MEETING

STATE OF CALIFORNIA

LANDS COMMISSION

CALIFORNIA STATE LANDS COMMISSION

100 HOWE AVENUE, SUITE 100

SACRAMENTO, CALIFORNIA

THURSDAY, NOVEMBER 13, 2003

11:00 A.M.

Michael Mac Iver

Shorthand Reporter

ORIGINAL
APPEARANCES

Cruz Bustamante, Chairperson (via telephone)

Steve Wesley, State Controller, represented by Cindy Aronberg (via telephone)

STAFF

Paul Thayer, Executive Officer (via telephone)

Jack Rump, Chief Counsel

ALSO PRESENT

Alan Hagar, Deputy Attorney General (via telephone)
# INDEX

<table>
<thead>
<tr>
<th>Item</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Call to Order</td>
<td>4</td>
</tr>
<tr>
<td>Approval of Minutes</td>
<td>5</td>
</tr>
<tr>
<td>Consent Calendar C2</td>
<td>5</td>
</tr>
<tr>
<td>Regular Calendar</td>
<td></td>
</tr>
<tr>
<td>Item C1</td>
<td>6</td>
</tr>
<tr>
<td>Dave Cornman</td>
<td>16</td>
</tr>
<tr>
<td>Bill O'Brien</td>
<td>23</td>
</tr>
<tr>
<td>Dan Hall</td>
<td>25</td>
</tr>
<tr>
<td>Richard Cunha</td>
<td>30</td>
</tr>
<tr>
<td>Robert Clark</td>
<td>35</td>
</tr>
<tr>
<td>Lou Franchimon</td>
<td>47</td>
</tr>
<tr>
<td>John Andres</td>
<td>48</td>
</tr>
<tr>
<td>Matt Kelly</td>
<td>49</td>
</tr>
<tr>
<td>Adjournment</td>
<td>61</td>
</tr>
<tr>
<td>Reporter's Certificate</td>
<td>62</td>
</tr>
</tbody>
</table>
CHAIRPERSON BUSTAMANTE: Let's call the meeting to order. We have myself and also the Controller's office that's represented. Is Controller Wesley on the line?

ACTING COMMISSIONER ARONBERG: I'm here for Controller Wesley.

CHAIRPERSON BUSTAMANTE: Okay. And so we are not going to have a representative of the Finance office; is that correct?

CHIEF COUNSEL RUMP: That's correct. We're not joined here by Finance today.

CHAIRPERSON BUSTAMANTE: Okay. So this is going to be a telephone conference meeting. And do we need to do the role call, Madam Secretary?

EXECUTIVE OFFICER THAYER: I think we just did.

ACTING COMMISSIONER ARONBERG: Oh, I'm sorry, then I'll be more formal. Cindy Aronberg for State Controller Steve Wesley. Apologies.

CHAIRPERSON BUSTAMANTE: And so we need to adopt minutes?

EXECUTIVE OFFICER THAYER: Just for the last meeting, yes.

CHAIRPERSON BUSTAMANTE: Okay. So have you had a chance to look at the minutes of the last meeting?

ACTING COMMISSIONER ARONBERG: Yes. I move adoption.
CHAIRPERSON BUSTAMANTE: All right. Let's go ahead and make that unanimous. Unanimous of two votes.

CHIEF COUNSEL RUMP: That's correct.

CHAIRPERSON BUSTAMANTE: This is probably one of the only committees and commissions that we could probably find in the state of California where two people constitute not only a quorum, but a unanimous vote. I think that's wonderful. Maybe we should reduce a lot more of the commissions like that.

(Laughter.)

CHAIRPERSON BUSTAMANTE: We'd move business a lot faster this way, except for the editorials of the Chair. Okay. Why don't we go right into the order of business. We have two calendar items.

Paul, do you have any kind of a report of any kind in general, or do we go right into the first item?

EXECUTIVE OFFICER THAYER: I don't have an Executive Officer's report.

CHAIRPERSON BUSTAMANTE: All right.

EXECUTIVE OFFICER THAYER: Let me just by way of background just set the stage for these two items. The Commission last met I think in San Diego on October 20th, and at that meeting we had before it one of these two items, the one that deals with the Santa Fe/Kinder Morgan pipeline which runs from Concord to West Sacramento. The Commission
conducted a hearing on that item and heard some opposition and directed the staff and the Applicant and the opponents to try and work together to work through some of those issues.

CHAIRPERSON BUSTAMANTE: Right.

EXECUTIVE OFFICER THAYER: We spent some time on that. The Applicant has a time crunch in that if they don't start work fairly expeditiously in the spring, they won't be able to complete it within the environmental construction window, which would require them to remobilize all the equipment again the following year, which may require them to put off the entire operation, the entire construction project for an additional year. So the Applicant asked and the Commission agreed to hear this item before the December 9th hearing, which is our next regularly scheduled one.

In the interim, we also had presented to us a problem, a timing problem, for a dredging project, otherwise routine, that's been proposed in Benicia. And so we've put that on the calendar as well. If the Commission can't approve it at this meeting, then it would have to be put over, the project put over, until sometime later this spring. So that was placed on the items as well. That's part of the Commission's policy, of course, of dealing expeditiously with projects that might have environmental or economic impact.
CHAIRPERSON BUSTAMANTE: Do we have any opposition of any kind on Item Number 2?

CHIEF COUNSEL RUMP: We have no slips at this location regarding Number 2.

ACTING BOARD MEMBER ARONBERG: I have no slips at the Controller's location for that item.

CHAIRPERSON BUSTAMANTE: All right. So would it be appropriate to just accept this as a matter on a consensus?

EXECUTIVE OFFICER THAYER: We could consider this on the consent calendar?

CHIEF COUNSEL RUMP: Yes, we could.

ACTING COMMISSIONER ARONBERG: Okay, great.

CHAIRPERSON BUSTAMANTE: So if you make a motion, I'll second it, and we'll move unanimously to put that on the consent and move it out.

ACTING COMMISSIONER ARONBERG: I move that item to consent.

CHAIRPERSON BUSTAMANTE: Second. The motion is made, second, unanimous approval. So Item Number 2 has been moved off as a consent item.

And we'll go now to Item Number 1, the calendar item. This is an item, in which as Paul indicated earlier, that we all talked about trying to resolve this, and given the concern about notice, we wanted to make sure that those
who were in opposition had enough time to be able to get back with folks. And although we have had records on file showing that notices went out, still the concern that was raised by, I believe it was Mr. Cunha, with respect to notice was of concern to the Commission. And what we did was that we postponed action until such time that staff, Mr. Cunha, and all the other folks would be able to get together and speak in order to see if we could resolve it.

Apparently there has been some progress in the sense that the folks from the Contra Costa Sanitary District, they did remove their opposition to this matter. I don't believe that Mr. Cunha has removed his opposition. I'm assuming that the speaker slips that you have are from Mr. Cunha and other members who would like to speak; is that correct?

ACTING COMMISSIONER ARONBERG: Yes. Mr. Chair, I've got Robert Clark, as well as Richard Cunha.

CHAIRPERSON BUSTAMANTE: Is there a staff presentation on this?

CHIEF COUNSEL RUMP: There is. But before we do that, let me give you the speaker slips which we have at Howe Avenue. In support, we have David Cornman from Kinder Morgan; Bill O'Brien from Kinder Morgan; Lou Franchimon from Napa Solano Building Trades; John Andres, Operating Engineers Local 3. We also have two slips, if there are
questions, Susan Lee, who is the environmental project manager for Aspen Group; Matt Fagundes, environmental scientist with Aspen. We have a request for clarification from Dan Hall of Wickland Pipelines.

And was there anyone else who wanted a speaker slip here?

MR. KELLY: You can put me down. My name is Matt Kelly, I represent the Sacramento Building and Construction Trades Council.

CHIEF COUNSEL RUMP: Great. Matt Kelly then. And if you'd fill out a slip, please.

MR. KELLY: I will.

CHIEF COUNSEL RUMP: Thank you.

CHAIRPERSON BUSTAMANTE: Are all these folks interested in speaking in favor or opposition, or are they there just for Q and A or --

CHIEF COUNSEL RUMP: Well, we have, let's see, one, two, three, four, five in support. We have two, if there are questions, but they are with the proponent. And we have one which is for clarification from Dan Hall.

CHAIRPERSON BUSTAMANTE: All right. Why don't we go with the staff report, then we'll go to opposition, and then we'll go to support.

ACTING COMMISSIONER ARONBERG: Okay. Just for a quick clarification, the two at the Controller's office both
checked the opposition box. So two additional oppositions.

CHAIRPERSON BUSTAMANTE: All right. We'll go with
the opposition right after the staff report. Is there a
staff report?

EXECUTIVE OFFICER THAYER: Yes, sir. Mr. Chair,
Lorna Burks from our Land Management Division will present
the first part of the staff report, and she'll be followed
by Dwight Sanders, the Chief of our Environmental Division,
who will explain some of the measures that have been adopted
to address the issues.

CHAIRPERSON BUSTAMANTE: Okay. And everybody has
received the Contra Costa Sanitary District letter
indicating that they have pulled their opposition; is that
correct?

ACTING COMMISSIONER ARONBERG: Yes, sir.

CHAIRPERSON BUSTAMANTE: Okay. Go ahead.

MS. BURKS: Good morning, Commissioners. My name
is Lorna Burks, and I'm a Public Land Management Specialist
with the Land Management Division.

Before the Commission for consideration on October
20th, 2003, was certification of the Final EIR and an
application from SFPP for the proposed construction and
operation of a new 20-inch petroleum products pipeline
extending from the existing SFPP Concord station in Contra
Costa county to the existing SFPP Sacramento station in the
city of West Sacramento in Yolo county, and maintenance on
an existing 14-inch petroleum products pipeline known as
Line Section 25, which is under the Commission's Master
Lease Number PRC-5439.

The proposed new 20-inch pipeline will cross
state-owned lands at Walnut, Grayson, and Pacheco Creeks,
and Cordelia Slough in Contra Costa and Solano counties.
Approximately 5,500 feet of existing 14-inch pipeline would
continue to be used for the crossing of the Carquinez
Straight until such time that replacement with a new 20-inch
pipe using a single horizontal directional drill is
technically feasible.

The new pipeline will carry gasoline, diesel fuel,
and jet fuel. The total length of the new 20-inch pipeline
is approximately 70 miles.

During consideration of this item at the
Commission's October 20th meeting, representatives from
Central Contra Costa Sanitary District and Clark Trucking
Service, Incorporated, objected to the proposed routing of
SFPP's new 20-inch pipeline in the vicinity of their
properties.

Clark Trucking Service's concerns is the proposed
route along South River Road in the city of West Sacramento.
Since that meeting, staff has received a letter from the
Central Contra Costa Sanitary District, dated October 27th,
2003, removing its objection to certification of the EIR for this project, or to the Commission action on staff's recommendation to award a lease to SFPP.

Subsequent to the October 20th meeting, SFPP has been in discussions with Mr. Cunha of Clark Trucking Service to develop additional approaches to the issues originally raised and to coordinate and facilitate additional discussions between the parties.

On October 28th, 2003, SFPP met with various property business owners along South River Road, including Clark Trucking Service and representatives of the City of West Sacramento. During this meeting, an additional business, Clark Pacific, another trucking company, revealed its concern that its operations too would be constrained by construction activities. The outstanding issues, as are addressed in the revised calendar item, are, one, safety of businesses along South River Road; two, consistency of the proposed project with the recently adopted Sacramento riverfront masterplan, and; three, closure or impairment of South River Road during project construction.

Mr. Dwight Sanders, Chief of the Environmental Planning and Management Division, will briefly address the status of these issues since the Commission's meeting of October 20th. Thank you.

MR. SANDERS: Good morning, Commissioners. As
Lorna indicated, I am Dwight Sanders -- yes, hello

CHAIRPERSON BUSTAMANTE: Dwight is going to be doing what?

EXECUTIVE OFFICER THAYER: He will be talking about the responses that have been developed to the issues that were raised by the opponent.

CHAIRPERSON BUSTAMANTE: Okay. Then I'll wait for my questions until after you're done. Go ahead.

MR. SANDERS: Thank you, Mr. Chairman.

For each of these issues, I would like to give a very brief overview of the content of the Final EIR and then subsequent offers from the Applicant to address these particular issues.

First of all, safety of businesses. The Final EIR involves or recommends a thorough design review of the project by both the State Fire Marshal's office and the engineering staff of this Commission. Secondly, it also includes the development and requirement of a supplemental spill response plan, which developed in conjunction with the local police and fire departments, would address such items as emergency response and ingress and egress from the area in the event of an emergency. The pipeline itself will be built to what are termed urban standards. That means, in specifics, that it will be 12.5 percent thicker walled than are required by the U.S. Department of Transportation
standards.

Secondly, 100 percent of the welds in this area on the pipeline will be X-rayed, in contrast to the usual 10 percent of such welds. And finally, SFPP has offered in the meeting of October 28th to bury the pipeline deeper in South River Road.

The second issue as to the consistency with the adopted Sacramento riverfront masterplan. Staff has consulted with the staff of the City of West Sacramento who has indicated as a replacement pipeline, the project is allowable under and consistent with the adopted riverfront masterplan.

Lastly, the closure or impairment of South River Road during the project construction. The Final EIR addresses several impacts, among them, roadway blockage and traffic congestion and construction restricting property access. For the former, the EIR requires a traffic control plan be prepared with local jurisdiction and affected business involvement. In the second impact, the document requires the development of a construction schedule also with local jurisdiction involved and the affected businesses.

And in this particular issue, as a result of the October 28th meeting, SFPP has offered to construct the pipeline at night, which in consultation with the City of
West Sacramento, is compatible with their views. Secondly, the construction would also occur on weekends. And lastly, the key construction period, which is estimated to be two to three weeks would be conducted during less active periods for the businesses.

And we have in attendance today Matt Fagundes from Aspen Group, who can address, if desired, the success of such measures in comparable projects throughout the state.

As to resolution of the issues, at this juncture we have none formally between Clark Pacific or Clark Trucking Services, Incorporated. We are aware of several offers and counteroffers that have been made between Clark Pacific and the Applicant. And as late as a letter dated November 10th, which we received this morning, the Applicant has offered to meet with Clark Pacific in conjunction with an anticipated construction start date of April to explore additional measures that might alleviate that trucking operation's concerns.

There is no known resolution or compatible resolution or offer, counteroffer, at least to staff, between the Applicant and Clark Trucking Services, Incorporated.

That, Mr. Chairman, concludes my presentation. And, of course, we're available to answer questions.

CHAIRPERSON BUSTAMANTE: Yes, a couple of
questions.

First, from the Controller's office, do you have any questions?

ACTING COMMISSIONER ARONBERG: No, not at this time.

CHAIRPERSON BUSTAMANTE: Okay. My understanding is that there was going to be a relocation of Valve Number 12. We had talked about that at the October 20th Commission meeting. You didn't mention that as you were -- or at least I didn't hear it.

MR. SANDERS: No, I didn't mention it, Mr. Chairman. Mr. Dave Cornman is present to address that particular issue.

Dave.

MR. CORNMAN Thank you, Dwight.

Mr. Chairman, the valve site that was proposed initially along South River Road has been moved, in our final design process that is still ongoing, down to our old facility that is on South River Road, just at the fence line of our facility, at that location.

CHAIRPERSON BUSTAMANTE: So it has been moved, okay.

MR. CORNMAN: Yes, sir. The final design is still ongoing and will be reviewed by Commission engineering staff as we proceed forward. And that we have already moved.
CHAIRPERSON BUSTAMANTE: All right. Dwight --

MR. SANDERS: Yes, sir.

CHAIRPERSON BUSTAMANTE: I don't know who else I
would -- there was also in addition to the two- to three-
week construction period, that you would try to move around
the major trucking operations. And in addition to
constructing at night and on weekends, in order to avoid any
conflict with daytime operations, there was also another
item, a third item, that talked about the compensation of
firms for actual damages that would be incurred as a
consequence of the construction of the pipeline. Whatever
happened with that?

MR. SANDERS: You're correct, Mr. Chairman, and
that is the interchange of offer/counteroffer that I
indicated. And, again, I would ask Mr. Cornman to address
the status of those negotiations.

MR. CORNMAN: Mr. Chairman, we have entered
discussions with Clark Pacific regarding their claim to
potential liquidated damages associated with a specific
large project outgoing shipments of structural components
that are on very tight timeframes. And what they have been
asking for is upfront commitment to a specific payment,
dollar payments, for damages that we think we can avoid and
are willing to make every effort to avoid by either weekend
construction, when they tell us they do no trucking of any
substance, or on evenings. Currently they're doing no
trucking in the evenings. So we are very hopeful that we
can avoid their damages completely and are not very -- our
lawyers essentially told us not to sign off on a dollar
limit up front, that's really a projection.

CHAIRPERSON BUSTAMANTE: I understand that, and
that's probably good counsel. But how do we know and what's
the protocol for determining actual damages?

MR. CORNMAN: Well, just compensation. Obviously,
as a partner of the EIR, if any damages are incurred by any
business that we cannot avoid, the mitigation requirements
in the EIR require us to compensate those property owners,
whether they be businesses or private.

CHAIRPERSON BUSTAMANTE: Let me just ask an
example, so I can have it clear in my own mind what that
could mean. Let's say that in these tight timeframes, and
you have a street that you've tore up and you are blocking
either the receipt or the delivery operation of one of the
trucking companies, and a load is delayed, and there is
either a penalty or nonacceptance of the load because of the
delay. Are you saying that actual damages includes the
compensation of that load?

MR. CORNMAN: As I understand it, and Mr. Clark
will have to speak specifically to this for you when he
speaks, but my understanding from their letters and our
discussions is that they have contractual obligations that
subject them to liquidated damages of upwards of I think
it's $50,000 a day if they are late. And I don't have a
clear understanding of exactly what that means.

So their desire, Mr. Chairman, is to have us
obligate to moving their project from their site on South
River Road to a secondary site off of that road for an
indeterminate amount of time and pay for the actual each
load of the materials that have to go to that site at a
certain price per load. So there are --

CHAIRPERSON BUSTAMANTE: I'm not sure I know what
all that meant, but let me ask you this question. What I
believe that they are talking about is something that I'm
sure you are very familiar with and everyone else is as
well, a performance contract. If you’re required to deliver
something on time, at a specific place, and you don't do it,
then you are penalized. And in some cases it's too late for
a particular activity, so a load is rejected. So there we
are sitting at a dock with a load that's been rejected
because it didn't meet the specific timeframe because the
road in front of their facility was impassible. So all I'm
asking is does that fit under actual damages?

MR. CORNMAN: Yes, sir, it does. That's correct.

CHAIRPERSON BUSTAMANTE: So penalties and those
kinds of activities that are actual damages, not things that
are made up, not some kind of a pre-amount that they anticipate may be somehow, somewhere divvied out in some accountant's mind that would be the approximate amount of damages, but the actual damages. And there is a process and a protocol somewhere in this process for determining that, or is that going to have all be done in some court case in which, you know, there's an additional 40 percent cost to the companies in order to be able to pay for legal fees.

MR. CORNMAN: What we have committed to -- I don't know of a process other than the court process that you referenced, other than what we have said in writing to them that we will negotiate in good faith and sit down with them to avoid their damages, and to the extent that we cannot do that, we will develop a process by which we track any delays to their loads going out and have a formula for compensating them for not only liquidated damages, but any other damages that might be incurred.

CHAIRPERSON BUSTAMANTE: Okay.

MR. CORNMAN: We are committed to that.

CHAIRPERSON BUSTAMANTE: All right.

EXECUTIVE OFFICER THAYER: I think I might just add to that that this is like any other condition, that if it's not followed, then the ultimate recourse is, in fact, you do have to go to court. But the obligation is established by the EIR to pay that, and the commitment of
the Applicant affirms that. And so if something can't be worked out, then the trucking company has that recourse to court, which it otherwise would not have, except for the EIR process.

CHAIRPERSON BUSTAMANTE: Okay. So let me just make sure that I run these down. There is the relocation of Valve Number 12, it's going to be moved to the South River Road site. There is scheduling the two-to-three week construction period around major trucking operations and you work with the businesses there to try to deal with that. You're going to construct at night and on weekends to avoid any conflict with daytime operations. And you will compensate the firms for actual damages incurred as a consequence of the construction of the pipeline.

In addition, according to Dwight and others, there's going to be a design review by the Fire Marshal. There's going to be a supplemental spill response. The specifications of the pipeline, which are going to be thicker, a thicker-walled pipe, a hundred percent welds reviewed, and a deeper trench in certain sensitive areas for the pipeline. And you've already checked with West Sacramento with respect to comporting with their plans?

MR. SANDERS: That's correct, Mr. Chairman.

CHAIRPERSON BUSTAMANTE: All right. And you're going to be required to do a traffic control plan as well?
MR. SANDERS: Yes, they will, Mr. Chairman.

CHAIRPERSON BUSTAMANTE: All right. Is there anything else that we need to know just in terms to bring us all up to speed up to this time? Anything else? And then we'll go to opposition.

MR. SANDERS: I think, Mr. Chairman, that Mr. Cornman would probably like to verify also all of the points that you've listed.

CHAIRPERSON BUSTAMANTE: Okay.

MR. CORNMAN: Mr. Chairman, I guess what I would like to just say very briefly is that we appreciate all the hard work that staff has done to work with us over the last couple weeks here. They have been doing an awful lot of effort and we appreciate it.

I would just say that we as a company took the opposition very seriously and we worked in good faith with all the parties to try to resolve their concerns, understanding all their concerns. And as is evidenced by the settlement with the Contra Costa County Sanitation District, we came to the table and paid a premium there to resolve their concerns. But in that particular case, the pipeline was crossing their property.

With respect to South River Road, we had numerous phone calls and one meeting with the parties up there, and ultimately I thought we were pretty close with Clark Pacific
in basically agreeing to avoid them, because they told us
that they don't truck much on the weekends. And with Mr.
Cunha, we really never got the specific damages or issues
clarified for us satisfactorily. We have done what we can,
we feel, to resolve the concerns and move forward with this
project. We think the staff has selected and proposed an
environmentally superior route and we support that.

CHAIRPERSON BUSTAMANTE: All right. Let me just,
beyond this activity, I have just one more question of you,
Mr. Cornman. Just for clarification, my understanding is
that there was going to -- I believe you were in the process
of building the connector with Wickland?

MR. CORNMAN: Yes, sir.

CHAIRPERSON BUSTAMANTE: In order to build a
pipeline to assist jet fuel to the airport?

MR. CORNMAN: Yes, sir.

CHAIRPERSON BUSTAMANTE: Is that still in the
process? Is that going to be a part of your activity, or is
that --

MR. CORNMAN: Okay. Mr. Chairman, may I have a
gentleman who has got his name on the speaker's list to
respond to that question who is sitting next to me, Mr. Bill
O'Brien?

CHAIRPERSON BUSTAMANTE: Sure.

MR. CORNMAN: Okay, Bill.
MR. O'BRIEN: Right. Well, are you asking the question on the existing 14-inch line, whether that one is going? So the 20-inch?

CHAIRPERSON BUSTAMANTE: I believe it was a new line.

MR. O'BRIEN: The new line, okay. Well, Wickland, they're in the process right now of connecting up to our 14-inch line. We signed a deal with them back in May of 2003. And in the EIR process here, we submitted a lateral from the 20-inch line to that connection that is currently being built. And it's our intention, yes, to go ahead with that, both timingwise, you know, we submitted the EIR or included it in the EIR, I'm sorry, so that it would go smoothly and concurrently with the construction.

CHAIRPERSON BUSTAMANTE: Okay. Well, let me ask you in a way that I can understand it and see if I can get a yes or a no answer?

MR. O'BRIEN: Oh, you can get that.

CHAIRPERSON BUSTAMANTE: Is there going to be a new connector to bring jet fuel to the airport?

MR. O'BRIEN: Yes. There will be a connection to the airport, pending a commercial agreement with Wickland.

CHAIRPERSON BUSTAMANTE: Pending a commercial agreement.

MR. O'BRIEN: Similar to what we've done on the
14-inch line.

CHAIRPERSON BUSTAMANTE: And so is there a representative of Wickland there?

MR. O'BRIEN: Yes.

CHIEF COUNSEL RUMP: Yes. We have a request from Dan Hall on this subject. We'll ask him to speak to you, as soon as he gets to the microphone here.

CHAIRPERSON BUSTAMANTE: Okay. Is Dan Hall coming up to a microphone?

CHIEF COUNSEL RUMP: Yes, he's there now.

CHAIRPERSON BUSTAMANTE: Okay.

MR. HALL: The only thing I would say -- speak to that?

CHIEF COUNSEL RUMP: Yes, right there.

MR. HALL: I'm Dan Hall. I'm with Wickland Pipelines. The issue that we have is an issue that really bears on the last clause of what Bill just said, pending a commercial resolution. There is some dispute as to who will pick up the cost of this connection. We realize that. What we want to make sure is that the connection is made and that it is part of the project as it was advertised in the project description of the EIR. Ultimately who has to pay will be decided, if not by a negotiation, but by the PUC, I would imagine.

But the real issue here is whether or not the
project, including the connection, goes forward on a timely basis. And I frankly don't want to be put in a position where Wickland is faced with a situation of either agreeing under duress to pay for the thing or be faced with the prospect of not having that connection built.

If you look at the project description, it's very clear that it was considered to be a part of the project and that it was going to be built by Kinder, or by SFPP. So that's the situation here. If SFPP is willing to say that they are going to build it and move forward and it will resolve one way or another the funding issue, we don't have a problem. If they are saying that the funding issue has to be resolved or it won't get built, then we do have a problem. That's it in a nutshell.

CHAIRPERSON BUSTAMANTE: Could either Dave or Bill talk to that issue.

MR. O'BRIEN: Well, again, I think we're hung up on some semantics here, but the bottomline here is we don't know the exact right of way this line is going to take until this EIR is established. So we don't know the final cost of what we're agreeing to. Similar to the conversation earlier, we can't agree to anything until we know what the final cost is.

CHAIRPERSON BUSTAMANTE: Okay.

MR. O'BRIEN: We don't make the deliveries --
CHAIRPERSON BUSTAMANTE: It was pretty much advertised. I mean it was pretty much said that this was going to be a part of this program, part of this build out.

MR. CORNMAN: Mr. Chairman, what we did for this EIR is to the benefit of all parties, we included the lateral for the 4,100 foot lateral between the new 20-inch and up to the 14-inch, so that we could help to facilitate the eventual land acquisition, permitting, and construction of that lateral. But it was in no way intended to be an indication of the commercial terms and agreement, what is yet to be negotiated between the two parties.

CHAIRPERSON BUSTAMANTE: Now was that an attorney speaking?

MR. CORNMAN: No, sir.

(Laughter.)

CHAIRPERSON BUSTAMANTE: That was pretty slick.

(Laughter.)

MR. O'BRIEN: Well, there are other --

CHAIRPERSON BUSTAMANTE: Bill, you earned your money today.

MR. O'BRIEN: Mr. Chairman, Bill O'Brien here. There are other terms other than the financing. There is ownership of the line. You know, the 14-inch connection right now is a Wickland item, they own that line. That is up for grabs, the ownership, the operation, the maintenance,
as well as the financing. These are all items that when Wickland came to us on the 14-inch line, we sat down, we negotiated a deal with them, and they are under construction. It's our intention to do the same thing here once we get some finalized numbers and locations, plus the EIR.

CHAIRPERSON BUSTAMANTE: Well, I think it's something that the Commission would like to see. I don't know if we have -- do we have any authority over this, Paul?

EXECUTIVE OFFICER THAYER: We don't.

CHAIRPERSON BUSTAMANTE: All right. Although we don't have any authority, it clearly was a part of the reasoning that we were very interested in moving this thing forward the way we have, and I think that part of the cooperation that was extended by the Commission to all parties was because we felt that this was an important part of the overall project. I wish we had authorization, but since we don't, I guess I should move on than just say that we are going to ask staff to pursue monitoring of this piece of it, as well as the other areas that we do in fact have authorization over, and to see if there isn't a way to continue to increase and to move, nurture, this part of the plan, because we feel it is a very important part of the overall plan. So that being said, is there any other questions at the Controller's office?
ACTING COMMISSIONER ARONBERG: No. I wish to concur with your directions to staff in that regard.

CHAIRPERSON BUSTAMANTE: Okay.

CHIEF COUNSEL RUMP: Excuse me, Mr. Chairman, Dan Hall has a comment he'd like to make.

MR. HALL: This is Dan Hall speaking. There is one area that this is very relevant that I do believe the Commission has to consider. The plain wording of the Environmental Impact Report in its project description says the Applicant, and I'm quoting one of several provisions, "The Applicant proposes to construct a 12-inch pipeline connection from the 20-inch pipeline over to the Wickland metering station as part of the Concord/Sacramento project."

If in fact it's predicated on prior commercial resolution of issues, then that is not a correct statement and the EIR is not a correct EIR or a correct project description. And also the impacts associated with not putting that in have not been addressed.

So my issue here is one merely, somebody is going to have to pay for it, I understand that, and the forum to decide that is either negotiations between us and SFPP or Kinder Morgan, or if we can't determine the resolution of that outcome, the PUC. What I'm saying is the project as described was a project that includes that connection and it should go forward as one project. And if it doesn't, the
EIR is incorrect.

CHAIRPERSON BUSTAMANTE: I personally as a layperson would agree with you, but, again, this commission doesn't appear to have any kind of authority on that particular point. All I can do is at this point suggest, encourage, and have staff follow up with any way that we can encourage that particular part of the project to be built out. I would agree with you, Mr. Hall. I hope that you guys can come to an agreement on this so that it can be a complete project and we won't have to go back through any additional amendments or another type of EIR or any other kinds of process.

I think we'll go now to opposition.

ACTING COMMISSIONER ARONBERG: Great. Would you like to start over here at the Controller's office?

CHAIRPERSON BUSTAMANTE: Sure. We'll start with your office.

ACTING COMMISSIONER ARONBERG: Okay. So we go to Mr. Cunha.

CHAIRPERSON BUSTAMANTE: Very good.

MR. CUNHA: Thank you, Mr. Chairman, and other people in the audience.

This is Richard Cunha. And, Mr. Chairman, you were in attendance and heard my presentation in San Diego, and not to be redundant, I will try and simplify the
position which we have not agreed to resolve. My threshold position is not in opposition to the project, the only issue that I have initially is the one half mile line that is presently under the railway right of way that parallels but is not under Jefferson Boulevard in West Sacramento, which by all accounts can be and is being used at this time.

The request is to abandon that half of mile right of way and pipeline, 14-inch pipeline, which is mentioned in today's document on page 8, which the staff agrees the 14-inch pipeline is being used elsewhere in this project. All we're asking is that be continued to do that. The request is to trench another 20-inch pipeline, which is a new additional mile of pipeline that is not in the ground at the present time.

From our conversations, myself and other property owners, with Mr. Cornman and Mr. Smart, the head engineer, I believe, of the project, Mr. Smart indicated that in fact that 14-inch pipeline can be used. And that is done with a launcher, et cetera, that was referred to in a document I received after 5:00 o'clock last night from the Commission, and none of the other property owners have received. So I'm the only one that has any ability to comment on it.

The unfortunate part is, from my understanding of this conversation, is that it would cost Kinder Morgan an additional sum of money to put in a launcher station to
allow this 14-inch pipeline to be used in its present location.

As you are aware, as the Commission is aware, there is ongoing apparently litigation between Kinder Morgan and Santa Fe Pipeline or the railroad and Sante Fe Pipeline as to their ability to use that right of way, which is not our problem and not the Commission's problem, but their own problem. So my understanding is an additional fact that Mr. Smart indicated that the 14-inch pipeline would be sufficient at the present time and up to when it's built out or that the increased capacity is necessary, because the input at the station on South River Road is geared down to approximately 500 barrels per hour, which is completely under the maximum capacity that's trying to be achieved.

Consequently, I think that the discussions you've been having are all subsequent to what the threshold issue is, is this half mile of pipeline which is presently in place usable. Yes, it is. There are statistics by the Commission that the older plan has more frequent, may have more frequent releases, but the volume or the larger pipeline will have larger releases. And from what I read and what it seems to say is pretty much it's a wash, except that the residual impact of the new project is significant and there are some items that cannot be mitigated. So our concern is at the outset, can this right of way be used up
to the time of capacity, and I believe the answer to that is yes.

Now there's a lot of verbiage that says, well, we can increase it if we go through South River Road and along the deep water channel, but is it necessary at this time. I think that the bottomline answer is no. We can move with the pipeline being used as is stated by the CEQA. The project's basic objectives can be attained, it would not avoid or substantially lessen any of the results tried to be achieved, and I think you have access to that pipeline. Because as it is now, if they have a leak in it, they obviously have an easement to repair it. If they can repair it, I suppose if a section of 14-inch pipeline needs to be repaired or replaced, they can do that as well. So I'm not sure why it's such a big opposition at this point that it cannot be done.

Secondly, staff indicates that it has to be coordinated with the low interceptor system, which is the decommissioning of the wastewater treatment plant on South River Road. If that is to be the case, then at the same time the wastewater treatment plant is decommissioned and Jefferson Boulevard or thereabouts is being excavated for wastewater and, et cetera, going into the low interceptor system, then they can remove and replace this pipeline at that time, which is approximately 2005, which is before the
demand capacity is necessary with regard to Kinder Morgan's request.

As you've already seen from Wickland, and I hear with regard to Clark Pacific, who will discuss their possible damages, I think you already have built in two potential lawsuits, when I don't think it's necessary. I think that by utilizing what is in existence, what has been in existence, and by even staff's analysis, can be utilized, and by the comments from Kinder Morgan at the meetings, they can in fact utilize with additional planning -- this additional one mile of new pipeline to the south of our property and north along South River Road is not necessary and will not thwart nor diminish the objectives of this project.

I can respond to Mr. Sander's letter that I received last night, if necessary, if you would like. I think some of the statements made, typographical errors, et cetera, are not exactly what we're looking at close to the river, which indicates it has been taken into consideration. But I will wait for any questions so as to no go on. Thank you.

ACTING COMMISSIONER ARONBERG: Mr. Chair, would you like the next speaker to go ahead, or would you like the staff to address Mr. Cunha?

CHAIRPERSON BUSTAMANTE: No. Thank you. Let's go
ahead and go to the next person for opposition.

ACTING COMMISSIONER ARONBERG: Go ahead.

MR. CLARK: Hi, my name is Robert Clark. I'm the President of Operations for Clark Pacific. On page 9, you've referenced us as a trucking company, we're actually a construction company. I just happen to have a similar name as Dick Cunha's company.

Just to clarify, we manufacture, design, and install large building products throughout the state of California, and we're a union contractor, and we have approximately two to three hundred union employees at any one time. We built our company up over the years because of our ability to do a lot of key scheduling requirements on getting the construction timing.

We subsequently have a lot of liquidated damage clauses on our contracts to make sure that we hit these key dates. The damages that can happen to us not only relate to the liquidated damages, but also the consequential damages that occur towards other subcontractors in the working on a project, and then ultimately to our future reputation and picking up future work.

A few years back, South River Road was repaved and it did have a significant impact on our company. We have been able to secure some very key contracts and the volume of our work is going to increase during this time period,
which we brought to Kinder Morgan's attention.

So we had met with Kinder Morgan and understand some of the mitigations that they're willing to do. In talking with them, we talked about a timeframe that would cut when they would work on South River Road, should that go forward, that would help mitigate some of our potential costs.

Our concern is we've been trying in good faith to negotiate with Kinder Morgan and appreciate their ability to work with us, but ultimately, we have not been able to come up with an agreement that in my estimation we would have a significant amount of costs to try to achieve compensation for extra costs that we may have.

As a company, we will have to make a decision early January on whether we'll have to use an off-site location, and in our conversations with Kinder Morgan, they're having a hard time understanding why we would have to make that decision. Again, we're thinking of the five- and ten-year plan of the problem. It's not the costs necessarily, the actual costs on this particular job only, but it is the consequential costs and any damage, a significant effect on our company in regards to not just money, but to losing jobs for a lot of our union employees. So we've put a lot effort in the last 30 years to build our company up, and some of these contracts lately have been
very onerous on the timing issues. We do a lot of repeat
business because of our ability to hit these schedules.

CHAIRPERSON BUSTAMANTE: Well, what is it, if you
don't mind, what is it that you have asked for?

MR. CLARK: Well, what we've said is if by
January, if in our opinion, we're not satisfied with the
mitigation measures that Kinder Morgan can achieve at our
sole opinion, we have to go out and actually rent a piece of
property to do our storage and ship our product to that
property. If we have to physically do that extra thing that
we normally wouldn't, we just want to be compensated for it.
We don't want to be paid up front for it, we don't want to
do anything other than be reimbursed without a lot of
onerous -- without a big argument with Kinder Morgan,
whether they think we should of had to or not, basically.

So what we were trying to do, if we have to lease
the property, we can give them a copy of the lease so they
know we actually paid the money or our trucking bills to
bring our product to this off-site storage. You know, we'll
do it at our cost with no mark up, and they can audit all
our records. We just want to get compensated for that
decision that we'll probably have to make if this project
goes forward on South River Road.

CHAIRPERSON BUSTAMANTE: Is that your only issue?

MR. CLARK: Yes. And so from being a contractor,
we were from a practical standpoint, we just laid it out, here's what our concerns were, here's what our actual costs probably will be that you can audit later on.

CHAIRPERSON BUSTAMANTE: Right.

MR. CLARK: And in our discussions with Kinder Morgan, we got that cut in half by the timing of their operations, which was in both of our benefit. But we just want to be compensated and have you know our issue to try to argue, you know, we really have a hundred thousand dollar problem here, and so if it's done early on, like they're talking about. That's our concern.

CHAIRPERSON BUSTAMANTE: So if I could summarize this, you're talking about outstationing or finding a location where you can put materials off site for storage, and you're talking about a two- to three-week period during this construction phase?

MR. CLARK: Well, actually, our product, our jobs that we run -- this is where it get's complicated. Our jobs that we run, we produce these products over a four- to six-month period, and when we go to the installation phase where the trucking company brings our product to the site for the iron workers and carpenters and operators to install, we don't know the exact -- we won't know the exact sequence on that. So you end up having to have a whole job have to be stored at one location. And so if there's any project
that's going during this three- or four-week period, that's a job that we'll have to store the whole project off site. So it will be a decision that we make that will affect for six months what our production and costs are.

CHAIRPERSON BUSTAMANTE: And can you tell me approximately what you think that that amount is going to be?

MR. CLARK: Well, if indeed they have to do South River Road, it was somewhere in the eighty to a hundred thousand dollar cost. And what that was made up of was the lease cost of the alternate land, and then the cost to actually drive our product to the different site there.

CHAIRPERSON BUSTAMANTE: All right.

MR. CLARK: And if they decide to do it in October, it probably will double in amount.

CHAIRPERSON BUSTAMANTE: All right, sir. Thank you. Thank you for your testimony.

Could I get Dave or Bill back for a moment?

MR. CORNMAN: I'm here, Mr. Chairman. Dave Cornman.

CHAIRPERSON BUSTAMANTE: Yes. Is this the kind of thing that we were talking about? Are we talking about trying to figure out what the amount really is, but this is one of those things that you would consider an actual damage?
MR. CORNMAN: Yes, sir. We would actually --

CHAIRPERSON BUSTAMANTE: In negotiating the amount and trying to figure out what really is the real amount. And are you saying eighty to a hundred, but we don't know what it's really going to be?

MR. CORNMAN: That's correct. And more importantly, it might be nothing, because our intent is to avoid it completely. And so to give them the sole discretion, which is what they have been asking for, to make the decision to move off site, I think is an unfair request. And that we will work together with them --

CHAIRPERSON BUSTAMANTE: I see.

MR. CORNMAN: -- in determining that if they are going to be damaged, if we can't avoid them either by time of the year, but night construction and weekend construction, when they do no trucking, then there's really no -- our lawyers aren't just going to let us sign an indemnification clause saying we'll pay you whatever you want.

CHAIRPERSON BUSTAMANTE: Okay.

ACTING COMMISSIONER ARONBERG: Okay. So we have a --

CHAIRPERSON BUSTAMANTE: Although that wasn't artfully put, I understood what it meant, and was not meant to impugn the reputation of Pacific Clark or their legal
counsel.

MR. CORNMAN: I certainly don't want to do that.

ACTING COMMISSIONER ARONBERG: Mr. Chair, there's a response over here from the previous speaker, Mr. Clark. He just wanted to respond to the last comment.

CHAIRPERSON BUSTAMANTE: Surely. Mr. Clark.

MR. CLARK: Well, again, our concern is we can't be in a spot where Kinder Morgan, who has very good intentions of mitigating this, us not being able to -- you know, agreeing -- going along those lines and having it not happen according to plan, and the effect, the downstream effect, isn't just our actual damage, but the lack of future work which will affect our company and our union employees. And that's very -- we may be trying to be a little too over conservative, but, you know, the downside of the thing is so great for our company.

CHAIRPERSON BUSTAMANTE: There's no way, Mr. Clark, that an owner of a company who's trying to build his business up and to take care of the employees that work for him can be too conservative when dealing with something like this. And so your fighting for them and yourself is appreciated and it is understood. So you don't have to apologize for that in any way, shape or form.

MR. CLARK: Our concern is Kinder Morgan, you know, in not agreeing that we need to make that move. And,
again, we don't want to make any money on this thing other
than get reimbursed for actual costs, which can be
documented.

CHAIRPERSON BUSTAMANTE: And which is what I'm
hearing Kinder Morgan as saying they're willing to do,
except that you're looking at the timing and if they're
going to move quickly enough to be able to resolve these
things so that you don't have to worry about trying to deal
with this then down the road in some legal fashion is what
you're suggesting.

MR. CLARK: My suggestion after our negotiations
and the way I read this is I think they will agree if we
have to go off site, and that's an easy answer to figure out
how much that actually costs, but the question is should we
go off site or not, and I'm really -- all over our
conversations is they think not, and from our point of view,
we think we're going to have to, no matter, you know, almost
regardless, because we can't stand the risk, we can't stand
two percent of that risk --

CHAIRPERSON BUSTAMANTE: No.

MR. CLARK: -- for the downside. And that's the
argument I don't want to have six months from now with them.
And that's our real concern. You know, just cutting to the
chase, that's the crux of what we wanted to get resolved
with them, and that's why being in construction, if you
don't have something signed and agreed to up front, a lot of times things get wiggled out of. Not that Kinder Morgan would do that.

CHAIRPERSON BUSTAMANTE: Yes, I would be very disappointed if Kinder Morgan was unable to figure out how to make sure that what clearly both have identified as a mitigation that would be necessary to make you whole as an actual damage, and they wouldn't come through with dealing with that.

Is there anything we can do, staff, Paul, Jack, with respect to -- which I think is fairly clear? I mean I'm not going to get in the middle of negotiating this thing between these guys, they're going to have to do that themselves, but is there anything we can do to try to help with something that we see real clearly that could be an issue that falls well within the actual damages? Is there anything we can do at this point?

EXECUTIVE OFFICER THAYER: I think the problem that I see is that Kinder Morgan can agree to do everything to avoid this problem, only you can't switch to Plan B if a problem develops, other than to perhaps give some authority to Clark when the Kinder Morgan construction actually starts that basically allows them to say, no, we're moving, you cannot dig that trench this evening because we're moving the stuff through.
In other words, give Clark some construction authority over the construction process to ensure that these delays won't occur. Because otherwise, what, in essence, Clark is asking for is basically we can't trust the mitigation measures. They may have worked other places, but if something doesn't go right, then it's too late for us to move back to Plan B and move all of our stuff off site, we had to have done that for the six months leading up to the construction.

So either Kinder Morgan is going to have to come up with the money, the eighty to a hundred thousand, and go ahead and let's just plan on the new site for storage, or Kinder Morgan would have to surrender some kind of construction oversight to Clark to ensure there won't be any slip up when the actual construction occurs. Those seem like the only two choices to me.

CHAIRPERSON BUSTAMANTE: Well, why don't we let that sit for a minute and continue with our opposition, and we'll come back to that issue. Unless anybody at Kinder Morgan wants to make comment?

MR. CORNMAN: Mr. Chairman, I'll just make one brief one, and that is we feel very strongly that we can avoid impact by weekend construction. They have specifically told us they don't do trucking on weekends, except maybe a couple of loads on late Sundays. That's a
quote. And so we feel that we can do this in three or four weekends and avoid impact. I don't know why they won't agree.

CHAIRPERSON BUSTAMANTE: I understand. And, again, for us to get into a negotiating is a very difficult part of this. We clearly have gone through just about all the major activities here with respect to the EIR with respect to all of the mitigation. I think that the issue is of actual damages and whether or not this person, this company, Pacific Clark is going to be damaged. In your view they're not likely to be. And so then if that's the case, it seems like it would be easy to say that since they're not, then we'll go ahead and take care of whatever those costs are going to be. But I know that you don't want to leave some like open checkbook out there as well. And so why don't we just go and continue, and if the Controller's office has any comment at any time, please jump in, otherwise, we'll go ahead and move on to additional opposition.

ACTING COMMISSIONER ARONBERG: Okay. I'm okay with going on to additional opposition and hearing everyone else.

CHAIRPERSON BUSTAMANTE: Okay. Is everyone in opposition at your office done?

ACTING COMMISSIONER ARONBERG: Yes. We are done,
except I'm sure they may want to jump in with responses.

CHAIRPERSON BUSTAMANTE: I understand. And, Jack, do you have opposition there?

CHIEF COUNSEL RUMP: We have no speakers indicating opposition at this time.

CHAIRPERSON BUSTAMANTE: Is there anyplace else where there is opposition? No other people who are expressing opposition?

ACTING COMMISSIONER ARONBERG: Except now we have a responsive comment.

Identify yourself.

MR. CLARK: Robert Clark here again. You mentioned whether their mitigations may -- what other options did we have available to us to short circuit the problem I have, and I guess that falls back to Mr. Cunha's comment about staying using that 14-inch line along the railroad line and not going near South River Road.

CHAIRPERSON BUSTAMANTE: I understand that, sir.

MR. CLARK: That's another option to help mitigate my problem.

CHAIRPERSON BUSTAMANTE: I understand.

Okay, then, let's go to support. Do we have any supporters at the Controller's office?

ACTING COMMISSIONER ARONBERG: None here.

CHAIRPERSON BUSTAMANTE: Okay. Then why don't we
go to the support that you have over there.

CHIEF COUNSEL RUMP: All right. We have heard from Mr. Cornman and Mr. O'Brien. We have as support Lou Franchimon from the Napa Solano Building Trades.

CHAIRPERSON BUSTAMANTE: Okay.

CHIEF COUNSEL RUMP: He's approaching the microphone right now.

MR. FRANCHIMON: Good afternoon, Mr. Chairman. Can you hear me okay?

CHAIRPERSON BUSTAMANTE: We can hear you fine, sir.

MR. FRANCHIMON: Okay, that's great. Lou Franchimon. I represent the Napa Solano Building Trades Council. I'm also here representing the Contra Costa Building Trades Council. Greg Speery couldn't make it, so I'm speaking on behalf of both councils, representing approximately 40,000 union construction workers, which many of those construction workers will be working on this pipeline. Also it's going to include the Sacramento Building Trades Council. Matt Kelly is here to represent them. So we're talking about a large segment of the area that's going to be affected by this.

We are totally in support of the project. We have a commitment from Kinder Morgan that this will be under a project labor agreement. Also, if any delays happen, this
thing could be delayed for up to a year. Right now, with the work situation in the area, we desperately need to look forward to something starting next year like this pipeline. The economic effect of this for our workers will be tremendous. There will be a large amount of construction work, we will be working on this pipeline. And I urge the approval of the EIR, and hopefully that will move forward and all the mitigation being handled between the parties that we just listened to will be taken care of. We're just interested in the construction jobs.

The other issue that I'd like to bring up that I haven't heard anything about is that any delay or possibly Kinder Morgan pulling out of this project could have a major effect on the 680/80 corridor with additional trucks hitting that freeway. It's already a total mess, we don't need additional gasoline trucks on the road, potential bombs. So we're really looking forward to having this pipeline put in place. And I appreciate it. Thank you.

CHAIRPERSON BUSTAMANTE: Thank you, Lou. Who else do we have, Jack?

CHIEF COUNSEL RUMP: All right. We have John Andres from the Engineers Local 3.

CHAIRPERSON BUSTAMANTE: Move forward, please.

MR. ANDRES: Hello, Mr. Chairman, my name is John Andres. I'm a business agent with the Operating Engineers
in Fairfield. I'm in favor of the EIR as it stands. I think that the negotiations with Kinder and Clark could probably be brought to a conclusion if they could -- the points that Clark brings up as far as having to stage his material for six months in advance seems a little too far out, but I think if he simply withdraws some of that on a three-week to a four-week worst case scenario for the construction of this project, even if they hit a water line or anything that's in the ground, I would think that would even seem a little far out for six months. So outside of that, the project itself, the jobs and the mitigation as far as the amount of truck traffic on the highway, the project stands on its own. And I urge you to accept the EIR as it stands. Thank you.

CHAIRPERSON BUSTAMANTE: Thank you, John.

Jack, anyone else?

CHIEF COUNSEL RUMP: Yes. The next speaker is Matt Kelly of the Sacramento Building Trades.

CHAIRPERSON BUSTAMANTE: Come forward, Matt.

MR. KELLY: Yes, thank you for giving me the opportunity to speak in support of this project. As both gentlemen prior to me said, the dollars that are involved with this project and the boost to the economy and the local area that will result from this project going forward will be tremendous for the people that are in the construction
industry.

The project labor agreement on this project is tremendous, it will ensure that many individuals that are involved with the construction industry are given good jobs. Apprenticeship is part of that, the education of new people being brought into the construction industry, and we would like to put our support behind this. The velocity of the dollar is not as great anywhere as it is in the construction industry, and we think this will be a tremendous project for the area that it crosses.

I would encourage the individuals who have the issue with the project specifically in their areas to work diligently with Kinder Morgan and resolve these problems. We know of Clark Pacific very well, they are a fine union contractor that is a member, and many of their members are members of our affiliated unions in the building and construction trades in Sacramento. And we would encourage them to find some resolve on this. And we look forward to future meetings.

CHAIRPERSON BUSTAMANTE: Well, Matt?

MR. KELLY: Yes.

CHAIRPERSON BUSTAMANTE: Maybe you, John and Lou can talk to Kinder Morgan and prevail upon them to work out the matter with Pacific Clark.

MR. KELLY: I think the gentleman from Clark
Pacific has done a fine job himself.

CHAIRPERSON BUSTAMANTE: Well, he could always use a little help, you know what I mean?

MR. KELLY: Yes.

CHAIRPERSON BUSTAMANTE: You want to help the family, don't you, Matt?

MR. KELLY: Yes, I do.

CHAIRPERSON BUSTAMANTE: All right. Anyone else, Jack?

CHIEF COUNSEL RUMP: No. The only other slips we have were in support, if there were questions, from Aspen. So we're finished.

CHAIRPERSON BUSTAMANTE: Okay. There is no other persons in opposition or in support of this matter at this time, is that correct, at the Controller's office?

ACTING COMMISSIONER ARONBERG: No. No other persons here.

CHAIRPERSON BUSTAMANTE: I'm here at the Lieutenant Governor's office, nor, Jack, anyone else over there?

CHIEF COUNSEL RUMP: No one else here.

CHAIRPERSON BUSTAMANTE: All right. All testimony having been done, if the Controller's office is interested in either making any comment at this time or asking any questions?
ACTING COMMISSIONER ARONBERG: Actually, I would like to ask the staff a question, and that is, we are not the final arbiter of this project; is that correct? Can you tell me about is there local approval or what's next on line for this project, and where is that going to fall in the approval process for this project?

EXECUTIVE OFFICER THAYER: Let me give a crack at this, and then if Dwight thinks that I have left something out, he can fill in. We're the first agency to act because we're the lead agency under CEQA, and we're approving the environmental documents that will be used by the other agencies that have to give approval to this project. And there will be a number of them that will be required, everything from the Regional Water Quality Control Board for impacts having to do with water. I think ultimately the PUC is involved. But with particular respect to the pipeline alignment in West Sacramento, the City of West Sacramento will ultimately approve that part of the project and would implement any of the mitigation that's required in the EIR.

Dwight, is there anything else?

MR. SANDERS: No, Paul, you've covered it rather thoroughly.

CHAIRPERSON BUSTAMANTE: And the items would be just again for items that came up in the discussion and the staff reports, be to relocate Valve 12, schedule the two-
three-week construction period around operations, construct
at night and on weekends, compensate firms for actual
damages, design review by fire marshal, supplement the spill
response with ingress and egress, create a larger wall for
the pipe, a hundred percent of all welds being reviewed, at
some point I believe near residential areas the pipeline is
buried deeper than was required, and a traffic control plan.
Is there any other items for mitigation that would be a part
of this EIR that would be in the final either approval or
nonapproval by the Commission.

MR. SANDERS: Mr. Chairman, this is Dwight
Sanders. There are many other mitigation measures in the
final Environmental Impact Report.

CHAIRPERSON BUSTAMANTE: That would be found
where?

MR. SANDERS: They are in the document that we are
asking you to certify, Mr. Chairman.

CHAIRPERSON BUSTAMANTE: This is the --

MR. SANDERS: The Final Environmental Impact
Report for the project before you.

CHAIRPERSON BUSTAMANTE: Yes, I have it here.
Okay.

MR. SANDERS: Yes, sir. We've highlighted the
issues and the mitigations that we have discussed today
primarily because of the issues that were brought before the
Commission at its October 20th meeting.

CHAIRPERSON BUSTAMANTE: So that's a good clarification. I appreciate that. That's accepted.

MR. SANDERS: Thank you, Mr. Chairman.

CHAIRPERSON BUSTAMANTE: Is there any other questions from the Controller's office.

ACTING COMMISSIONER ARONBERG: I just want to note that it sounds like from Mr. Cunha's perspective, the City of West Sacramento would have some further say about the alignment of the pipe from what I understand Paul was saying. Is that right, Paul?

EXECUTIVE OFFICER THAYER: Yes. It's our view that the Environmental Impact Report looked at a couple different options in this area, and one of them was the use of the railroad right of way and the difficulties associated with that. But, nonetheless, if the City as the responsible agency with really the lead status for approving the use permit, the required permit for the pipeline there, could use this environmental document to choose either alignment. There are various reasons, barriers, to choosing an alternative alignment, but nonetheless the City can make that choice.

ACTING COMMISSIONER ARONBERG: Okay. And the Controller appreciates Kinder Morgan working with all the parties and agreeing to all these additional mitigation
measures that were not set forth in the FEIR. So that's very much appreciated and I guess from my perspective we have just got this one open issue, and that would be the staging area, moving the staging area for Clark Pacific. And maybe a Kinder Morgan representative has some ideas on what to do, maybe preferring that the Clark Pacific people have some sort of voice in the construction schedule?

MR. CORNMAN: This is Dave Cornman, and absolutely. As we say in our most current letter to them, we would like to sit down with them in January to review both our schedule as it's moving forward, as well as their schedule moving forward. And I see that as a fair negotiation about trying to avoid impacts first, and if we can't do that, then clearly if what's needed to happen is for them to move off site, as we have said in writing, we will pay damages that are required.

ACTING COMMISSIONER ARONBERG: Mr. Clark is saying that the problem is if you agree, and that's the sticking point.

MR. CORNMAN: It just can't be unilateral.

CHAIRPERSON BUSTAMANTE: Is there any recommendation or any motion that would come from the Controller's office?

ACTING COMMISSIONER ARONBERG: I would ask the staff, do you have a suggestion for how to get everyone
feeling like they have enough say in this matter here?

EXECUTIVE OFFICER THAYER: I think that the avenue that's been worked out in the EIR is a reasonable approach. The juggling of the construction schedule and moving to night and weekend hours is the sort of thing that has met with success in other places, and it's commonly done in the CEQA process, so I think that that approach is the reasonable one.

I would ask Kinder Morgan about what sort of flexibility it has in terms of actually scheduling the construction?

MR. CORNMAN: We have maximum flexibility. We have offered in writing again that although we plan to do West Sacramento in September/October, the latter part of the year, from our discussions with Clark Pacific, we agreed to consider April, which did help them some. And we've also agreed if there is a window, a three or two- to three- to four-week window anytime between April and October/November, we will try to target that, although at some additional cost.

CHAIRPERSON BUSTAMANTE: Well, let me ask you this. Have we run into this particular situation before in which a company is attempting to build some kind of line and then adjusts their construction around the operations of the various businesses that it could possibly interrupt? Have
we had experience in that before?

EXECUTIVE OFFICER THAYER: I don't recall anything directly analogous to this. It seems like what's being offered by Kinder Morgan is more flexibility than generally pipeline constructors evidence. Most of the time they want to move down the right of way mile by mile with the construction, and there is some expense to starting construction at one location, then relocating it and starting again in a different area in order to accommodate Clark as they're proposing to do here. I'd ask Dwight, because he has a longer history with the Commission as to whether there are any other analogies.

MR. SANDERS: Not totally, Paul and Mr. Chairman, however, the consulting firm that we retained to prepare this document, Aspen Group, has had extensive experience with comparable pipeline projects throughout the state, and as such, the mitigation measures that are incorporated in the Final Environmental Impact Report mirror that experience, and I believe they are as contemporary as can be at this point.

ACTING COMMISSIONER ARONBERG: Mr. Chair, I would then make a motion, and ask for Jack or Alan's help on this part of it, but to approve staff's recommendation, and with the added caveat that Kinder Morgan make every good-faith effort, I'm asking for a lawyer's advice here, but something
DEPUTY ATTORNEY GENERAL HAGAR: I would say to make a good-faith effort to resolve their problems over compensation.

ACTING COMMISSIONER ARONBERG: To resolve the problems over compensation and construction schedules, and which it sounds like it's going to happen in that way, to make it so that Clark Pacific doesn't have any disruption in its construction schedules, and further down-the-line problems in its business.

CHAIRPERSON BUSTAMANTE: Can you make that into a formal motion?

ACTING COMMISSIONER ARONBERG: That was the motion.

CHAIRPERSON BUSTAMANTE: Did the person who is taking down the minutes get that motion?

CHIEF COUNSEL RUMP: Yes.

CHAIRPERSON BUSTAMANTE: Did the reporter get that motion?

CHIEF COUNSEL RUMP: We have a court reporter here, as well as Kim has been taking notes as well.

CHAIRPERSON BUSTAMANTE: Did the court reporter get the motion?

CHIEF COUNSEL RUMP: He says yes, Mr. Chairman. He's nodding in the affirmative.
CHAIRPERSON BUSTAMANTE: Okay. Can he repeat that motion?

CHIEF COUNSEL RUMP: Okay, hold on.

ACTING COMMISSIONER ARONBERG: I'd be happy to redo it, if that would be easier.

CHIEF COUNSEL RUMP: All right. I think it would be quicker.

CHAIRPERSON BUSTAMANTE: Okay. Do it one more time for us.

ACTING COMMISSIONER ARONBERG: Okay. I move to adopt staff's recommendation with one caveat, which is that Clark Pacific and Kinder Morgan work together, and that Kinder Morgan make every good-faith effort to accommodate Clark Pacific's construction schedule and to accommodate them on compensation issues, as well as construction timing issues.

CHAIRPERSON BUSTAMANTE: I'll second that motion. We're ready for a vote. Are you ready to vote on this motion?

ACTING COMMISSIONER ARONBERG: I am ready.

CHAIRPERSON BUSTAMANTE: Okay. How do you vote?

ACTING COMMISSIONER ARONBERG: Aye.

CHAIRPERSON BUSTAMANTE: And I vote aye. Let the record show it was an unanimous vote. And we will move forward.
Is there any other business before the Commission at this time?

CHIEF COUNSEL RUMP: There is no other work here to come before the Commission.

DEPUTY ATTORNEY GENERAL HAGAR: Did you adopt a consent calendar? I think you transferred an item to the consent, but I'm not sure that you actually made a vote to adopt it.

CHAIRPERSON BUSTAMANTE: We only approved Item Number C-02 as a consent. We approved that as a consent. We did not approve a consent calendar. I don't see a consent calendar.

DEPUTY ATTORNEY GENERAL HAGAR: No, I meant -- I thought the motion was to transfer Item 2 to the consent calendar, but there was no motion to adopt it.

CHAIRPERSON BUSTAMANTE: My understanding was that it was to transfer it to consent and to approve the consent calendar. Is that the way you heard it, Cindy?

ACTING COMMISSIONER ARONBERG: Yes. I am satisfied with that, provided that Counsel is.

CHIEF COUNSEL RUMP: All right. I think that is clear in the record.

ACTING COMMISSIONER ARONBERG: Do you want one more motion?

DEPUTY ATTORNEY GENERAL HAGAR: I would prefer you
do one more motion.

    CHIEF COUNSEL RUMP:  All right.

    ACTING COMMISSIONER ARONBERG:  Okay.  So do you
want me to move to adopt the consent calendar?

    DEPUTY ATTORNEY GENERAL HAGAR:  Yes.

    ACTING COMMISSIONER ARONBERG:  Okay, so moved.

    CHAIRPERSON BUSTAMANTE:  Second.  Let the record
show that it was passed unanimously.

    Is there anything else that the attorneys want at
this time?

    (Laughter.)

    CHAIRPERSON BUSTAMANTE:  Okay.  Is there anyone
who was at any of the locations who wished to address the
Commission during this public comment period on any matter?

    CHIEF COUNSEL RUMP:  There is no one present here.

    CHAIRPERSON BUSTAMANTE:  At the Controller's
office?

    ACTING COMMISSIONER ARONBERG:  No one is here.

    CHAIRPERSON BUSTAMANTE:  All right.  If there are
no other matters before the Commission, then we'll assume
that this meeting is now adjourned.

    Thank you all.

    (Thereupon the meeting of the State
Lands Commission was concluded at 12:35
p.m. on November 13, 2003.)
CERTIFICATE OF SHORTHAND REPORTER

I, MICHAEL J. MAC IVER, a Shorthand Reporter, do hereby certify that I am a disinterested person herein; that I reported the foregoing State Lands Commission proceedings in shorthand writing; that I thereafter caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said State Lands Commission proceedings, or in any way interested in the outcome of said State Lands Commission proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of November 2003.

Michael J. Mac Iver
Shorthand Reporter