APPEARANCES

COMMISSIONERS
Cruz M. Bustamante, Chairperson
B. Timothy Gage, Director of Finance, represented by Annette Porini
Kathleen Connell, State Controller, represented by Cindy Aronberg

STAFF
Paul Thayer, Executive Director
Jack Rump, Chief Counsel
Kim Korhonen, Executive Secretary

ALSO PRESENT
Matt Rodriguez, representing the Attorney General
Alan Hager, representing the Attorney General
# INDEX

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opening remarks by Chairperson Bustamante</td>
<td>1</td>
</tr>
<tr>
<td>Confirmation of Minutes for the Meeting of January 19, 2001</td>
<td>1</td>
</tr>
<tr>
<td>Executive Officer's Report</td>
<td>1</td>
</tr>
<tr>
<td>Consent Calendar</td>
<td>4</td>
</tr>
<tr>
<td>Item 73</td>
<td>5</td>
</tr>
<tr>
<td>Dave Plummer</td>
<td>5</td>
</tr>
<tr>
<td>Jim Levine</td>
<td>13</td>
</tr>
<tr>
<td>Leslie Jones</td>
<td>21</td>
</tr>
<tr>
<td>Tule West</td>
<td>27</td>
</tr>
<tr>
<td>Jonathan Wisnom</td>
<td>33</td>
</tr>
<tr>
<td>Ellen Johnck</td>
<td>37</td>
</tr>
<tr>
<td>James McGrath</td>
<td>40</td>
</tr>
<tr>
<td>Larry Kolb</td>
<td>46</td>
</tr>
<tr>
<td>Brian Ross</td>
<td>49</td>
</tr>
<tr>
<td>Item 74</td>
<td>75</td>
</tr>
<tr>
<td>Mayor Beverly O'Neill</td>
<td>79</td>
</tr>
<tr>
<td>Lester Denevan</td>
<td>80</td>
</tr>
<tr>
<td>Senator Better Karnette</td>
<td>83</td>
</tr>
<tr>
<td>Colette McLaughling</td>
<td>84</td>
</tr>
<tr>
<td>Item 71</td>
<td>86</td>
</tr>
<tr>
<td>Mayor Beverly O'Neill</td>
<td>87</td>
</tr>
<tr>
<td>Chris Garner</td>
<td>90</td>
</tr>
<tr>
<td>Carol Shaw</td>
<td>96</td>
</tr>
<tr>
<td>Public Comment</td>
<td>118</td>
</tr>
<tr>
<td>Adjournment</td>
<td>118</td>
</tr>
<tr>
<td>Reporter's Certificate</td>
<td>119</td>
</tr>
</tbody>
</table>

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
CHAIRPERSON BUSTAMANTE: I'll call the meeting of
the State Lands Commission to order. Representatives are
all present. I'm the Lieutenant Governor Cruz Bustamante
joined by Cindy Aronberg for the Controller. And we also
have Annette Porini, Chief Deputy Director of the
Department of Finance.

The first item of business will be the adoption
of the minutes of the Commission's last meeting. Do I
have a motion?

ACTING COMMISSIONER PORINI: Move approval.

ACTING COMMISSIONER ARONBERG: Second.

CHAIRPERSON BUSTAMANTE: Let the record show that
the minutes are approved unanimously.

The next order of business is Executive Officer's
report, Mr. Thayer.

EXECUTIVE OFFICER THAYER: Good morning, Mr.
Chairman and members of the Commission. I just have a few
items I wanted to bring up to the Commissioners. Most of
them have to do with energy, not surprisingly.

We have reported on this in the Executive
Officer's report in the last couple of meetings. And I
wanted to indicate that we're continuing our internal
efforts as staff of the Commission to ensure that the
Commission's use of energy is minimized. We have a number
of conservation efforts that we've undertaken in our various offices, the ones that you've all heard about in terms of turning out lights, turning off computers when they're not in use. This kind of thing.

CHAIRPERSON BUSTAMANTE: Does that include over the weekend?

EXECUTIVE OFFICER THAYER: Absolutely over the weekend and as well as during the day. The staff is under instruction that if they leave their desk for a significant period of time they should power down their computers. And most of us are operating in about half light.

We're also looking at a couple other things, too. We're looking to develop some public information items that we would send out to members of the public with whom we have relations. So, for example, our lessees, mailings of say the Commission's agenda. We're trying to come up with, sort of, a single sheet slip that would remind all Californians that we're in this together and we're urging you to take whatever conservation methods they can.

Another way that we're affected by this is we're beginning to receive some notices from some of our lessees that are involved in power generation indicating that they are not receiving payment from large utilities like PG&E. And primarily this involves generators at the geysers, the
Geothermal generation where they generate electricity. They're not a utility per se. They're just a generator to sell that on. And the same way PG&E is having trouble paying their larger suppliers, they're having trouble paying the smaller suppliers.

And so our royalties are going to be affected by that. Now, if PG&E doesn't go bankrupt, eventually our generators will be paid and we'll receive the royalties. But we're reviewing the leases in each situation to understand more carefully and clearly what the implications are for us and what our rights and responsibilities are.

And I'll brief the Commission further on that as we get more information. We've received some of these notices just in the last week or so, so we're still analyzing them. They're not huge suppliers of electricity in comparison with Diablo or something like that. But nonetheless it's having an impact on our revenue generation.

Then there's, of course, the Long Beach gas item that we'll be discussing today, and I think I'll save comments on that until the city has had a chance to present.

The final thing I wanted to mention is that the Commission about a year and a half ago extended the
drilling obligation to maintain the lease that's held by Benton Molino off of Santa Barbara County. They requested a one-year extension of their requirement to drill a well. The Commission granted that. That expired last November. However, they did apply for an extension prior to the expiration of that obligation. And as we discussed with you at our last meeting, it's our intention to bring that to the Commission, once the county has had a chance to act on a similar application to extend the lease on the local level.

That we had expected the county -- and I indicated in our last meeting, that we expected the county to act by now, and that you'd have this on the agenda for today. For a variety of reasons, the county has not acted. We're now told they will, by the end of this month, and so it would be our intention to bring this item back at the following meeting.

And that concludes the Executive Officer's report.

CHAIRPERSON BUSTAMANTE: Thank you, Mr. Thayer. The next order of business will be the consent calendar. Are there any items to be pulled off of the consent calendar?

EXECUTIVE OFFICER THAYER: There are two items, Mr. Chair. One is C67, which had to do with the Lands
Commission financing a new State office building in Eureka. And the second one is C71 dealing with the Long Beach gas situation. There are a number of officials here from the City that want to make a presentation on that.

CHAIRPERSON BUSTAMANTE: Is there anybody in the audience here who would like to speak on the consent calendar?

If not, we're going to move the items in one group.

Seeing none, is there a motion?

ACTING COMMISSIONER ARONBERG: Move approval of the consent calendar.

ACTING COMMISSIONER PORINI: Second.

CHAIRPERSON BUSTAMANTE: Okay. You're not going to be speaking a whole lot today.

(Laughter.)

CHAIRPERSON BUSTAMANTE: Let the record show that the consent calendar is unanimously adopted, saving C67 and C71.

That takes us to our regular item of business.

Mr. Thayer.

EXECUTIVE OFFICER THAYER: The first item is 73. This is an application having to do with the disposal of dredge materials, dredge projects in San Francisco Bay. It's located at the Montezuma Slough in the northern part
of the Bay region. And Dave Plummer from our staff will
give the staff presentation on that.

CHAIRPERSON BUSTAMANTE: All right.
REGIONAL MANAGER PLUMMER: Mr. Thayer, 67 is
pulled?
EXECUTIVE OFFICER THAYER: Yes.
CHAIRPERSON BUSTAMANTE: It's not on the calendar
today?
EXECUTIVE OFFICER THAYER: It's not on the
calendar for today. We'll bring that back.
CHAIRPERSON BUSTAMANTE: So if there is anybody
here regarding item number 67, it will be held over till
the next meeting.
REGIONAL MANAGER PLUMMER: Good morning,
Chairman, Commissioners. My name is Dave Plummer. I'm a
regional manager with the Land Management Division. The
item before you this morning is a request for a lease of
sovereign lands in Montezuma Slough and the Sacramento
River in Collinsville, Solano County.

The lease is proposed to allow the construction
of a barge off-loading dock, drudge section pipeline,
water lines for water discharge, two small boat ramps and
four levee breaches. These facilities are part of a
larger project, the Montezuma Wetlands Project, that would
store wetlands by placing dredge sediments which have been
dredged from the San Francisco Bay Navigation Channels including the Port of Oakland's deepening project on to privately owned uplands that lie adjacent to the states sovereign lands.

And the location of the project is right here. This is sort of the upland hills in the Montezuma Hills area, Antioch is over on this side of the Bay. This is the Sacramento River. Montezuma Slough goes on this side of the project.

The entire Montezuma Wetlands Project consists of approximately 2,400 acres. About 1,800 acres of the site would be used for the purpose of wetland restoration to the disposal of dredge materials. Dredge sediments would be placed on the land that is now diked grazing land, containing both uplands and some nontidal wetlands.

The proposed project would accept about 17 million cubic yards of dredge sediments that would be placed on the site raising the elevations to a level that would support marsh plant colonization and would allow the tides to ebb and flow through levee breaches.

In addition to the 1,800 acre restoration area, a sediment rehandling facility would be constructed within a 165 acre site located in the southeast corner of the project. The rehandling facility would contain up to 90 acres of sediment fill where sediments would be rinsed of
salts and dewatered and would be suitable for on-site levee maintenance as well as off-site levee stabilization in the Sacramento/San Joaquin River Delta.

And this is the whole project site. The rehandling area would be this area in here. What we would be permitting by lease would be the construction of a barge off-loading dock out in the Sacramento River on this portion of the property. The dredge suction pipelines would be here. There would be a small boat ramp up at this end. And down at this end that would be for launching boats to do water quality testing levee monitoring.

And, in addition, there would be four levee breaches. And what is proposed is that this project would be done in four phases. Phase one is located here. The sediments would be off loaded here, slurried and transported by pipeline into the Phase One area. At the completion of Phase One, when it's built up to the right elevation and marsh plant colonization has taken place, there would be a levee breach constructed that would allow the tides to come in through Montezuma Slough into the Phase One. And that would continue for the other three phases and that's the reason for the levee breaches.

The Montezuma Wetlands Project is a result of many years of work by numerous agencies, scientists and
engineers on the problem of dealing with materials dredged from the Bay's navigation channels and using them to restore wetlands in an environmentally safe and beneficial manner.

An inter-agency group composed of State and federal agencies with responsibility over dredging was formed to devise a long-term management strategy for the safe disposal of dredge materials. The LTMS estimated that for the next 50 years the annual average dredge in the Bay area would be between two and five million cubic yards.

The dredge disposal management alternative selected by the LTMS provides for a reduction of in-bay disposal to 20 percent of the total volume dredged, 40 percent going to ocean and 40 percent for upland and wetland reuse.

This project would fulfill the goal of upland wetland reuse through its wetland restoration and rehandling components. Jim McGrath from the Port of Oakland and Ellen Johnck, Executive Director of the Bay Planning Coalition are here today to speak of the importance of this project to the Bay area and the dredging communities.

This particular project would accept two types of dredge materials, cover and noncover. I would like to
expand on the calendar item discussion of cover versus noncover sediments. Cover sediments are those that pass leachate and bio tests, and contain contaminants at concentrations less than those specified in the regional boards interim screening period. Noncover sediments, those that, like cover sediments, have leachate tests, but have one or more contaminant concentrations that exceed criteria for cover material.

The use of noncover sediments has been evaluated by the regional board, United States Environmental Protection Agency, which deemed them suitable for wetlands creation or restoration, provided that the noncover material is covered by a minimum of three feet of cover material.

The proposed project would provide for that minimum of three feet of cover, and will keep all noncover materials at least 200 feet away from any existing waterways or constructed channels. Larry Kolb, Assistant Executive officer the San Francisco Bay Regional Water Quality Control Board and Brian Ross of the United States Environmental Protection Agency are here today to address sediments testing contaminants.

The lead agency for this project is the Solano County. The County certified the Final Environmental Impact Report in February of 1999 and approved the
amendments to the county general plan, the zoning
ordinance and local protection plan amendments. On
October 5th, 2000 the Solano County Planning Commission
approved a use permit and a marsh development permit for
the project.

This was followed by an appeal to the Board of
Supervisors to rescind the Planning Commission approval.
The board denied the appeal on November 7th, 2000. The
county has adopted 102 conditions of approval related to
the project, and has approved a mitigation, monitoring and
reporting plan.

The San Francisco Bay Conservation Development
Commission has certified Solano County's amendments to
plans and policies that's consistent with the Suisun Marsh
Preservation Act. A lawsuit was filed to overturn the
County Certification of the EIR. The trial court found
the EIR to be adequate.

The trial court decision was upheld on appeal to
the District Court of Appeal. A second lawsuit has been
recently filed and is described in the calendar before
you. The proposed lease will incorporate protection for
any historic or cultural resources on State lands. The
lease will adopt all the mitigation measures approved by
the County of Solano and will require that work stop or be
redirected if the historical or cultural resources are
found.

We will also incorporate standards for historic preservations that will be developed in consultation with the federal government throughout a programmatic agreement. The lease also requires that a marine archeologist approved by Commission staff be hired.

The projecting agency decisions are not without controversy. Mark Collins, Lesley Emmington Jones, Jim Levine and others will address you today on several points, including success of the marsh restoration, salinity escape and contaminants and quality of the sediments.

Staff has reviewed the key documents of the agencies that have considered the project. As the agency representatives will describe, extensive technical analysis has been done in the formulation of operating standards and project design to assure that the project will be successful in the creation of tidal wetlands and the avoidance of adverse environmental effects.

These regulation requirements have been incorporated into permit conditions and the mitigation monitoring program plan approved by the county board of supervisors, the waste discharge requirements of the regional board and will be reflected in the Corps of Engineers permit in consultation with the Nation Marine
Fisheries Service and the Fish and Wildlife Service.

And what you're being asked to approve this morning is issuance of lease for the docks, for the moorings, for the sediment off-loading facilities, for portions of two small boat ramps, and the four levee breaches as well as making the necessary CEQA findings enumerated in the calendar item.

CHAIRPERSON BUSTAMANTE: Do we have other folks who are going to speak on this issue?

EXECUTIVE OFFICER THAYER: Yes, we have slips in from about six individuals. And I don't know, we might want to start with the proponent of the project to explain the project further and move on to the others. At the moment, I don't have anything in opposition, but I guess if there are people coming --

CHAIRPERSON BUSTAMANTE: Make sure you bring your slips forward, please.

Welcome.

MR. LEVINE: Mr. Chairman, members of the Commission, good morning. I'm Jim Levine, founder of the Levine-Fricke family of environmental companies and the managing partner for the Montezuma project.

You may be familiar with our companies through the hundreds of environmental projects we've done in the State. Our project, as Mr. Plummer indicated is, to use
sediments that have being approved by the state and federal agencies to restore 1,800 acres of tidal wetlands on our own property and also to operate a sediment rehandling facility where we can use those sediments to restore levees and protect farm lands and protect water supplies and restore habitat around the Delta.

This project is a significant project to accomplish five or six important State goals, including providing an efficient solution to the loss of wetlands and what's due to dredge material.

In the late 1980's the federal, state agencies and environmental groups and political forces came together and decided that a large portion of sediment ought to be used beneficially instead of dumping in the water. And they set standards in the mid nineties for what sediments were used for what purpose and we are proposing to follow those standards, and this is a significant project to implement that.

The past nine years, we've being working very collaboratively with the EPA, the Water Quality Control Board, BCDC, with your staff, Department of Fish and Game, California Resources Agency, federal wildlife agencies, Department of Water Resources, Solano County Mosquito District, about everybody you can imagine.

And to analyze all of the potential environmental
impacts, to improve the project, and those collaborations helped them to improve the project, and to develop the testing and safeguards that are acceptable to everybody. And we have done this successfully.

I'm confident you understand the kind of analysis and safeguards that's necessary to get this support of all those agencies and to receive permits and approvals from them.

Your staff has seen support letters from the Resources Agency, The Department of Water Resources, Fish and Game, Water Quality Control Board, EPA, as well as the operating permits from Solano county and the Water Quality Board which was just mentioned.

The use permits in Solano County, we receive with unanimous votes at the Planning Commission and the Board of Supervisors. And we additionally have received our endangered species consultation, the draft biological opinion from the Fish and Wildlife Service. They concluded, Fish and Wildlife Service, that the project will be a net benefit for the recovery of several important endangered fish and mammals.

And I know based on the range of issues you face on this commission, I know you understand how good a project has to be for Fish and Wildlife Service to like it.
Despite the overwhelming agreements among the regulatory, technical and political communities, there has been some local opposition, and some of them are here today, I see. They have appeared at all the hearings in the past two years. They have claimed that the five-year environmental impact report was not good enough and the superior court and court of appeals disagreed with them and said it was good enough.

They have said that we are accepting toxic waste at the site, when, in fact, we are only proposing to accept the sediment that the State and federal agencies have determined is suitable for building wetlands with. In fact, the sediments we are going to take are the cleanest two categories of sediments in the Bay.

They have claimed that we will harm groundwater and that we're going to affect salinities, when, in fact, all the independent technical studies and the agencies have concurred that we will not, in any way, impact salinity or groundwater.

And they have claimed that the site doesn't need to be restored, and that we will harm, not help wildlife, despite the Fish and Game and Fish and Wildlife concluding that, in fact, this project is important for wildlife.

I believe the agency support speaks for itself, but I'm prepared to answer any questions that you might...
have based on your review of the material.

On the subject of local concentrations of metals in sediments, it's a complicated issue, but it might be helpful. I brought a couple of charts --

CHAIRPERSON BUSTAMANTE: You might want to spend a little time on the whole issue of sediments. I think that that's probably the biggest concern by both the Commission and, my guess is, any of the opposition, because I'm going to call them up next, right after you, so if you could spend a little time on that.

MR. LEVINE: Okay, certainly. This graph, I have two charts here that show kind of standards and the test results for sediments from the Bay. And as examples we can look at chromium, lead and nickel. The red bar is what would be considered as hazardous or toxic. This orange bar is what you can build residential houses on. And the other colors relate to the kind of sediments that we can take compared to the concentrations that are currently existing in the marsh and the concentrations that are currently dumped in the ocean and the Bay.

And what these charts say and I believe what you will hear from the EPA and the Water Board here today is that, in fact, the concentrations that we are proposing to take are similar to what's in Suisun Marsh now. They're lower than what is currently put on farmland right
adjacent to the site. And they are on the same
concentrations as what is currently dumped right in the
water in the Carquinez Straights and Alcatraz and the
ocean.

I believe what you will hear from the Water Board
is that, in fact, using these sediments in wetlands and
anaerobic environment is the safest thing to do with those
sediments. And these sediments are currently of the same
quality that people are using to place on levees directly
open to the environment all over the Bay and the Delta.

Additionally, one of the key scientific issues
involved here is that all the sediments that we receive,
cover and noncover, has to be subject to testing before
it's dredged to determine what it's usable for.

And all the sediments are tested by leaching
tests, that is running water through the sediments. As an
example, the sediments from the Port of Oakland that we
are going to take, the noncover sediments, the ones that
these folks are calling contaminated, when you run water
through those sediments, the water comes out the other
side cleaner than drinking water.

So it's fundamental to the project that we won't
accept any sediments that leach chemicals out of them and
that the concentrations we are taking, and there's a lot
of test results and background that support this in the
EIR, indicate that what we are taking is similar to what's in the marsh now anyhow. As you know, Suisun Marsh sits at the mouth of the San Joaquin/Sacramento Rivers. And for centuries there's been runoff of soil and that has farming byproducts and mining byproducts. And so it's not a pristine environment to begin with, but we're taking the same quality that's already up there.

CHAIRPERSON BUSTAMANTE: Is there any information, because I've had experiences here in my short time as a legislator and public life in the concentrations of materials. And what that actually means individually is a piece of, either dirt or water, as it begins to concentrate in an area, it begins to have different kinds of effects. Has that been studied?

MR. LEVINE: Yes, it has. And, in fact, in this case, let's take lead, for example. The sediments we're allowed to take are up to about 100 or 130 parts per million lead. It's well under what you can take even to build houses on.

Lead, as the other heavy metals in this kind of environment, stay absorbed to the sediments when they're deposited. They don't move, and that's an undisputed technical fact. And so, in fact, as long as the chemicals don't move, they really can't concentrate and the industry, the environmental industry, has had 20 years of
experience in dealing with the State of heavy metals in soils and sediments under different kinds of conditions.

And so it is the conclusion of all the scientists and all the regulatory agencies that there will be no bioaccumulation, there will be no concentrating of the metals here. I know that there was that problem with selenium in Kesterton and everybody is familiar with why that occurred.

But the conditions here are totally different. And the way in which the sediment is being placed, these sediments are in the Bay right now. Okay, and so they are available to the environment right now.

CHAIRPERSON BUSTAMANTE: Right, but as we know, we have to concentrate them someplace and then lay them open for habitats to feed on.

MR. LEVINE: But the way these are being handled, that will not occur. In fact, the sediments that are in the shallow areas of the Bay, like in the Port of Oakland, that we are going to be placing underneath other sediments, will be less bio available. And that is, in fact, the conclusion off all the scientists in the agencies.

Furthermore, the most contaminated sediments aren't even going to the site. The criteria is very strict. We're only allowed to take certain sediments.
CHAIRPERSON BUSTAMANTE: Where are those others going?

MR. LEVINE: They go uplands when they dredge the Port. For instance, when they make a new birth next to the Port, that's where the material goes that is not good enough to use in wetlands creation. And so the agencies, the EPA, and Water Quality Board and Fish and Game, they spent years analyzing what quality of sediments can be safely used for creating wetlands.

We're not asking for any variances. The public has spent a lot of money to have these things studied. And we are just trying to implement a project that uses those criteria.

CHAIRPERSON BUSTAMANTE: Any other questions?

MR. LEVINE: So I'll just stand by if you have any questions later.

CHAIRPERSON BUSTAMANTE: We have some folks here who are in opposition. Would the three members please come up. You have Lesley Jones. I believe these are in opposition, correct me if I'm wrong. Jonathan Wisnom and Tule West.

CHAIRPERSON BUSTAMANTE: Grab a seat. And why don't you go ahead and just sit there and speak.

MS. JONES: Chairman Bustamante, my name as mentioned earlier, I'm Lesley Jones. And I'm hoping I
might have more than three minutes. I'm representing
Friends For Suisun Marsh.

CHAIRPERSON BUSTAMANTE: Are you going to speak
for all three?

MS. JONES: Well, we prepared a letter that had
some substance with some questions. And I'm hoping we
might -- I'm going to try to cut out --

CHAIRPERSON BUSTAMANTE: Have those been
submitted? Do we have a copy?

EXECUTIVE OFFICER THAYER: I don't think so.

MS. JONES: We just are submitting it now,
including to you.

CHAIRPERSON BUSTAMANTE: It would be good to have
that information ahead of time so that we can read it.

MS. JONES: I understand. I think I gave you --
well, it's important for the staff to have a complete --

EXECUTIVE OFFICER THAYER: Sure.

CHAIRPERSON BUSTAMANTE: Is this noticed some
time back in terms of this item being on the agenda?

EXECUTIVE OFFICER THAYER: We sent it out, I
think, about 13 or 14 days ago.

CHAIRPERSON BUSTAMANTE: Have you known about
this, I mean, for some time. This wasn't --

MS. JONES: Well, we're citizens with ourselves
as staff, and we're trying to --
CHAIRPERSON BUSTAMANTE: I understand, but you're submitting a lot of --

MS. JONES: Yes.

CHAIRPERSON BUSTAMANTE: You're submitting a lot of language.

MS. JONES: We tried to be as thorough as we could be for the subject. And I won't read the whole letter. I'll be happy --

CHAIRPERSON BUSTAMANTE: Don't read the letter. We can read it. Just go ahead, why don't you.

MS. JONES: Well, one point in the letter that I wanted to bring to your attention, if I can verbalize it as effectively as it reads. There is an alternative site for this material, and it's just being developed right now. And your staff is aware of this project proposal. And your questions about contaminated materials and concentration in the site they're going at is entirely appropriate. The alternative project that's coming on line, and will be ready in time for the Port of Oakland urgency is at Mare Island.

It's a very interesting project. It's using seven of the ten pawns that were part of the Navy rehandling facility. And all piping is there. The docks are there, and we don't have to alter a site that's a tidal wetlands at this point.
So I wanted to bring that to your attention and you might want to explore it with the staff.

CHAIRPERSON BUSTAMANTE: So you're not opposed to the actual moving of the materials?

MS. JONES: We understand.

CHAIRPERSON BUSTAMANTE: You don't have any problem with the materials and what's in the -- what is being called toxics or contaminants. You're not concerned with the formula that's being used to move material from one place to the other. You just have a preference as to when it should go.

MS. JONES: Well, yes, because the Suisun Marsh is one of our resources of the State, if not the continent for a very fragile wildlife. And if we can -- the second point I wanted to make to you is that we would like you to refer -- this particular site, this exact site we are at least being asked to -- the general lease application is focused on, we would like you to refer it to CALFED.

CALFED is just beginning to be up and running. And the Delta-Bay Program for CALFED is looking at the kind of questions you asked. They have a team of scientific -- for instance, the Mercury issue is a very important issue. And I'm just trying to be very quick, but I think I referenced this in a response -- I know CALFED earlier supported this site, but I think, at this
point, we're at a juncture where we don't have to have the Montezuma site.

It's a site that could be a clean development site contributing to the clean water that we're trying to protect within the Bay program, precisely because we have to look at the whole State.

We --

CHAIRPERSON BUSTAMANTE: Does CALFED no longer support it?

MS. JONES: Well, we're asking you -- there's a lot of these going in a momentum. We're asking you, maybe, to pull back and maybe ask for CALFED --

CHAIRPERSON BUSTAMANTE: I'm just asking you a question. You said that CALFED earlier supported the project, which sounds as if it no longer supports the project. Does it still support the project?

MS. JONES: I cannot say whether it does fully support or it fully wouldn't support it.

CHAIRPERSON BUSTAMANTE: Does staff know?

EXECUTIVE OFFICER THAYER: Mr. Chairman, I don't know off the top of my head. However, the gentleman here, Larry Kolb, from the Regional Water Quality Control Board who probably knows the answer to that question.

CHAIRPERSON BUSTAMANTE: We'll ask him when he gets up here.
MS. JONES: But that's something I'd like to put on the table.

Then we have some specific questions. And I guess I'll just read them, because they're very specific.

CHAIRPERSON BUSTAMANTE: Where are these questions?

MS. JONES: They're on the page, 1, 2 through 8.

CHAIRPERSON BUSTAMANTE: You're not going to read those questions. What we're going --

MS. JONES: They have to do with the lease.

CHAIRPERSON BUSTAMANTE: I understand. You submitted the information for the record. That information is on the record. Okay, we're not going to sit here and read through all the different questions. I think that if you have a question that you'd like to ask, I think, you should go ahead and make that question.

MS. JONES: Well, we'd like to urge you to be aware of your Mare Island. We'd like to urge you to talk with the new CALFED director and staff. It's a new program staff. And we'd also like you to be aware that our passion for this area, and its integrity is very strong. And we concur with the recent questions raised by Earth Justice at Stanford regarding water and the discharge of water. And those questions have been recognized as valid enough to actually have the project
And your applicant's application does not reflect those changes fully. And we also want you to know that we're going to pursue the endangered species Salt Marsh Harvest Mouse issue. We're just here and we are not afraid of litigation, because we feel it's really vital on behalf of the State that this project doesn't have to happen.

CHAIRPERSON BUSTAMANTE: Some of the ecosystems along the coast are extremely fragile. You're absolutely right, and we should make sure that we're clearly looking at ensuring that ecosystem. You're absolutely right. What I'm trying to do is I'm trying to get through the rhetoric and into what we know and what we don't know.

MS. JONES: Thank you very much.

MS. WEST: Hi, I'm Tule West. Granted, we are here as members of Friends of the Suisun Marsh, local people from the area who have started this group out of concern for protection of Suisun Marsh, but I'd also like to note that the Bay Keepers, Save the Bay, Earth's Justice, and Stop the Montezuma Project are also organizations that have formed in opposition to this project.

Going to read --

CHAIRPERSON BUSTAMANTE: Do we have any letters
or do we have anything that says that?

MS. WEST: You have documentation from Earth's Justice of Stanford Environmental Law Clinic as well as Stop the Montezuma Project. I don't know if these were submitted earlier to you or not.

CHAIRPERSON BUSTAMANTE: Do you have these?

EXECUTIVE OFFICER THAYE: We had just gotten the Earth's Justice one today. I think actually their letter that I'm looking at was a response for the State Water Resources Control Board appeal process, looks to be a letter to --

MS. WEST: There's a new one.

EXECUTIVE DIRECTOR THAYE: There's an additional one?

MS. WEST: I think we could confirm by the dates on the letter.

EXECUTIVE OFFICER THAYE: I'm looking at one date January 19th.

MS. WEST: Okay.

CHAIRPERSON BUSTAMANTE: So this is all the information that's been reviewed previously, have you seen this?

EXECUTIVE OFFICER THAYE: I think we've seen -- this is in the form it looks like of a pleading before Solano county, and it's dated -- I can't quite read it.
MS. WEST: She.

MS. JONES: She has not seen the cover. He has not seen it.

EXECUTIVE OFFICER THAYER: We haven't seen that. This one is addressed to the State Water Resources Control Board. That hasn't being submitted to us before, I don't believe.

MS. JONES: That's the letter he has not seen.

CHAIRPERSON BUSTAMANTE: Okay. The cover page.

EXECUTIVE DIRECTOR THAYER: Yes, we do.

SENIOR STAFF COUNSEL STEVENSON: I'll speak just momentarily. I'm Blake Stevenson, Senior Staff Counsel for the Commission working on this project. One of the documents produced here is a copy of the complaint from the most recently filed lawsuit and we have seen and reviewed that.

CHAIRPERSON BUSTAMANTE: Go ahead and make your testimony. Sorry to interrupt.

MS. WEST: This State lands throughout the entire Suisun Marsh area, including the Montezuma Slough and all the tide lines of the entire marsh. The marsh is a unit. Even though it's put together in a diked area and may not be officially State lands, it has the potential of affecting the rest of the marsh by the nature of this project.
State Lands has a vital interest in the design and nature of this project in ensuring that it maintains the integrity of the marsh. I don't think this experimental project does that. It is a very bad policy to convert an uncontaminated area into a contaminated waste area. By the acceptance of this noncover material, not suitable for product disposal, it is not at all the same as allowing dumping in an already contaminated site or creating wetlands with green cover dredge. It should give you great pause to be advocating and facilitating the creation of a contaminated waste dump in a clean wetlands area.

Most importantly, it is very bad policy to turn the State's largest wetland refuge, to allow this to occur on an entrepreneurial basis without any larger policy decisions made about whether the State wishes to site contaminated dumps in wildlife areas or not.

The State Lands has jurisdiction on more than just these levees and piers. You have concern by virtue of your lands throughout the entire Suisun Marsh and its 89,000 acres.

This project has the potential, by virtue of the applicant's own EIR, for running the risk of damaging the resources here. This risk should not be taken in the first place without much more consideration from State
lands and State policy by virtue of the unique and very sensitive nature of the Suisun Marsh.

Thank you for your time.

CHAIRPERSON BUSTAMANTE: What's the difference between clean cover dredge and what they're talking about putting on.

MS. WEST: The noncover material, it's a new category that's been developed. It's not suitable for aquatic disposal. It's too contaminated to dump unconfined out in the ocean. It needs to be buried under three feet of mud, so that's the cover that goes on top of it.

The problems that occur are when they bring this noncover contaminated material to the site, it remains exposed during migratory periods, so the animals can actually get into it there. So there's a concern for burrowing, for instance the red swamp cray fish, which can burrow deeper than three feet, and the answer has always been we've got elaborate monitoring and mitigation programs set up to watch for it, but it is a valid concern. That is experimental. It hasn't being proven effective with this noncover material being buried here and that's what our big problem is.

CHAIRPERSON BUSTAMANTE: And does staff have response to this or is it going to be covered by one of
the other folks?

EXECUTIVE OFFICER THAYER: I think it's going to be covered by one of the other speakers, but I do want to say that Ms. West's concerns are ours. I mean, these are the reasons that we've reviewed very carefully this project and sought the advice of all the wildlife agencies, knowing that they had more expertise in this than we did and more biologists had worked in these fields, as well as dealing with the environmental hazard that comes from these different contaminants.

So I just want to respond by saying that these are the exact same kind of conversations and issues that we've had internally as we were reviewing this project and the reason we've gone out to all these different agencies.

CHAIRPERSON BUSTAMANTE: What about the specific species that she talked about and whether or not these --

EXECUTIVE OFFICER THAYER: I don't personally know about the crayfish, but I think the gentleman from EPA may be able to respond to that.

CHAIRPERSON BUSTAMANTE: Make sure that that is noted so that can be responded to. Is there any other species that you mentioned.

MS. WEST: There's quite a few endangered species on the site. We have lots of concerns, for instance, the final biological opinion has not been released from the
There is a huge concern about the taking of the Salt Marsh Harvest Mouse endangered species and habitat when initially this project was done and I noted about the Salt Marsh harvest in '91. It was after a long drought and it was his habitat.

The records since 2000 have come forward that State that habitat, the salt water marsh is actually much improved, and they are going to flood this area and eliminate the habitat in the hopes of recreating a higher volume habitat. That's not proven. It's still an issue of concern. It's a concern of ours, that is the taking of this species.

CHAIRPERSON BUSTAMANTE: That will also be addressed, I hope, by Fish and Wildlife.

Sir.

MR. WISNOM: My name is Jonathan Wisnom with Friend's of the Suisun Marsh. I want to bring to the attention of the Commission and staff that this project has changed from its original description, and as it was described in the Environmental Impact Report. It was changed within the past few months to eliminate subdrains to take the water from the holding ponds or from the sediment cells back to the holding ponds.

Because there is such a shallow water table, you
can't dig trenches for the return water to flow, as it's subject to tide. Now, in the changing of the project, the applicant has suggested that the reuse of this water be taken advantage of. I don't understand the math, and it's not -- it's not described.

To operate the project, it's going to take between three and five million gallons of shallow groundwater daily to mix and force this dredge into these cells as far as three miles away from the off-loading facility.

As this water works its way back to the sediment pond, it just seems scientifically fundamental that there is going to be additional accumulation of chemicals that are hazardous sitting in a 90-acre pond at the point of the off-loading facility. There hasn't being suitable analysis for the accumulation of these chemicals over a period of time to approve this project.

There's an awful lot of emphasis on the restoration of the marsh, but, in fact, this is a two-fold operation project, the rehandling facility, which is going to, for up to another hundred years, resell this treated material. It's the beginning of a new industry on the Sacramento River at Collinsville on the edge of the Suisun Marsh. I think it's irresponsible of the State to use its lands to encourage a business such as that.
CHAIRPERSON BUSTAMANTE: Okay. Thank you.

MR. WISNOM: I might add, no one has ever addressed, in all these meetings that I've been to, the accumulation of heavy metals in the existing levees. As I understand, these levees that were built in the 1880s from the indigenous material there at the confluence of the rivers is loaded with heavy metals. And no analysis has been done of the deposits that are there wasting their way through the Montezuma Slough and the Suisun Marsh when the levees are breached.

There is thousands -- hundreds of thousands of cubic yards of material that hasn't being analyzed. I'd like to know these answers, so I could feel good about this project and having them as neighbors, but I'm very, very skeptical.

CHAIRPERSON BUSTAMANTE: All right. Thank you. You wanted to add something.

MS. JONES: I did.

CHAIRPERSON BUSTAMANTE: As long as it's a short something.

MS. JONES: Okay. The science doesn't have to be too scientific. It's really -- there are so many questions to ask, that any of us in this room could ask about this project, and we talked about the noncover and the covered, and the cover is three feet. And I just want
you to understand even in your own garden or whatever, the cover of three feet, there's questions like, does it always need to be three feet? Does it compact?

I mean, it might start out three feet. Does it stay three feet? And if you've got noncover that has to be separated from bodies of water by 200 feet, and then you have a little cover on top of it, that's three feet, and what about the tidal action, what about the erosion? I mean, this is not so secure and it's being covered from the elements so that it contributes bad things that we're trying in our world in America not to have occur in different cities and towns and waterways and so forth.

So we're appealing to State Lands, and those of you voting, to get kind of up to speed on what this really is and that there are alternatives, not stop shipping, but to add to the -- that LTMS has been trying to talk about.

We just want to carry it one step further.

CHAIRPERSON BUSTAMANTE: Thank you. The comments were very thoughtful. Is there anybody else here who is in support of the project? I'm not talking about staff reports, or department reports that we're going to hear from, but is there anybody else here in support of the project?

EXECUTIVE OFFICER THAYER: Ellen Johnck from the Bay Planning Coalition.
CHAIRPERSON BUSTAMANTE: Please state your name for the record.

MS. JOHNCK: Yes. Good morning. I'll Ellen Johnck, Executive Director of the San Francisco Bay Planning Coalition.

The coalition is a nonprofit organization representing a couple hundred users in San Francisco Bay, the Maritime industry, local government and shoreline business all devoted to a sensible and balanced permit process.

We strongly recommend that the State Lands Commission endorse this flagship project. And, frankly, we think that this is really a metaphor for the work and the mission of the State Lands Commission. This project represents a significant innovation in the use of dredge material as a resource. It serves the economic objective of the maritime industry and the interests of the State and successful trade and shipping, because we need our channels dredged in order to accommodate the latest in shipping size and draft.

It also achieves our State's environmental goal for using our resources in an environmentally protective way. The theme is environmental ports and environmental dredging. I just came back from a three-day workshop where ports and industries all over the nation, all over
the seaboard, are utilizing and working on beneficial reuse projects. We have some fantastic innovations in setting up parks and wetland restoration in Baltimore and Houston, for example, and in Florida using dredge material with the theme of beneficial reuse.

Montezuma is really the springboard for this concept that we started almost ten years ago with a project known as the Long-term Management Strategy, for dredge material disposal. The State Lands Commission has been an active party to this program where we have identified 40 percent of the material dredged in San Francisco Bay will be devoted to beneficial reuse.

We can't get to beneficial reuse without innovative and environmental engineering expertise, which Levine-Fricke Corporation represents, capital infusion and public/private partnerships. This is a team effort with private industry and the federal government and the local project sponsor all moving together to create an environmental flagship project.

CHAIRPERSON BUSTAMANTE: Excuse me, did you say that this similar kind of project has been done before?

MS. JOHNCK: Yes.

CHAIRPERSON BUSTAMANTE: You said Baltimore, Miami?

MS. JOHNCK: Yes. Baltimore, Florida and Houston
are some significant examples. New England is moving on this too. It's really being done all over the United States right now, and it's really the way we are headed. It's very exciting.

CHAIRPERSON BUSTAMANTE: Projects like this or identical to this, so I mean the same kinds of --

MS. JOHNCK: Projects like this, both rehandling and wetland restoration and park establishment.

CHAIRPERSON BUSTAMANTE: How long ago have these projects --

MS. JOHNCK: We've been working on this for ten years. Actually beneficial use has been around for about 20 years.

CHAIRPERSON BUSTAMANTE: Which is your longest existing project?

MS. JOHNCK: Well, Hart-Miller -- Jim, would you say Hart-Miller is about -- well, 12 years in the making now. That's all completed now.

MR. McGRATH: Fourteen or 15 years.

MS. JOHNCK: Fourteen or 15 years. That's off of Baltimore Harbor.

CHAIRPERSON BUSTAMANTE: Go ahead.

MS. JOHNCK: That's a really good example. So I think the other aspect here you've raised, okay what about the environment and what about the sediments? I've been
working with resource agencies and the maritime business for 25, 30 years now, and we are thoroughly indoctrinated and have established quite a rigorous testing program for sediments.

Sediments can be managed, depending on what's in them. You are very well scrutinized and spend millions of dollars on testing to ensure that you're placing sediment for what its constituents contain in the proper place.

The EPA, the Water Board has -- and the Army Corps which has a marvelous facility in Vicksburg, Mississippi for analyzing sediments, have all passed on this project for being the most appropriate environmentally managed project. So I think you ought to listen to both EPA and the Water Board and what they have to say.

Overall, again, we encourage your support for this project. We think it matches your mission succinctly.

Thank you.

CHAIRPERSON BUSTAMANTE: Thank you.

MR. MCGRATH: Commissioners, Jim McGrath. I'm an Environmental Manager at the Port of Oakland. I've been at the Port of Oakland for about 11 years and before that I came from the Coastal Commission and before that I came from the Environmental Protect Agency. I've worked on
water quality issues now for about 29 years. And you have a tough issue before you. You have some very tough trust issues that are affecting people's perspectives. And I'll try to bring some information to that, but I think we need to acknowledge upfront that there's a great degree of trust issue with the government here. And you have before you both representatives from the Environmental Protection Agency and the Regional Water Quality Control Board who are looking directly at these.

To start with, this, I think, is a very important project to the Port of Oakland. We're considered one of the driving wheels in the Bay Area's economy. What is imported to California generally comes -- or northern California, generally comes through the Port of Oakland. And although we do have alternatives, we believe this is a very essential element of the Port's project. But let me provide a little perspective. The dredging project that we're talking about has 12 million cubic yards of essentially geologically deposited material. It has not being disturbed in any way and is about as squeaky clean as Mother Nature made it back then.

There is about a million cubic yards of material that must be managed in some way. And of that, 400,000 cubic yards is proposed to be taken here. It's called wetland noncover and then covered with 2.6 million cubic
yards of material. So it's covered by about six times as
much material as placed in the first place.

    I believe it's being appropriately managed. And
I'm here to express, I think, a more difficult and subtle
concern, and I hope I can do it, about how overregulating
this material can actually backfire in the environmental
arena.

    Each category of sediments from the very cleanest
to the very dirtiest needs an appropriate and protective
set of standards to guide its disposal and its reuse.
You've asked a number of questions that indicate you've
put a lot of thought into that.

    Let's start with the very dirtiest material which
is hazardous material, which must go to a special quality
of landfill. Then there's material that's cleaner than
that, but still a substantial concern. That material
needs to be sequestered and landfilled. Then there's
material, as you step towards cleaner, that can be reused
in construction, provided it has the right kind of
physical characteristics. Then there's the category
called wetland noncover and then there's a category of
wetland cover.

    Now, let's look at two of the metals that are of
concern, and certainly very valid concerns, both lead and
mercury are accumulated in the food chain, and they must
be appropriately managed. One of the things that I learned at EPA is that material needs to be reused at levels where it is effectively managed. And one of the programs that's come out of that from the EPA is reusing biosolids or sewage slide, where it has value.

Now, let's look at the level of material of lead that is proposed to be buried under three feet of material. It's 1/20th of the standard that EPA has established for lead for the surface of Suisun Marsh. So I think that's one indication that the protective standards here are very substantial.

Let's look at an even more critical concern, mercury, which is a great concern, both acutely, because it's an acute toxic and through the food chain. Again, the levels that are proposed to be buried under three feet here are -- so to that's nearly two orders of magnitude below the biosolids level that are actively tilled into the surface.

Now, I'm not trying to tell you that reusing biosolids in the Suisun Marsh represents any substantial risk. I'm telling you that's appropriately managed, and I'm trying to give you some idea of protectiveness of the standards here.

We have some experience with managing contaminated material. We took a million cubic yards of
the worst material in the port. When we dredged from 35 feet down to 42 feet, we put it to cap a landfill at the Galbraith Golf Course. We're now rebuilding the golf course on top of that.

Part of our program was to test it in discharge, and to test it in situ to make sure that there weren't any levels that were hazardous materials. That material is substantially more contaminated than the relatively clean material here. Again, I think the issues about hazardous levels, and indeed about toxicity, are not well taken.

I rechecked our toxicity tests about the material that we're proposing to take here on Friday, and I brought them with me today. There are 15 samples that they received the full suite of toxicity tests.

None of those failed the sublethal test. All the waste passed all toxicity tests and can go to the ocean. So the idea that his material is grossly contaminated, I think, represents substantial fears and substantial levels of trust, but it is indeed not borne out.

Now, let me, if I have just a minute, make a tough point.

CHAIRPERSON BUSTAMANTE: You have one minute.

(Laughter.)

MR. McGrath: There is a lot of material that settles into navigational channels, but essentially the
same material settles everywhere in the estuary where the currents are very low. And if we try to -- if we create really expensive solutions for this material, which is very mildly contaminated, those solutions may end up precluding proper management of the other areas within the estuary, where you might want to do something to reduce the risk of that sediment.

Now, the best thing we all need to do is keep the material out of the water in the first place. But throughout the estuary there are areas that have very low levels of contamination and very low levels of risk. And managing those sediments is in many of the regulatory programs tied to cost effectiveness. If you keep driving the price of all management solutions up, regardless of the relatively low risk, then you actually tie the hands of people to do things in management at the low-level risking estuary that properly should be done.

So I think what we need to do is not only look at things that are well regulated and protected, but things that help provide cost effective solutions, so that we can manage our estuaries so that ecological risk goes down over the long term, rather than go up.

Thank you.

CHAIRPERSON BUSTAMANTE: Okay. Thank you, both. We have folks from water quality and US EPA.
Would you please come up and make your presentations.
Make sure you state your names for the record, please.

MR. KOLB: My name is Larry Kolb --

CHAIRPERSON BUSTAMANTE: Turn your microphone on, please.

MR. KOLB: My name is Larry Kolb and I'm Assistant Executive Officer with the San Francisco Bay Regional Water Quality Control Board in Oakland.

The Regional Board adopted an order essentially approving this project in July. That order reflected the Board's existing policies. It is the best available science on this subject.

Let me say here that the science on this subject, as has been noted earlier, is much better than it was, say, ten years ago. We think we understand sediments a lot better than we used to.

The Regional Board strongly endorses the concept of steadily reducing the amount of sediments that we dump in San Francisco Bay. This is what's called, in the long term, management strategies for dredging in the Bay.

This will help achieve that objective and even better it carries the additional advantage of helping to restore what were historically tidal wetlands and makes them tidal wetlands again. As you probably know, what happened is these lands were diked off from the Bay, maybe...
100 years ago, but the site for the soils behind them are not very good. They're low valley agricultural soils. The soils subsided similar to what's happened in the Delta islands although losing different mechanisms because it's different soil conditions.

And some of these are maybe ten feet below sea level right now. To restore these to tidal action would require fill. And the use of dredge material to achieve this environmental purpose is very attractive if it can be done safely.

The Regional Board believes that the order adopted by the Board in July will protect the Bay and organisms that live in it. Certainly, this is vastly superior to dumping this same material into the Bay. This project has undergone unusually thorough environmental review by the applicant, by our staff, by the staffs of the other --

CHAIRPERSON BUSTAMANTE: Without all the rhetoric, can we get right to the meat of what you're here to say.

MR. KOLB: We think it's safe.

(Laughter.)

CHAIRPERSON BUSTAMANTE: There were several questions that were asked by people who were opposed. Are you going to be answering any of those questions?
MR. KOLB: The one on the burrowing cray fish I cannot answer. The reference to Vallejo, I think that that project has not been proposed to the Board and is nowhere near approval. I think the Vallejo project would be like this project would have been several years ago, you can't just say why don't we take it here, absent an EIR or absent the kind of elaborate environmental studies that have been done for this project and then say well, we can do it by Tuesday. It doesn't work that way.

CHAIRPERSON BUSTAMANTE: Okay. So you couldn't answer -- is there anybody going to answer these other questions? I thought we had staff that could.

EXECUTIVE OFFICER THAYER: The one other --

CHAIRPERSON BUSTAMANTE: You want to do that in your close, Mr. Levine. Did you want to say something?

MR. PLUMMER: Well, I can answer some of the questions. I don't know if you want to give Brian Ross a chance.

CHAIRPERSON BUSTAMANTE: Are you going to be coming up then?

MR. PLUMMER: Yes.

CHAIRPERSON BUSTAMANTE: All right. Go ahead.

EXECUTIVE OFFICER THAYER: The one other question that came up had to do with the relationship to this project with CALFED, one of the opponents. And I wonder
if Mr. Kolb had any knowledge of that.

MR. KOLB: I'm not aware of the position of CALFED. I could comment to the agencies that are a part of CALFED, though, that are relevant to this that have endorsed this project.

CHAIRPERSON BUSTAMANTE: Those agencies are?

MR. KOLB: Department of Water Resources, the State regional boards acting through my regional board, federal agencies through the federal Environmental Protection Agency and the US Department of -- or the Department of Fish and Wildlife.

CHAIRPERSON BUSTAMANTE: Okay.

MR. KOLB: That's all I have.

CHAIRPERSON BUSTAMANTE: Thank you.

MR. ROSS: Thank you, Commissioners. I'm Brian Ross with the Environmental Protection Agency and the Region 9 office in San Francisco. I've been in the sediment quality business for about 20 years now myself. Thank you for the opportunity to be here today. Obviously, we need to move things along. I have about a two and a half page statement that I was going to say, but I've provided a copy to your staff. So it sounds like maybe I should say a couple of very much quicker things to you.

First, we certainly, EPA, concurs with what the
Regional Board has said. We do think the project is one that can be very beneficial to the region, both in terms of our long-term plans under LTMS, which we have been very very active in, and in terms of the environmental benefits that they can bring to the region, if the project is done correctly. And that's what I want to underline, our role as the regulatory agency, the Regional Board's role as a regulatory agency and the Corps of Engineers in particular, sort of, our job now, since the EIS and EIRs have all been out, is to make sure that those potential benefits are maximized while the potential risks are minimized. And that's exactly what we're doing through the detailed permitting process as we're going through it.

Right now, we're working closely with the Corps of Engineers on all the specific details that would go into Corps permits that will, in some cases, supplement a lot of the things that are already in the State and local requirements for the project.

I think there were a couple other questions that I might put just a small bit of additional light on. CALFED, as Larry said, is composed of many of the various same agencies that the LTMS is comprised of. But beyond that, in fact one of my bosses, Karen Schwinn is the EPA point person for CALFED. And a lot of discussion with the EPA and I think within CALFED and between LTMS and CALFED
has gone on over the years.

And to a large extend, CALFED looks to LTMS for the policies needed to manage dredge material properly, including potentially contaminated dredge material. Where they're taking up the ball from there, as to coordinating which projects they want to have done in an overall ecological sense for the region and for the Delta, and how we can mesh those two, is a source of active conversation.

I think the other question had to do with crayfish. I'm also not an expert on the crayfish, but I can attest that that issue was brought up and rightly brought up by some of these in opposition. And it was forwarded along by us and others to be evaluated as appropriate in the EIS process. We weren't the lead agency for the EIS, but there has been attention paid to it.

I can also say that confined aquatic disposal, which is being done around the country, you heard Ellen Johnck, I think, mentioned some other cases. Burrowing organisms are the classic thing to worry about. An issue to keep in mind, though, is that, in general, you're not going to eliminate all exposure to every organism. What you're doing is minimizing the amount of exposure to the most organisms that are the most sensitive that can be done and is necessary to do for a particular sediment at a particular site.
The three-foot minimum thickness which is, in fact, going to be met on this project, and I think in several cases exceeded on this project, takes into account not only the chemical isolation of the contaminants and the sediment that are buried in noncovered sediment in this case, but it also does include buffers specifically for burrowing organisms.

It happens that the cray fish is one that can burrow about as deep as anything. And that's why I think there was a monitoring program component added was to help determine the degree to which there is any problem. And which, at that point, that would be one of the kinds of criteria that all of our various permits would look at and determine whether there's any kinds of contingency measures that need to be taken, once an evaluation is made, even if there's a significant impact or a risk at that point.

Having said all that, and I promised to keep it quick, I'll just say, again, EPA is generally supportive of the project and we look forward to continuing to work with the other agencies and the Commission to make sure those impacts are, in fact, minimized and benefits maximized.

CHAIRPERSON BUSTAMANTE: Do either of you gentlemen deal with the endangered species or the taking
of those issues or --

All right.

EXECUTIVE OFFICER THAYER: He's commission staff.

MR. ROSS: We do deal with it within projects -- that this being a project --

CHAIRPERSON BUSTAMANTE: Because the Post raised several questions about -- you'll deal with that.

Gentlemen.

ACTING COMMISSIONER PORINI: I just have two quick questions. I don't know if our staff is appropriate to deal with it or others. One of the opponents mentioned that the Fish and Wildlife final report hadn't been issued yet. Is that the case, do you know?

MR. ROSS: That I know. The biological opinion from the National Marine Fisheries Service has been finalized. As you know, there's the SA coordination with Fish and Wildlife and NIMFA at the federal level. And I think that's probably reflected in the materials you have.

The draft opinion from Fish and Wildlife was also issued. And I'm aware of through discussions with the EIS Coordinator for the Corps that some minor points are still in discussion, but that, again, in general Fish and Wildlife has come out and that opinion is positive about the project.

ACTING COMMISSIONER PORINI: Another question.
How many other federal permits have to be issued? I think you mentioned the Army Corps had not issued a permit.

MR. ROSS: That's typically one of the final steps on the federal level. And all of this is preparatory in the Corps' view to that and they make sure that all the appropriate state and local authorizations and requirements are reflected. I think beyond that, probably the applicant could tell you if there's any more. I think that's about it though.

CHAIRPERSON BUSTAMANTE: Thank you.

ACTING COMMISSIONER PORINI: Thank you.

CHAIRPERSON BUSTAMANTE: Thank you, gentlemen.

ACTING COMMISSIONER ARONBERG: You mentioned the burrowing organism issue. Do you know when that will be finalized?

MR. ROSS: As far as I know, it is finalized to the extent that the -- except to the extent that the process isn't finalized because the Corps hasn't finalized all the details of its permit yet, I think, the aspects of monitoring that have been included, based on the analysis that was done, subsequent to the EIS, have been included in the applicant's -- excuse me if I get the acronym wrong, the NMRP, the Monitoring and Reporting Plan that they have that has being adopted by the county.

All the relevant aspects will also be adopted by
the federal permit. I don't know that there's additional analysis going on is what I'm trying to say. I think the analysis is done.

ACTING COMMISSIONER ARONBERG: What was the outcome? Is this organism part of the food chain and what does that mean?

MR. ROSS: Well, certainly it's an organism that's up in the area. And like a lot of others the issue is could it be adversely affected if it burrows through deeply enough to be exposed to noncover sediments.

There are a lot of aspects about whether that exposure, if it happens, will be adverse. And as I say I think that the outcome and the analysis was that it was made as particular -- included late because the issue came up late, specifically as part of the monitoring program, to keep an eye on just that, and see whether it is burrowing deeply enough, and to determine whether, if that happens, it's suffering any exposure that's adverse.

ACTING COMMISSIONER ARONBERG: If it is suffering exposure up the food chain, what would be affected?

MR. ROSS: Well, it's not necessarily up the food chain yet either. The issue of bioaccumulation of contaminants up the food chain is an important one, but it's not the only aspect of whether there could be an adverse effect or any toxicity to the organism. There
could be an effect.

I don't recall off the top of my head exactly what is in the monitoring program at the sort of first stage. But all the permits have, and certainly more can have more contingency measures for things that may show up in the monitoring program. That's very, very typical for any kind -- we have success criteria, for example, before the project can move from one phase to the next to the next to specifically make sure that the concern that was expressed, and we shared it from day one on this project, that we not initially wipe out a lot of the existing wetland habitat there before we know that the earlier phases are successful and that those replace that, and that you can then move on to the next phase and it's already being mitigated in a sense.

And from there on out you're in a net plus situation. We have those in the permits and in the MMRP right now.

ACTING COMMISSIONER ARONBERG: There were mentioned alternatives, at least a couple of the prior speakers, can you speak to alternatives, this Mare Island alternative or others?

MR. ROSS: I can speak real briefly. I think that the problematic answer for us and LTMS is that we need many alternatives. This project will not suffice for
the sediments that we have to manage, especially some of
the more contaminated sediments over time. The capacity
in this project for the noncover sediments has actually
been cut back quite a bit from what was originally
proposed and what frankly EPA thinks the site could safely
manage.

If anything, this site could handle a lot more
contaminant than it's been designed for in our view. My
point being that not only do we need other wetland
restoration sites, independent of noncover issues -- for
example, the Hamilton Wetlands Project that's being worked
on very actively right now will also be very important to
the region both from the beneficial reuse of dredge
materials standpoint, clean and nonforming cover.

And also, from the standpoint of wetland habitat
restoration in the Bay, Mare Island, as I understand it,
if it's what I know about, which has to do with their old
dredge material disposal ponds, that the Navy used for
years, some of which has some ugly stuff in them, would
not be primarily for any kind of habitat enhancement, but
rather an option or an alternative just for disposal of
contaminated sediment. In other words, what we'd call
confined disposal facility, not a habitat facility.
That's needed as well.

We also need regional rehandling facilities, in
general, is something that LTMS has identified for a long
time is just very important to the region. Montezuma
Wetlands is one major step toward our goal, but it is by
no means enough for the management of dredge material in
the region, especially not for contaminated sediments.

CHAIRPERSON BUSTAMANTE: Any additional
questions.

EXECUTIVE OFFICER THAYER: Commissioner Aronberg,
I think Mr. Kolb's reference to the Vallejo site was the
Mare Island site. It's the same site where he indicated
it wouldn't be available for several more years.

MR. KOLB: I would like to echo what was said,
that we'd like to see more projects like this.

CHAIRPERSON BUSTAMANTE: Any additional
questions?

Thank you, gentlemen.

You're batting cleanup.

REGIONAL MANAGER PLUMMER: I'll try to keep it
real short here.

Regarding Mare Island, much has already been
said, I'm the staff person directly working on that Mare
Island Project. It's at the very beginning stages.
They're just now scoping out what issues will be covered
in the environmental process. They haven't gone to the
regional board. Many of the issues that were issues on
this project will undoubtedly be issues at Mare Island as to what to do with the water, you know, how you keep it clean.

So I think that we can see that Mare Island potentially has some time before it will be permitted, you know.

CHAIRPERSON BUSTAMANTE: How much time?

REGIONAL MANAGER PLUMMER: It could be anywhere from a year to a couple years, maybe -- I don't know. It depends on what kind of comments happen through the environmental process. Maybe because of this project, it will be speeded up because much more has been learned. The proposal will come in with many mitigations that are proposed here and placed on that that may speed up that process. But I don't think anybody knows, at this point, how long that will be.

CHAIRPERSON BUSTAMANTE: Okay. There were several questions that were asked about everything from the burrowing organisms to the marsh mouse species.

MR. PLUMMER: I think the CALFED issue you probably heard about. The same comment I was going to make. It's really the same agencies. We participate. All the other agencies participate.

CHAIRPERSON BUSTAMANTE: We got that.

MR. PLUMMER: As far as the cray fish, I am also
no expert on the cray fish. But from what I've been able to learn about it, they do burrow three feet, but you have to realize what the starting point is. And the cray fish really want to stay up around the high water and below that to some extent.

But where this noncover material is going to be is going in an anaerobic condition, in other words there's no oxygen. And it's unlikely that the cray fish is going to want to burrow down into the anaerobic conditions that are going to be there. At least that's what I've been able to find out so far.

As far as the taking of the Salt Harvest Mouse, we've been in consultation with the Department of Fish and Game. Our lease has contemplated that there will be an MOU between Fish and Game and the project proponent that will address incidental taking of the Harvest Mouse.

The project is designed by phases, so that the existing mouse habitat, that will be the last phase to be touched. New habitat for the mouse will be created before the existing habitat is destroyed.

As far as project changes, there have been a few project changes. You've heard of this elimination of the subdrains. If subdrains always were a condition of the geotechnical reports, they could have been in, they could have been out. They were covered by the environmental
analysis. Now, we're hearing that because they're eliminated, that's a change to the project.

You know, that was brought up to the County. The County certified the document. We think that the CEQA process has enough flexibility into it to have minor project changes like that to not significantly alter the project. Those changes have no impacts on what was applied to the State Lands Commission for lease.

As far as reselling -- one of the issues that was brought up is should we allow resell of treated material? Department of Water Resources is very supportive of this project. They would like to see reuse material available in the general vicinity of the Delta for levee maintenance. And as far as -- you know, there will be monitoring at the levee breaches for any metals or any contaminants that would pass through the levee breaches.

In our lease, we require that the applicant provide funding in place upfront to cover things like if we need to go in there and do any remediation work, we're able to tap that bond ourselves as an agency and contract out to have that work done.

During the life of the project the applicant will create another fund for us that will cover the expense of closing those levee breaches, if that's ever deemed to be necessary. So I think, you know, we know about these
issues. We've worked hard with the agencies and the applicant to address these issues in our lease.

CHAIRPERSON BUSTAMANTE: The accumulation of chemicals over a period of time has been raised several times. Can you tell us anything about that?

REGIONAL MANAGER PLUMMER: I think Brian and Larry Kolb probably could address it far better than I. It is the fact that the contaminants aren't going to drain to the bottom and somehow accumulate in a cesspool of contaminants. They are bound to the clays and the sediments, you know, that are there. And when you keep them in an anaerobic condition, where they're not exposed to air, and they're not exposed to wind, they stay bound to those sediments, and they're not available for release.

The sediments they come in on is where they stay, and that's proven by the leachate tests, where they take the sediment, they put it in water, and then they leave it sit for four hours and then they check that water and see if any of those chemicals leached out.

And all these have to pass those leachate tests showing that those chemicals have not leached out of the sediments.

CHAIRPERSON BUSTAMANTE: Okay. And the issue of whether three feet is three feet or three feet is compacted or not or higher in some areas or lower in
others.

REGIONAL MANAGER PLUMMER: These sediments will be put in place by a series of layers. In other words, it's not going to instantly be three feet put on top of it and then somehow that's going to settle out. There will be a layer of sediment that's put on, and there's going to be a time frame that will allow those sediments, the water will decant off and they'll be consolidated and then another layer will be put on.

So essentially we'll start with a consolidated three-foot layer of sediment prior to the levee breaches and also there will be marsh vegetation forming before the levee breaches to hold those soils in place.

And it's typical with most marshes in the San Francisco/Suisun Bay region they actually collect sediments. The sediment level in the waters that will come in on these on a daily basis, twice daily by the tides and they actually deposit a sediment load there. So we're going to start with three feet and we may gain up to another half a foot through the deposit sediments on a natural process.

CHAIRPERSON BUSTAMANTE: And the folks from the Port indicated that Baltimore Harbor has a project 12 to 15 years that's identical to this.

MR. PLUMMER: I'm not aware of that project. I
don't know, I'd have to defer that to somebody else.

CHAIRPERSON BUSTAMANTE: Well, in the staff
review of this project, were there any other projects that
were looked at that were similar to this?

REGIONAL MANAGER PLUMMER: We didn't look at any
projects similar to this. I've worked the San Francisco
Bay Area for 25 years for State Lands Commission. They
weren't designed to do this, but there were areas where
dredge sediments were taken out of the Bay long before
there was any testing of them, so they probably included
cover, noncover, and over time those have become marsh,
and Moosey Marsh is one of them, and it's a thriving marsh
today.

And there's been any problems, at least that I
know of, that anybody's ever raised about contamination of
those sediments. But, you know, 25 years ago people were
dredging stuff out of the Bay. And if they didn't dump it
right back into the Bay, some of it was being put up on
the uplands and today there is a marsh there.

CHAIRPERSON BUSTAMANTE: A good marsh?

MR. PLUMMER: Yes, it is a good marsh. It's
actually cited by a number of environmental groups as a
good marsh.

CHAIRPERSON BUSTAMANTE: We were lucky?

(Laughter.)
REGIONAL MANAGER PLUMMER: What's that?
CHAIRPERSON BUSTAMANTE: We were lucky?
REGIONAL MANAGER PLUMMER: Maybe.
CHAIRPERSON BUSTAMANTE: There was one other thing, the levee breaches is the last question I had, if there was any other questions. The concern was whether or not there would be heavy metals or other kinds of contaminants inside those levees. Are there Core samples that are taken prior to any kind of breach taking place?
REGIONAL MANAGER PLUMMER: You know, I don't know if the core samples were taken, and I might want to defer that to the project applicant. But the Commission could clearly instruct the staff to write a paragraph into that lease that would require core samples prior to the levee briefing.
CHAIRPERSON BUSTAMANTE: Consider that done.
(Laughter.)
CHAIRPERSON BUSTAMANTE: If there's somebody who can speak on that issue, is there somebody here?
All right, is that it?
REGIONAL MANAGER PLUMMER: Any other questions?
CHAIRPERSON BUSTAMANTE: Mr. Levine, you wanted to come up.
REGIONAL MANAGER PLUMMER: I note. I may have misspoke. I need to make one slight correction, that the
MOU with Fish and Game is to avoid any take, not incidental take.

CHAIRPERSON BUSTAMANTE: To avoid?

REGIONAL MANAGER PLUMMER: To avoid any take rather than incidental take.

CHAIRPERSON BUSTAMANTE: Do you have questions that you wanted to ask?

Go ahead and ask whatever you want to ask.

ACTING COMMISSIONER ARONBERG: I'm not sure who is the appropriate person to ask this.

CHAIRPERSON BUSTAMANTE: Ask the questions and we'll hear them.

ACTING COMMISSIONER ARONBERG: The Baltimore project, if it's been in operation for all these years, has anyone looked into like any scientific evidence about what the results of that project are, what happens to sediments in this whole --

CHAIRPERSON BUSTAMANTE: Didn't the Port of Oakland raise the issue that there were other projects that were like this?

MR. MCGRATH: Jim McGrath, again, for the record. The Hart-Miller Island -- Baltimore is a long way from the ocean and they don't put any of their dredging material in the ocean. They put it in a series of islands.

Hart-Miller Island is one of two dredge disposal
sites that they use to recreate shallow flats and islands that actually were there about the turn of the century. The standards for Hart-Miller Island, we actually evaluated Hart-Miller Island when we built the Galbraith Golf Course. And it's a less protective structure. It's a confined aquatic disposal. So it builds up from mudflat up creating at the top levels both a marsh and a beach, and it's so used by recreational boaters. It's now nearly complete. They put --

CHAIRPERSON BUSTAMANTE: How is it different than this project?

MR. McGRATH: It accepts sediment of substantially lower quality. And one of the issues that they have there is the quality of the runoff from that as it dries and the material oxidizes, they have some problems with the sediment quality and the runoff quality. So they actually do leach some sediment out of it.

As I said, they accept substantially lower quality of sediment, so it's a less protective example in that sense. They have to manage the runoff from it very carefully.

CHAIRPERSON BUSTAMANTE: So we can't really use that as some kind of a benchmark.

MR. McGRATH: Well, I think you take all of those things and you learn from them. In that case you have
to -- I think one of the lessons that was taken from that
is you need to be perhaps more protective of a site where
you're going to have runoff from the site in restricting
material more. That's certainly the take home message
that we took from it.

CHAIRPERSON BUSTAMANTE: You believe this project
does that?

MR. McGRATH: Yes, it's substantially more
protective. We take the material that is of lesser
quality in the Port and we dry some of it and take it to
landfills.

CHAIRPERSON BUSTAMANTE: Thank you. Did you want
to follow up?

ACTING COMMISSIONER ARONBERG: That's actually
what I wanted, thanks.

Ms. West, I believe, earlier mentioned some group
opposition to the project, about San Francisco Bay Keeper,
is there -- I have no documents in front of me. Staff, if
you have documents showing some opposition or any other --
does Sierra Club take an opposition stand on this project?

EXECUTIVE OFFICER THAYER: Some of those groups
participated in the county process. The county was the
lead agency for the Environmental Impact Report prepared
for CEQA compliance. None of those groups have contacted
us in our process, so we don't have any letters of opposition or concern from any of those groups.

CHAIRPERSON BUSTAMANTE: No, bay area conservation group?

EXECUTIVE OFFICER THAYER: There is Save the Bay, is probably the preeminent one. We haven't heard from them. I spoke actually with Mark Holmes, who on this particular project has worked with some of the people who spoke today, but he used to work with Save The Bay and he said that they were familiar with the project. He wasn't -- he, frankly, said he wasn't sure they were going to come up for this meeting, but they --

ACTING COMMISSIONER ARONBERG: As far --

MS. WEST: Mark Holmes and I had a lengthy conversation last night and most of the material that I presented today was direct input from Mark.

CHAIRPERSON BUSTAMANTE: From whom?

EXECUTIVE OFFICER THAYER: Mark Holmes, who used to work for Save The Bay but now is an independent consultant.

CHAIRPERSON BUSTAMANTE: So we still have nothing in writing. You're saying that he has -- there's no organizational endorsement or opposition or anything at this point?

MS. WEST: The opposition, at this point, is that
what you're asking?

CHAIRPERSON BUSTAMANTE: Yes.

MS. WEST: Well, Earth's Justice has opposition to this. Save The Bay is involved in litigation that is being appealed.

CHAIRPERSON BUSTAMANTE: So they're opposed as well as Save The Bay is opposed officially?

MS. WEST: Yes.

CHAIRPERSON BUSTAMANTE: There is a contradiction?

MR. LEVINE: Yes. The appeal they were involved with has been decided. The court of appeals ruled in our favor. And this new lawsuit they are not a party to, Save The Bay dropped out. Originally, the Sierra Club supported this project when the legislation was passed in Washington that allows the Corps of Engineers to help pay for a plan disposal. And the Solano County guy from the Sierra Club is basically being cool with it.

CHAIRPERSON BUSTAMANTE: But there is no position, at this point, by Sierra Club?

REGIONAL MANAGER PLUMMER: What I did do is in the environmental document there were comment letters, and while it's in 1994, because that's when the draft EIR was circulated, the letter by the Sierra Club Solano Group, Redwood Chapter said that their major concern involves the
potential growth inducing effects of this project. Will this project increase the likelihood of development of the Collinsville area? They weren't addressing contaminant issues in those areas.

CHAIRPERSON BUSTAMANTE: And those items were addressed?

REGIONAL MANAGER PLUMMER: Those were addressed in the EIR.

CHAIRPERSON BUSTAMANTE: Okay. Any other questions.

Why don't you go ahead and sum up.

MR. LEVINE: I'll also say the California Water Foul Association has been very supportive of the project also. And I think you have a letter from them, the California Water Foul.

On the -- you asked about the burrowing --

CHAIRPERSON BUSTAMANTE: Do we have a letter, I haven't seen it?

EXECUTIVE OFFICER THAYER: I have not seen a letter.

MR. LEVINE: We sent that up.

REGIONAL MANAGER PLUMMER: That was with letters that were included in the environmental document.

MR. LEVINE: Right, a 1994 letter, from the California Water Foul Association. And we met with them
and a lot of the duck club owners there in designing the project and so forth.

The question was raised about the burrowing crayfish. This is not an open item. This issue was raised a few years ago and we had conversations -- we did some analysis and contacted the scientists at Louisiana State where, you know, 90 percent of the world's crayfish live, down there in Louisiana. And they basically confirmed that the crayfish, while they burrow, they will not burrow below the mean tide line into areas with no oxygen. They'll suffocate.

So they don't burrow into the anaerobic areas of the site. And this was confirmed. We then discussed this with US Fish and Wildlife, Wayne Wright, up here in Sacramento and he confirmed that's accurate. And that's why when Fish and Wildlife Service gave us -- gave the Corps their draft biological opinion, they did not raise this as an issue. In fact, I know several of the speakers are acting like endangered species have never been looked at.

There's been eight years of studies by independent biologists about endangered species. And I'll just read, if you don't mind, Mr. Chairman, two sentences from the Fish and Wildlife letter, if you want.

CHAIRPERSON BUSTAMANTE: Okay, if it's two
MR. LEVINE: That's all it is. "It's the
Services biological opinion that the Montezuma Wetlands
Project, as proposed, will result in a net benefit to the
tidal marsh ecosystem and will likely represent a benefit
to the Salt Marsh Harvest Mouse, California Clapper Rail,
Delta Smelt and Sacramento Split Tail.

"The Montezuma Wetlands Project is not likely to
jeopardize a continued existence of the Salt Marsh Harvest
Mouse, California Clapper Rail, Vernal Pool Fairy Shrimp,
Vernal Pool Tadpole Shrimp, Delta Smelt and Split Tail."

So they looked at these organisms with these
folks they are talking about, and they have concluded it
will net --

CHAIRPERSON BUSTAMANTE: When was that done?
MR. LEVINE: October 2000, October 25th.
CHAIRPERSON BUSTAMANTE: Anything else?
MR. LEVINE: Yes.
CHAIRPERSON BUSTAMANTE: No more reading.
MR. LEVINE: No more reading.
(Laughter.)

MR. LEVINE: It was alleged in that
approximate -- in fact, all the sediments that anybody is
concerned about are well below the water table. In a very
flat area of 2000 acres of tidal marsh, there is no
erosion there. There is none. And that was all looked at in the EIR. Geotechnical engineers looked at it and that's what they concluded. The agencies concurred with that.

And as Mr. Plummer indicated, once the site is open at the tides, the site will continue to settle as all marshes do, and new sediment will be placed naturally on top of it. So the three feet will end up being three and a half feet and maybe four feet over time.

And, you know, they built the levees throughout the entire Sacramento and Delta and Suisun Marsh out of whatever material they have. And some of that material has got contaminants, and most of it is much higher in contaminants than anything we're going to bring on the site.

We have no problem with testing the levees before we breach them, but recognize that those levees are in contact all around the Bay and marsh right now. And so whatever we do is not going to increase any kind of exposure. The sediments we bring in are going to minimize any exposure.

CHAIRPERSON BUSTAMANTE: But if you hit a hot spot, you're not going to breach it there, right?

MR. LEVINE: No, obviously. We'll test it beforehand. But it's the same thing all the duck clubs
face right now. You know, they breach levees and bring
water in and put pipelines in all the time, but we will
commit to whatever testing program makes sense.

So we've got no problem with that. We've already
committed to several hundred thousand dollars a year worth
of monitoring to make sure everything goes okay.

CHAIRPERSON BUSTAMANTE: Why don't you prepare
some kind of a statement that would be included?

EXECUTIVE OFFICER THAYER: We'll make sure that
that goes into the conditions of the lease then.

CHAIRPERSON BUSTAMANTE: Any other questions by
the Commissioners?

What's your pleasure?

ACTING COMMISSIONER PORINI: I would move
approval of staff's recommendation.

ACTING COMMISSIONER ARONBERG: The Controller
came into this very concerned about the environmental
safety, but it really does seem all to have been
addressed, so I'm going to go ahead and second.

CHAIRPERSON BUSTAMANTE: There's a motion and a
second. Let the record show that the staff recommendation
passes unanimously.

And we'll go on to the next item.

We're going to take a five-minute break.

(Thereupon a recess was taken.)
CHAIRPERSON BUSTAMANTE: Let's go ahead and start this meeting up again. The next item is item number 74.

        Staff.

EXECUTIVE OFFICER THAYER: Mr. Chair, Item 74 is a request by the Controller for a staff audit of the City of Long Beach's Granted Lands activities. I'm not sure if Ms. Aronberg wanted to speak to this or if I should just give some background to it.

CHAIRPERSON BUSTAMANTE: Why don't you go ahead and give us the background.

EXECUTIVE OFFICER THAYER: Okay. Briefly then, the Commission heard from a Mr. Denevan, a concerned citizen from Long Beach at the first or second meeting last year asking questions about -- or questioning the City's management of tides and submerged lands, particularly with respect to the proposed Queensway Bay Project.

At a succeeding meeting in April, several other residents came to the Commission meeting and spoke during the public comment period expressing similar concerns. The Commission directed staff to hold a workshop last summer in Long Beach to determine the range and scope of concerns about Long Beach's management.

We had such a workshop and about 42 people showed up, and about a third of those were in favor of what was
happening in Queensway Bay, and the others opposed the Queensway Bay Project, and some of them had more general comments about Long Beach's management of the tide and submerged lands.

Since then staff has prepared a draft staff report that would respond to all of the issues raised, both at the workshop and at the earlier meetings last year before the Commission. That draft staff report is at the Attorney General's office for review.

I want to add that that procedure is somewhat standard for us in dealing with public trust issues. It doesn't mean that we've uncovered something particularly alarming or anything. We generally do turn to the Attorney General's office for advice on these matters.

One of the issues raised, both at the April meeting before the Commission as well as in the workshop, was a request by several individuals for the Commission to do an audit of the Long Beach management. And, of course, an audit can be -- there can be several kinds of audits. One would be of the management, whether or not the uses were appropriate and consistent with the legislative grant as well as the public trust doctrine.

Another kind of audit would be more fiscal. We believe -- you know, it's our intent to respond to those requests as to whether or not -- and to make
recommendations to the Commission as to whether or not an
audit needs to be done in the staff report. In talking
with the Attorney General's office, we believe that their
review of any revisions we need to make is likely to be
done within the next month, and that will provide
background information to the Commission that may be
useful in considering the Controller's requests.

CHAIRPERSON BUSTAMANTE: Is there a time frame in
which the staff report is going to be done?

EXECUTIVE OFFICER THAYER: We believe it will be
done within the next month.

CHAIRPERSON BUSTAMANTE: Has it been completed?

EXECUTIVE OFFICER THAYER: The staff draft is
done. It's completed. It underwent several revisions
in-house, and it's the Attorney General's office now.
We're meeting with them, actually, this afternoon when the
Commission meeting is done on this.

CHAIRPERSON BUSTAMANTE: Okay. Commissioner
Porini.

ACTING COMMISSIONER PORINI: Well, I think that
in view of the fact that we haven't seen the staff report
yet, I'd like to put off action on this item. It just
seems kind of premature since we don't know the scope of
what we might be looking at. It doesn't make any sense to
move forward right now, if that's acceptable to the
Controller?

ACTING COMMISSIONER ARONBERG: That makes sense.

CHAIRPERSON BUSTAMANTE: Why don't we go ahead and then by unanimous consent postpone the audit until such time as we've had a chance to review the staff report.

EXECUTIVE OFFICER THAYER: Certainly. And we will keep the --

CHAIRPERSON BUSTAMANTE: Most of the issues are discussed in the staff report, it may not be necessary for an audit. We'll review the report and then see where the Controller would like to go from there.

EXECUTIVE OFFICER THAYER: Certainly. I would like to point out that there's several people who wanted to speak. And I don't know whether you want to take the discussion?

Some of these people, I know, were Mr. Denevan is here as well as Colette McLaughlin. Both of those individuals, I believe, spoke at the workshop and we could take additional testimony.

CHAIRPERSON BUSTAMANTE: We have the Mayor here. Would you like to make a comment before we close this item out?

MAYOR O'NEILL: Actually, if it is going to be postponed, no, I was just going to make a quick statement
that since 1992 we have had every step of the way approval 
by the State Lands. So it would be redundant, but I think 
in light of the report --

CHAIRPERSON BUSTAMANTE: And Lester Denevan, 
would you like to make comments, sir?

MR. DENEVAN: Lester Denevan, resident of Long 
Beach. If there is a staff report, some of the people in 
Long Beach would like to see that as soon as possible, 
perhaps before next month's meeting or whenever so we can 
respond to that.

Just briefly today, I wanted to synopsizes just a 
couple of the problems with the tidelands property in Long 
Beach, and what I ascertained to be mismanagement of the 
Long Beach tidelands.

You know, looking back over 30 years, there's a 
number of cases which could be cited of mismanagement of 
the Long Beach tidelands. The Queen Mary is a good 
example, where the City of Long Beach was actually sued by 
the State Attorney General. And the City was found to be 
culpable in the misexpenditure of millions of dollars on 
the Queen Mary.

I want to mention also that the former planning 
director was sent up to state prison for two years in 
connection with the projects in the State tidelands. Now, 
you might think, well, that's history.
However, the point is that the City staff, planning commission and council went along with some of these projects, which were approved in violation of the State Planning and Zoning law. So I think the City should be watched very carefully when they proceed with these projects.

Another example would be the Hyatt Hotel, which received $24 million in free rent from the City. It was built in Rainbow Lagoon, which cost the taxpayers $768,000, 40 years ago to build.

I think in connection with the Queensway Bay Project, that you should look carefully at that proposed shopping mall. And when you're reviewing the request for the audit, look into the matter of the commerce navigation and fisheries on the Long Beach tidelands. I think that if you look in the history of tideland grant, you'll see that commerce is permitted in the tidelands but not any commerce, not any business.

This would be in terms of fisheries. It would be in terms of ocean-going trade. And there's a question that I think the Lands Commission would want to look into more carefully is just what is commerce, and which commercial uses are permitted. Is the barber shop permitted or some of these other non-ocean related uses?

Then, finally, concerning the site of the
Queensway Bay project, it is built on a landfill in the Long Beach tidelands. And that occurred way back in 1964. There's 113 acres of landfill created in the downtown tidelands, that fills the Pacific Ocean. The Lands Commission reviewed that in October 1964. Eleven million dollars was approved by the Lands Commission to build this landfill.

That's worth $40 million today, if you wanted to repeat that project, say up and down the coast. Say that the City of Santa Monica or Oxnard or whatever said we want to build a landfill that's spent $40 million worth of taxpayer's money for a shopping mall.

How ready would the Lands Commission be to appropriate that kind of money for a use which is not really even in -- it's not even permitted under the tideland grant.

So, finally, I'd like to mention that the Lands Commission has been more or less ignored by the City of Long Beach. The City has never applied to the Lands Commission for permission for this $100 million project in Queensway Bay. It's really strange that the Commission hasn't taken any look at this project. Well, the city hasn't asked.

There was the MJ Broch project in the 1970s. It was a hotel. It went to the Lands Commission for review.
The Hyatt Hotel, about 20 years ago, it went to the Lands Commission for review. The Queen Mary --

CHAIRPERSON BUSTAMANTE: If you have a list of the items, we can give it to staff so they can review them, instead of reading off all of this.

MR. DENEVAN: So that would be my conclusion that, I think, that the Lands Commission should look very carefully into this and review the pattern of mismanagement over many years. I have a handout, one copy of which the Members of the Commission have received on earlier occasions in the mail, but here's a copy.

CHAIRPERSON BUSTAMANTE: If you could give it to staff.

MR. DENEVAN: I'll give this to the staff. This is a compendium of what I intend to be issues and projects which were in contradiction of the tideland grant and would represent mismanagement of the Long Beach tidelands.

CHAIRPERSON BUSTAMANTE: Thank you. They'll consider those in the final staff report.

MR. DENEVAN: Thank you.

CHAIRPERSON BUSTAMANTE: We also have in our audience Senator Betty Karnette, would you like to say anything? I mean are you here for this.

SENATOR KARNETTE: Well I, always like to hear what's going on in my district, you know, Long Beach. I
live in Long Beach. By the way, I enjoy downtown Long Beach. I've been in Long Beach since 1952 and I've watched it change and this mayor I'm very supportive of.

CHAIRPERSON BUSTAMANTE: All right. Okay, so we're onto the next item.

EXECUTIVE OFFICER THAYER: Yes, sir.

CHAIRPERSON BUSTAMANTE: Hold on.

MS. McLAUGHLIN: I'm one of the people, could I speak, please.

CHAIRPERSON BUSTAMANTE: You're one of the people?

MS. McLAUGHLIN: That was on the list they read off.

CHAIRPERSON BUSTAMANTE: Yes, if you'd like to -- what is your name?

MS. McLAUGHLIN: Colette McLaughlin.

CHAIRPERSON BUSTAMANTE: Please come up.

Does Jim McCabe also want to speak at this point?

MR. McCABE: Mr. Chair, I'm Deputy City Attorney Jim McCabe for the City of Long Beach. Considering the expected action that won't be necessary.

MS. McLAUGHLIN: Colette Marie McLaughlin, and I greatly appreciate you letting me speak, because this came out of my children's college fund, because I believe your decision on this audit is needed to protect my children's
future. And I hope that you seriously read all the
evidence that Lester Denevan, and he works for both the
City of Long Beach and the LA City, has put in decades of
research trying to protect my children's and all of our
children's future resources.

I also am a planner for a school district in
southern California. I'm finishing up my Ph.D research on
redevelopment in Long Beach. And I know that Kathleen
Connell reads her audits of the redevelopment agency, and
has helped redevelopment not misuse our children's funds
and our public resources.

I could speak about a lot of concerns I have. I
know that our mayor cares about our city. But the
evidence that Lester Denevan -- I can't say his name,
Denevan, that he has produced is not just his own
evidence. It's been in the LA Times. We've had headlines
for the last few months about questionable lawsuits on the
Queen Mary, about questionable uses of the aquarium that
was supposed to benefit the public that now is in severe
financial --

CHAIRPERSON BUSTAMANTE: Also, if you have a list
of things that --

MS. McLAUGHLIN: He has those. The last thing I
will say is that, as I presented it before, is UCLA's
research on banking on blight showed Long Beach as a very
questionable user of our public resources, which include what you're monitoring.

And thank you for letting me speak, because this was a big investment for me. I also had to take the day off of work.

CHAIRPERSON BUSTAMANTE: Thank you very much.

Thank you for coming.

I believe that there was a motion and a second to postpone the request for an audit until such time as the staff report is made available. The staff report is expected in approximately a month, so it should be in time for our next meeting.

EXECUTIVE OFFICER THAYER: Absolutely.

CHAIRPERSON BUSTAMANTE: And you'll make sure that the Controller's office and the Commissioners have copies of the report so that we can review it thoroughly before that next meeting.

EXECUTIVE OFFICER THAYER: Absolutely and a transcript of the workshop will be appended to that so that you'll be able to review the comments that were made directly on that to members of the public.

CHAIRPERSON BUSTAMANTE: Okay.

EXECUTIVE OFFICER THAYER: The last agenda item is Item 71, which was pulled from the consent calendar. This has to do with the Long Beach gas situation. And I
believe that the Mayor has a presentation that she wanted
to make.

CHAIRPERSON BUSTAMANTE: Great.

Welcome, Mayor.

MAYOR O'NEILL: Thank you very much. I
appreciate being here. I've not been here to testify
before you.

Good morning, Mr. Chairman. Thank you very much
and members of the Commission. My name is Beverly O'Neill
and I'm the Mayor of the City of Long Beach. And we
appreciate the opportunity today to talk to you about
something that is very near and dear to our hearts. And
we're certain that once you understand the problem, that
it can be rectified.

Our most pressing issue is, of course, the
State's most pressing issue and that's the State's energy
crisis and it's connection with the drastically increased
gas -- natural gas prices in our community. As you may
know, with a population of about 500,000, we're the 5th
largest city in California, the second in Los Angeles
County.

And we have the unfortunate distinction of having
the highest natural gas prices in the nation. Over the
past month, we've been bombarded with calls and visits
from the victims, our residents, because their prices have
gone up, and they ask the same question, why, and we are asking the same question.

The City's natural gas utility, known as Long Beach Energy, purchases all of the State-owned natural gas that is produced in Long Beach. And that's part of the State's tidelands oil operation, except for the gas that's used in the oil production itself. The gas is accepted into the City's natural gas pipeline, and then delivered and resold to the City residents.

The price paid, since 1992, by the City to the State is equal to 110 percent of the price paid by Long Beach to other gas suppliers at the California border. And this pricing mechanism, actually in place since '92, worked well until the recent California energy crisis.

While the price of natural gas has increased nationwide this winter, the price of natural gas at the California border has skyrocketed to historical heights. And the prices at the border have generally stayed within the $2 to $3 level per decatherm for the past 10 to 15 years, but the border price since early December has been well over $12.

Oddly, while Long Beach has paid these incredibly high prices to the State, Southern California Gas has been able to purchase its gas supply for the customers at a much lower rate, about one-third the price that we are
paying to the State.

The next result has been that during the last two months, the citizens and businesses of Long Beach have had to pay double or triple prices than what virtually all other customers in southern California have paid and more than any other that are paid in the nation.

Now, we appreciate what the State Lands is doing to investigate this pricing disparity, but we believe that the proposed solution falls far short of treating the City and its residents in a fair manner, and would provide virtually no immediate relief to the citizens and businesses of Long Beach from the tremendous cost they now bear, largely because of the price that we must pay the State.

The City has proposed price revision, which Chris Garner, Director of Long Beach Energy will discuss with you in detail, would allow the City to pass through the cost of the State's gas to our customers at a price that's competitive and comparable with the rest of the southern California area.

And I want to emphasize that this reduction would go directly to the people of Long Beach. The very thing that all of us in California have abhorred in this energy crisis is the companies that take advantage of situations by spiking their prices. That very practice of spiking is
what it looks like the State of California is doing to
Long Beach. And we have always prided ourselves in being
a partner with our city.

This is an unconscionable practice, I think we
all agree. It does not cost the State one more penny than
before, but we are paying triple prices. The State is
making money at the expense of the people of Long Beach.

So I want to thank you for the opportunity to
present this to you today. And we know that when you
really understand the situation that you will provide the
appropriate assistance that will go directly to our rate
payers. And I'd like to introduce you to Chris Garner who
is the Director of Long Beach Energy, who has a Powerpoint
presentation that he would like to present to you today.

Chris.

CHAIRPERSON BUSTAMANTE: Does staff have any
initial thoughts on that?

EXECUTIVE OFFICER THAYER: I can respond, if the
Chair wishes, to the points raised by the Mayor now or
wait until the end, whatever you prefer.

MAYOR O'NEILL: I brought the problem forward, he
has the answers.

CHAIRPERSON BUSTAMANTE: Go with the
presentation, go ahead. Mr. Garner, you're on.

MR. GARNER: Thank you. Actually, what I think I
will do is bypass the Powerpoint presentation since the
Mayor did such an excellent job in summarizing the
personal part of it, and I'll try and get into the
technical aspects of it.

Each of you have this packet, I believe, in front
of you. What I'd like to do is just give a little
background on what the intent of the parties have been
since 1998. What we were trying to do was come up with a
fair market price for the gas that we purchased from the
State.

And what was used, since the Southern California
Gas Company represents probably about 97 percent of the LA
basin area and we're supposed to be using an LA basin
price, it was deemed that the SoCal gas non-Corps WACOG,
and WACOG stands for Weighted Average Cost Of Gas, it's
the average portfolio, would represent a fair market
price.

And we paid that price from 1988 through 1991.
And in 1991 SoCal gas stopped publishing that price, and
so we were looking for a mechanism to replace that. And
because historically the Long Beach border price and SoCal
gas price basically mirrored themselves, it was deemed
that would be a sufficient replacement.

And so in 1992, we went retroactive about 13
months and started paying from that point forward, the
Long Beach border price.

And since then in 1992 that price has worked very, very well. If you look in your package at tab number one, the cost of gas comparison chart, you'll see that the price that we paid to the State of California basically matched the SoCal gas weighted average cost of gas during that same time period to their customers.

And then also when we get to 19 -- or November of last year 2000, and you see that the red line goes up to where the normal price for the last 10, 15 years, was around 20 cents to 30 cents, it jumped up to $1 at the California border and then jumped up in December to a $1.60 and then in January it jumped even higher than that, and February is following suit.

And what's happened is there's now a large discrepancy between the price that the City of Long Beach pays for its gas at the California border and what Southern California Gas Company is able to purchase their gas supplies.

CHAIRPERSON BUSTAMANTE: Is that for a portion of the gas or is that for all the gas is a constant $1.60?

MR. GARNER: That represents our average cost of gas for all our supplies. And what we do is we mark it up by ten percent and pay that price to the State.

So what's happened is you go to the next page,
you'll see that in the beginning of last year, 2000, we're paying the State of California a price around -- a total price of about $600,000 to $700,000 a month for the gas supply. Well, then we hit the summer and the energy crisis really accelerated and the price started going up, but it was still not acceptable to us in the sense that that was still in the ballpark of what Southern California Gas Company was paying for its gas.

But then we hit November and our cost to the State, our price that we paid to the State went from the $600,000 level up to 2.7 million. In December it jumped even greater to 4.1 million and it's expected in January to be 4.2 million.

If you look at the column next to that, if we had paid a price equal to the price -- or the average price that Southern California Gas company pays for its gas supplies, it would be far significantly lower than what we absolutely paid to the State.

Just for those three months alone, it's about a $6 million difference to the City of Long Beach and its customers. If you go to the next page, we did the comparison of our price that we paid to the State versus the Southern California Gas Company weighted average cost, and it was all relatively stable, a little over 100 percent for January through the summer.
But then you hit, again, November, December, January and all of a sudden the Long Beach price is 181 percent, 243 percent and 274 percent of the SoCal Gas price.

What that has done is if you look at tab number 3, this chart right here, it shows what the commodity cost and what the impact has on a residential customer in Long Beach. The blue part represents the price that we currently pay to the State of California for gas supplies. The red bar is the price that would be used if we paid our recommended solution to this problem, which is based on the Southern California gas company cost.

The green bar represents the solution recommended by the State Lands staff. As you can see, the blue bar compared against the red bar, there's quite a significant impact upon customers in Long Beach. Seventy-five therms is basically an average residential usage for winter months.

So if you look at, say, for December, you have a Long Beach customer paying $120 for its gas commodity versus a Southern California Gas Company customer paying $50. What that means is three percent of the LA basin area is paying $120 and the other 97 percent is paying $50. So you can understand why this represents such a crisis for the City of Long Beach and this probably
continues into January.

So what we're asking or recommending as a solution is that going retroactive as we had in 1992, adjust the price to equal the Southern California Gas Company Core WACOG, and on top of that add a 50 percent split of the interstate transportation charges that the city would pay for gas supplies at the border, so that the State would share in that cost savings to the city. And that would be our recommendation and we would ask that this be done immediately.

The problem that we have is we have over 1,000 customers calling daily complaining about their gas prices. And what they're doing is they're comparing it against neighbors in Lakewood and other surrounding communities where we're really at quite a disadvantage right now, because we're just passing through the cost of gas.

And what we'd recommend, if you accept our recommendation, is we're going to be passing through whatever savings that the State agrees to pass through to us, we would in turn pass through 100 percent back to our customers.

CHAIRPERSON BUSTAMANTE: One hundred percent?

MR. GARNER: One hundred percent.

CHAIRPERSON BUSTAMANTE: That was going to be my
first question.

MR. GARNER: Yes.

CHAIRPERSON BUSTAMANTE: Anything else, sir?

MR. GARNER: That concludes the presentation.

CHAIRPERSON BUSTAMANTE: Any questions?

We have, let's see, Carol Shaw.

MS. SHAW: Good morning. I'm a Deputy City Attorney with the City of Long Beach. And the Mayor and Chris Garner have done such an excellent job there's not a whole lot left for me to tell you except that I don't know if you're aware of the abundance of lawsuits that have been filed in the State of California at both the gas level and at the electric level alleging that there is substantial price fixing and price manipulation.

Part of that price manipulation has occurred at the California border and been reason for this extreme difference in the cost of gas in Texas as compared to the cost of gas in California.

It is alleged that none of this inflated gas and electric prices is really connected to true and real supply and demand in a competitive market. It is all a manipulated fixed price.

We do not feel that it is fair that the City of Long Beach standing alone as compared to all of the other gas customers in the southern and the Los Angeles basin
should bare the brunt of that result and pay over this
to the state when the State itself is suffering from
a very similar crisis in electric energy. This is related
to the same problem.

As far as going retroactive, a retroactive
correction of price is not unusual as between the State
and the city. At the request of the State in 1992 our
agreement went back for a period of over 13 months to
provide for price parity in that agreement. The attempt
always over 30 plus years in five different agreements
between the State and the city has always looked at the
price of Southern California Gas Company and what it paid
for its gas to decide what Long Beach should pay the State
for its gas.

That's all, if people would like to ask
questions.

CHAIRPERSON BUSTAMANTE: Any questions from the
Commissioners?

Thank you.

Paul.

EXECUTIVE OFFICER THAYER: I guess I would. Paul
Mount is here who is in charge of our Long Beach office.
He may want to supplement what I have to say because I'm
mostly repeating things that I've learned from him.

CHAIRPERSON BUSTAMANTE: Why don't you have him
come up then and take a seat there and you guys can do it candidly.

EXECUTIVE OFFICER THAYER: But I'd guess I'd start out by saying I think we agree with almost everything the City has said in terms of the history of this. What I would point out is that the '92 agreement that established the benchmark where it is now, which is based on how much the City pays for the rest of the gas that it needs to sell to its customers, the State's share, I think, constitutes about a quarter to a third of the gas needs of the City, and then the City goes out and buys gas from other sources.

And we set our price to equal what they pay for a majority of their gas. So I don't think the City's alleged, but I want to be clear, that the State is not out there trying to make the maximum buck off the City. This was an agreement that both sides entered into willingly when the Southern California Gas price no longer became available to use as a benchmark in '92. We looked around, said what's a good price. Well, it's what the City pays for the rest of its gas. We all greed to that.

CHAIRPERSON BUSTAMANTE: I don't think that they made such an allegation. I do think, though, whether you do something by default or by design, the effect remains the same. And in this particular case, it looks like we
were on autopilot in an emergency situation, and it looks
like we did exactly the same thing that we're accusing
other folks of doing.

EXECUTIVE OFFICER THAYER: But actually the
contract was set up to deal with this very situation.
There's a provision in here, number four, and five, I
guess number four in particular, which said if the price
ever got out of whack with what's predominantly paid, and
I think mostly it's the SoCal gas price, by more than 15
percent, the City was overpaying by more than 15 percent
for three months in a row, that they could make a demand
to us in writing and we were required to negotiate.

And, in fact, if we're not able to reach a
solution within 30 days, and we go to court, it's
retroactive to when they first made their demand. So
there's a --

CHAIRPERSON BUSTAMANTE: This is that point?

EXECUTIVE OFFICER THAYER: This is that point.
And, in effect, at least my understanding is, that there's
two sides to this problem. One is the correct
transportation costs. And the City sent us a letter in
December that focused on that issue. And I think we and
the City, I think, are in agreement on a solution to that,
which is basically, to say instead of ten percent extra
for transportation costs we'll say half of whatever the
savings is, because we're delivering the gas with no
transportation costs, half the city gets, half we get and
I think they're happy with that.

But this latest issue, in terms of wanting to set
it to the SoCal gas benchmark is something that was only
raised to us, to my knowledge, a week ago. And, in fact,
the City's presentation here at the bottom talks about the
prices -- the excessive prices being paid for the last
three years, just as is required by the agreement in the
contract that there be three months of bad differentials.

Now, I look at their other stats and it's clear
that the differentials exceeded 115 percent or the extra
15 percent for a longer period of time than is listed on
the bottom here, so they could have sent us a demand
letter earlier on.

But I don't think we're resistant at all as a
staff to negotiate an appropriate deal here. We've done
it several times over the last 30 years, as the City has
said. We try and work cooperatively with the City. And I
think, you know, they make a good point.

I think what we're recommending, as a staff, is
since we've reached agreement on one of the two factors,
which is the transportation costs, let's go ahead and
approve that right now, and that's what our recommendation
is to the Commission, and that we negotiate on this other
point and bring it back to the Commission and they can have it retroactive back to this last Monday.

Although the agreement actually provides that for retroactivity back to 30 days after their demand, but still as they point out, we're both partners in this contract, and any two parties and any contract can agree to terms that are different from the contract. And if the Commission wants to make it retroactive for a longer period of time, certainly the Commission is legally able to do that.

So the staff's recommendation, as I say, is to go ahead and approve the change in the transportation costs formula and then direct staff to go off and negotiate a revised contract with the understanding that it may very well be retroactive and bring it back to the next meeting.

CHAIRPERSON BUSTAMANTE: Well, let's -- I understand the recommendation. Let's back up just a little bit though.

Let's go back to the point that we talked about when the same sort of move beyond -- I mean, I'm assuming that you agree, at least somewhat, with this graph that shows the cost increases that took place at least, in general.

EXECUTIVE OFFICER THAYER: Paul, do we have any reason to doubt that?
MR. MOUNT: No, we agree with that.

CHAIRPERSON BUSTAMANTE: And so I think that we need to look fundamentally at how we've designed this formula. We're not in the business of making money. We obviously are trying to raise revenues wherever we can. You and I have had that discussion the very first year I got here, how can we raise revenues for, not only for the State, but also within those areas that we have, and how do we do it in a reasonable fashion.

I think we may have put something in autopilot here that began to careen out of control. And I think there needs to be, fundamentally, a look at how we've developed this particular formula.

So what I'd like to do is I'd like to have staff for the next meeting bring us back a report, despite whatever we do on this issue that says -- that is thoughtful about how this particular -- this is not going to go away. We're going -- this summertime, I think we're going to see even more fluctuations. I think we clearly need to figure how to get a control on this thing now. We are in, I don't if you'd call it a state of emergency, but it's pretty damn close.

And so what we need to do is we need to resolve this particular issue so that this doesn't happen again in a way that meets both whatever the costs are involved and
how we're going to have to reasonably deal with this particular issue.

Second, with respect to the retroactivity, I'd like for staff to give me a thought on what exactly that means, how far back can we actually go, regardless of what is -- what the deal is. Can you tell me -- give me some thoughts on retroactivity.

EXECUTIVE OFFICER THAYER: Well, when I look at the same chart you're referring to, it seems like things really departed about maybe October or November this last fall, and Alan Hager, who's representing the Attorney General's office, who has actually done most of the oil work for the Long Beach units for the State Lands Commission over a long period of time, can stop me if I've got this wrong, but it seems that a mutual agreement, we could decide to go back to any date we want to.

ASSISTANT ATTORNEY GENERAL HAGER: We've agreed on a retroactivity matter in the 1992 agreement, but we both agreed. And if we both agreed to do something differently, we could do something differently. Yes, we could go back.

CHAIRPERSON BUSTAMANTE: And so applying the '92 agreement to this situation, what would that mean?

ASSISTANT ATTORNEY GENERAL HAGER: We could go back to the November 1st, 2000 if that were the
EXECUTIVE OFFICER THAYER: Although, that --

CHAIRPERSON BUSTAMANTE: Under the agreement?

ASSISTANT ATTORNEY GENERAL HAGER: We could --

no, not under the agreement.

CHAIRPERSON BUSTAMANTE: What would be under the

agreement?

ASSISTANT ATTORNEY GENERAL HAGER: Thirty days

from the date that they gave notice of their desire to

renegotiate the price.

CHAIRPERSON BUSTAMANTE: What would that date be?

ASSISTANT ATTORNEY GENERAL HAGER: When they

brought this issue up, it was a week ago. When they gave

a notice to renegotiate the transportation matter, that

was December 19th.

CHAIRPERSON BUSTAMANTE: What is the date then?

ASSISTANT ATTORNEY GENERAL HAGER: The date would

be 30 days --

CHAIRPERSON BUSTAMANTE: We don't have the date?

ASSISTANT ATTORNEY GENERAL HAGER: -- from today.

30 days approximately -- 20 days from today.

CHAIRPERSON BUSTAMANTE: So we don't have that
date?

EXECUTIVE OFFICER THAYER: Well, 20 days from
today, the 25th of February. If we take that they've made
the demand as required by the contract, it would be
retroactive to 20 days from today or the 25th of February,
but we could agree to do whichever retroactivity -- or the
commission could, excuse me, as it cares to.

CHAIRPERSON BUSTAMANTE: Okay. And we have --
so then we have the original date, based on the contract,
is February 25th, but we have flexibility on the date?

EXECUTIVE OFFICER THAYER: Yes. And if we acted
after that point, of course, the Commission could direct
retroactivity.

CHAIRPERSON BUSTAMANTE: Now, if we were to act
on the flexibility and go back a period of time, how does
that work? Where do you get the money from? I mean, I'm
assuming things have been paid? Is there some account
that then you would take money out of and -- is there some
report as to how much that would be and --

MR. MOUNT: You would defer payment. In other
words, We continue to get our gas revenues and we would
just not get paid for some period of time till they were
paid back.

CHAIRPERSON BUSTAMANTE: Okay. Are there
problems in the interruption of revenues on a monthly
basis or is there.

MR. MOUNT: It just reduces our revenues.

CHAIRPERSON BUSTAMANTE: I mean, I have certain
bills that I have to pay every month. And I don't pay them six months in advance. I mean, you're going to be -- do you have an account that becomes depleted, and as a result you have other bills that you have to pay?

MR. MOUNT: This money goes to the General Fund.

CHAIRPERSON BUSTAMANTE: General Fund.

EXECUTIVE OFFICER THAYER: And it is used for some specific purposes.

CHAIRPERSON BUSTAMANTE: I think we have a little money there.

EXECUTIVE OFFICER THAYER: Right. And I believe the amount of money appropriated from this source for the fiscal year we're in now was less than the amount of revenue we expect to be making.

In other words, last year, at this time, the Legislature and the Governor was putting together the budget, gas prices were very low, and so they only anticipated a certain amount of revenue. We're exceeding that revenue this year.

So in terms of, you know, we're putting revenue into the State budget. Did it anticipate money at a certain level, yes, that level was much lower, though, than we're making this year.

So I guess this goes by way of saying that if we ended up deciding to reduce our revenue intake in order to
pay retroactively to the City, it probably would not
adversely affect State budgetary matters, but we can check
into that further.

ACTING COMMISSIONER PORINI: I should probably
try and chime in and protect the General Fund, but under
the circumstances, I think that the process that the
budget uses allows for those adjustments in the form of
the May Revision, so I'm certain that we would have
negotiated some sort of contract by mailing for it to be
perfectly timed to make that adjustment.

EXECUTIVE OFFICER THAYER: And we would certainly
look into that issue before we brought it back to the
Commission.

MS. SHAW: May I bring to your attention that the
General Fund only made $8 million off Long Beach last year
in its entirety. And if you look at the contribution that
the City of Long Beach is making to the General Fund, if
it were SoCal, they would have only paid $14 million.
Last year we paid eight million for 1999. I'm sorry, not
last year, 1999. We paid $8 million into the General
Fund.

This year, if you look at these figures, the
expectation is totally exorbitant compared to prior years
of what --

CHAIRPERSON BUSTAMANTE: Do you have an amount?
MS. SHAW: -- Long Beach has contributed.

CHAIRPERSON BUSTAMANTE: Do you have an amount?

MS. SHAW: Well, if you look in Exhibit 1, the schedule --

CHAIRPERSON BUSTAMANTE: Can you say it?

MS. SHAW: -- what Long Beach has contributed, it should have been 15 million if it were paid by SoCal gas. The same amount if it is being paid at these rates by Long Beach, we're talking about $22 million. In 1999 --

CHAIRPERSON BUSTAMANTE: So your concern is minimally the seven?

MS. SHAW: Yes. In 1999, this same amount to the General Fund for these same volumes was 8 million.

CHAIRPERSON BUSTAMANTE: We've got it.

Thank you.

MS. SHAW: But I would like to address some of these other issues also.

CHAIRPERSON BUSTAMANTE: What other issues?

MS. SHAW: This three month expectation of price and the recomputation, that did not anticipate issues, what I would call, force majeure, things beyond our control totally, things unanticipated, just like the electric prices. My goodness, if we could have anticipated this, don't you think we would have absolutely done something to correct it?
CHAIRPERSON BUSTAMANTE: My goodness, don't you think we would have too.

MS. SHAW: Yes, that's right. And so to try and say well, yes, you should have known about this three months ago and you should have anticipated it and you should have planned for long-term gas contracts, that this would never happen --

CHAIRPERSON BUSTAMANTE: I don't think anybody's disagreeing with you.

MS. SHAW: Well, the fact that then to hold us to a level --

CHAIRPERSON BUSTAMANTE: I don't think anybody is talking about -- saying that, at this point. I think you're arguing against yourself at this point.

MAYOR O'NEILL: One thing that I'm hearing is retroactivity and I think that's wonderful and I appreciate that. We have a crisis today and to wait two months for this decision is what's -- is what our city cannot stand.

CHAIRPERSON BUSTAMANTE: Is the city paying each and every month, is that the way it works?

MAYOR O'NEILL: Yes. And we have to pay -- and then we transfer that to our rate payers in two more months.

CHAIRPERSON BUSTAMANTE: When does the payment
actually take place?

MR. GARNER: Say for the month of January for gas supplies in January be at the end of February.

CHAIRPERSON BUSTAMANTE: At the end of February.

So did you just pay for December?

MR. GARNER: We just paid for December.

CHAIRPERSON BUSTAMANTE: Have we actually sent the check?

MR. GARNER: Yes.

CHAIRPERSON BUSTAMANTE: Have we deposited it?

MR. MOUNT: It's cashed.

(Laughter.)

CHAIRPERSON BUSTAMANTE: You guys made sure of that.

(Laughter.)

ACTING COMMISSIONER PORINI: Yes.

MR. MOUNT: I'd like to point out --

CHAIRPERSON BUSTAMANTE: Well, maybe, at this point, we could make an amendment. I would be open to an amendment, staff, you could comment on the deferral of the payment for January taking the staff recommendation, deferring this until such time that we come up with an appropriate contract. Is that --

MS. SHAW: Excuse me, that won't do it for Long Beach. And it won't do it for Long Beach, because we
can't pass through our cost-of-gas savings until we have them. So for the next two or three months then, the citizens of Long Beach would have to pay absolutely exorbitant rates --

CHAIRPERSON BUSTAMANTE: This is not a courtroom, ma'am, and you don't have to make, you know, a dramatic case. Why don't you tell us -- for example if you make the case, you make the statement that you have to have savings before you can pass it on, it's a legitimate statement, you would have to realize the savings then.

By not paying or by deferring, you don't have savings, is that what you're trying to tell us?

MS. SHAW: Well, I'm saying it's still an issue. You're not saying you're going to absolutely cut this price back. You're saying you're going to reconsider it, not that you're absolutely going to agree with the SoCal price or reduce it to that amount.

CHAIRPERSON BUSTAMANTE: Right. You're right, because I don't think the staff has had time to take a look at it. It's an interesting problem.

I think that the consensus is, I don't know if I'm reading the Board correctly, but I think the consensus is to try to find a way of absolutely lowering the costs here. I think in conversations with staff I've made it clear that we need to, in fact, find a way of being able
to do that.

As to what the formula is, I think it's only fair to have staff sit down and to try to deal with that issue.

Well, how long would it take you?

EXECUTIVE OFFICER THAYER: I've discussed that issue with Mr. Mount over the weekend, and we believe --

CHAIRPERSON BUSTAMANTE: Maybe what we need to do is have an emergency meeting between now and the next meeting, I don't know, a week, ten days, whatever it takes, to make this thing happen.

EXECUTIVE OFFICER THAYER: We could do it in -- we think we'd have the information together and analyzed, we believe, in about two weeks. Now, as another alternative that I was just discussing with the Attorney General and our Chief Counsel to see if this would work and if the City is agreeable to this, perhaps what the Commission could do today is reset the figure at the SoCal gas figure, which is what I think what the City would like it to be until we next met, and then we would make -- instead of putting some sort of potentially artificial deadline on how quickly to get the information together, that would give us two months.

And then with the agreement that whatever the Commission did in two months at its next regular meeting would be applied retroactively. So if the final formula
gave a little bit more to the State, then the City would pay that little bit more. If the city did better, then we would --

CHAIRPERSON BUSTAMANTE: That way you would realize savings?

MS. SHAW: Would this go back to November 1st then, is that what you were proposing?

EXECUTIVE OFFICER THAYER: No. We're not proposing that, because that money has mostly been paid already and already charged to the consumers and so there's no real immediate need for that. But to deal with the issue that was raised that, you know, they can't lower the amount that they're charging to their consumers until the Commission actually makes a change, if we acted today to reduce it to SoCal Gas price, then they'd have that two months of grace at the lower level. And then we would deal with the retroactive issue that the attorney raises at the next meeting.

CHAIRPERSON BUSTAMANTE: What is the City's position?

MAYOR O'NEILL: I think that if they started today with the Southern California Gas, and there is precedent for that in the pricing directive that the price should reflect the reasonable wholesale market value of dry gas, purchased for consumption in the LA basin, and if
you went with the Southern California Gas, that would give
us relief until you meet to work this out.

I just don't think the State wants to make money
on Long Beach. It's not going to be productive for us to
do this any longer, to even produce this, if this is the
way we're going to go.

CHAIRPERSON BUSTAMANTE: You're absolutely right.
The only question that I've had is that we should have
probably done this even earlier and I wish we --

MAYOR O'NEILL: Absolutely. That's the way the
State feels about it --

CHAIRPERSON BUSTAMANTE: But if that resolves the
issue until we can have a final -- I mean, if it was up to
me we'd adjourn the meeting, go and get the formula done
and then come back and do this thing right away. I know
that this is an emergency situation. But I think that if
we can do this a little bit more methodically and still
meet your need and then come back to figure out what kind
of flexibility on the issue of retroactivity as well as
trying to figure out what the potential cost loss would be
to the State and then listen to what Finance says, et
ce tera, I think that we could probably resolve everything
in pretty short time.

MAYOR O'NEILL: And if this provides us immediate
relief until it's resolved, I think that we can live with
what we have as a resolution. However, we met last
Friday, I was not there, with the staff and the solution
they came up with was not acceptable to us.

CHAIRPERSON BUSTAMANTE: Besides, I want to pass
that Orenthal Cardineto called me and said you better
resolve this thing fast.

(Laughter.)

MAYOR O'NEILL: Thank you.

MR. MOUNT: Might I add two things. One is the
reason SoCal gas price is so low is because they let
long-term contracts. Long Beach took the risk of going
with border price.

The second thing I want to point out is that our
royalties are being paid on a higher gas price, so on all
our other State leases, we're getting paid at the higher
gas price.

CHAIRPERSON BUSTAMANTE: I think all those very
interesting details can be worked out by staff and come to
some kind of an agreement, hopefully by the next meeting.
If not, we'll have to, I guess, resolve it through
Commission action. We'd like to be able to come a
resolution. We don't know the formula at this point.

Commissioner Porini, do you have a question?

ACTING COMMISSIONER PORINI: I just wanted to add
one thing for staff, maybe -- I apologize, I'm losing my
voice again. Maybe you can get together and look at the
renegotiation provisions to see if there's anything that
we can do to speed up the provisions that were in the old
agreement, so that if we do get a similar sort of
situation, at any point in time, the notice can be made a
little more timely to the Commission.

EXECUTIVE OFFICER THAYER: I think that's a good
point, and it dovetails with the Chairman's point about
trying to come up with a mechanism that will -- I mean the
last one lasted eight years, but hopefully we can come up
with one with a notice quicker and so we won't have this
same incongruity for a long period of time.

CHAIRPERSON BUSTAMANTE: And does staff identify
problems with using the weighted average cost for this
month and the next?

EXECUTIVE OFFICER THAYER: That would be SoCal --
the broader LA basin weighted average or the SoCal gas, I
don't think so, and I --

MS. SHAW: But everyone else and all of the other
residential customers are paying for the Southern
California Gas Company.

CHAIRPERSON BUSTAMANTE: All right. I'm open for
any action by the Commission?

ACTING COMMISSIONER PORINI: I move approval of
the short-term changes that we're making pursuant to the
Lieutenant Governor's proposal noting that we'll come back and take final action at our next meeting.

ACTING COMMISSIONER ARONBERG: Second.

CHAIRPERSON BUSTAMANTE: This will reduce substantially the cost of gas for the City of Long Beach immediately and will give us time to work out the details. Let the record show that has unanimous approval by the Commission.

There's also one other issue that was raised, Paul, between you and I, and that is how do we expand the production of gas in that region? Here we have a facility, it has the ability to expand, we believe. Yet there's no incentives for expanding the gas production in that area.

And I think that anything that the State Lands has in terms of its -- within its jurisdiction or its authority to be able to provide for expansion, obviously given all of the other requirements of the environment, etcetera, that we should look into finding ways of how we might be able to do that. Whether it's a sentence to the City or to the various contractors, we should come up with some kind of a plan to ensure that we are, in fact, producing.

Clearly, the State currently has maximum capacity coming in, and any kind of production, additional
production of gas internally will help us in our energy crisis, so I think we should make sure and pursue that very aggressively.

EXECUTIVE OFFICER THAYER: We'll do that, and I know that's an issue that the city is very interested in as well. And I think --

CHAIRPERSON BUSTAMANTE: Maybe we can work out some kind of an arrangement in trying to make sure that we actually increase. And that way we hopefully will have a little bit even stronger variance on the price of the rate payers. And, hopefully, we'll go from 25 to something greater and be able to give the residents even greater relief.

Okay, any other items on the agenda?

None.

Any comments from the public? This is the time that anybody in the public might come up and give us their 60 seconds or whatever you feel is necessary.

Seeing none, the business of the Commission is done for today and we will adjourn.

(Thereupon the California State Lands Commission was adjourned at 12:50 p.m.)
CERTIFICATE OF REPORTER

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing California State Lands Commission hearing was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of March, 2001.

[Signature]

JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
License No. 10063