value. So what we are asking for you today --

MR. BUSTAMANTE: What was the appraised value?

MR. FOSSUM: I believe it was 24 million dollars or in excess of that -- in excess of 24 million dollars.

MR. BUSTAMANTE: What does that mean, "in excess"? Is that like 24.5 or 24?

MR. FOSSUM: 24 and a half. And we
discounted -- from that, we discounted acreages. We also
discounted valuation of several other factors of that.

And the professional advice that we give,
both legal, boundary and appraisal advice, is that this --
the value of the interests that are being acquired from
Western Salt is still in excess of 20.5 million dollars.

It's still a better deal for us.

And it's my understanding that Western Salt
Company intends to take a significant charitable
contribution by donating the excess lands to the State of
California, and to the Port of San Diego.

The previous speakers mentioned several
other situations in California, such as Famosa Slough. I
spent many years dealing with Famosa Slough. The problem
with that is, in fact, what happened -- and that was, we
went to court. The State of California litigated the
boundaries in Famosa Slough in the 1930's and lost.

They mentioned other places in California
where those things were litigated. When you go into
court, you take chances. One of the reasons that the
Commission tries to settle these things is because we know
what the facts are. We also know that when you get into
court, sometimes you don't win. We wanted to be a win-win
situation.

So when we evaluate these claims, we are
very conservative in our estimates and we are very
cautious about that. San Elijo Lagoon was mentioned.
San Elijo Lagoon was a settlement agreement where the
State did purchase the lands. The Department of Fish and
Game, I believe, contributed close to a million dollars to
help purchase the lands around San Elijo Lagoon.

The State of California ended up with the
property. We didn't pay anything. The Department of
Fish and Game got an interest around the lagoon, some
wetlands as part of the settlement with the United
California Bank. So if you have any other questions, I'd
be happy to answer them. Otherwise, I think your staff
has done everything that's been asked, and will continue
to do so.

MR. BUSTAMANTE: So the appropriate title
searches were done?

MR. FOSSUM: Absolutely.

MR. BUSTAMANTE: The --

MR. FOSSUM: I have archive boxes full of
title reports.

MR. BUSTAMANTE: The appraisal was at 24.5,
and the settlement agreement was approximately 4 million
dollars under the appraisal?

MR. FOSSUM: That's correct.

MR. BUSTAMANTE: Are there any other
questions? Is there a motion?

MS. CONNELL: Yes. I would move that we support the staff motion, which is basically to approve the settlement.

MR. GAGE: I would second.

MR. BUSTAMANTE: With a motion and second, if there is obviously no -- no additional opposition, by at least the Commissioners, we will deem this to be approved by unanimous vote. Staff, it does sound as if, in fact, there was a, as described, a win-win-win situation here. It's wonderful to see that activity taking place.

It appears that there was due diligence by staff to make sure that the taxpayers' money was, in fact, safeguarded. And as a result, we were able to get a wonderful addition to the San Diego area here for environmental purposes. I think we did a great job. And thank you to all participants of the project.

Congratulations.

Next item, Item Number 46. A proposed expenditure of Port of San Diego funds for the acquisition of the South Bay Power Plant near Chula Vista and National City. Mr. Hight?

MR. HIGHT: Thank you, Mr. Chairman.

Mike Valentine, Assistant Chief Counsel, will make a very
brief presentation, followed by a presentation by the Port.

MR. VALENTINE: Good morning, Mr. Chairman, members of the Commission. I will be very brief, because I believe the Port has another one of those pretty power-point presentations for you. And then will both stand by for any questions that there may be.

Let me just say, this is a proposed acquisition of three parcels amounting to approximately 160 acres along south San Diego Bay, including the location of the San Diego Power Plant, which the Port Commission would like to buy and arrange for its replacement, decommission and demolishing that facility. That's the purpose of their acquisition.

The secondary benefit would be that it would free up substantial acreage that would be suitable for other Public Trust purposes, in accordance with the terms of their grant.

You are being asked to review this, at the Port's request, because it is a substantial expenditure which is outside the trust grant of the City of San Diego -- the Port District of the City of San Diego. We believe that the findings required of you by law are justified in this case.

And we will be, at the end of this
presentation by the Port, moving and recommending that the
Commission approve the acquisition. With that, I would
like to turn it over, if you would, to representatives of
the Unified Port District.

MR. BUSTAMANTE: Do we have a question
first?

MS. CONNELL: Yes, thank you. Mr. Chair,
maybe I should be directing this to the Port, but I had a
question. I see that it's intended that -- that we are
going to keep the SBPC functional up to ten years. And
that during that period, that Duke is going to develop a
new facility to replace the old plant. Is there any
question in your mind that we will be able to do that
within the ten-year period?

MR. VALENTINE: I think there is some. That
is the intent. But sure, there is some question as to
whether it is, in fact, possible. There are guidelines,
landmarks in the agreement set forth to make sure that
progress is being made toward that end.

It may be. And the agreements with Duke and
San Diego Gas and Electric contemplate that, since it is
required to keep this facility on line until there's a
replacement for it, it is contemplated that it may be
necessary to build the replacement facility at the south
end of this 160 acre parcel on or near what is called the
LNG site.

That would be -- take up about 25 acres.

And while that would not be an ideal solution by any means, it would certainly be a facility -- that the replacement would be a facility that would be subject to 1990 or 2002 or whatever the year is -- environmental laws, as opposed to the environmental laws as they existed in 1960 when this plant was built.

And it could scarcely be as ugly as the existing plant. I dare say there's not a power plant in California that's as ugly as this plant.

MS. CONNELL: Do you anticipate any problems with -- with environmental litigation on this? I mean, where are we on an EIR, and what are we contemplating is the time period here? While it may be replacing a truly ugly plant, there may be those who would prefer that it not be replaced at all. Let me be very direct about that. So I'm just concerned about the reality of getting this through an environmental process.

MR. VALENTINE: In terms of replacing, my understanding of the situation is that we don't have a choice of making it go away. Our choice is leave it as it is, or replacing it. The Port obviously would like to replace it off the waterfront.

I mean, that's the purpose of this
acquisition after all. But we do what is possible. And
the Port is committed to replacing it before the existing
facility is demolished. It's not a perfect world. But as
things stand now, this plant must remain in operation
until the energy generated by a replacement facility comes
on line.

And will there be environmental litigation
over building the replacement plant? Who knows? That --
that certainly -- that's a possibility. But Duke will
have the responsibility of securing all environmental and
other permits that may be necessary to build -- to locate
and build a replacement facility.

The divestiture -- that is the sale of the
facility, which is the part of it that's before you
today -- has been the subject of an environmental
document, which has already been approved by the Public
Utility Commission, and has been reviewed by staff.

MS. CONNELL: Mr. Chairman, may I ask a
follow-up question? I have a question about the way this
is going to be financed. Maybe you could help me
understand this. It's my understanding that we're
going -- that Duke is intending to do a sale of bonds in
order to finance their facility expansion. What is Duke's
relationship to SBPC -- SBPP, and who is going to
actually -- is it Duke standing behind the bonds? Is it
their credit and their balance sheet?

MR. VALENTINE: If I may, I would like to give you a very limited understanding -- my very limited understanding of this, and then turn that particular question -- which I'm sure you're quite capable of asking more questions than I can answer. I would like to turn that over to the Port.

But as I understand, there will be bonds that will be marketed. The bond issuers will loan the money to the Port District for the acquisition. The Port District will use the money to acquire this site.

Duke will pay rent, if you will, in the form of debt service on a schedule, so that it can -- the bonds can be serviced and amortized over the period of their lease.

MS. CONNELL: So these are lease-revenue bonds, I'm assuming. Someone in the audience is shaking their heads.

MR. HOLLINGSWORTH: Lease-revenue bonds, without recourse to the Port District, their only recourse is to Duke.

MS. CONNELL: Okay. I don't mean to interrupt this flow. Maybe it will come, Mr. Chair, in the course of conversation. Those are just concerns that I wanted -- I hope that somebody can address as you make a
fuller presentation. If you could illuminate on the
structure of the bonds. I'm curious about that.

MR. VALENTINE: I would like to yield to the
Port after making the one point that came from the floor
was a good one. Is that the bonds -- there is no recourse
for the bond holders against the Port District or against
the Port District's property it's acquiring here. The
recourse would be against Duke. So if I could --

MR. BUSTAMANTE: Go ahead. Continue with
the presentation.

MR. SPEAR: Well, Mr. Chairman, I'm going
to stay out of the middle of this discussion and let the
professional people get into it.

MR. BUSTAMANTE: I don't blame you.

MR. SPEAR: But I would like to introduce
our new executive director, who I understand came in.
Mr. Dennis Bouey, who's on board. And with that said, I
would like to ask Mr. Tom Morgan from the professional
staff to come up and give you the Port's presentation on
the purchase.

We are excited about the purchase for a
number of reasons, as I'm sure you can see. And we see it
as being transparent to the consumer, because the energy
will continue to be produced down there.

And also, it will give us a -- a piece of
that property down there that we can use for Port purposes
and for -- for Trust purposes. And it will enhance the
waterfront down in Chula Vista. Thank you. Tom?

MR. HIGHT: Mr. Chairman, if I could for
one second introduce Mr. Bouey, who has just come to the
Port of San Diego, was previously, in another life, the
Executive Director of the Port of San Francisco. And
we've had a very wonderful relationship with him, which
culminated in the San Francisco ball park, just after he
left.

MS. CONNELL: He did our part there. Now
it's up to the City of San Francisco.

MR. MORGAN: Thank you. Good morning,
Chairman Bustamante and Commissioners. It's my privilege
on behalf of the Port of San Diego to present for your
consideration and request approval of the Port's
acquisition of the South Bay Power Plant.

This important acquisition would not be
before you today if it were not for the invaluable
contribution and cooperation of both Duke Energy and the
San Diego Gas and Electric Company.

Before I begin my more formal remarks, I
would like to take this opportunity to introduce to the
Commission representatives from both Duke Energy and
San Diego Gas and Electric.
With us today are Mr. Keith Head from Duke Energy, who is the vice president of power acquisition, Mr. Tom Williams, who's the Regional Public Affairs Manager of the western region, and Mr. Steve Gotskey, the plant manager for both Duke's Morro Bay and Moss Landing facilities, and is also a member of the South Bay Transition Team.

And then also representing San Diego Gas and Electric, we have Mr. Bruce Williams, who's the manager of -- regulatory case management for Sempra Energy and also Attorney Michael Thorpe with Sempra Energy.

The Port would especially like to thank the representatives of San Diego Gas and Electric for their cooperation and contribution to the Bay-wide region by agreeing to sole source the negotiations with the Port of San Diego, that allows us to bring this very important transaction before you today.

The wildlife refuge is a very tough act to follow. However, you can see the close proximity on the screen before you of the South Bay Power Plant. It's contiguous, located just to the north. The combined acquisition of these properties will provide a contiguous area in excess of 1500 acres on the waterfront.

As this slide demonstrates, the power plant is in close proximity to downtown San Diego, approximately
seven miles south of the city, located in the City of Chula Vista, which is a member city of the Port of San Diego.

The Port recognized that it would be in the Bay-wide region's best interest to acquire this plant with the intent of its ultimate decommissioning, demolition and removal. The transaction includes the acquisition of basically three properties.

The southerly property is identified as the LNG site or what was previously used for liquid natural gas distribution, approximately 13 acres. The main plant site in the center is 116 acres. And then the transmission property in -- outlined in blue, is approximately 16 acres that extends to the north.

This entire 165-acre, three-parcel property is being acquired for a hundred and ten million dollars.

I'm going to give you the layman's economics of the deal. And we have with us our treasurer, Mr. Bruce Hollingsworth and also Mr. Russ Goings for First Albany, who will be able to explain Commissioner Connell's concerns and questions with regards to the bonds.

But essentially, they are lease-revenue bonds that will be issued in the amount of approximately a hundred and fourteen million dollars, which will include not only acquisition costs, but also closing costs.
The bonds will be secured by Duke Capital, and the bond holders have no security interest in the property, and have no recourse to either the Port of San Diego or the State of California. Duke Power's lease payments will equal the debt service on the bonds, and the amortization period coincides with the lease term, which is approximately ten years, depending upon the interest rate at closing.

The Port is very pleased to introduce Duke Power as our operator of this facility. Duke is a worldwide leader in power generation and distribution, and as just previously mentioned, the owner of two other California power plants -- one in Moss Landing and the other in Morro Bay -- Duke Capital, with over 26 billion dollars in capital in assets, provides energy services to over 50 countries.

The Port would like to take this opportunity to congratulate Duke on being named the 1998 Utility of the Year by Electric Power and Light Magazine, as well as being named first in electric-utility industry customer satisfaction by Fortune Magazine. So we believe that we have selected the right operator.

The transaction with Duke, as I mentioned just previously, includes a debt payment that would equal the bond amortization. It includes a requirement for due
diligence and commercially reasonable efforts to locate a
replacement-generating-facility site, to move through all
the -- of the permitting processes required, and then to
construct a replacement facility to allow the South Bay
Power Plant to be decommissioned, demolished and removed.

It currently is in a must-run-status
category with the CPUC and would have to have the
alternative power supply available before this could be
accomplished. In addition, Duke's responsibility is the
decommissioning, the demolishing and removal, and also
remediation of any existing facilities.

As far as the risks to the Port of San Diego
and for the State of California, this transaction's been
negotiated so that any existing remediation responsibility
falls under the responsibility of San Diego Gas and
Electric.

Any future remediation responsibility, due
to the operation -- ongoing operation of the facility will
be Duke Energy's. So the Port and the State have no
liability with regards to remediation responsibilities.

And then in summary, the Port envisions that
there are many benefits to the San Diego community, as
well as the State of California concerning this
transaction. The transaction will allow us to acquire
over a hundred and sixty acres of tide-lands property with
essentially no capital expenditure by the Port.

The positive environmental and community effects will begin with the early demolition of the north tank farm, which includes three large tanks that are on the north end of the property. The Port is seeking to demolish these large empty tanks within two years of the initial acquisition.

Of course, the ultimate benefit for the community will be the complete demolition and removal of the plant. The replacement plant will implement modern technological advances in power generation facilities and will conform to modern environmental regulations.

The bottom line is, that the -- the Port's acquisition of this property is an opportunity -- creates an opportunity to remove an aging plant from the waterfront. If the Port were not purchasing this facility, it could possibly continue to operate indefinitely under private ownership.

And then as you can see, Michael couched it pretty clearly. It's ugly. It's an ugly plant. This is the view from the bay. By State Lands Commission approving this acquisition, you will help achieve the goal of demolishing the plant and enhancing the waterfront.

And as they say, a picture is worth a thousand words.

MS. CONNELL: It's amazing what you can do
with computer graphics.

MR. MORGAN: That concludes my presentation.

MS. CONNELL: Before we just used white

out. But we've -- now we have computer graphics.

MR. MORGAN: I and my staff remain

available to answer any questions you might have. If

you'd like to address the bond situation initially, we can

have Mr. Goings come up.

MR. BUSTAMANTE: Please.

MS. CONNELL: Yes, if we could have both

Russell and Bruce come up, I have a couple of questions on

the bond.

MR. HOLLINGSWORTH: Good morning,

Mr. Chairman, Commission. My name is Bruce Hollingsworth,

and I'm the treasurer of the Port of San Diego. And with

me is Russell Goings. And Russ is our -- our financial

advisor with First Albany. We've prepared a flow chart.

MS. CONNELL: How lovely. Something --

something I'm very comfortable with.

MR. HOLLINGSWORTH: I might go through that

real quickly, if I might. The issuer is the California

Maritime Infrastructure Authority. Pursuant to a loan

agreement, they will take the proceeds of the issuance,

loan them to the Port of San Diego.

Those proceeds will be assigned to the
trustee. And the bond proceeds will be paid for the acquisition of the plant to San Diego Gas and Electric. The Port is the borrower, but also the lessor. And under a lease agreement -- and the documents off to the side are the -- the dotted line are the cooperation agreement, et cetera.

Those are the documents for which the protection and the lease agreement between the Port and Duke, South Bay LLC. Duke, South Bay LLC will be the operator of the plant. Supporting the Duke, South Bay LLC is a corporate guarantee which is Duke Capital Corporation. And those are the documents -- the guarantee documents.

The guarantee runs to the bond holders through the trustee. The guarantees protect the Port and the State and the Maritime Infrastructure Authority, so that the recourse for the bond holders is through the Duke, South Bay LLC and Duke Capital as guarantor. The underwriters are Solomon Smith Barney, and the trustee is the Bank of New York.

MS. CONNELL: Can we go back to the corporate guarantee through Duke Capital Corporation? Is this a corporation that is being created or was created for purposes of this transaction?

MR. HOLLINGSWORTH: No, it's not. Duke
Capital Corporation is the corporation that does primarily -- and Duke is here. They might speak as to their corporate nature. But they are the primary corporation that puts together these deals around the country for Duke.

MS. CONNELL: So they have an independent balance sheet, I'm assuming?

MR. HOLLINGSWORTH: They have an independent balance sheet, and the rating --

MS. CONNELL: What is that rating?

MR. HOLLINGSWORTH: The rating is an A rating.

MS. CONNELL: Okay.

MR. HOLLINGSWORTH: And this is a Duke Corporate guarantee, so that the bonds will be rated off of the guarantee of Duke Capital.

MS. CONNELL: Second consideration here, we are trying to obviously synchronize the lease with the demolition and recreation of the facility. What in the bond-transaction language, in the official statement or other documents allows for a continuation of the bonds or an extension of the bonds if indeed we don't have this facility completed in time?

I just want to make sure we don't have interruption of lease payments going forth to secure this
transaction if there is a mitigation problem or if there
is a problem in the construction of a new facility.

MR. GAGE: Mr. Chairman, maybe another way
to phrase the question would be, are the lease payments
dependent on the operation of the plant as it currently
exists?

MR. HOLLINGSWORTH: No, they're not.

They're independent. The way that the documents are
drafted, the lease payments will equal the amortization
schedule on the bonds, and will continue in full force and
effect until the bonds have been fully amortized.

If the plant has problems, if Duke decides
to -- is allowed to or decides to shut down the plant, in
terms of not operating for economic reasons, the
obligation to pay the lease is still there. And
therefore, the funds through the trustee would be paid to
the bond holders.

MS. CONNELL: What happens if there are
cost overruns in this process?

MR. HOLLINGSWORTH: All of that is liability
of Duke.

MS. CONNELL: How did the bond documents
deal with that?

MR. HOLLINGSWORTH: The bond documents
reference all of those agreements that we have between the
Port and Duke, South Bay LLC, and then the cooperation and guarantee agreements. And those agreements provide for that and are referenced in the official financing documents.

MS. CONNELL: I assumed that there will be issuance if there is a cost overrun?

MR. HOLLINGSWORTH: There would be -- no, this is just -- 110 million dollars is the acquisition fee. We are approximating that the bond issue would be about a hundred and fourteen million, which would cover a cost of issuance. And the -- all of the costs that the District has incurred in putting this transaction together would be paid out of that. That would be the sole amount of money or sole issuance on this deal.

MS. CONNELL: The reason I'm pursuing this line of questions, Mr. Chair, is that we have had other circumstances where we thought we had the right amount of money, and we found out we were short. I just -- I'm trying to anticipate what -- I'm sure you've already anticipated this. I guess the question is, what happens if there is a shortfall, given some misunderstanding of what the costs of this project might be?

MR. HOLLINGSWORTH: I might put it this way. We have an agreement with SDG and E that provides for what the purchase price is, so that the bond proceeds
are merely going to fund the purchase price -- the
acquisition of the property. If there are other costs
associated in the future with the operation of the
plant -- remediation, mitigation, any of those things --
those are the responsibility of Duke Capital.

MS. CONNELL: Okay. So this agreement does
not speak to that issue?

MR. HOLLINGSWORTH: That's correct.

MS. CONNELL: All right. Thank you.

MR. GAGE: Mr. Chairman, I'd like to follow
up with a couple more questions. The hundred and fourteen
million dollars -- that's the purchase, plus additional
costs associated with the transaction. Is that -- that's
purchase of the land as well as the existing power plant;
correct?

MR. HOLLINGSWORTH: No. That price includes
the purchase of the facility. The land is subject to
another transaction. That will be granted to the Port.
And the purchase price of that -- or the cost of that is
being absorbed through a tax deductible receipt that would
be issued to San Diego Gas and Electric as a donation.

MR. GAGE: So this is just the facility?

MR. HOLLINGSWORTH: That's correct.

MR. GAGE: Right. And then, at the
conclusion of this transaction, this facility will be
decommissioned, presumably. Is Duke Power obligated to provide the replacement facility?

MR. HOLLINGSWORTH: There are provisions in the agreement that they will use best efforts and cooperation with the Port to find a relocation site for this plant. And as the presentation mentioned, subject to that not being able to happen, the plant would still -- the intent is, the plant would still be decommissioned. A new plant, more efficient plant, better looking plant, would be built on the site. And there are provisions for that. So that if the plant continues to have a must-run designation by the State, the plant's generating capabilities would be protected. The plant would be continued in a smaller portion on that site.

MR. GAGE: And under the agreement, who owns that future replacement plant?

MR. HOLLINGSWORTH: I'd have to ask our counsel on that.

MR. MORGAN: The Port of San Diego would own the land, and it would be a lease to the operator.

MR. GAGE: So that the operator -- whoever that future operator would be -- could potentially be Duke Power?

MR. MORGAN: Could be. They would hope it would be.
MR. GAGE: They would lease land. I guess what I'm alluding to is, the hundred and ten million dollars is being paid -- is basically being -- at the end of the day, does the Port have an asset?

MR. MORGAN: Yes, sir.

MR. GAGE: And what is that asset?

MR. MORGAN: It's 165 acres of land. The fee ownership in land.

MR. GAGE: But I thought the earlier comment was that the hundred and ten million dollars was simply paid for the facility, not the land?

MR. MORGAN: No, sir. The land is included. There's this tax-deductible contribution that would be to the benefit of San Diego Gas and Electric, if there's a value over the 110 million bond portion of the acquisition.

So there's an appraisal being performed by San Diego Gas and Electric to determine what the ultimate value would be. And then they would receive a tax-deductible contribution for the difference. But the fee ownership of the land comes with the transaction.

MR. GAGE: So that additional transaction, based on the appraisal -- do we have any sense at this point in time as to what the potential additional amount could be?
MR. MORGAN: We have not seen their appraisal to this point. It's an issue that really is more concern to San Diego Gas and Electric than it would be to the Port. Because we have the State actually absent the 15 million dollars -- the State is contributing some money to the transaction. The Port of San Diego is not investing any dollars into the transaction and is receiving the fee ownership of the land at the end of the day for redevelopment purposes, in accordance with the trust.

MR. GAGE: So the Port receives title to the land, independent of this additional appraisal and side transaction, if you will?

MR. MORGAN: Yes, sir.

MR. BUSTAMANTE: What does the State get?

MR. MORGAN: The participation of seeing an ugly power plant removed from the waterfront, and great new development accomplished for the benefit of the citizens of the state.

MR. BUSTAMANTE: Is the appraisal done prior to or before the plant is demolished?

MR. MORGAN: The appraisal would be conducted -- it's being conducted now I believe. I could ask San Diego Gas and Electric to speak to that issue, if you'd like.
MR. BUSTAMANTE: Yeah.

MR. MORGAN: Would you like to have Mr. Williams come forward?

MR. BUSTAMANTE: So 15 million dollars we get a better view?

MR. WILLIAMS: Good morning. Bruce Williams, Sempra Energy, representing San Diego Gas and Electric. Actually the appraisal is yet to start. The IRS regulations require that the appraisal be done within a 60-day time period of the actual closing of the sale.

And so we're anticipating that within a month of our anticipated closing date we'll commence the appraisal activities, and then complete those within a 60-day time period.

MR. GAGE: Mr. Chairman, if you could, could you go back over a little bit the nature of the transaction that would occur following that appraisal, in terms of I guess what could be referred to as excess value that would have to be paid for the land?

MR. WILLIAMS: Certainly. In layperson's terms -- I'm not a tax expert nor an attorney. But we will -- the actual -- the hundred and ten million dollars is from -- again, a conversational standpoint -- is for the improvements of the property.

We will have the power plant itself
1 appraised. To the extent that the appraisal is above a
2 hundred and ten million dollars or the tax base of the
3 property, that incremental amount would be -- on the tax
4 basis would be a charitable contribution, which we would
5 claim in that year's tax filing.
6
7 We will also have the three parcels of
8 property appraised. And then the total-appraised value
9 will be the basis for tax -- or the charitable
10 contribution from which our tax deduction will be
11 calculated.
12
13 MR. GAGE: So if I understand this
14 correctly, basically, San Diego Gas and Electric is
15 prepared to live with whatever the appraise -- the
difference, and that incremental value. And in effect,
your only compensation is the deduction from the tax
16 perspective?
17
18 MR. WILLIAMS: Correct. The worst-case
19 scenario is that -- is this transaction would result in a
20 hundred and ten million dollars for San Diego Gas and
21 Electric.
22
23 MR. GAGE: Could we go back to the budget
24 act appropriation of 15 million dollars? If someone,
25 perhaps yourself -- if someone could describe the role
26 that those dollars are expected to play in the
27 transaction.
MR. WILKINS: Mr. Chairman, Dan Wilkins, Port staff. That was the affect legislature that was promulgated at the request of State Senator Steve Peace. And as I understand, it was money that would be available to the Port. In fact, I do understand. The money would be available to the Port to aid in the closing, due diligence, and any environmental responsibilities, which you now know the Port has none, nor does the State have. And that money was in this year's budget and signed by the Governor.

MR. GAGE: Remind me. To whom was this appropriation made?

MR. WILKINS: The actual agency is PUC, I believe.

MR. GAGE: And so talk a little bit, if you would, about how you would anticipate that this budget act appropriation might actually be expended.

MR. WILKINS: Well, as we get through the end of the transaction -- which we're not yet here, this is one stop along the way -- I would envision that we would be sitting down with the cumulative parties -- seller, buyer, ourselves -- and take a look at the sum-total of the cost.

Where we come up that we are short, with regards to that title-financing package, we would be going
to the State to look to bridge the gap. We don’t know that yet, until we get all the way through it. We know the financing cost. We don’t know some of the other costs. We apparently have yet to run through those total numbers until we get past both this step and ultimately into the closing phase of this transaction.

MR. BUSTAMANTE: So this is a 15 million dollar slush fund to close the deal?

MR. WILKINS: It’s help from the State to further the transaction, yes, sir.

MS. CONNELL: Mr. Chairman, may I follow-up on this?

MR. BUSTAMANTE: Please.

MS. CONNELL: I want to put on my former investment-banking hat here and ask the question of my colleagues who are structuring this deal, why couldn’t that 15 million dollars be made part of the bond financing? Why is the State paying anything here?

And I also would like to just remind you, I sit as the chair of the tax agency. So I’m particularly interested in the tax-deductible nature of the excess funds here.

MR. MORGAN: I believe I can -- I’ll attempt to answer that question. I hope I can answer it. The acquisition cost is one part of the formula in having
Duke's interest in willing to come alongside and be the operator of this facility and pay the lease payments that are required for the acquisition, in addition to assuming the responsibility to demolish the facility at the end of the day, and then to perform any remediation activities that might be required.

Some of those cost estimates are unknown. They are only estimates at this point. And so as part of the overall negotiations, the 15 million dollars was taken into account. It was made available to us by the State for acquisition, demolition, and remediation. So when we were into our negotiations with all three parties, it was looked at as being a fungible asset.

In other words, the 15 million dollars was part of the transaction. So in order for Duke Energy to agree to a limit of ten years on the term, the 15 million dollars was applied to solve some of these problems at the end of the lease term.

MS. CONNELL: I guess my concern here is that there doesn't seem to be anyone sitting around the table that is going to have the State's financial interest at heart here. In other words, if you have an open-ended 15 million dollar fund, what encourages you to be efficient in the use of the way this project is run?

None of the people who are going to draw
down on that fund are at risk. The State, who is not
down on that fund are at risk. The State, who is not
party to any of this activity, is going to make available
party to any of this activity, is going to make available
a checkbook, and you're going to come to us and ask for a
a checkbook, and you're going to come to us and ask for a
15 million dollar check from the State of California.
15 million dollar check from the State of California.

Maybe it should have been ten, maybe it
Maybe it should have been ten, maybe it
Should have been five, maybe it should have been three. I
Should have been five, maybe it should have been three. I
mean, I really feel very strongly there should be some
mean, I really feel very strongly there should be some
monitoring of costs along the way. There should be some
monitoring of costs along the way. There should be some
limit as to the exposure. I mean, I don't know why the 15
limit as to the exposure. I mean, I don't know why the 15
million dollars was set as a limit for the State's
million dollars was set as a limit for the State's
participation.
participation.

Do you know the history of that? I mean,
Do you know the history of that? I mean,
how do we come up with 15 million dollars? I think it's
how do we come up with 15 million dollars? I think it's
only fair to ask, since we are providing the funding here.
only fair to ask, since we are providing the funding here.
How do we know that these dollars are being effectively
How do we know that these dollars are being effectively
used? And our -- I mean, it's easy if when you have an
used? And our -- I mean, it's easy if when you have an
unlimited cash register there to be a little careless, as
unlimited cash register there to be a little careless, as
you go through a process.
you go through a process.

I would like to make sure that -- that we
I would like to make sure that -- that we
are paying no more than we need to pay. I might even
are paying no more than we need to pay. I might even
question why we're paying at all. But obviously that is
question why we're paying at all. But obviously that is
not my decision. I assume the legislature has taken
not my decision. I assume the legislature has taken
action. So having that they've taken action. My concern
action. So having that they've taken action. My concern
here to -- is to make sure that we control the use of
here to -- is to make sure that we control the use of
those dollars.
I would like to see -- and my usual brief for the State -- most of those dollars coming back to the State, to tell the truth. I mean this is a -- this would be nice if we could return some of the 15 million dollars back to the State of California. So how can -- can you assure this Commission here today that those dollars are going to be carefully watched?

MR. MORGAN: We would certainly agree with you. And as trustee ourselves of the assets of the State of California under the Tide Lands Trust, we would have that same concern in our negotiations. Those were very uppermost in our minds when we negotiated this transaction, both trying to reach an acceptable acquisition price with San Diego Gas and Electric, and in trying to limit the length of term with the operator, Duke Energy.

Because really, the Port of San Diego is not interested in the long-term transaction and that power plant remaining on the property and the waterfront. We would prefer to have it removed as soon as possible.

MR. BUSTAMANTE: But you don't have any money invested in this deal.

MR. MORGAN: That's correct.

MS. CONNELL: I'm still getting back to my question, I guess, of, why are we playing the role of
providing the dollars for cost overrun or for additional
funding that may not be able to be determined at this
point -- we being the State of California -- and
secondarily, how can we minimize those costs?

MR. GAGE: Mr. Chairman, I can perhaps
speak to the issue a little bit. I mean, I think your
point is an excellent one. It occurred to me that we
certainly have to be careful to insure that there's
incentive on the part of the parties to this agreement,
that as little of the 15 million dollars that's
available is expended for purposes of closing the deal.

My understanding is, the 15 million dollar
amount was derived last year in negotiations between
Senator Peace and the prior administration. I don't know
the basis for that particular figure. But my
understanding is, that was the best available estimate of
time of what was the gap, if you will, in financing -- in
putting together this agreement.

And I think perhaps what it would mean is,
that we should have a conversation with the PUC as well as
the other parties to the agreement, for the purpose of
laying out for them our concerns as it relates to, again,
minimizing the amount of the 15 million that's used.
Using only that portion that is truly essential to close
this deal out.
MR. BUSTAMANTE: Maybe we can require a --
a match with the Port of San Diego.

MS. CONNELL: Well, at the very least -- I
mean, I think that before that 15 million dollars is paid,
there should be a very defined list as to what ingredients
would go into the 15 million.

I mean, I don't want cost overruns in the
financing that should have been born by the bond to be
paid for by the State of California. I mean, I'm totally
against that. I mean, some very serious concerns about
the, you know, the overlapping here between the bond
financing and this 15 million dollar fund.

I mean, I think it's a bit unusual, the way
this is being structured. And I think we need to have
some rather tight definitions as to whoever's going to
make the decision as to whether we pay or we don't pay. I
go back to the fact that we are not at the table.

And while it's comforting to know that the
Port of San Diego views themselves as a trustee to this
transaction, their interests are not duplicated with that
of the State of California.

I mean, I really do want to emphasize here
the State of California has an independent balance sheet,
and that 15 million dollars is forthcoming from our
general fund. And while it's nice that we have a
surrogate sitting at the table for us, I wonder why we're
not sitting at the table before that check is written to
make up for whatever costs are accumulated.

MR. BOUEY: Mr. Chairman, if I may. As I
was introduced earlier, my name is Dennis Bouey, and I've
been the executive director here now for 12 days. And I'm
about to do something very, very dangerous. And that is,
talk.

Of anybody in this room, I probably know the
least about this deal. But I'm concerned that we may be
heading on the wrong track here. And I'm going to ask our
attorneys to straighten me out if I say something that's
wrong.

I understand your concern that when this
money is used for the remediation and the demolition,
what's to stop them from expanding their cost to 15, when
maybe it could really be done for 10, therefore saving the
State 5 million dollars.

The truth of the matter, as I understand the
deal -- again, I'm on dangerous territory here -- is that
we are buying the utility and the land and the three-part
transaction. We've already heard about the hundred and so
million dollars that's going to be issued in bonds.

You've already heard about the tax
deduction. And at a point in time some time ago, the
State was at the table, and they agreed to fund or put into the deal 15 million dollars to make this work. 

Austensibly that money would go into an account. And so at that point in time when the facility can be demolished, and the area can be remediated, and that money will be there. But that money's in the deal. That's the deal as I understand that San Diego and Duke agreed to.

And quite frankly -- I'm just being candid here. And again, if I'm mistaken, somebody step up and stop me. But if they spent 13 million dollars instead of the 15, they're keeping the two. Because that's what -- again, there's a hundred and ten, there's 15, and there's the tax deal.

MS. CONNELL: No, let me clarify here. This deal is not yet done.

MR. BUSTAMANTE: You were right in your opening statement.

MR. BOUEY: Well see, I told you it's dangerous.

MR. BUSTAMANTE: That's all right. Go ahead.

MS. CONNELL: I've got to tell you, that isn't the answer I was hoping for.

MR. BOUEY: Even if I made a mistake, I
certainly don't want to leave you with the wrong
impression.

MS. CONNELL: I've been Controller for four
years and I've asked similar questions, and I've never had
quite that candid a response. I don't know whether
we're --

MR. BUSTAMANTE: Staff, did you know about
this?

MR. HIGHT: We never saw Mr. Bouey before.

MS. CONNELL: I don't think that's the way
we want to think through this process. If I can just
suggest it, that what we need to do here, hopefully, is to
recognize that obviously we want to support Senator
Peace's desire to move this forward.

What we're trying to do is not cancel a deal
that has already been made. What we're trying to do is
make sure that we don't leave any money on the table. And
I think that that is our obligation as Commission members.
Certainly it's my obligation as Controller.

It would be a deed of public funds which is,
as the Attorney General has often reminded me, illegal.
So we have to be very circumspect here, that we make sure
we put sufficient support behind the deal so that it moves
forward, but that we do not encourage dollars to be
misspent that otherwise should not be.
And I certainly want to make it clear to every person who's a participant in this deal, that this deal will at some point be available for public discussion and public review.

And I certainly know that I, and I'm sure my colleagues on this commission are concerned that we can be proud of what we've accomplished with the contribution, whatever that amount is, to this transaction.

And that's what we're really trying to discuss. And I think that's the -- I feel that that's probably the feeling unanimously of this commission here today.

MR. BUSTAMANTE: Yes, sir.

MR. CHAPMAN: Mr. Chairman, my name is David Chapman. I'm the attorney for the Port of San Diego -- in house counsel. Mr. Bouey was right on track directly on every point, up until the last comment with regard to any remainder of the 15 million that might exist after demolition, decommissioning and remediation.

Were there to be any surplus in that account, that would return to the State. The current estimates in today's dollars that have been developed -- and they are very, very broad in nature.

It's very preliminary and difficult to come up with those numbers, and part of the difficulty in
negotiating this transaction. But the current estimates for demolition and remediation vastly exceed the 15 million dollar number.

It is certainly my understanding and expectation that the moneys that would be expended would be fully subject to scrutiny by the State and audit as to how they were expended, as would any other governmental grant, that I would expect this agency or any other agency I've worked for, to receive, would be.

So that kind of supervision and review we anticipate. Records will be kept accordingly, and any procedures that the State would like to impose for participation and evaluation of the expenditure of those funds would be more than welcome by us, and I'm certain by our partner, Duke.

But once again, the 15 million dollars is essential to this deal. It was part of the transaction. It was anticipated to be available, and it was the way we were able to do a deal that gets the plant down in ten years.

This is a very short amortization period for this kind of transaction, and that was the difficulty we were confronting. So it is important, and it was factored into negotiations that Duke made in agreeing to the deal.

But we do respect that degree of review,
that I think you're looking for. We welcome it. I honestly do not expect there will be any moneys left over. But certainly, if there are, we would be happy to return them to the State.

MS. CONNELL: What do you do with the shortfall if it's going to be more than 15 million?

MR. CHAPMAN: That's Duke's responsibility.

MS. CONNELL: It's whose?

MR. CHAPMAN: Duke. They have the full and complete obligation to decommission, demolish and remediation. The 15 million is there just to assist in that effort.

MR. GAGE: And, Mr. Chairman, that characterization is certainly consistent with my understanding of the use of the 15 million dollars as it was run through the budget process. That it was, in effect, a piece of what would close the deal. But I certainly welcome the opportunity to participate in scrutiny of the costs -- the decommission cost as we go forward.

MR. CHAPMAN: As I said, we not only expect it, we invite it.

MR. BUSTAMANTE: The question that was asked earlier by the Controller was, why wasn't this rolled into the bonds rather than a up-front cash --
MR. CHAPMAN: It really --

MR. BUSTAMANTE: -- account?

MR. CHAPMAN: It could have been. Buying down the bond issue, though it simply -- it becomes a financial consideration for Duke. Essentially they're going to pay everything irrespective of how it's allocated.

Their preference is to bond for the full 110 -- actually 14 with costs imbedded -- acquisition cost, and reserve the 15 million dollars as an account to help them ten years in the future for the demolition, remediation. But again, as someone said earlier, the moneys are fungible. If it had been utilized in the front end, they'd have a bigger obligation in the back end.

MS. CONNELL: I think you're -- you were saying, so we can clarify for the record, because I think there is something that is important. As we are not likely to be on this commission -- I certainly won't be on this commission eight years from now.

I think it's important for the record to show that it was intended that this was a way of reducing the period in which the bonds had to stay outstanding. Because if you add another 10 million dollars, 15 million to a bond transaction that's already at a hundred and fourteen -- my old investment-banking days -- would...
suggest you would probably add another couple of years or
a year and a half. Is that about right, Russell? To the
amortization period?

        MR. GOINGS: It would have been closer to
five years, actually.

        MS. CONNELL: Two, three, four, five years.

So you would have end up amortizing over a more extended
period of time which would change the financial dynamics,
and probably change the willingness of certain partners to
come to the table.

        MR. BUSTAMANTE: Is that what you guys
meant to say?

        MS. CONNELL: I hate to be the investment
banker here.

        MR. CHAPMAN: Precisely.

        MR. BUSTAMANTE: Thanks.

        MS. CONNELL: I'm just trying to make sure
I understand this. Because I think it is important, Bob,
that when we do staff write-ups on this in the future,
that we clarify the understanding that this commission has
as we move forward in our action today. Certainly my
understanding -- and I just want to make sure that -- that
we're all on the same page here.

        MR. GAGE: I agree. And I think the
fundamental public purpose associated with, particularly,
the 15 million dollars was decommissioning the plant more quickly than not. That's what's the -- fundamentally the public benefit that we're seeing.

MS. CONNELL: Right. And that's not -- that hasn't been -- I don't -- I think we need to emphasize it again. I think it got a little confused in the discussion today.

MR. BUSTAMANTE: Are there any other persons that would like to speak on this? Any other discussion or debate on the issue? I guess I see none. Then at this point, a motion would be in order.

MR. GAGE: I would move, Mr. Chairman.

MS. CONNELL: I'll second.

MR. BUSTAMANTE: Motion and a second to approve the project as recommended by staff. Let the record show that it was passed unanimously by the members of the Commission. Is there any other items to come before us today before the meeting is to be adjourned?

MR. HIGHT: No, Mr. Chairman. That's the conclusion of the agenda.

MR. BUSTAMANTE: Okay. If there's no other items to come before the Commission, this meeting will be considered adjourned.

(The proceedings were concluded at 12:20 p.m.)

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STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I, Kathleen Knowlton, C.S.R. 11595, a Certified Shorthand Reporter in and for the state of California, do hereby certify:

That the foregoing proceedings were taken down by me in shorthand at the time and place named therein and were thereafter reduced to typewriting under my supervision; that this transcript is a true record and contains a full, true and correct report of the proceedings which took place at the time and place set forth in the caption hereto as shown by my original stenographic notes.

I further certify that I have no interest in the event of the action.

EXECUTED this 14th day of March, 1999.

Kathleen Knowlton