

MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

RADISSON HOTEL AT THE LOS ANGELES AIRPORT
BALLROOM A & B
SECOND FLOOR
6225 WEST CENTURY BOULEVARD
LOS ANGELES, CALIFORNIA

MONDAY, NOVEMBER 26, 2001
9:30 A.M.

JAMES F. PETERS, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

ORIGINAL

APPEARANCES

COMMISSIONERS

Cruz M. Bustamante, Chairperson

B. Timothy Gage, Director of Finance, represented by
Annette Porini

Kathleen Connell, State Controller, also represented by
Cindy Aronberg

STAFF

Paul Thayer, Executive Officer

Jack Rump, Chief Counsel

Alan Scott

Maria Faulkner

ALSO PRESENT

Alan Hager, representing the Attorney General

INDEX

	<u>PAGE</u>
Roll Call	1
Confirmation of Minutes for the Meeting of April 24, 2001	1
Executive Officer's Report	1
Consent Calendar C01 - C86	5
Regular Calendar	6
Item 87 Santa Catalina Island Company and Santa Catalina Island Conservancy	25
David Arntzon	37
Ron Douth	39
John Broome	51
Gordon "G.T." Frost Jr.	54
William Davidson	55
Richard Whilden	65
Bob Graham	85
Richard Landes	89
Rose Ellen Gardner	99
Item 88 California State Lands Commission	6
Item 89 Postponed	
Public Comment	101
Adjournment	101
Reporter's Certificate	102

1 office securities are in pretty good shape. All of our
2 offices have restrictions not to provide unlimited access
3 to the public, but we have more work to do still on
4 external security. And we've been in conversations with
5 the Coast Guard and various officials involved with the
6 port facilities, in particular. And we may very well be
7 bringing some regulations in the near future to the
8 Commission to beef up security, particularly at oil
9 terminals where we have jurisdiction to prevent oil
10 spills.

11 The Coast Guard does, though, indicate that they
12 have some long-term concerns over the greater port
13 facilities, the ones that we don't have jurisdiction over.
14 And they may be asking for our assistance in beefing up
15 security in these areas as well.

16 This may require additional legislation. And, at
17 this point, we don't have a particular proposal to bring
18 to you, but I wanted to highlight that for you, and to let
19 you know that we may be bringing material to you in the
20 next few weeks. We're still waiting for the Coast Guard
21 to refine their ideas. They've indicated they'll send us
22 a letter on this. And we're also involved in
23 conversations with them, but I wanted to give you a
24 progress report on the post-September 11th activities that
25 we're undertaking.

1 The second item I wanted to bring up was the
2 Bolsa Chica meeting that occurred before the Coastal
3 Commission earlier this month. As you are aware, the
4 State Lands Commission is playing a leading role in the
5 restoration of wetlands at Bolsa Chica, and had previously
6 approved a Memorandum Of Understanding between the various
7 agencies involved to govern how the process that would
8 occur that would lead to restoration of those wetlands.

9 An EIR/EIS has been prepared. The Coastal
10 Commission heard this item earlier this month, as I
11 indicated, and approved a restoration proposal. This
12 proposal is likely to be ready to be brought to the
13 Commission, to the State Lands Commission in the near
14 future, and we will be in conversation with your staff
15 about this.

16 But we wanted to discuss with them the various
17 options that might be available to the Commission in
18 proceeding on this. One of them might be to have a
19 special purpose meeting down in the area. Another way to
20 go would be to just have another southern California
21 meeting and combine it with other items.

22 But given the significance of that --

23 CHAIRPERSON BUSTAMANTE: When are you suggesting
24 that meeting take place, soon or after the first of the
25 year?

1 EXECUTIVE OFFICER THAYER: As soon as January, I
2 believe. We want to make sure that we have an opportunity
3 to present this fully to the Commission, and perhaps let
4 the Commission have an opportunity to go out and look at
5 the wetlands as well. But we'll bring you more detail on
6 that, and we'll be in conversation with your offices about
7 that.

8 CHAIRPERSON BUSTAMANTE: Move forward on it.

9 EXECUTIVE OFFICER THAYER: Great. And that's, at
10 least, the final item, which is that with the exception of
11 potentially doing this special meeting for Bolsa Chica, we
12 would anticipate the next Commission meeting would be some
13 time late January or in February. There are some calendar
14 items with some urgency about them, but the processing on
15 them may require that we meet later in February.

16 And we'll be in contact with your staff as to the
17 best location and appropriate time that meets with
18 everyone's schedule.

19 And that concludes the Executive Officer's
20 report, unless there are any questions.

21 CHAIRPERSON BUSTAMANTE: Any questions?

22 Any there any items that have been removed from
23 consent?

24 EXECUTIVE OFFICER THAYER: No, Mr. Chairman,
25 there are none.

1 CHAIRPERSON BUSTAMANTE: Okay. So I would
2 entertain a motion to accept all items on this item.

3 ACTING COMMISSIONER ARONBERG: Move the consent
4 calendar as recommended.

5 ACTING COMMISSIONER PORINI: Second.

6 CHAIRPERSON BUSTAMANTE: Is there anybody in the
7 audience who wishes to speak on any of the items on
8 consent for the State?

9 Seeing none, let the record show that it has
10 passed unanimously. I think we're at Item 87.

11 EXECUTIVE OFFICER THAYER: Yes, sir. Item 87
12 involves the issuance of a new lease to the Island
13 Company, the Santa Catalina Island Company, and the
14 Conservancy for the master lease for moorings at Catalina
15 Island. The staff who will make the presentation on this
16 item is Alan Scott.

17 Alan.

18 CHAIRPERSON BUSTAMANTE: At the request of the
19 representative of the Controller, why don't we take one of
20 the other items before going into 87. She is on her way.
21 She wants to be here for that, and perhaps we can do one
22 of your reports for a few minutes.

23 EXECUTIVE OFFICER THAYER: Certainly. We have
24 two additional information only items that are on the
25 regular calendar. And Maurya Falkner is ready. She has a

1 presentation to give you a status report on the ballast
2 water program.

3 MS. FALKNER: It's going to take a couple of
4 seconds to get this set up and the overheads. I was just
5 going to give a real brief summary on the last year's
6 progress for the ballast water program.

7 CHAIRPERSON BUSTAMANTE: Can you speak into the
8 microphone. We're having difficulty hearing you.

9 There's no hand-held?

10 (Thereupon an overhead presentation was
11 presented as follows.)

12 MS. FALKNER: I prepared a brief report that was
13 in the calendar summary, and that has a little bit more
14 detail than what I'm going to be presenting today. A lot
15 of the information that's in this, the early part of this
16 presentation, you've already seen so we can just kind
17 of -- that looks pretty good.

18 Can you do the next slide, please.

19 --o0o--

20 MS. FALKNER: As you know, ballast water is
21 considered the primary vector for transporting
22 nonindigenous aquatic species around the world.
23 Basically, vessels need ballasts in order to operate.
24 They use it for trim and stability, taking on ballast and
25 any organisms that might be entrained in that water and

1 One of the reasons our program, I believe, is so
2 successful is we have -- we actually fund the program
3 through fees that allows us to actually have inspectors in
4 the field and do the research that needs to be done.

5 Next, please.

6 --o0o--

7 MS. FALKNER: There were four agencies tagged
8 with responsibility under the law. The Board of
9 Equalization has the admirable task of collecting fees
10 from a global industry, and they're doing an outstanding
11 job of that. The Department of Fish and Game is required
12 to conduct base line and biological surveys to see what
13 the current status in California is with regards to
14 nonindigenous species. They're also required to prepare a
15 report to the Legislature in December of 2002.

16 The Water Resources Control Board is responsible
17 for conducting base line research or pulling together all
18 the information that's available on alternative treatment
19 technologies. And they're working with us on some
20 research that I'll be talking about a little later. They
21 also have a report due to the Legislature. And then, of
22 course, our agency here we're -- we've spent the first six
23 months of 2000 setting a fee. And since then, we've
24 implemented the program, inspection and monitoring program
25 also with some research.

1 --o0o--

2 MS. FALKNER: Again, this is just a little bit
3 more detail. We've got the fee set. It's set right now
4 at \$400 per qualifying voyage. Based on information that
5 I just received from the Board of Equalization last week,
6 we have nearly 95 percent compliance with paying that fee,
7 which is pretty incredible when you consider the number of
8 vessels, owners, operators in the world that we're dealing
9 with.

10 We're doing quite a bit of data gathering and
11 compilation. We have a new database system that we've set
12 up with help of an outside consultant. We're sharing our
13 data with the federal government. Actually, Canada uses
14 our data, New Zealand, and then other states around the
15 country are utilizing our data.

16 We have the Vessel Inspection Program, which is
17 right now taking about 25 percent of all the qualifying
18 voyages that come in. We're using a modified random
19 sampling for vessels. We actually look at what vessels
20 have come in, what vessels have violations and then try to
21 revisit those vessels, as well as keeping a 25 percent
22 coverage.

23 Research is what I'm going to be talking a little
24 bit more in this talk. We've got some interesting stuff
25 going on. And then outreach and education is -- one of

1 the primary jobs, I believe, of this first initial program
2 is getting the word out to the industry and pulling
3 together all the possible technologies. We also have a
4 report due in December of 2002.

5 Next, please.

6 --o0o--

7 MS. FALKNER: Just to give you some numbers. You
8 can see that in the first, almost, two years of the
9 program, we've had close to 13,000 different -- or
10 qualifying voyages come in. These represent about 2,700
11 different vessels.

12 Next, please.

13 --o0o--

14 MS. FALKNER: As I mentioned earlier, the
15 compliance is up quite nicely. Early in the program, as
16 you probably remember, we had a little bit of difficulty
17 getting the industry to submit the necessary forms. We
18 took some action, had some meetings with the industry,
19 established some procedures to bring our compliance up
20 statewide to 92 percent.

21 We, right now, have a monthly notification system
22 via Email. And we contact nearly 50 shipping agents
23 around the State, and let them know what their compliance
24 level is. My assistant Terry Ely has been very helpful in
25 that regard.

1 Next, please.

2 --o0o--

3 MS. FALKNER: Discharge and just some other
4 numbers. These are the kinds of data points that are of
5 great interest to the rest of the ballast water community.
6 How much ballast water is being discharged around the
7 state? And we're working with a couple other organizations
8 to see exactly what's in that ballast water that's being
9 discharged.

10 So that will help us get an idea of, you know,
11 conducting a mid-ocean exchange, but how much of that
12 water is actually clean and has less coastal organisms in
13 it.

14 Next, please.

15 --o0o--

16 MS. FALKNER: Inspection program is going along
17 nicely. A great deal of what the inspectors do is do
18 outreach and education for the maritime industry.
19 Probably, at the end of this talk, I think, Kim will give
20 you a poster and brochure that we have been working with
21 the West Coast Ballast Outreach Group. And we present
22 these to all of the vessels that we board, all the marine
23 oil terminals get them and the agents get them. So it's
24 just kind of this is ballast water and what the problem
25 is.

1 Next, please.

2 --o0o--

3 MS. FALKNER: Just some more numbers. We're
4 continuing to have violations. The majority of the
5 violations are an administrative meeting that they don't
6 have a formal written ballast water management plan on
7 board or they don't have IMO guidelines.

8 We are still getting some ballast water exchange
9 violations. These are primarily coastal vessels. And by
10 that I mean they're coming down from Vancouver into
11 California or they're coming up from Mexico into
12 California, and they're either unwilling or unable to
13 conduct an exchange.

14 Right now, we've been on -- the inspectors have
15 been on over 1,500 of these different vessels statewide.

16 Next, please.

17 --o0o--

18 MS. FALKNER: This is the kind of the stuff
19 that's been really happening this year, and it's been
20 exciting from my perspective being a biologist. We're
21 working with a small technology development company out of
22 the midwest who was funded by the Coast Guard to look at
23 different verification techniques.

24 And they actually came out in June and boarded
25 about 50 different vessels, and pulled ballast water

1 samples, took those samples back, and they're conducting a
2 suite of tests on those. And they'll be coming back out
3 in March to further develop their verification techniques.

4 Then we're working also with the Smithsonian
5 Environmental Research Center on the east coast. These
6 folks are working out of the Port Of Oakland right now
7 looking at ballast water exchange efficacy, how good is
8 ballast water exchange, and looking at what kind of
9 organisms are coming out of ballast water tanks.

10 So we've been working with the Smithsonian folks
11 directing them to vessels that are good test subjects,
12 allowing them to go on board, ride the vessels for the
13 entire voyage, do some hull tests, things like that.

14 And so we're hoping to get some of their data,
15 their preliminary data, probably in the mid-spring of next
16 year, and we'll be able to incorporate that into our
17 report to the Legislature.

18 We've also been looking at a suite of alternative
19 treatment systems. We've been going to several
20 conferences and working with technology developers, on
21 both shipside and shoreside technology. Shipside, we're
22 looking at a suite of mechanical type of treatment
23 systems, filtration, ultraviolet light, et cetera.

24 And chemical, even though chemical has a tendency
25 to send a red flag to many folks, there are some promising

1 to the State Water Resources Control Board, and they had
2 some dollars from the Exotic Species Control Fund. And
3 we've got their research team set-up protocols to go
4 aboard these vessels.

5 Next, please.

6 --o0o--

7 MS. FALKNER: The two vessels that we're looking
8 at, the RJ Pheifer, which is a Madsen vessel, it's a
9 container ship that operates from primarily Hawaii to
10 California, although she also picks up quite a few Asian
11 ports. Especially this time of year, she covers her
12 sister ships.

13 And the other vessel is the Sea Princess, a
14 Princess Cruise vessel. We had engineering designs
15 conducted on both of these vessels. The Sea Princess was
16 actually retrofitted this late summer, and she's had two
17 evaluation cruises on board.

18 Next, please.

19 --o0o--

20 MS. FALKNER: This is the system that's on the
21 Sea Princess now and a similar system that will be
22 installed on the RJ Pheifer. It's a combination of
23 cyclonic separation, so basically it's forcing water
24 through a tube that creates a cyclone action, pulling out
25 any organisms or material that's heavier than water, and

1 that material gets immediately discharged back to the
2 source water.

3 And then the cleaner water goes through an
4 ultraviolet treatment system. We have conducted, as I
5 said, two evaluation cruises on the Sea Princess, and
6 we're hoping to have some of the preliminary results back
7 in the next month.

8 Next, please.

9 --o0o--

10 MS. FALKNER: The RJ Pheifer was supposed to have
11 been retrofitted last month, but because of some problems
12 with the sister ships, she's going to be staying in the
13 Asian trade until probably December, so she'll be
14 retrofitted in December, late December, early January.

15 Her shipboard evaluations will occur in January.
16 And we will hopefully have all of the reports, how well
17 these systems do at two real different vessels and
18 different challenges for either -- for both of them.

19 You have a container vessel that carries a
20 great -- much more water in it, but not that many people.
21 And you have a cruise vessel that you're having ballast
22 problems, gray water, black water, all the, you know,
23 thousands of folks on board and how to manipulate that
24 water effectively. So two very different vessels with the
25 same system, so it should be very interesting to see where

1 that goes.

2 We're also hoping to get a tank vessel company
3 here in the next couple of months to act as a test bed for
4 a chemical that has shown a great deal of promise. They
5 did some preliminary work back in the Port of Maryland --
6 the Department of Maryland did, and it's looking like it
7 might be a very viable option for vessels that carry large
8 amounts of water.

9 So next, please.

10 --o0o--

11 MS. FALKNER: Again, last year, we spent
12 developing and continuing to do the partnership. We've
13 worked very closely with the U.S. Coast Guard out of
14 Washington D.C. with the goal of trying to coordinate not
15 only our local activity, but also how the laws are going
16 to look in the next couple of years.

17 We have a ballast water technical advisory group.
18 As you may remember, it is industry folks that we meet
19 with on a regular basis. In fact, we have a meeting
20 coming up in December in San Francisco to talk about how
21 the program is going.

22 I sit on the ballast water shipping committee
23 subgroup of the A&S Task Force as well as the rest of
24 these groups. So we are trying to coordinate our
25 activities, to reduce the patchwork of regulations that

1 you see along the west coast, and hopefully we will
2 continue to lead, so the federal government has a little
3 bit better -- you know, they have some steps to take.

4 Next slide, please.

5 --o0o--

6 MS. FALKNER: As I mentioned, this doesn't show
7 up nearly as good, but in the earlier part of this year we
8 worked with the West Coast Ballast Outreach to put
9 together a poster and an educational brochure that you all
10 will receive one today.

11 And it's been very well received by the industry.
12 We had some of the old curmudgeons say, you know, it's
13 silly, it's stupid and everything. But when you have
14 captains calling you up when they're in port saying hey,
15 can I get three more copies please, this is really a great
16 poster. And so it's been very, very successful.

17 So we work with the Coast Guard and distribute
18 these posters and brochures to all the vessels that are
19 coming into the State.

20 And that's all. I can take any questions if you
21 have any.

22 CHAIRPERSON BUSTAMANTE: Please.

23 COMMISSIONER CONNELL: I'm sorry, I came in late,
24 but I did read your materials that you had submitted
25 before. But more importantly, I'm impressed by how much

1 progress we have made here. I think it's a remarkable
2 statement of commitment. And I thank you, Paul, and you
3 for leading us in this way. In fact, I would think that
4 probably, at this point, California is pioneering in this
5 field.

6 And I'd like your response to what other states
7 are partnering with us. I'm disappointed Washington could
8 not, but are there other states that are moving along in
9 this effort? I mean, it should be really a collaboration
10 with, hopefully, other states and perhaps other nations.

11 MS. FALKNER: Unfortunately, at least along the
12 west coast, the coordination and communication has been
13 less than ideal. Washington developed its program and
14 then Oregon state developed its program, which, in many
15 ways, is going to compound the problems that we face here
16 in California.

17 And, for example, they want, you know, discharge
18 of ballast water exchange. Vessels that come out of San
19 Francisco must conduct an exchange before they hit the
20 Cape of Mendocino, regardless of the distance offshore.
21 So they're basically discharging stuff that's right now
22 semi-contained in the bay estuary area, out into the
23 Farallons and out into all of those nice marine
24 sanctuaries.

25 I just was asked two weeks ago, if I'd sit on the

1 Oregon task force, ballast water task force, to discuss
2 how we're going to fix some of these issues, because it
3 came up this summer. And you might imagine it was a
4 rather heated conversation at a meeting at the Cal
5 Maritime Academy.

6 So the coordination is not nearly as good as I
7 would like and that anybody would like. Even Oregon and
8 Washington recognize it. We also need to bring in Mexico
9 and Canada for the west coast, if we really want to do a
10 regional perspective.

11 COMMISSIONER CONNELL: Are you making headway in
12 trying to get Mexico and Canada engaged in this issue?

13 MS. FALKNER: Canada is -- I communicate with
14 folks out of Canada. Right now they have kind of a
15 hodgepodge patchwork of regulations. The Port of
16 Vancouver is really the only port that requires ballast
17 water management at all. And they're kind of just don't
18 dump it in our port. We don't care where you dump it,
19 just don't dump it in our port. So it's kind of a
20 not-in-my-backyard scenario.

21 But we are trying to communicate with them. The
22 folks who put together this poster on the ballast outreach
23 poster, they are trying to do quite a bit of coordination
24 with the various states and countries here.

25 But, you know, any help that we can get from

1 folks who have better connection, especially with Mexico.
2 They have almost no money. We've got a few Emails from
3 folks, but for the most part there is -- we don't even --
4 I'm not even sure who to communicate with at this point.

5 COMMISSIONER CONNELL: May I ask one further
6 question of you. I am curious what happens if we find in
7 looking at the Sea Princess that it's not adequate what
8 we're proposing here? What's the next step?

9 Because there's lots of cruise ships that come in
10 and out of California ports, and I'm concerned that we
11 have an alternative, if whatever this technology that is
12 explained is in place, does not appear to be adequate --

13 MS. FALKNER: Well, this is -- I mean, in my
14 mind, I'm looking at this as research, and that every --
15 even if it's a failure, we've learned something from it.
16 What part of the system is not working. There are other
17 systems that are being talked about by some of the other
18 cruise lines.

19 So although, you know, let's say the OptiMar
20 system doesn't work, there are some other things that may
21 work. There may be chemicals that work effectively. For
22 the Princess vessel that we're dealing with right now,
23 under our agreement, she will be considered as an
24 evaluation vessel through the end of the program. And
25 then after that, depending on what the California law says

1 or depending on what the federal law does, it's kind of --
2 they understand that they may not be in compliance after
3 the new law starts up.

4 So we have a really good team of folks working on
5 the vessel now. And I think I'm hoping, based on some of
6 my earlier communications with them, that we can identify
7 where some of the problems are.

8 One of the big problems with cruise lines is that
9 they mix their gray and black waters, so the dishwater
10 water and the gross sewage water all use the same piping
11 as the ballast water.

12 COMMISSIONER CONNELL: That's really encouraging.

13 (Laughter.)

14 COMMISSIONER CONNELL: Remind me to bring paper
15 plates next time I go on a cruise.

16 (Laughter.)

17 MS. FALKNER: No, no. They discharge the water.

18 CHAIRPERSON BUSTAMANTE: They discharge it.

19 (Laughter.)

20 COMMISSIONER CONNELL: They're mixing them inside
21 the boat. Dishes appear a little grimy to you today?

22 (Laughter.)

23 MS. FALKNER: No. For the record, they do not.

24 COMMISSIONER CONNELL: We don't recycle on board,
25 I hope.

1 I'm teasing.

2 CHAIRPERSON BUSTAMANTE: Annette Porini has a
3 question.

4 ACTING COMMISSIONER PORINI: Just --

5 EXECUTIVE OFFICER THAYER: If I could first
6 elaborate a little bit. This is a fairly new issue area.
7 And I think that Maurya is right, that science is really
8 working hard on this and there are probably some solutions
9 that are being -- in the back of somebody's of mind right
10 now, that we'll see more of in the next five years and so
11 if one particular method fails, I'm expecting that there
12 will be other options that will be available. The base
13 line method for treatment that's established in the law is
14 you exchange water out at 200 miles, and that's thought to
15 be fairly successful.

16 But some of these ships, particularly the ones
17 going to Mexico or otherwise in the coast trade, that
18 Maria was talking about earlier, don't normally go out 200
19 mile, so we're imposing a financial hardship, if we're
20 saying, yes, stay an extra day or two and go out there and
21 just change your water and come back.

22 So the more methods we have to deal with this
23 issue, whether it's using chlorine or on-land treatment,
24 which has a whole host of problems associated with it as
25 well. But the more of those that we have available, means

1 that we can craft a program that has the least economic
2 impact on the entities that are trying to be
3 environmentally correct about this. So I expect that
4 there will be other solutions developed as we move
5 forward.

6 MS. FALKNER: And one of the intriguing new ideas
7 that's being floated around is, again, passenger vessels
8 create a great deal of gray water, so that's from the
9 showers and things like that. It's not mixed with the
10 sewage, but they create a great deal of that, more than
11 they need in ballast.

12 So there has been some work -- there's been some
13 work going on about using gray water treatment systems to
14 make the water basically fishable and swimmable, that's a
15 tough one to say, and use that as ballast, and then
16 discharge that.

17 Now, you know that creates a whole other issue
18 with the Coast Guard and the Water Board folks as they
19 could take the gray water and discharge it as ballast and
20 what are the issues with that. But it's still a
21 potentially promising way to go for a passenger vessel.

22 This system, if it doesn't work on the Sea
23 Princess, it may work really well on other types of
24 vessels like a car carrier container vessel where you
25 don't have the huge inputs of other stuff. So it's a very

1 new field. There's ozone being tested. There's lots of
2 interesting stuff going on. And I know the technology
3 developers have been going nuts waiting for, you know,
4 people to set standards.

5 And the maritime industry is going nuts waiting
6 for people to present them with technology, but it's --
7 you know, I guess the main point that I keep trying to
8 stress to folks is this is very much a research phase and
9 we're learning a lot. And even if it fails, we've learned
10 a great deal about that system.

11 So thank you.

12 CHAIRPERSON BUSTAMANTE: Any other questions?

13 Thank you.

14 We're going to go back to Item number 87.

15 Paul, was there any additional --

16 EXECUTIVE OFFICER THAYER: I think Alan Scott was
17 going to give a staff presentation for background on that.

18 MR. SCOTT: Good morning, Mr. Chairman and
19 Members of the Commission.

20 My name is Alan Scott. I'm the regional manager
21 with the land management division of the Commission here
22 to present information on calendar item number 87.

23 This item contains a staff recommendation for
24 approval of a commercial lease to the Santa Catalina
25 Island Company, and the Santa Catalina Island Conservancy

1 for the operation of 720 moorings at various locations
2 around Santa Catalina Island.

3 It continues the past actions of the Commission
4 by providing greater public access to mooring subleases at
5 a reasonable cost. These mooring locations are exclusive
6 of those moorings located in Avalon Bay, which are in a
7 legislative grant to the City of Avalon.

8 Catalina Island is a premier destination for
9 boaters in southern California. Because of the island's
10 unique location, it's been used for moorings since before
11 World War II.

12 Over several years leases for moorings have been
13 issued by this Commission. In the late 1970s, early 80s,
14 as the lease at that time was ending, the Commission was
15 approached by several individuals indicating a desire to
16 compete for any new leases that might be issued for
17 operating moorings at Catalina Island.

18 Because of this interest, the Commission began a
19 process of developing an RFP. As part of the development
20 of the RFP, the Commission held a number of public
21 hearings. Those hearings were held in Los Angeles and in
22 Sacramento, and both of those locations the hearings
23 covered several days.

24 At those hearings, various boaters expressed
25 concerns over the needs and desires of the boaters for

1 services at the island facilities.

2 In addition to the public hearings conducted, the
3 Commission received several hundred letters from
4 individuals expressing concerns with respect to the
5 operation of moorings at the Catalina Island sites.

6 The results of the public input were compiled by
7 staff and used in the RFP to identify the various services
8 and levels of those services that would be required of any
9 successful bidder under the RFP process.

10 A major concern of the boating public expressed
11 over and over during the hearings held by the Commission
12 was equal access to the mooring subleases at a reasonable
13 cost. It became a primary goal of the Commission to
14 provide greater public access to mooring subleases and to
15 assure that rental for those subleases would remain
16 reasonable. The practice of selling mooring equipment and
17 subsequently the rights to a sublease was believed by many
18 to be a deterrent to greater public access.

19 The boating public entering many number of public
20 hearings before the Commission asked that this practice be
21 prohibited in any future lease.

22 After receiving input from the equipment owners,
23 the State's lessee and other boaters, the Commission
24 agreed that the practice of selling equipment/subleases
25 should cease. Stopping the practice would lead to a

1 greater number of subleases being available to the general
2 boating public.

3 However, in recognition of the financial
4 investment that many equipment owners have made in their
5 equipment, the Commission agreed to allow those affected
6 by the prohibition on sale to continue the practice of
7 transferring their equipment/sublease for one more time
8 during the term of the lease.

9 This transfer right was available to the
10 equipment owners for the first 14 years of the 15-year
11 lease. Thereafter, in accordance with the terms of the
12 lease, the transfer rights terminated on December the
13 31st, 1995.

14 No new transfers have been allowed subsequent to
15 that date. Also, during the 14-year period, the equipment
16 owners continued to enjoy a lower rental rate than the
17 sublessees of the island owned equipment.

18 This was a means of allowing them to recover the
19 costs of the mooring equipment itself. The lease provided
20 a notice of such transfer right be given to every
21 sublessee, and further that the prohibition against future
22 transfers also be given after the one-time transfer was
23 completed.

24 Language concerning this notice was contained in
25 each subleased document covering owned equipment, since

1 the beginning of the 1982 lease. All mooring subleases
2 not renewed by current sublessees are filled from a
3 waiting list. About 300 sublessees had a right of
4 transfer. Approximately, 225 sublessees either
5 transferred or relinquished their sublease during the
6 14-year period that was available under the lease.

7 About 70 sublessees chose not to exercise this
8 transfer right during that 14-year period.

9 Again, any right to transfer ceased pursuant to
10 the terms of the lease on December the 31st, 1995.

11 Subsequent to the termination of the right to transfer,
12 several members of the group that chose not to make a
13 transfer approached the staff of the Commission with a
14 request to reinstitute the right of transfer.

15 They offered several different proposed programs
16 under which the right of transfer might be extended.

17 Among them, in instituting a transfer fee, setting aside a
18 percentage of the sale price for either the Commission or
19 for some other worthy cause, to allowing a transfer only
20 within family members.

21 Staff considered these proposals, but believes
22 that to allow any of them would be counter to the decision
23 to promote more equal and affordable access to mooring
24 subleases reached by the Commission during many hours of
25 public hearings. Continuing the transfer would also have

1 a negative impact on the waiting list process by reducing
2 the overall number of subleases that could become
3 available.

4 The current waiting list for moorings at Catalina
5 Island are organized by location and contain around 2,000
6 names. The average time spent on a waiting list depends
7 on the location of the mooring desired. Some have waited
8 on the list for more than 20 years, while others waiting
9 for one of the less desirable sites can wait about eight
10 years, that's about the shortest time.

11 Currently, approximately 40 subleases are issued
12 to individuals for the waiting list each year. The lease
13 that's before you today is a culmination of many years of
14 negotiation of public input. It is a replacement lease
15 for the 15-year lease that was issued in 1982, which has
16 been in holdover for several years now. This lease
17 continues the conditions and requirements for service that
18 were placed in the 1982 lease as a result of the
19 Commission's desire to open the area to greater public
20 access and to control boater costs.

21 Staff recommends approval of this item as being
22 consistent with past Commission actions. And I will
23 remain available for questions.

24 CHAIRPERSON BUSTAMANTE: Could we have the
25 lectern turned so they're not aimed somewhere else. I

1 like to look people in the eye.

2 (Laughter.)

3 CHAIRPERSON BUSTAMANTE: Any questions by the
4 Commission?

5 COMMISSIONER CONNELL: Yeah. You know this is a
6 very difficult one for me. I mean, I understand what the
7 lessees want to achieve in terms of maintaining their
8 involvement with these leases. I think it's part of the
9 heritage for some of these families to have this
10 relationship. And they do think of it as a legacy that
11 they kind of pass down from family to family.

12 I've boated frequently at Catalina Island, so I'm
13 certainly familiar with the attitude and the locale and
14 the history of this. But I think it goes beyond those
15 families and those many people who have been waiting
16 patiently on the list to be accommodated. I think it gets
17 to a broader -- at least for me, it got to a broader
18 question of access to what I see as really a public right.

19 And this isn't seats at the Hollywood Bowl, which
20 someone brought to my attention. I got a call and
21 somebody said, you know, seats at the Hollywood Bowl you
22 can pass down. Well, this is not really seats at the
23 Hollywood Bowl. This is a limited public access to a
24 natural environment.

25 And for me I concluded that the staff was right.

1 I agreed with what the staff is saying. My only concern
2 with the staff is why did it take us so long to get here.
3 You know, being ever impatient as I am, I'm wondering why,
4 you know, always trying to hold government accountable,
5 why did it take us from 1995 to the year 2001 to get this
6 before the Commission? Maybe you can explain that?

7 CHAIRPERSON BUSTAMANTE: Lawyers.

8 (Laughter.)

9 COMMISSIONER CONNELL: Well, you know how I feel
10 about that, so I won't comment on that. I say my nightly
11 prayer for my sons that they won't become lawyers. Go
12 ahead.

13 (Laughter.)

14 Executive OFFICER THAYER: And, of course, the
15 previous lease did expire in 1997, so it's been four years
16 before it's come back to the Commission, and this isn't
17 the sort of thing we normally like to do, but there were
18 two goals, two factors here that mitigated in favor of a
19 go slow approach.

20 The first is we did have ongoing negotiations
21 with both the people who made this counterproposal and
22 with the Island Company in hopes of resolving this issue
23 in a way so as to avoid public controversy to satisfy all
24 of the different factions of the public that were involved
25 with this issue and to try and resolve that. And we think

1 that that's our job to do our best job for the Commission
2 that way.

3 And regretfully we weren't able to do that. The
4 second factor that allowed us to keep working on this is
5 that this is an existing lease. The use was continuing
6 during these negotiations. If this had been an
7 application for a new development, where money was being
8 lost by a developer because of a protracted negotiation
9 like this, we would have brought it to the Commission much
10 more rapidly.

11 We wouldn't have thought that to be fair, but it
12 was only because seeing the operations were continuing as
13 they had been before, and that people were being
14 unaccommodated by it, that we felt it was appropriate to
15 try and take our time to reach a solution.

16 COMMISSIONER CONNELL: I appreciate your trying
17 to be open and gracious to everyone. I just think that,
18 you know, we had prolonged, you know, some anxiety out
19 there in the public, at least in the boating community, as
20 it relates to Catalina Island.

21 I am comfortable -- I know you have a number of
22 people to speak on this today, I'd like to hear those
23 people speak. I'm comfortable with that answer. That was
24 of concern to me, though, why we were so delayed.

25 CHAIRPERSON BUSTAMANTE: Paul, the only question

1 I would ask is that as I'm reading many of these letters,
2 who are supportive of maintaining the existing lease
3 arrangements is the issue of treating folks from Catalina
4 Island, in this part of the lease, different from those of
5 Avalon? Could you address that, because that seems to be
6 a recurrent theme in many of the letters.

7 EXECUTIVE OFFICER THAYER: Certainly, I'll do
8 that. First, let me also add to Commissioner Connell's --
9 my response to Commission Connell's concern which is to
10 say, you know, that I take note of that. I think the
11 other Commissioners feel the same way that the general
12 direction from the Commission we believed to be to act
13 expeditiously in evaluating these leases, and we
14 understand that concern. I don't want to make it sound
15 like we didn't want to be responsive to that, because, in
16 generally, we try and bring things to the Commission
17 expeditiously, and we would like to do so.

18 In response to the Chair's particular question,
19 it is true that particularly at Avalon and also true in
20 several other places, transfers or subleases can be
21 transferred by payment to the former sublessee or the
22 original sublessee.

23 And the Commission had that evidence before it
24 when they considered it, at least back in 1982, but it
25 decided not to follow that model here. And it should be

1 noted that in Avalon and the other places where this
2 happened most frequently, all of that area has been
3 subject to a legislative grant. We don't have control
4 over that, so we have no authority over the --

5 CHAIRPERSON BUSTAMANTE: What area, the Avalon
6 area?

7 EXECUTIVE OFFICER THAYER: The Avalon area has
8 been granted to the City of Avalon. So those leases
9 aren't subject to our review and approval.

10 CHAIRPERSON BUSTAMANTE: So they're responsible
11 for it?

12 EXECUTIVE OFFICER THAYER: The City of Avalon has
13 taken that approach. I wasn't here at the time, but Jack
14 attended a lot of those workshops, and he might have more
15 information on it, but that particular problem, as
16 evidenced in Avalon, where the exchange prices are even
17 higher, I think served as a, sort of, a negative model,
18 something that the Commission decided no, we don't want to
19 go down this road, because of how expensive it's gotten in
20 Avalon.

21 The material provided by the proponents for an
22 alternative way to go here, the former owners, indicates
23 the transfer fees in Avalon can be as much as \$200,000.
24 And I think we've heard rumors that some of them may even
25 be as much as \$300,000. And I think that the Commission,

1 cognizant of what happened in Avalon, said no, we're not
2 going to do that.

3 So I don't believe that there's any consistency
4 in what the Commission's approach is. The Commission --
5 there's nothing illegal about charging to the highest
6 bidder, selling these buoys. But the Commission
7 consciously said no we don't want to do it this way. This
8 is not a set of moorings that are used for storing a
9 vessel. This is a set of moorings, which is a destination
10 point, sort of like a Yosemite, and that it shouldn't be
11 available to the highest bidder if they wanted it.

12 Another distinction is this is one of the few
13 leases, perhaps the only one in the State, and we're
14 talking about this as a staff, where there's really a
15 Commission cap on the amount that can be charged for the
16 sublease.

17 In most cases, we allow the market to set the
18 rate. But, again, here it was decided there as public
19 good involved that shouldn't be based on market value, and
20 therefore really a lot of this is caused by the fact that
21 the annual leases are kept at a low rate by the
22 Commission, and that causes the expansion to be a little
23 bit more.

24 CHAIRPERSON BUSTAMANTE: So we're missing out on
25 some revenue at the State.

1 EXECUTIVE OFFICER THAYER: We could charge more
2 money and the State would probably be able to sell all the
3 buoys at a higher rate, but that's the case.

4 CHAIRPERSON BUSTAMANTE: Okay. Why don't we
5 start in a somewhat alphabetical order with opposition and
6 support. Why don't we start off with David Arntzon to be
7 followed by Ron Doutt, is that the way you pronounce it?

8 MR. DOUTT: Yes, sir.

9 CHAIRPERSON BUSTAMANTE: To be followed by John
10 Broome, to be followed by Gordon or GT Frost Jr.

11 If you could make your way toward the podium and
12 be ready to speak.

13 MR. ARNTZON: My name is David Arntzon. I'd be
14 considered an owner/permittee of Alpha 7 in two harbors
15 the isthmus.

16 I'd like to thank the Commission for allowing us
17 to come and speak on this issue. I'd also like to thank
18 Commissioner Connell for her words. This is a very
19 important issue to many of us.

20 As for myself, I've been coming to Catalina for
21 40 years. I'm 48, so I started very young. In the early
22 1970s my family went quite often and had an opportunity to
23 acquire a mooring, alpha 7, and my mother did so.

24 A few years later she passed on and I received
25 that mooring and have gone ever since. My son in 1990 was

1 born. We've enjoyed it with him every year. He's
2 actually been there every single year. And so for us what
3 might appear to be a petty or selfish issue, to some truly
4 it is a heritage, it's a legacy. It's a very important
5 thing.

6 To be brief, what I would like to do, though, is
7 address the question of fairness. There's a lot of issues
8 about that that I don't even think have been addressed
9 here. But as for myself, I, only at luck, with a great
10 deal of luck, get their 18 days a year, sometimes fewer,
11 at which times our mooring, as all moorings --

12 COMMISSIONER CONNELL: I certainly hope that
13 isn't because you're an attorney?

14 MR. ARNTZON: No, no.

15 (Laughter.)

16 MR. ARNTZON: But I do prepare taxes, so if we
17 want to talk about fairness in life.

18 COMMISSIONER CONNELL: We have something
19 compatible. I collect a lot of taxes.

20 (Laughter.)

21 MR. ARNTZON: I was going to say, and I guess I
22 will, any time my son says gee, that's not fair. I tell
23 him to look in the first chapter of the book of life,
24 which is life is not fair.

25 (Laughter.)

1 MR. ARNTZON: But in fairness, our mooring -- if
2 you only looked at 90 days a year, at most our mooring, we
3 use it or our boat is on it only 20 percent of the 90
4 days, which means it is always available. And I think the
5 use of the mooring, not the subleases of the mooring,
6 should be considered here.

7 If you open up to a broader period of time, up to
8 six months, we're barely on at ten percent, which means
9 our mooring is available for all the general public to use
10 during that time.

11 So I wish to be brief, because I know a lot of
12 people wish to talk, and I thank you so much for listening
13 to me.

14 (Applause.)

15 MR. DOUTT: Good morning, Commissioners.

16 CHAIRPERSON BUSTAMANTE: State your name for the
17 record, please.

18 MR. DOUTT: My name is Ron Douth and I'm
19 president of the Santa Catalina Island Company. I'm
20 speaking in favor of the lease. I'm not speaking on the
21 subject of sublessee ownerships.

22 A little later Rose Ellen Gardner, who is the
23 president of the Santa Catalina Island Conservancy, will
24 also speak in support of staff recommendation to issue
25 this lease.

1 CHAIRPERSON BUSTAMANTE: You're speaking in
2 opposition to the staff recommendation?

3 MR. DOUTT: I am speaking to urge your issuance
4 of the new lease.

5 COMMISSIONER CONNELL: In support of the staff
6 recommendation.

7 MR. DOUTT: In support of the staff
8 recommendation.

9 Actually, I've got a four-fold purpose. I want
10 to give you some background about the Conservancy and the
11 Island Company and its qualifications. I want to describe
12 the mooring operation. I'd like to be available to
13 address any of your concerns, and, to repeat what I said
14 at the outset, request that you authorize issuance of the
15 lease.

16 Joining us in the audience are members of our
17 staff and members of the crew that operate the day-to-day
18 operations. They're here also to help us answer any of
19 your questions. They will not mercifully be providing
20 formal testimony.

21 CHAIRPERSON BUSTAMANTE: Thank you.

22 MR. DOUTT: The Santa Catalina Island Company is
23 a 100-year old -- 107-year old enterprise that is based in
24 Avalon. With only one ownership change, and that being 82
25 years ago, we'd like to think we're awfully stable.

1 Our primary purpose is to assure that all
2 visitors to Catalina Island have a quality experience.
3 We've long recognized that what primarily draws people to
4 Catalina island is its natural beauty and priceless serene
5 environment.

6 The preservation, stewardship and promotion of
7 Catalina has been the key focus of the Island Company for
8 years. With the formation of the nonprofit conservancy in
9 the mid-1970s and the simultaneous transfer of ownership
10 of 88 percent of Catalina Island from the owners of the
11 Island Company to the Conservancy, and even more effective
12 overall stewardship, a conservation program has become
13 possible.

14 We, at the Island Company, are proud to have the
15 conservancy as a co-lessee in this commercial lease.

16 Your submerged lands area of Catalina are an
17 equally precious resource for the enjoyment of the
18 visiting public.

19 These waters also deserve to be managed with a
20 high degree of care and customer service. And that is
21 exactly what we've tried to do for you over the past 51
22 years.

23 We look forward to continuing in this role for
24 the next 20 years, which is the term of the proposed
25 lease. We have the experience, the financial wherewithal,

1 and the commitment to provide first rate service. And
2 surveys have shown that the boating public is also
3 satisfied with the trust you have placed in us.

4 And I'll have a little bit more to say on that
5 later.

6 CHAIRPERSON BUSTAMANTE: Hopefully, not a lot
7 more.

8 MR. DOUTT: I'll try to speed up, sir.

9 We conduct the mooring services through a
10 California Limited Liability Company. It is described in
11 the lease. It is endorsed by staff. And that limited
12 liability company, the members of which are the
13 Conservancy, and a wholly owned subsidiary of the Santa
14 Catalina Island Company.

15 Our mooring operations are based in the village
16 of two harbors. It's roughly a 200-person community, and
17 it's an hour's drive from Avalon. We have 18 support
18 vessels dedicated to the service. And we need this fleet
19 because, as you can see from the maps, the 720 moorings we
20 manage are widely dispersed.

21 They are dispersed from along 15 nautical miles
22 along the northern side of Catalina Island plus in
23 Catalina Harbor on the backside of the island. In
24 addition, we're responsible for eight anchorage areas.
25 And, as indicated earlier, none of these 720 moorings are

1 in or adjacent to the Bay of Avalon.

2 We feel human resources are equally, if not more,
3 important to the success of our mooring operations, as is
4 the physical equipment. And we feel our employees are the
5 best, and comment cards confirm this.

6 Our year-round staff has 170 years of experience,
7 and they're augmented by 30 additional people in the
8 summertime, many of whom come back annually.

9 I think it's important for all of us, and this
10 will help you in weighing the testimony from the people
11 who are talking about their sublease transfers, for all of
12 us to understand the unique nature of the mooring
13 operations on Catalina Island.

14 Catalina's moorings are one of the few overnight
15 destinations available to southern California recreational
16 boaters. Unlike marina operations on the main land, our
17 moorings are more widely dispersed, they're in varying
18 water depths, and are subject to tide and current
19 conditions.

20 Whereas, the chief purpose of a mainland slip is
21 more like a boat garage, people use our moorings and view
22 our moorings differently. Very few are used for long-term
23 stays. Instead, our customers look forward to their brief
24 escapes to Catalina.

25 It's a way to get away from the hustle and bustle

1 of mainland life. It's a home away from home. Our
2 customers, therefore, are intensely loyal and are very
3 supportive of Catalina.

4 Use patterns, and the previous gentleman made
5 reference to this, very dramatically, depending on
6 location, weather, day of the week, month of the year, the
7 overall annual use rate is only 21 percent. In the winter
8 it's only five percent, but in August it jumps to 61
9 percent, and in summer weekends it's 100 percent.

10 Because of this widespread mooring use, our work
11 force expands and contracts. We use the slow winter
12 months to repair the moorings, to vessel overhauls. And
13 we, in the winter, we're just going 100 miles an hour to
14 handle the needs of our visiting customers.

15 The last area that I'll cover is the subject of
16 boater satisfaction. And this past summer, we did a
17 comprehensive customer satisfaction survey. We used the
18 Research department of BVD of Chicago, and it was at our
19 cost. We wanted to find out just how well we're meeting
20 the boating customer's needs and their expectations.

21 We surveyed the entire spectrum of customer base,
22 sublessees, overnight renters and anchorers. The results
23 we just got earlier this month. Nearly half the
24 respondents indicated that the overall mooring service
25 experience was excellent, which is the highest rating

1 possible.

2 We're gratified with these results, but we pledge
3 not to become complacent. This survey gives us a base
4 line against which our future performance can and will be
5 measured. And Commission staff has a copy of the survey.

6 In conclusion, we have the experience and the
7 desire to continue as your lessee. We have consistently
8 achieved, we believe, the performance expectations that
9 you expect. We also feel that the boating public is
10 satisfied with the services we provided. We, therefore,
11 encourage you to authorize the issuance of this new lease.

12 And I'll be happy to come back and answer any
13 questions. I'll stay now or I'll come back anytime later.

14 CHAIRPERSON BUSTAMANTE: Do you have any
15 questions?

16 COMMISSIONER CONNELL: Yes, I would like you to,
17 just as abbreviated as you can, try to explain the major
18 difference between your position and that of those who
19 will be arguing against the staff recommendation.

20 MR. DOUTT: We have taken no position on this
21 matter. We're here to administer the will of the
22 Commission on the subject of collecting for you funds to
23 transfer sublessees from one sublessee to the next.

24 COMMISSIONER CONNELL: What would happen to your
25 entity if we voted against the staff recommendation today?

1 MR. DOUTT: If I understand what you're asking, I
2 believe what you're asking is if you voted against the
3 staff recommendation, you would be voting against the
4 issuance of this lease. And to me that would mean we'd go
5 back to the drawing board and work with staff to draft
6 another lease.

7 The staff, in their due diligence on the subject
8 of mooring transfers, has deemed that the previous
9 Commission was very clear that in 1995 there will be no
10 further transfers of subleases. We don't argue with that.

11 If you vote it down because you would like to
12 reverse the previous Commission's position on that, to me
13 that means we go back and rewrite certain sections of our
14 lease, which we would be fully happy to do, working with
15 staff.

16 COMMISSIONER CONNELL: And if we went in a
17 different manner, we didn't go for the staff
18 recommendation, we voted against the staff recommendation
19 and said that we didn't feel that there needed to be a
20 lease arrangement at all in Catalina, how would that
21 affect your revenues?

22 MR. DOUTT: How would that affect our revenues?
23 Significantly.

24 ACTING COMMISSIONER PORINI: Just one question.
25 How frequently are the moorings inspected for safety?

1 MR. DOUTT: May I ask my staff to help me on
2 that?

3 ACTING COMMISSIONER PORINI: Once a year?

4 ACTING COMMISSIONER CONNELL: You can't be hard
5 on the record. You need to identify yourself.

6 CHAIRPERSON BUSTAMANTE: Your name, please.

7 MR. ODEN: Doug Oden, harbor master at two
8 harbors. I've been with the company or with the operation
9 now for 23 years. As far as the rigging of the mooring,
10 the maintenance of the moorings, the care of the moorings,
11 I don't know if you've seen the physical system of a
12 mooring, but it's pretty basic and simple with two weights
13 and chain and lines.

14 Those are reworked every year completely. They
15 pull, inspect, replace chain and line as necessary. Every
16 day we do visual inspections of the moorings to see that
17 everything is in order. If there's any chaffing or if
18 there's anything wrong with it, we're patrolling routinely
19 for that type of thing.

20 ACTING COMMISSIONER PORINI: Thank you.

21 MR. ODEN: The mooring service, when they service
22 the moorings, two or three -- every two or three years,
23 they change all the chains. The weights don't have to be
24 changed, they're always secure. So it's a diligent thing.
25 It's done annually. It's done weekly. It's done monthly.

1 And as damages occur, they're repaired.

2 ACTING COMMISSIONER PORINI: Thank you.

3 CHAIRPERSON BUSTAMANTE: This is a sole source.

4 EXECUTIVE OFFICER THAYER: Yes.

5 CHAIRPERSON BUSTAMANTE: There's no RFP on this?

6 EXECUTIVE OFFICER THAYER: That's correct. We
7 had considered -- the Commission had gone through an RFP
8 process last time it was issued. And, Jack, maybe you
9 have more detail on this, but ended up deciding that for a
10 variety of reasons, the Island Company was best suited to
11 carry out -- to continue to carry out that function,
12 partly because they have the land base there and other
13 entities don't have it in order to provide the shore
14 services. Jack was there.

15 CHIEF COUNSEL RUMP: Yeah, that is correct.

16 CHAIRPERSON BUSTAMANTE: Okay. Can you tell me a
17 little bit more. Can you tell me about why did staff
18 decide that, I mean, other than they had the land base.

19 CHIEF COUNSEL RUMP: Particularly probably having
20 gone through the long process. The last time around it
21 was over a year in consideration of granting the lease.
22 The last time there were two other entities that wanted to
23 put in proposals, and those were detailed considerably in
24 terms of all the terms and conditions which we see now.

25 And the Commission then, at that time, evaluated

1 the financial capability, the ability to deliver the
2 services that the boaters required, and also the benefit
3 of some of the experiences that the Island Company had.
4 So, at that time, they granted it. So, at this time, you
5 know, it seems logical. Scotty, have we had any other
6 interest in this item?

7 MR. SCOTT: No.

8 CHIEF COUNSEL RUMP: So it's a renewal lease,
9 similar to a lot of other leases that we have performed.

10 CHAIRPERSON BUSTAMANTE: Has the cost changed?

11 CHIEF COUNSEL RUMP: Scotty, can give you the
12 details.

13 CHAIRPERSON BUSTAMANTE: Have they gone up or
14 down?

15 MR. SCOTT: It's gone up. We've increased the
16 percentage to the State. We did that about five years
17 ago, almost six years ago now. We looked at the market
18 again for this lease, as we proposed it, to enter into a
19 new lease with them. The market has pretty well stayed
20 stable. It's a percentage of gross lease, so as their
21 fees increase, the market share to the State increases.

22 The lease itself contains provisions that limit
23 the Island Company's ability to increase the rates to the
24 boaters based on the Consumer Price Index, so that the
25 boater and the daily day use folks, in addition to the

1 sublessees, don't get priced out of the market. And then
2 the State Lands Commission collects a percentage of the
3 gross income generated by the moorings.

4 CHAIRPERSON BUSTAMANTE: So their fees are based
5 on the CPI as well?

6 MR. SCOTT: That's correct, Governor. The fees
7 that they're allowed to charge under the Commission's
8 lease is regulated by the CPI. They cannot exceed the CPI
9 or the accumulation of the CPI over a fixed period of time
10 of the lease.

11 EXECUTIVE OFFICER THAYER: And the actual rates
12 that we collect, that the Commission and the State obtains
13 are shown on the first page of the staff report, it's 25
14 percent of the mooring subleases. And then the varying
15 percentages for other types of services. This compares
16 with most marinas. We get about somewhere between four
17 and six percent of the gross, because there's much higher
18 costs in maintaining the docs versus the moorings, and so
19 that's why we have a high percentage here.

20 And so any increase in revenues -- so, for
21 example, if the occupancy rates went up from say 60
22 percent as it averages during certain times of the year,
23 to 75 percent during that period of time, there would be
24 an increase in the revenue to the Island Company, but we
25 would share in these same percentages, any increase.

1 There's also a minimum annual rent to ensure that
2 the State is going to be paid the minimum amount, no
3 matter what, which is \$210,000.

4 CHAIRPERSON BUSTAMANTE: Okay. Any questions?

5 MR. SCOTT: In addition to that, Governor, there
6 is a provision in the lease that will require us to review
7 this rent at the midpoint of the 20-year lease to
8 determine whether or not it still meets market conditions.

9 If it does not meet market conditions at that
10 time, then --

11 CHAIRPERSON BUSTAMANTE: When is the midpoint?

12 MR. SCOTT: In ten years.

13 CHAIRPERSON BUSTAMANTE: Next we have John
14 Broome. How are you, sir?

15 COMMISSIONER CONNELL: Very patient I would add.

16 MR. BROOME: Good morning, Commission. It's a
17 pleasure and a privilege to be able to participate in your
18 deliberations. I have to empathize a little bit with you
19 all, because I sat in a comparable position in the Channel
20 Island Harbor during the course of the development. I was
21 on the Harbor Commission for a number of years. And I can
22 understand the various proposals that are coming before
23 you. And I won't attempt to delve into all the
24 ramifications of it.

25 I am a boater owner. I've been a boat owner for

1 a number of years, a third generation boat owner, and I
2 have two generations following me that are also excellent
3 sailors.

4 In reviewing your item as promulgated here,
5 there's only a couple of comments that I'd like to make.
6 One is I do think that there should be a fee, and I don't
7 know whether it is or not that is annually paid to purge
8 your ever-growing list of applicants for moorings.

9 In Santa Barbara they had a list that went for
10 100 some years, and they finally charged a fee, an annual
11 fee, to be on the list, which I think is appropriate, and
12 they didn't have to go through and analyze each one.

13 As far as a transfer fee, a change of ownership,
14 I think it's a wonderful opportunity, because I've often
15 said that my mooring in Cherry Cove was my most
16 irreplaceable asset. And I think that's true. There's a
17 great demand for them, and I think if a reasonable fee
18 could be charged that would be distributed among
19 charities, we've participated in the Boy Scouts fund
20 raising there in Cherry Cove for as long as we've been
21 there, and I think that would be a good thing.

22 I think just to terminate -- is this coming
23 through all right?

24 CHAIRPERSON BUSTAMANTE: Yes.

25 MR. BROOME: To terminate the ability to transfer

1 a mooring, I think would work a hardship on the owners
2 that have been there and have paid for the maintenance.
3 And I might say that I think the maintenance there is
4 superlative. The moorings are kept in a splendid
5 condition, and if it is a deterioration, they're fixed
6 right away. I believe that if some arrangements could be
7 made to a fee, a reasonable fee, and someone else I think
8 will speak on what they think is fair, it is only right.

9 But someone who's been there a long time, I would
10 think, should have consideration and ability to select and
11 transfer the fee.

12 Ms. Connell, you said something about the
13 Hollywood Bowl. And, I'm a little bit involved in that.
14 If I have a seat and I can't use the seat, I don't have to
15 turn it back in. I can ask a friend to sit in my seat.
16 And the organization at the Hollywood Bowl doesn't get a
17 chance to resell it, just because I personally can't use
18 it. And I think one of the most onerous things over there
19 for a boat owner is when he owns, pays, pays a possessory
20 interest of tax on his mooring that he can't loan his
21 mooring out to a friend or a relative without having them
22 incurring a nightly fee for it.

23 I consider what I've paid for it mine to -- the
24 mooring, to do with what I want and I just don't think
25 it's right to have to encumber a guest with a nightly fee.

1 I would like to think today is a start of another
2 20 years and not necessarily looking back on what the
3 previous Commissions did under different circumstances,
4 who knows, and 20 years is a long time for any kind of
5 lease. We do a little leasing of property, and most of
6 our leases are five years, and then they're reconsidered.
7 I would like to see maybe some provision made for in the
8 event circumstances change that it not be set in concrete
9 for 20 years.

10 There will be other people who will probably say
11 things much more articulately than I. If there's any
12 questions, I'd be happy to try to answer them.

13 CHAIRPERSON BUSTAMANTE: Thank you, sir.

14 MR. BROOME: I asked our commodore, if you could
15 take my place, sometimes a speaker defers to another one,
16 I know, and he has it more prepared.

17 Well, thank you very much for giving us your time
18 and we appreciate it very much.

19 CHAIRPERSON BUSTAMANTE: Thank you, sir.

20 Thank you for coming.

21 G.T. Junior.

22 MR. FROST: Well, my name is Gordon Frost,
23 Junior, and I go by my initials G.T. Frost and I thank you
24 for the opportunity to make a few comments. When I filled
25 out the speaker's slip, I think I put that I was for item

1 number 87. And I did that because I think the Island
2 Company has been doing a superb job and I encourage you to
3 renew their lease for this 20 years.

4 At the same time, as a family member of the Frost
5 family, we have a 75-year old boat that has been coming up
6 to Catalina every year for those 75 years. Seventy-three
7 of those years have been in the Frost family ownership.
8 We own the tackle at Cherry Cove and we send our boat out
9 during the summer months. And the boat is called Helen,
10 and there's been -- well, my kids represent, I guess, the
11 fourth generation of Frost people that have enjoyed and
12 supported the island and it's a very dear spot to us.

13 I felt it was pretty important to come up and let
14 you know that we encourage you to look favorably on at
15 least studying the mooring owner's position. I think it's
16 fair. I'd love to see the opportunity for future Frost
17 generations to continue to enjoy Catalina Island and I
18 would be very disappointed if we didn't have this
19 opportunity. So that's the reason I'm here to speak and I
20 appreciate your time.

21 CHAIRPERSON BUSTAMANTE: Thank you, sir.

22 Next we have William Davidson, Philip Stein,
23 Richard Whilden.

24 MR. DAVIDSON: Mr. Chairman, Commissioners, thank
25 you for allowing me the opportunity to speak this morning.

1 I'm concerned that there's been a lot of talk
2 about public access. And I certainly share your belief
3 that part of your responsibility is to promote public
4 access, but I really don't think the issue here today is
5 about public access. It's about balancing public versus
6 private interests.

7 The only difference between the owner of a
8 mooring and the lessee of the mooring is that the owner
9 paid for it and the lessee got it off the waiting list.

10 And I think it's important that the Commission
11 realize that this is not an annual lease to somebody that
12 came off the waiting list. Many of the people that have
13 leased moorings in Catalina have been leasing the same
14 mooring for 40 years. So you really are not increasing
15 public access by transferring it from a private individual
16 who paid for it to a private individual who got on a list.
17 You're just changing the person that has the first right
18 to use the mooring.

19 One of the things this Commission did in the
20 earlier lease, was mentioned earlier, was to say if the
21 lessee or owner of a mooring is not using it, the public
22 has the right to use it. In the past that was not the
23 case. And I think that's contrary to another speaker here
24 this morning. I think it's excellent that when I'm not
25 using my mooring, the public has the right to use it.

1 But I don't think it's fair to say, for your
2 staff to say, they're promoting the public interest by
3 taking away from one person and giving it to another.
4 Now, the staff also mentioned that well, we've had a lower
5 lease rate for the owners of these moorings since the last
6 lease. I believe it's \$100 a year less that I've been
7 paying.

8 If you take that for the 15 to 17 years of the
9 lease and you compare that to what the investment in these
10 leases were by the owners of these moorings, there's still
11 no way that we've been close to compensated for the value
12 of the tackle that we purchased.

13 And therefore, if you are going to take away the
14 private ownership, I think you have to address the issue
15 of compensation for the taking of that tackle.

16 I'm also concerned, and it's been brought up
17 briefly and Avalon only was mentioned, that your
18 Commission is treating the Catalina mooring owners
19 differently than others. If you look up and down this
20 State you've got private owners that have docs in front of
21 their houses and slips that are on the tidelands that
22 transfer freely, you've got private yacht clubs that
23 control slips and moorings and harbors up and down the
24 states that they transfer freely. And yet for some reason
25 we have decided that Catalina, the private owners should

1 not have this right to transfer. And I think you really
2 need to look at the equity in that.

3 I think if you're honest, you will have to reach
4 the conclusion that the public is not benefited by taking
5 away the private ownership and giving it to a person
6 that's signed up on a list. That person, as was
7 mentioned, may have been there 20 years.

8 So the majority of the population of this State
9 wasn't even here to sign up from that list. So somebody
10 who's a recent resident of California still has no right
11 to be the lessee of that mooring.

12 Finally, I think that it would be suggested to
13 you later that there's a wonderful opportunity to
14 compromise the interest here, if that's the right word,
15 and allow the private ownership to continue, while
16 creating a public benefit of significant dollar value.

17 And if you miss this opportunity, then those
18 public benefits and the contribution to the welfare of the
19 people of California is lost. So I ask you not to have
20 your mind made up, at this point. I think you're hear
21 today to hear testimony, and you hopefully will do that
22 with an open mind.

23 And I also ask you to look realistically at the
24 issues that are here. It's not public access. It's the
25 right of a private person to continue to own something

1 versus another private person to lease the same thing with
2 the public having the same right of access in either case.

3 Thank you.

4 (Applause.)

5 CHAIRPERSON BUSTAMANTE: Paul, the question was
6 raised that there are other facilities in the State of
7 California that we, in fact, do have control of, Avalon
8 being regulated under the City of Avalon. Are there other
9 facilities that are treated differently than Santa
10 Catalina.

11 EXECUTIVE OFFICER THAYER: I think the chief
12 difference here is that this is a set of moorings that's
13 not used for storage of the boat. And so I think in some
14 of the -- I'm not sure what the circumstances are in every
15 marina where slips -- how they're transferred. But the
16 reason the costs have gotten so high for transferring the
17 facilities here is because, again, the Commission has
18 adopted this policy of making the moorings -- of buying a
19 buoy or buying a sublease to be affordable, and that's
20 generated this tremendously long waiting list.

21 And so the individual owners of mooring buoys had
22 the opportunity to sell them at these higher costs,
23 because the Commission has decided that this is not like
24 every other mooring, and so we have, in effect, rent
25 control here.

1 CHAIRPERSON BUSTAMANTE: And the issue of
2 compensation is raised.

3 EXECUTIVE OFFICER THAYER: The Commission when it
4 acted in 1982 gave the tackle owners a choice, if they
5 wanted to remove tackle, they could do that. But if they
6 would prefer to stay there, they could keep it. I don't
7 know how much -- perhaps the Island Company could provide
8 some information about how much the tackle costs, but it's
9 nowhere near the 45 -- or the \$40,000 it is now -- that
10 those subleases are sold for.

11 That the value there is to be able to get the
12 sublease more rapidly, but I'm sure direct information
13 about that can be provided. But in short, the Commission
14 said if you want to keep your tackle there, that's fine,
15 but you'll only be able to transfer it once in the next 14
16 years.

17 And then after that, they can still keep the
18 tackle there. It's no longer owned by them, it's owned by
19 the State, and that's the situation we're in today. There
20 are no private owners out there today, but they will be
21 able to continue to use that tackle by renewing their
22 annual lease as long as they're alive, so we're not
23 kicking anybody off with any leases.

24 So they were given a lower sublease rent. They
25 were given the opportunity to remove their tackle. They

1 were given a final right of transfer. And those were the
2 methods that the Commission used previously to provide
3 them compensation for their tackle.

4 COMMISSIONER CONNELL: So are you saying,
5 following up on the Lieutenant Governor's question here,
6 that you believe that they have been fully compensated, is
7 that what I hear you saying?

8 EXECUTIVE OFFICER THAYER: That's correct. The
9 second thing about that -- the second thing to note is
10 that the Commission commonly, in its long-term leases,
11 provides for ownership of the improvements, as I think
12 occurs in other long-term land based leases, become the
13 property of the property owner at the end of the lease.

14 And so, for example, some of the oil facilities,
15 some of those others -- it's at our option to either
16 require the lessee to remove them at the end of the term
17 or to take ownership of them. It's at the Commission's
18 option. And so that provision is in this lease as it is
19 with most others.

20 COMMISSIONER CONNELL: As it would be in any
21 property lease.

22 EXECUTIVE OFFICER THAYER: That's right, the
23 longer term leases.

24 COMMISSIONER CONNELL: That is how it works in
25 any property lease. We deal with that matter all of the

1 time on the Board Of Equalization on property matters and
2 the evaluation of property. If you add value to a fixed
3 property as a result of installing an appliance or
4 lighting or whatever, you have one of two choices, either
5 you remove that item at the time that the lease is ending
6 and expiring and return the property to its original
7 condition or that additional improvement becomes the added
8 value of the property owner. That's a typical requirement
9 across the Board in any legal valuation of property. So
10 that would be no different here.

11 CHAIRPERSON BUSTAMANTE: Why then, as was
12 mentioned earlier, why is it that the leases are scheduled
13 for 20 years instead of for lower, like a five or ten
14 year?

15 EXECUTIVE OFFICER THAYER: The master leases
16 typically for marinas or for other facilities that have
17 fixed costs and organizations that have to be built up
18 often need to secure financing from banks. So in most
19 cases, we allow for those leases to be that period of
20 time.

21 CHAIRPERSON BUSTAMANTE: But in this case, we're
22 sole sourcing the contract. The financial availability is
23 already there. It is an atypical facility. Why wouldn't
24 we allow for the lease turnover to be quicker or that
25 those who are administering the lease would be looked at

1 over a shorter period of time rather than waiting ten
2 years before we even look at the change of either rate or
3 their management or the changeover of leases for the boat
4 owners.

5 EXECUTIVE OFFICER THAYER: There's nothing fixed
6 about either the lease term or the rent revision period of
7 time, and in some leases it's five years. And certainly,
8 if the Commission wanted to see a shorter period --

9 CHAIRPERSON BUSTAMANTE: Why are some five and
10 why are some --

11 EXECUTIVE OFFICER THAYER: I think in this case,
12 because things had already been connected -- those rates
13 had already been connected to the CPI, and that we had
14 some experience with this lease over a period of time, we
15 thought the rates, particularly since their percentages,
16 they're not fixed amounts, but percentages, so that as
17 income goes up our return goes up as well. So that
18 there's a correlation there.

19 Whereas, if we charged them, say, a flat rate --

20 CHAIRPERSON BUSTAMANTE: How long was the last
21 lease period?

22 EXECUTIVE OFFICER THAYER: Fifteen years.

23 CHAIRPERSON BUSTAMANTE: And the one before that?

24 EXECUTIVE OFFICER THAYER: Fifteen.

25 COMMISSIONER CONNELL: Is this a compounded CPI

1 adjustment? In other words, it kicks in regardless of
2 whether the lease is 15 years or is five. If it's
3 compounded, it wouldn't matter in terms of return to the
4 State, if we had a lease of five years, Cruz, versus 15.
5 If it's not compounded, I'd be very concerned we'd be
6 shorting ourselves dollars here.

7 EXECUTIVE OFFICER THAYER: I think it's
8 recalculated annually if the amount exceeds a certain
9 amount -- stop me if I get this wrong, Alan, then each
10 year the lease amount to the sublessees goes up by that
11 amount. If it's less than that amount, and it's not
12 raised in that year, but that's counted as part of the
13 next one, too, it's not like you've given it up.

14 COMMISSIONER CONNELL: I guess the question from
15 a mathematical viewpoint, you adjust the base every year
16 even if you don't raise the rent? Is the base adjusted
17 each year?

18 EXECUTIVE OFFICER THAYER: Yes. And the rent is
19 adjusted each year as well to the sublessee, so it's not
20 done every five years in terms of the sublessee. It's
21 done every year.

22 CHAIRPERSON BUSTAMANTE: It's done on both.

23 COMMISSIONER CONNELL: It is compounded.

24 Okay. Mr. Stein.

25 MR. STEIN: I'm going to defer to Mr. Whilden.

1 CHAIRPERSON BUSTAMANTE: Mr. Whilden.

2 MR. WHILDEN: I have copies of the briefing that
3 I'd like to present for you plus some other documents.

4 (Thereupon an overhead presentation was
5 presented as follows.)

6 MR. WHILDEN: Please don't be alarmed about the
7 size of that package, I'm going to be brief. But I am
8 speaking also for some other people in the audience who
9 chose not to speak. And if I could, could I have a show
10 of hands of the people who are tackle owners who are here
11 today.

12 (Hands raised.)

13 MR. WHILDEN: Many of them have chosen not to
14 speak, but have asked me to make this presentation.

15 I'd like to make a couple of observations.
16 First, the Island Company and its staff, I think, does a
17 great job. The discussions are easy to talk about when
18 you are thinking about a nice warm summer day, but one
19 should be on the island when there's a storm, and boats
20 are tearing up their moorings.

21 These are exposed coves in Santa Anna conditions,
22 very unsafe. And the people on the shore who operate the
23 shore boats are out there in their boats saving mariners
24 and saving their property. So it's a wide range of
25 activities over there, and the Island Company, I think,

1 does a phenomenal job with very dedicated people.

2 Secondly, I'd also like to commend the staff. We
3 have been working with them over a number of years, Phil
4 Stein and myself, who deferred, with the support of the
5 other owners of the tackle here. And the staff has been
6 uniformly informative, helpful to us, and in everyway
7 tried to facilitate the discussions that we've had. I
8 greatly appreciate that, Paul, for you and your staff.

9 And what we've come down to is we have basically
10 an honest difference of opinion in terms of what should be
11 done here.

12 If I could have the next slide, please.

13 --o0o--

14 MR. WHILDEN: I'll try not to repeat things that
15 you're already familiar with. But the basis of our
16 proposal is that tackle-owned moorings outside of Avalon
17 be freely transferable during the life of the current
18 lease.

19 We would propose to set up fees on initiation of
20 this right again and transfer of fees. We think we could
21 generate about a million dollars in the first year and
22 about \$150,000 annually thereafter. And that these funds
23 are vitally needed for the public trust on the island of
24 Catalina.

25 And I'll come to that with the second slide.

1 effort to do --

2 COMMISSIONER CONNELL: I would ask for every
3 penny.

4 (Laughter.)

5 EXECUTIVE OFFICER THAYER: 6217 talks --

6 COMMISSIONER CONNELL: Wouldn't you insist? I
7 think the Governor would insist that the Controller sweep
8 all accounts. I mean that was my last directive. I'm to
9 be sweeping every account in the State and putting it into
10 the general fund as we do have this little fiscal burden
11 that is upon the State now.

12 So I can't imagine that we would be sitting there
13 with funds sitting in an account that wouldn't be
14 transferred into the general fund immediately. We sweep
15 every 30 days, so these funds would be transferred into
16 the general fund.

17 It would then require budgetary action as part of
18 the annual budget to reallocate these dollars. It would
19 have to be part of the budget bill, the trailer bill in
20 order to reallocate these dollars out to any kind of use
21 on an Avalon or Catalina.

22 ACTING COMMISSIONER PORINI: And I think it would
23 require a statutory change.

24 EXECUTIVE OFFICER THAYER: That's correct. The
25 other barrier is even if there's some way to do it

1 administratively, the Commission would have to decide that
2 the uses proposed are consistent with the public trust.
3 And although there are some facilities that are part of
4 the hospital that perhaps could be found in terms of the
5 diving bell and that kind of thing.

6 Otherwise a hospital is a municipal use, which
7 like schools or like condominiums or city halls generally
8 is not allowed to either be on public trust lands or to be
9 funded from the public trust.

10 COMMISSIONER CONNELL: Yeah, but I don't think we
11 even get to that point. My point is that it would go to
12 the general fund and it would be then seen as part of the
13 general revenue flow to the State. It would have to be
14 reallocated at the time of budgetary, you know, decisions
15 of the Legislature and the Governor.

16 CHAIRPERSON BUSTAMANTE: I apologize for the
17 interruption. I wanted to make sure we clarified that
18 point.

19 MR. WHILDEN: Absolutely. It's very important.

20 CHAIRPERSON BUSTAMANTE: Go ahead, sir.

21 MR. WHILDEN: I would reiterate the one point and
22 that is more than half of the users of the municipal
23 clinic are actually visitors to the island who all come by
24 waterborne means, whether that would help in the legal
25 situation or not, I'm not sure.

1 Incidentally, there are about a million visitors
2 a year to the island of Catalina per the visitors'
3 statistics. And of those million visitors about 800,000
4 come by ships and tours, and then about 200,000 come by
5 private boats and some private airplanes. The need there
6 is clearly great for health care, for emergency services.
7 The people do a phenomenal job over there.

8 The dive chamber itself is staffed by volunteers.
9 When a diver gets in trouble, the volunteers leap into
10 work and so on. It's a remarkable community over there.
11 It's really a great place to go.

12 And, of course, there's a real need for the
13 workers of Catalina as well, the service workers of which
14 there are many.

15 Now, I'd like to go to my next slide.

16 --oOo--

17 MR. WHILDEN: We make the point here that we
18 presented a preliminary program plan to you.
19 Participation in the program is voluntary for tackle
20 owners. I'm not sure all will take advantage of this.
21 They may or they may not. Not everyone incidentally has
22 family to pass their moorings on to.

23 In fact, a number of people over the past few
24 years have spoken to me and said will I be able to sell my
25 mooring, either my children are not interested in boating

1 or I have no children, and I would like to get some value
2 from my State from this asset because I'm not a wealthy
3 individual. So I think that's an important point to take
4 here, but not all will take it, and as a consequence, some
5 moorings even now will continue to revert to the wait list
6 under our proposal.

7 Now, three special fees would be assessed. We
8 described those in the detail in the back of the proposal
9 that there would be a setup fee and annual maintenance and
10 a fee of transfer as is done in Avalon. There would be no
11 change, as bullet three suggests, in the regular annual
12 maintenance fee that we all pay. And the regular annual
13 maintenance fee is somewhere between \$1,000 and \$2,000.
14 And what you're doing for this \$1,000 to \$2,000 fee that
15 you're paying is getting the right to reserve a mooring
16 for maybe ten or 15 days a year, a very interesting
17 financial arrangement there.

18 In this particular case, if you were to agree to
19 this to be done on the Island of Catalina, Mr. Doult has
20 agreed that the lessee would agree to administer the
21 program at no cost. If that's not permitted by the Code,
22 then that's a moot point.

23 And obviously the details of the fee plan would
24 be negotiated with the State Lands Commission staff.

25 If I could go to the next slide, please.

1 --o0o--

2 MR. WHILDEN: It's pretty apparent that the
3 benefits are obvious health care services on Catalina to
4 save lives and increase the number of visitors. If
5 there's not adequate services there, the tour ship cannot
6 stop. They cannot bring their passengers ashore and that
7 would be certainly a detriment to the economy of Avalon.

8 Our program certainly solves the inconsistency of
9 sublessee treatment by the State, and the issue of who
10 actually owns our tackle. I don't think anybody wants to
11 take our tackle away. And if they said to me you could
12 have your tackle, I'd say no it's yours, I'll give it back
13 to you.

14 On the other hand, it never has been clarified as
15 to who really owns that tackle other than ourselves. The
16 funds and appointments made by Bill Davidson come from a
17 completely new source of income that we're proposing that
18 doesn't exist today. It's a substantial amount of money.
19 And if we don't take advantage of this, it will be lost
20 forever.

21 And one other point I would make is that people
22 involved here, as well as others, are active supporters of
23 this island giving to it many times, joining the
24 conservancy, real contributors to the future of that
25 island and the ongoing operations.

1 Now, if I could go to the next slide.

2 --o0o--

3 MR. WHILDEN: I think that you've recognized --

4 CHAIRPERSON BUSTAMANTE: Before you go to the
5 next slide, you indicated earlier that the tackle was the
6 owners, and that unless they decide to leave it, that then
7 it becomes a property of the State.

8 Let's put it this way, can you provide a clear
9 letter of who owns those moorings and what tackle and
10 equipment belongs to whom so that the owners have a clear
11 understanding of what that is?

12 EXECUTIVE OFFICER THAYER: The tackle, as a
13 result of the operation of the Commission's previous
14 lease, the '82 lease, became owned by the State, I'm going
15 to ask Scott, Alan Scott, to confirm this, because he does
16 the day-to-day stuff on this lease, became the property of
17 the State December 1st, 1995.

18 CHAIRPERSON BUSTAMANTE: What about that
19 equipment that was purchased after?

20 EXECUTIVE OFFICER THAYER: No equipment has been
21 purchased after that, except for maintenance items that
22 was purchased by -- that were purchased by the Island
23 Company as part of the routine maintenance, not only these
24 buoys but the other buoys that they owned.

25 CHAIRPERSON BUSTAMANTE: So Mr. Whilden, nor any

1 of the other owners would have purchased moorings or any
2 other tackle equipment of any kind?

3 EXECUTIVE OFFICER THAYER: No, not since 1995. I
4 mean --

5 MR. WHILDEN: Let's see, we've had to, in my own
6 case, I think pay for a tackle upgrade where I had to add
7 weights to my mooring. I think I paid for those weights.
8 Doug, do you recall?

9 MR. ODEN: Not, since '95.

10 MR. WHILDEN: Not since '95, I didn't get charged
11 two years ago? I thought I did.

12 MR. ODEN: Prior to '95 we did.

13 MR. WHILDEN: That's right.

14 CHAIRPERSON BUSTAMANTE: I just want to make that
15 there's a question in the minds of the owners that it's
16 resolved. I mean, it's silly not to have it resolved.

17 COMMISSIONER CONNELL: Can I just --

18 CHAIRPERSON BUSTAMANTE: We have to have a
19 complete record, so if you'd like to come up and make the
20 comment quickly.

21 COMMISSIONER CONNELL: Mr. Chair, I'd like to ask
22 Dick a question before he leaves.

23 CHAIRPERSON BUSTAMANTE: Why don't we have the
24 gentleman make his comment quickly.

25 MR. DAVIDSON: The name is William Davidson

1 again. I asked the Catalina Island Company for such a
2 letter when they came out with the revised lease form
3 saying show me that the moorings are no longer owned by
4 us, and I will probably accept that.

5 They did not. They changed the lease form back
6 and gave us the old lease form we had before. The prior
7 lease says the right of transferability stops, but it says
8 nothing about the ownership of the mooring tackle. So I
9 think if you conclude that we do not own the mooring
10 tackle, then we're entitled to a letter saying the State
11 now owns that mooring tackle and we can do with that
12 letter what's in our best interests to do.

13 CHAIRPERSON BUSTAMANTE: Yeah.

14 EXECUTIVE OFFICER THAYER: We'd be glad to
15 provide that.

16 COMMISSIONER CONNELL: Now, I have three
17 questions.

18 CHAIRPERSON BUSTAMANTE: We'll follow-up on
19 making sure that his --

20 EXECUTIVE OFFICER THAYER: Absolutely.

21 COMMISSIONER CONNELL: I have three questions.
22 It appears going back to your letter dated November 19th
23 that you've raised three issues. You discount the issue
24 of public access. Although, I think myself and other
25 Commissioners do think that that is an issue. We, I

1 think, would respectfully disagree with you on that.

2 The second issue is the inconsistency of the
3 subleases as they relate to other parts of the State.
4 And, Paul, are you saying that you either are not certain
5 that they're inconsistent or you don't think they're
6 inconsistent with other leases of the State.

7 EXECUTIVE OFFICER THAYER: I don't think they're
8 inconsistent. But the primary reason that that is true is
9 that there is not, in effect, rent control on other
10 leases. That's what happened here is that the State has
11 said that they want to make these buoys affordable and
12 therefore it's restricted the amount that the Island
13 Company can charge for the subleases. The Island Company
14 could make a lot more money if we let them do that.

15 And so, as a result, this lack of transferability
16 is linked to that, is taking away the transferring,
17 because what had happened was the secondary market had
18 sprung up to --

19 COMMISSIONER CONNELL: It placed the inefficiency
20 of the rent control situation -- so is the problem of
21 inefficiency? There's a, you know, black market for
22 apartment units in a rent controlled environment as well.

23 EXECUTIVE OFFICER THAYER: It's exactly the same.
24 In other places there may be transferability and there may
25 be sales occurring, but the rates haven't gotten

1 comparable to this.

2 COMMISSIONER CONNELL: The third issue was this
3 issue of benefits, which is a novel thought. I mean, I
4 must tell you I admire the fact that you -- my children go
5 to camp on Catalina, so I have a personal interest in
6 always making sure the health care is adequate on the
7 island where my children go to camp, but I then would like
8 to go back to the fact that I don't think we have any
9 legal way of maintaining a fund even if we were to impose
10 this fee of keeping it on the island of Avalon.

11 That just isn't the way the State's finances
12 work. You know, we have a singular general fund. And
13 unless it is an appropriate and segregated account, which
14 has to occur either through an initiative like the water
15 fund or through statutory action of the Legislature, and a
16 signature by the Governor, we don't run segregated
17 accounts. It just isn't done.

18 So unless there would be a legal reason why this
19 would become a trust fund, under the Lands' Commission
20 account, this money would be swept into the general fund.
21 And I don't see anyway that this could become a trust
22 fund. I mean, I don't see how we could do that.

23 So it would seem to me that your generous offer
24 would not -- all you would be doing is enriching the
25 general fund. And I personally hate to see people

1 imposing a fee on themselves to enrich the general fund.
2 It becomes like a tax that only you bear, because you
3 won't get the benefit of the services that you hope could
4 be delivered, as a result of the tax.

5 So while it's a very novel and generous idea, I
6 don't think it would result in improved benefits
7 unfortunately at Catalina.

8 MR. WHILDEN: I can't respond to that. And
9 unfortunately our attorney, John Brisco, could not be here
10 this morning. He is San Francisco available by phone. I
11 can call him. He thought he had some ideas. I wonder if
12 the staff and our attorney might not be able to solve that
13 problem in some way though.

14 COMMISSIONER CONNELL: I don't think it can be
15 solved by the attorneys. I think it's a financial -- the
16 way the accounts and budget of the State of California are
17 set up. If that was true, every department could set up
18 subaccounts, and that would be a nightmare given, you
19 know, the over 400 agencies and departments that we have.

20 That's why we have to, for obvious efficiency and
21 management reasons, sweep the money into a general fund,
22 so that we can maintain control over cash flow for the
23 State. I don't think that there's anyway you can do this.
24 I mean, do it on your own, but you know --

25 MR. WHILDEN: If I could comment on your three

1 points, by the way, I didn't discount public access. I
2 believe public access is well maintained and protected.
3 And I'll come to that in a subsequent slide.

4 And although, I don't want any new taxes, I do
5 think that, from what I read in the newspaper, the State
6 does have need for funds. So we're offering up these
7 funds to intelligent public use, public trust use.

8 If I could now just continue with a couple of
9 points here. We've talked about subleases being salable
10 in other -- and tackle being salable in other areas of the
11 State. Clearly, there's a table volume that I sent to
12 you -- the proposal I sent to you that shows that. And I
13 think we are being treated disparately here, although Paul
14 seems to think that it's reasonable.

15 I would also make a second comment here and that
16 is that although the statement is made that there was a
17 great deal of public input in 1981 or 1982 about these
18 moorings being sold privately, our recollection differs.
19 We don't recall that. Many people were in that hearing,
20 and what they heard is a great deal of contention in that
21 hearing over should a chicken company run these moorings
22 from a barge? Are there stealth moorings that someone is
23 running and not generating the revenue for the State.

24 I'm told that for three weeks there was a delay
25 in the hearings while divers went to look for stealth

1 moorings. I wasn't there, but the point of all of that
2 was that there was extraordinary contention in these
3 hearings. This decision came through somewhere in the
4 midst of that contention.

5 I don't think the public record clearly states
6 that there was a great deal of public uproar over this. I
7 think there was many other issues that really took the
8 headlines there.

9 Finally, I would make the point that no
10 compensation has been offered for the loss of our tackle.
11 I have never recognized, in any document that I've seen,
12 that my tackle now belongs to the State.

13 Instead, I read in the write-up here something
14 that I think is erroneous, and that is that we were
15 compensated for our tackle by a difference in the mooring
16 rate versus -- for tackle owners versus lessees. That
17 difference was always explained to us in that we were
18 responsible for our own maintenance.

19 So as Doug just said a moment ago prior to 1995
20 other than at the annual rigging time, if I needed a
21 repair on my mooring or if I needed to add new weights, I
22 had to personally pay for that as a tackle owner. And
23 that difference was about \$100 a year and that was the
24 difference. It was not to compensate me for my tackle, I
25 believe. Doug; is that correct?

1 MR. ODEN: Yeah.

2 MR. WHILDEN: That was my understanding at least.

3 MR. ODEN: Mooring weights only. You had to pay
4 for it if you wanted to have your weights.

5 MR. WHILDEN: So I think we would say that no
6 compensation has ever really been offered for the loss of
7 our tackle and the assignment, right, which we had
8 purchased. And as various people have said there is a
9 fair amount of money that has been paid for these assets.

10 I'll push on here so that we can continue the
11 discussion.

12 --o0o--

13 MR. WHILDEN: In my summary chart, there are two
14 key points I would like to make. One is related to the
15 public access, Commissioner Connell. We believe that the
16 public access is well served. The harbor patrol does a
17 very fine job. Catalina is interested in listening to the
18 VHF radio over there, while they work mightily to be sure
19 that people are given mooring assignments on busy weekends
20 and so on.

21 As Mr. Arntzon said in the beginning, he used his
22 mooring 17 days last year. I used my mooring three days
23 this year. Mr. Stein, a year ago used his mooring not at
24 all. His boat was in Mexico. My guess is that the
25 typical sublessee uses his mooring or her mooring seven to

1 15 days a year, leaving it open 350 days plus a year.

2 I don't think there's any question that there's
3 good public access for daily rental. The question then
4 comes down to who should have control of being able to
5 reserve a mooring. Should it be someone who's paid for
6 that asset? And Bill Davidson very wisely put, "or
7 someone who has now given it." It's important to
8 recognize the numbers here.

9 There are about 688 moorings, as I understand it,
10 that generate revenue, about 160 of those, I'm told now,
11 are considered tackle owned moorings, which means there's
12 528 available for other lessees who come from the wait
13 list or wherever. If you were to reject our proposal,
14 indeed some moorings would be added to the wait list.
15 Those moorings that would be added to the wait list would
16 probably be about five a year versus generating a million
17 dollars that could be used here for the public benefit.

18 We think that that's really a negligible benefit
19 over a period of time. We think that the public access,
20 as described by people being able to go over there and
21 rent a mooring, is clearly protected. And the only
22 difference is who gets to reserve the mooring out of a
23 total of about 688 moorings.

24 The other point that's on the summary chart here
25 is that if the tackle owner of the mooring is

1 relinquished, it goes to someone else without
2 compensation. I've emphasized that a couple of times. We
3 think this is really not fair.

4 If I could now go to my final chart which is
5 recommendations.

6 --o0o--

7 MR. WHILDEN: We think the proposal makes
8 economic sense, is a new source of funds and treats the
9 original purchasers fairly. It's interesting, we're
10 looking for a right that it seems to us that other people
11 in the State have, but we'd like to get it and we're
12 willing to pay for that right, and that's the essence of
13 our proposal. And, Ms. Connell, you did recognize indeed
14 we are willing to pay.

15 We think that a proposal, if it could be directed
16 to Catalina, does significantly benefit the island, which
17 serves all of southern California, 15 million or the 30
18 million people of southern California go to this island.

19 We think that the public access in the broad
20 sense is protected. We would say let's proceed with the
21 planning of incorporating this into the lease, which we
22 otherwise have no objection to, Mr. Chairman.

23 We'd like to incorporate this into the lease.
24 We'd like to say please don't treat us differently and
25 allow us to participate in this plan.

1 That's it.

2 COMMISSIONER CONNELL: Thank you. Why don't we
3 have rent control, as you term it, at these other moorings
4 throughout the State?

5 EXECUTIVE OFFICER THAYER: My understanding is
6 that the need hasn't arisen as in places like Catalina.
7 Catalina is a destination point in southern California
8 where the demand is great enough that people are willing
9 to spend the amount of money that they have in the past
10 for these buoys from the former owners here as well as in
11 Avalon.

12 We just haven't run into that problem. There
13 aren't that many other circumstances where there are
14 destination mooring buoys. I'm thinking in San Francisco
15 at Angel Island there are destination buoys there where
16 people go. And I think that's --

17 COMMISSIONER CONNELL: What about Tahoe?

18 EXECUTIVE OFFICER THAYER: There's a fair number
19 of owners who are there and some marinas, but that is a
20 potential place that we might have that problem. There
21 are these property owning associations that --

22 COMMISSIONER CONNELL: We've had the problem
23 before at Tahoe.

24 EXECUTIVE OFFICER THAYER: Yes. And there are
25 some illegal buoys in Tahoe that are going to be an

1 enforcement problem for the Commission for us in the
2 future, but that's a good example of a place where the
3 same situation may eventually exist. The difference, of
4 course, there is that in southern California most people
5 already have a place where they have their boat. They
6 either have it in the yard or frequently it's in a slip.
7 And then they're going across the bay to Catalina.

8 Whereas in Tahoe, people who launch -- you either
9 launch a boat or trailer it up there, and that puts a
10 limit on the size or you already have a place where you
11 have a legal buoy or a legal slip to park your boat, so
12 there isn't as much visitor destination problems of having
13 a separate set of buoys where people are traveling to.

14 COMMISSIONER CONNELL: Because access is more
15 limited.

16 EXECUTIVE OFFICER THAYER: That's right.

17 CHAIRPERSON BUSTAMANTE: Okay.

18 MR. WHILDEN: Thank you very much.

19 CHAIRPERSON BUSTAMANTE: Bob Graham.

20 (Appause.)

21 Mr. Trang and then Richard Landes and Rose Ellen
22 Gardner.

23 MR. GRAHAM: Thank you. I'm Bob Graham. I'm a
24 mooring sublessee. I generally agree with a good deal of
25 what was said, but I have a few more comments I'd like to

1 make.

2 Again, I think the Island Company, the mooring --
3 the Catalina Mooring Association, or whatever they call it
4 that maintains the mooring, they do an excellent job. I
5 have no argument about that. I don't think there's any
6 question that the organization that's in place, the Island
7 Company and the conservancy, should be renewed as the
8 lessees from the State of California. There's really no
9 argument about that.

10 The basic argument has been, in my mind, is
11 whether or not we're dealing with mooring tackle owners
12 properly. As one, I speak from some experience. When I
13 first started going to Catalina, as a youngster, and I'm
14 75 now, so that's some time ago, you either put down an
15 anchor or there were occasional buoys you could tie up to.

16 When I bought my mooring in 1976, 25 years ago, I
17 bought it because going to the island meant you either
18 were a poacher or an owner. And if you were a poacher,
19 you were subject to being thrown off the mooring you
20 picked up. If you didn't own it and the mooring owner
21 arrived, he could kick you off at night any old time.

22 But it didn't cost anything to the poacher to use
23 a mooring. Now, that's not true in Avalon, I'm sure. But
24 on those places in the island where we went to to be
25 boaters, access was totally free. You picked up a mooring

1 and it didn't cost anything. Now, a little while later
2 on, we were given a different kind of a lease structure
3 where if we would allow the Island Company or whoever was
4 operating the moorings at the time, to allow them to rent
5 out our moorings, then they would give us a lesser cost to
6 maintain the mooring. So they were encouraging us to let
7 them rent our moorings out at no compensation to us.

8 So those of us who decided what we really want to
9 do is to keep these moorings free for public access said
10 no we'll pay the higher price, so that the public had
11 access for free. That no longer exists. There are no
12 free moorings, and there's no free lunch at Catalina, but
13 there was before they decided to start having people allow
14 their moorings to be rented out.

15 Now, we don't have a choice. You go to Catalina,
16 either you own your mooring and you call ahead and say I'm
17 going to be there or you pay for it. And I think if you
18 talk about fairness, if you talk about public access,
19 that's what they have killed is really public access,
20 because Joe Six-pack can't afford to come over there and
21 spend \$16 or \$20 a day just to hang his boat on a mooring.

22 Now, there are some kind of interesting things
23 that have been spoken to. And it appears that there's a
24 great interest on the part of our Commission in enhancing
25 whatever they can, the budgetary situation in California.

1 COMMISSIONER CONNELL: No, no. You got me wrong.
2 I don't think you should have to enhance the budgetary
3 situation. Why should you, out of all Californians, of
4 which there are 32 million of which last count 16 million
5 paid some form of taxes, why should you have to pay
6 anymore than anyone else.

7 My concern is I think you have a novel proposal
8 here, but the money isn't going to go back to Avalon. The
9 money is going to come to the general fund of the State of
10 California and you will not see an enriched benefit in
11 Avalon.

12 MR. GRAHAM: I think I'm addressing that. If the
13 funds go to the State of California, it helps everybody in
14 California, but those funds won't go to California if the
15 proposal that Mr. Whilden has put forward is rejected.

16 COMMISSIONER CONNELL: Yes. I agree the funds
17 would come to California, but the second half of Mr., is
18 it, Whilden?

19 MR. WHILDEN: Whilden.

20 COMMISSIONER CONNELL: Whilden's proposal is that
21 the money would be reverted back to Avalon to help the
22 hospital and the dive chamber and the other facilities
23 that exist on Avalon. That half would not happen. I mean
24 we're always happy to take more money in California. The
25 problem is we wouldn't be directing it back to Avalon.

1 MR. GRAHAM: I understood what you said, but the
2 State of California would benefit from this program as
3 proposed. I don't have anything more to say.

4 CHAIRPERSON BUSTAMANTE: Thank you, sir.

5 (Applause.)

6 CHAIRPERSON BUSTAMANTE: Mr. Trang.

7 MR. TRANG: My name is Frank Trang, I'd just
8 defer to Mr. Whilden's presentation.

9 CHAIRPERSON BUSTAMANTE: Thank you, sir.

10 Mr. Landes.

11 MR. LANDES: Good morning, Mr. Chairman and
12 Members of the Commission. Thank you for the opportunity
13 to address you on this matter. My wife and I own a
14 mooring in Cherry Cove, and her family has had an interest
15 in that mooring since the mid-1950's. I wanted to make my
16 presentation very brief this morning in light of the
17 comments made by Mr. Frost, Mr. Davidson and Mr. Whilden.

18 I disagree with the staff conclusion that
19 compensation has been paid to the owners of the moorings.
20 I think the moorings obviously need to be looked at as an
21 asset in place with value in place not merely salvage
22 value, and this is a common question in appraisal practice
23 as you well know.

24 I won't belabor that point, but I simply wanted
25 to raise the issue that it's not merely salvage value that

1 we're talking about here. As many of the other speakers
2 have mentioned, it is a form of ownership, which is very,
3 very difficult to describe, but nevertheless it is
4 something in that bundle of sticks, that bundle of rights
5 that constitutes ownership of any asset.

6 One of the things that's included in that bundle
7 of rights is the right to pass along that asset to your
8 family, to your children and possibly to convey it. I
9 also wanted -- before I belabor that point, I wanted to
10 mention that there's comments about certain rights that
11 were extinguished as of 1995 at the conclusion of the
12 prior -- perhaps it was 1996 at the conclusion of the
13 prior 15-year lease.

14 I would point out that we are and have been in a
15 holdover position and continue, at this stage, to be in a
16 holdover position. And I would argue that all the
17 provisions of the lease were held over and none of them
18 expired at the conclusion of the base term. So that's
19 another point that might be looked at. I believe many of
20 those rights are being held over as well as the basic
21 terms.

22 My point is that there should be a recognition of
23 the ownership rights. There should be an ability to pass
24 those along to family members. And if there is a right of
25 conveyance, which I believe there should be on these, I

1 personally would not be opposed to some type of transfer
2 fee as Mr. Whilden mentioned. I understand the
3 difficulties that Commissioner Connell has raised about
4 not going to Avalon.

5 It seems to me that we're talking here of the
6 tidelands asset. It seems to me this is tidelands revenue
7 in a sense. It seems to me that, in fact, with some
8 effort, the funds could be set up to be retained as
9 tidelands funds, perhaps they could be -- portions of them
10 could be in turn used for Department of Boating and
11 Waterways Grants or something analogous to a tidelands,
12 and within the scope of a tidelands purchase.

13 So if the Avalon proposal doesn't work, my point
14 is that I would ask you and the staff to be creative and
15 see whether we can find a suitable use for these funds
16 other than Avalon hospital that would promote tidelands
17 uses, that would promote boating, and at the same time
18 recognizing the possible revenue that Mr. Whilden
19 mentioned to you that could be raised from either a flat
20 fee to be charged at the time of transfer or a percentage
21 against a minimum fee.

22 And those monies could be used for tidelands
23 trust purposes. I would encourage you to consider that
24 alternative. But my main point in appearing here, like so
25 many other people in the audience today, is to express to

1 you our very deep feeling that this is an ownership right.
2 We purchased it in various types, various ways and various
3 years.

4 It may not fit the norm, but just like at Big
5 Bear Lake, there's some people who have cabins on what
6 used to be forestry land. I mean there are these historic
7 things that do arise and that does not invalidate the fact
8 that they are property rights. And I would respectfully
9 ask you to recognize that in your consideration.

10 Thank you very much.

11 (Applause.)

12 CHAIRPERSON BUSTAMANTE: Paul, for the purposes
13 of clarification, can you give us a little clarity on what
14 is purchased when they have both purchased ownership, what
15 is it that they've actually purchased?

16 EXECUTIVE OFFICER THAYER: I think it's probably
17 in the past, and the transfers that occurred under the
18 most recent lease up until 1996 involve purchase of the
19 tackle, but predominantly, it was the purchase -- the
20 amount of money reflected the value of a sublease that
21 could be obtained immediately.

22 CHAIRPERSON BUSTAMANTE: So that area of water
23 was not purchased?

24 EXECUTIVE OFFICER THAYER: It wasn't purchased,
25 but they purchased the sublease. They purchased the

1 transfer --

2 CHAIRPERSON BUSTAMANTE: They didn't purchase, in
3 perpetuity, the area in which water flows back and forth
4 through? They don't purchase that area forever?

5 EXECUTIVE OFFICER THAYER: I think that under the
6 existing procedure that was established before '82, that
7 when they purchased a mooring, they also purchased a
8 sublease, and a sublease that could be transferred in the
9 future to whoever they wanted to transfer it to.

10 And so I think their primary value of what they
11 purchased was something under \$10,000 worth of tackle.
12 And people in this audience know much better than I how
13 much it costs at the time they were put in and that kind
14 of thing. And the rest of the money was for public -- a
15 right to use public lands.

16 CHAIRPERSON BUSTAMANTE: So what they purchased
17 were moorings or property, that type of property, that
18 type of tackle, and that tackle, those moorings, have
19 value at the end. The issue of whether they are an asset
20 and whether they should be looked at in terms of their
21 valuation is either salvage or some other type of cost.

22 EXECUTIVE OFFICER THAYER: That's right.

23 CHAIRPERSON BUSTAMANTE: And the evaluation of
24 that shouldn't it be for the actual value and there should
25 be an opportunity whether or not the Island Company says

1 we'll give you X amount because the value of those costs
2 or if the offer is not -- the owner's -- I mean, it seems
3 like we're taking over the moorings and the equipment,
4 then we should pay something other than just some salvage,
5 is what the term was, some salvage of cost.

6 CHIEF COUNSEL RUMP: If it's helpful in reviewing
7 some of the records of this item when it came up last
8 before the Commission, and particularly as the
9 Commissioners were going over the specific details, their
10 meeting of December 17th, 1981 addresses some of that
11 concept.

12 Maybe if you hear a little bit of what they were
13 talking about at the time. Commission Morgan, which was
14 the representative for Finance says, "We struggled at the
15 last meeting to try and resolve the difference between the
16 public's right to use this facility and the rights of
17 people who I consider to be trespassers."

18 So these were dropped without permission from
19 anyone. So, in effect, her consideration said that
20 basically, "...but they've been there a long time. And in
21 my feeling allowing these people an opportunity to have a
22 lease, a guaranteed right of a lease, if they wanted to,
23 that we extended ourselves sufficiently to take care of
24 their concerns."

25 So from her perspective these people were given a

1 right and a benefit that perhaps they didn't have to buy,
2 have an opportunity, a lease or a sublease from the
3 Commission to begin with. And a lot of the things we're
4 talking about, compensation those clearly were items that
5 were discussed and considered.

6 In fact, the Commission was debating whether or
7 not to grant the transfer term of six years, 15 years
8 whatever. They finally decided on 14 years as
9 compensation in a way for those that made a purchase
10 somewhat without much to hang a property right on to give
11 them an opportunity to recapture that profit if they wish
12 to. So they were put on full notice of each annual
13 renewal that they had that right.

14 In fact, Chairman Cory said, "I'm willing to vote
15 for the 14 as long as we get it resolved that the future
16 Commissioners don't have the same problem we do. I'm not
17 denying your side of the argument. It's just that when I
18 meet with people who paid \$30,000 and give them a maximum
19 time to amortize it, which I consider to be a foolish
20 expenditure, that we provide more equity."

21 So it's precisely to the point what the
22 Commission tried to do previously to balance all of the
23 arguments we've heard today by giving them the opportunity
24 of a one-time transfer to reduce rental rate and also
25 giving them lease status, which they formally really had

1 historically.

2 CHAIRPERSON BUSTAMANTE: Commissioner Porini.

3 ACTING COMMISSIONER PORINI: Yes. So one of the
4 points that you made, people got notice every year, that
5 this 14 years was going to expire and when it was going to
6 expire?

7 CHIEF COUNSEL RUMP: That is correct.

8 EXECUTIVE OFFICER THAYER: It was part of the
9 renewal lease that they have to sign every year. And it's
10 stated that they had this last chance to transfer one more
11 time before the 14 years were up. And then that would be
12 the end of any opportunity to transfer. They weren't
13 going to get kicked off their buoys. They would continue
14 to have the ability to stay at that buoy, as long as the
15 current lessee held that lease, but they just wouldn't be
16 able to transfer it.

17 COMMISSIONER CONNELL: So they had been notified
18 for 14 years is what you're saying, since the previous
19 Commission -- actually, it's longer than that, because it
20 was a 14-year lease, plus, you know, a period of years
21 that's expired since then, so it's another five. So it's
22 actually about 19 years, 20 years, is that what you're
23 saying?

24 CHIEF COUNSEL RUMP: The lease term -- the
25 transfer termination rate was buy-in expressed in a number

1 of years. And the thought of the Commission was it was a
2 15-year lease. It gave them 14 years, because at the
3 termination of the 15-year period, they wanted no further
4 discussion about who could transfer and who couldn't.

5 So it wasn't continued over. That date it became
6 final, there were no more transfers after December 31st,
7 1995.

8 COMMISSIONER CONNELL: So 1995 was the final
9 date, everyone knew that at that time?

10 CHIEF COUNSEL RUMP: That's correct.

11 COMMISSIONER CONNELL: So any of the speakers who
12 have referenced any other understanding were misinformed
13 at the time they signed this?

14 CHIEF COUNSEL RUMP: Or not reading the various
15 things which they received annually.

16 COMMISSIONER CONNELL: So we have definitive
17 reason to believe that everyone who signs a legal
18 agreement here on a lease would be notified that that was
19 the condition at the time of the signature of the lease?

20 CHIEF COUNSEL RUMP: That was exactly what the
21 Commission wanted. That is exactly what was done.

22 COMMISSIONER CONNELL: So everyone in the
23 audience then would have known that they were signing that
24 kind of an agreement.

25 CHIEF COUNSEL RUMP: I would be shocked if they

1 didn't.

2 COMMISSIONER CONNELL: So that is our
3 understanding though, that people were so informed. So,
4 at that time, then they knew they did not own quote, "own"
5 any tackle, is that your position?

6 CHIEF COUNSEL RUMP: The ownership of the
7 tackle -- I'm looking at the lease document. There are
8 references that at the termination of the lease, it would
9 become the property of the State.

10 To be honest, I think this is a Red Herring
11 issue, because whether it's owned or not, what we're
12 talking about here is a transfer right. There is no
13 further transfer right whatsoever. So ownership of tackle
14 is a relatively minor matter. We can look into that
15 research, that would give them the definitive answer, but
16 ownership makes no distinction about transfer.

17 COMMISSIONER CONNELL: So the issue you're saying
18 is one of transfer, at this point?

19 CHIEF COUNSEL RUMP: That seems to be what the
20 essence of the proposal is is transfer right.

21 EXECUTIVE OFFICER THAYER: And that goes to the
22 question of the Chair about what was being bought when
23 they were doing this. It was a small amount of money was
24 being paid for physical improvement, and the rest of the
25 money was being paid for a sublease, a transfer or

1 sublease of State property public property.

2 COMMISSIONER CONNELL: And since 1995 that hasn't
3 been possible?

4 EXECUTIVE OFFICER THAYER: That's right. And it
5 was available only once previously to that, so for many --

6 COMMISSIONER CONNELL: So if we were to be voting
7 today on your staff recommendation, your argument would
8 be, and the Attorney General should speak to this, the
9 Attorney General's representative, that there would be no
10 taking and therefore no compensation; is that correct?

11 ASSISTANT ATTORNEY GENERAL HAGER: That's
12 correct.

13 COMMISSIONER CONNELL: So that it would be the
14 legal position of the State, that there is no taking and
15 no compensation if we take a vote on the staff position
16 today?

17 ASSISTANT ATTORNEY GENERAL HAGER: That's
18 correct.

19 CHAIRPERSON BUSTAMANTE: We have one last
20 speaker, Rose Ellen Gardner for brief remarks.

21 MS. GARDNER: Good morning. I'm Rose Ellen
22 Gardner, president of the Santa Catalina Island
23 Conservancy. And I would just like to speak just briefly
24 in support of the staff recommendation regarding the
25 lease. Over the past 26 years that the conservancy has

1 owned 88 percent of the island and 48 miles of coastline,
2 we have learned how important a well-run mooring operation
3 is to our efforts in carrying out our stewardship mission.

4 We feel that the lease you are considering today
5 provides for that operation. I am concerned somewhat that
6 if our relationship is terminated, there is no lease, that
7 there will be no service to the moorings such as shore
8 boat and trash pickup and collection, items like that.

9 I think that the issues that you're talking about
10 today, addressing mooring ownership are really separate
11 from a lease operation. And I'd like to urge that you
12 accept the staff recommendation.

13 Thank you.

14 CHAIRPERSON BUSTAMANTE: Thank you. Okay, we've
15 had nine people speak against and one person -- well, two
16 people kind of, two people for the administration.

17 Is there any other questions by the Commission?

18 Is there a motion?

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

21 COMMISSIONER CONNELL: I'll second.

22 CHAIRPERSON BUSTAMANTE: There's a motion and a
23 second for the staff recommendation on Item number 87.
24 Let the record show that it's a unanimous decision on Item
25 number 87.

1 We have one other item on, Item number 89. Can
2 we postpone that? Do we have to do that today?

3 EXECUTIVE OFFICER THAYER: Yes, sir, we may.
4 That's an informational item about our audit program, but
5 I'm sure we're capable of giving that at a future meeting.

6 CHAIRPERSON BUSTAMANTE: Yes. Why don't we go
7 ahead and do that. I don't have any other items. Do we
8 have a closed session or anything?

9 EXECUTIVE OFFICER THAYER: No, sir. There is not
10 a closed session today.

11 CHAIRPERSON BUSTAMANTE: Okay. Just a comment.
12 It sounds as if there are some folks here who believe that
13 they have perhaps some legal recourse. I would hope that
14 staff would provide them with all documents, all
15 clarifications to hopefully not involve themselves in a
16 legal matter. But if they feel that they have a legal
17 course to follow that we are supportive and cooperative
18 with their efforts to give them any information that is
19 public information that they should have.

20 EXECUTIVE OFFICER THAYER: Yes, sir.

21 CHAIRPERSON BUSTAMANTE: Okay. If that's it, if
22 there's nothing else, meeting adjourned.

23 (Thereupon the State Lands Commission
24 meeting adjourned at 11:45 a.m.)
25

