APPEARANCES

BOARD MEMBERS

Mr. Cruz M. Bustamante, Lieutenant Governor, Chairperson, also represented by Ms. Lorena Gonzalez

Mr. Steve Westly, State Controller, represented by Ms. Cindy Aronberg

Mr. Tom Campbell, Director of Finance, represented by Ms. Anne Sheehan

STAFF

Mr. Paul Thayer, Executive Officer

Mr. Jack Rump, Chief Counsel

Ms. Maurya Falkner, Environmental Program Manager

Ms. Kimberly Lunetta, Executive Assistant

Mr. Mark Meier, Senior Staff Counsel

ALSO PRESENT

Mr. Jeff Browning, Sause Brothers Ocean Towing

Mr. Abe Doherty, Coastal Conservancy

Mr. Jason Lewis, The American Waterways Operators

Ms. Karen Reyna, National Marine Sanctuary

Ms. Linda Sheehan, California Coast Keepers Alliance

Ms. Erin Simmons, The Ocean Conservancy
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
ACTING COMMISSIONER GONZALEZ: I call the State Lands Commission to order. I'll the representatives of the Commission are present.

I am not Lieutenant Governor Cruz Bustamante. I'm actually his representative, Lorraine Gonzalez.

And I have with me today Cindy Aronberg from the State Controller's Office and Anne Sheehan representing the Department of Finance.

The Lieutenant Governor will be here shortly and take over the meeting. But we'll go ahead and start and try to get it moved somewhat on time.

For the benefit of those in audience, the State Lands Commission administers properties owned by the state as well its mineral interests. Today we'll hear proposals concerning the leasing and management of these public properties.

The first item of business will be the adoption of the minutes from the Commission's last meeting.

May I have a motion to approve the minutes.

ACTING COMMISSIONER ARONBERG: Move approval.

ACTING COMMISSIONER SHEEHAN: Second.

EXECUTIVE OFFICER THAYER: And if I could interrupt the Chair, because everyone's a representative and only one of you can vote on this.
ACTING COMMISSIONER GONZALEZ: Okay. You already made the motion, so let's show that it was unanimously adopted.

The next order of business is the Executive Officer's report.

Mr. Thayer.

EXECUTIVE OFFICER THAYER: Thank you, Madam Chair. I have only two items to report on. And, I'm sorry, I don't have the names of these.

But you'll recall that at our last meeting there were two gentlemen who spoke to the Commission about issues here in the Bay Area actually where they were asking for assistance from the State Lands Commission.

The first was a gentleman who was concerned about a section of wetland on I believe the Napa River which was part -- it wasn't even State Lands Commission ownership, but was immediate adjacent to a fill, a dump, and was seeking our assistance in getting funding and getting that area restored.

We've been in further discussions with the gentleman. He is appreciative of our assistance. He may be seeking a coastal conservancy grant to provide the funding for this. And we've assured him that we would write a letter in support. He's not moved on that yet. But there'll be further discussions with him to ensure
that we're giving whatever assistance we can give him to move that project along. This is the wetland that the gentleman at the last meeting came up during the public comment period and asked for our assistance in getting that restored in the north bay.

The second public commenter that the Commission heard from was a gentleman who operated a sailing school in the south bay and he was close to the South Bay Yacht Club. And he had some concerns about how the South Bay Yacht Club was run.

As we investigated this, we found that in fact there are a variety of disputes there, some involving the yacht club, some involving the gentleman who spoke with you, as well as several different public agencies. We've discussed the matter with all of them. And there will be a meeting involving all the principals later this month, I believe to the 27th. Although that might be postponed for a week because of some people's inability to make that meeting.

But at that meeting will be both of those land owners as well as the Bay Conservation Development Commission, who has jurisdiction over that area, and then the local water district, who does both flood control and water supply. So between all of those actors, we're hoping to straighten out the situation that had been
brought to the Commission's attention at that public
comment period. I wanted to let you know of our progress
on that and that we're working on that.

And that concludes the Executive Officer's
report.

CHAIRPERSON BUSTAMANTE: Any questions?

We can go to the consent calendar.

Are there any items that have been pulled off of
the consent calendar, off the regular list that's been
given?

EXECUTIVE OFFICER THAYER: Yes, Mr. Chair. There
are three items that we pulled off:

Item 16, which has to do with an overhead power
transmission line. We received late word, I think on
Friday, from Fish & Game that they have some concerns
about that project. So we'll review those concerns with
Fish & Game and probably bring back this matter at the
August meeting before the Commission.

And then Items 39 and 51 have to do with the
assignment from Plains to DCOR of some offshore leases.
And we'll be having some additional conversations with the
assignor and the assignee before we'll bring that back to
the Commission.

CHAIRPERSON BUSTAMANTE: What about the South
River Parkway?
EXECUTIVE OFFICER THAYER: I believe that's in closed session, the -- a potential settlement of that, yes.

CHAIRPERSON BUSTAMANTE: I see.
Okay. Is there a motion?

ACTING COMMISSIONER ARONBERG: Move the consent calendar.

ACTING COMMISSIONER SHEEHAN: Second.

CHAIRPERSON BUSTAMANTE: Motion's been made and seconded.

Let the record show that it's been passed unanimously.

The regular calendar.

EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.

The one remaining item on the regular calendar is the proposal for the Commission to adopt ballast water regulations. We already have some regulations in place. However, the reauthorization of the Commission's ballast water program included the new requirement that the Commission adopt regulations with respect to voyages that began and ended along the West Coast. That's within California or up to Oregon and Washington.

Maurya Falkner, who is in charge of this program for the State Lands Commission, will make the presentation on this.
CHAIRPERSON BUSTAMANTE: Also, has there been any kind of correspondence at all from any industry groups or environmental groups?

EXECUTIVE OFFICER THAYER: Maurya, do you have any -- we have some support letters, one from the ocean conservancy. And I think Maurya would -- who has that, might have.

ENVIRONMENTAL PROGRAM MANAGER FALKNER: Yes, we received support letters from the main sanctuaries here in the state, the Blue Water Network. And I guess we have some speakers today that will be speaking in support as well of the proposed regulation.

I have had four meetings with industry representatives since our last Commission meeting, trying to iron out some details. And I can go into that in a little bit more detail if you'd like.

CHAIRPERSON BUSTAMANTE: Please.

ENVIRONMENTAL PROGRAM MANAGER FALKNER: And good morning.

(Thereupon an overhead presentation was Presented as follows.)

ENVIRONMENTAL PROGRAM MANAGER FALKNER: As Mr. Thayer's already mentioned, we're here to ask for your approval to adopt proposed regulations that would govern coast-wise traffic for ballast water that they carry.
ENVIRONMENTAL PROGRAM MANAGER FALKNER: Under the Marine Basic Species Act that was passed in 2003, PRC Section 71204.5 mandates the Commission to adopt regulations that would govern the management of ballast water for vessels that operate within the Pacific Coast region.

ENVIRONMENTAL PROGRAM MANAGER FALKNER: This here is kind of a rough figure that represents the Pacific Coast region. It basically extends its coastal waters, so less than 200 nautical miles from shore from Cooks Inlet in Alaska down about three-quarters of the way down the Baja coast excludes the Gulf of California. This location was identified in the laws in the region that we need to be working with.

ENVIRONMENTAL PROGRAM MANAGER FALKNER: And the Invasive Species Act specifically requires us to adopt regulations for vessels operating along the Pacific Coast region. We were mandated to consider vessel design and voyage duration. We were also mandated to look at best available technologies that were economically achievable. Finally, the regulations required us to, as appropriate, impose restrictions or prohibition on
discharge into areas or estuaries that were considered sensitive.

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ENVIRONMENTAL PROGRAM MANAGER FALKNER: As I mentioned at our last Commission meeting, we've had several meetings in preparation for these rules. And they started way beyond the reauthorization of the bill. We had a meeting in March of 2002 with oceanographers. And they helped us identify areas that we -- at the very least we should not allow exchanges or ballast water discharges to occur. And those are the report summary there as to avoid discharges in 50 nautical miles around exclusion zones. And that graphic there represents, not to scale of course, but the exclusion zones that we're talking about specifically on the West Coast of North America. Those are primarily the great sanctuaries.

They also recommended restricting discharges within 15 nautical miles of estuaries. And, if possible, have discharges occur in waters that are deeper than a thousand meters, which would put the waters off of the continental shelf.

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ENVIRONMENTAL PROGRAM MANAGER FALKNER: We took this information forward to a group in January of 2003, included everybody from Alaska, British Columbia, down
through California, and both state, federal, international, the regulated community and NGOs.

Came out of that workshop with surprising high level of consensus. First off, everybody agreed that ballast water transport is a significant threat. They wanted us to move forward with the data that were available and create ideally a regional uniform program that considered safety exemptions and costs and, finally, not to allow exchange to occur in waters that are less than 200 meters in depth.

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ENVIRONMENTAL PROGRAM MANAGER FALKNER: We had additional meetings and put forward some draft regulations with the stakeholders. Again, the general consensus was we wanted to be consistent with the other West Coast states and still be protective of California waters.

The industry asked us to consider a shared waters designation and a process by which to address emergencies that may come up.

We had a meeting with the technical advisory group in December of 2004, presented our draft regulations. And the TAG came back with some recommendations for us to clearly state the safety exemption within the regulation. It is already in the law, but they wanted it explicitly placed in the
regulation as well. They also wanted us to clarify our
shared waters designation and to include a process by
which we could address or deal with petitions for
alternatives that weren't clearly stated within the
regulation.

Again, the first and last of the exemption and
the alternative section were already identified in the
law. So we just restated that again in the regulation.

We had another meeting here with you in April.
At that meeting there was some concerns raised by the
industry regarding the safety exemption provision and
limited delegation of authority provision, as well as a
petition for alternatives.

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ENVIRONMENTAL PROGRAM MANAGER FALKNER: Two
public hearings were held, both in June, earlier this
month. And then I've had additional meetings with
industry and Assembly Member Joe Nations, a staffer as
well on this issue, on this regulation.

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ENVIRONMENTAL PROGRAM MANAGER FALKNER: Just to
give you a brief overview of what the rest of the world is
doing, the IMO has adopted a convention, which is a set of
guidelines that requires at a minimum ballast water to be
conducted at 50 nautical miles from shore and in 200
meters of water depth, so it's consistent -- we are consistent with IMO.

The U.S. right now has no regulations, and it's unclear if they're going to set a federal regulation at this point. There is some legislation going through at the federal level. But whether or not that actually makes it out and gets taken care of is unclear.

Canada adopted the IMO resolution. Washington has a coastal rule in place. That is a 50 nautical mile rule as well. Oregon just passed legislation this session that will go into effect at the end of this year that will require vessels to adopt California and Washington's 50 nautical mile rule.

So basically we've succeeded in getting a regional management plan for coast-wise vessels.

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CHAIRPERSON BUSTAMANTE: Is there something specific about the 50 nautical miles?

ENVIRONMENTAL PROGRAM MANAGER FALKNER: It is -- it meets the scientific recommendations or the recommendations from the oceanographers that we be outside of the special exclusion zones like the sanctuaries. It is a straight line -- one of the early proposals was we do these bubbles. You know, a vessel comes out and they can exchange. Oh, here's a sanctuary. They've got it out 50
nautical miles if they're going to continue exchanging, or shut off.

And so in order for it to be as easy for the industry as possible, 50 nautical mile works well on the West Coast. It may not work real well in the rest of the country. But here, because the continental shelf drops off quickly, because of the currents and tides, the 50 nautical mile we believe is going to work well here in California and here on the West Coast.

CHAIRPERSON BUSTAMANTE: Is that -- does the water temperature, is that -- because of the science of it or --

ENVIRONMENTAL PROGRAM MANAGER FALKNER: It's the combination of --

CHAIRPERSON BUSTAMANTE: -- has an impact on different species that are contained in ballast water?

ENVIRONMENTAL PROGRAM MANAGER FALKNER: We hope so. We're going to be doing some research starting up here this month that will be looking at differences between coastal water, 50 nautical mile, and further out. But the recommendations from the oceanographers were the -- because of the drop-off in the continental shelf you have -- more likely waters are going to be uplifting and moving things out instead of in to shore. The closer you're into shore, the more likely the organisms can be
blown into shore and survive. So it's a combination of that distance and then the water differences in depth and everything else. Is that okay?

Does that answer your question, I should say?

CHAIRPERSON BUSTAMANTE: Well, it answers the question.

ENVIRONMENTAL PROGRAM MANAGER FALKNER: Okay. So at the last Commission meeting and in the comment letters that we've received, there have been three primary areas of concern that the industry has brought up to us. One is regarding the safety provision. And this is especially important with the tow barges, and in particular the barges -- there are three different types of barges. There's the articulated tug barge, the integrated tug barge, and then there's the tow barge.

And the tow barges in particular, they are unmanned vessels. They are, you know, literally to get tugged. And somebody's got a long tow line and they're towing this big thing.

In order for those vessels to conduct an exchange a person has to go from the vessel and climb up probably a J ladder up the side of a barge, get on board to do the exchange. And there's extreme concerns about safety there. But the regulation includes a safety exemption that we believe will apply to those circumstances right
there; that those vessels because of safety condition
situations can't do an exchange can utilize that safety
exemption. They still fall under the confines of the law
and the regulation. They still need to minimize ballast
water discharges and file reports and be in communication
with State Lands Commission.

CHAIRPERSON BUSTAMANTE: Is it a small hole or is
it a big hole?

ENVIRONMENTAL PROGRAM MANAGER FALKNER: A small
hole?

CHAIRPERSON BUSTAMANTE: Or exemption.

ENVIRONMENTAL PROGRAM MANAGER FALKNER: It's a
small hole.

CHAIRPERSON BUSTAMANTE: And the exemption --
when you talk about safety, under what specific parameters
are they able to ask for an exemption? Is it just weather
or is it --

ENVIRONMENTAL PROGRAM MANAGER FALKNER: No, I
think in this case, especially with these tow barges, that
they would be able to come forward. I don't think it's --
it's never been the intent of the staff nor I believe the
Commission to put -- or of the legislation to put these --
to put regulations or legislation in place that would
jeopardize the safety of the crew. And that's why that
safety provision is in there.
And so to get a human being, even in calm weather, from a small boat on to a barge, it is exceedingly dangerous and it's not our intent for those vessels to try to comply and lose crew members. That's not our intention.

CHAIRPERSON BUSTAMANTE: So those folks would have permanent exemptions? There wouldn't be a request? That would be a constant exemption that that particular barge would have in any use?

ENVIRONMENTAL PROGRAM MANAGER FALKNER: We could go about it that way. There are several different avenues that we can go -- that we could just --

CHAIRPERSON BUSTAMANTE: Well, an exemption isn't something that's regular practice. An exemption is something that takes place outside of regular practice.

ENVIRONMENTAL PROGRAM MANAGER FALKNER: Correct.

CHAIRPERSON BUSTAMANTE: So you're giving them a permanent exemption?

ENVIRONMENTAL PROGRAM MANAGER FALKNER: Again, I think that we can pursue this in several different ways. We can either -- on a case-by-case basis. Because some of the barges can do exchanges, some can't. Some, they don't even have pumps onboard, so there's not even an opportunity for them to say, "There's a safety exemption."
We don't have a pump onboard, you know. We can't do anything till we get alongside doing an exchange." So I think there is a case-by-case scenario. But there's also the opportunity to come back to you with a list. We have six months before these rules will go into effect. Sit down with the vessel owners -- there's only 28 barges that are operating in California waters, at least in the last 18 months. Sit down with you and get a blanket, "This is what you will do," you know. "You are not required to do a near-coast exchange because of safety concerns. However, you need to continue to file your forms and your fee and all of that." So we could go that route as well. It's really what the comfort level is between the industry and the Commission.

EXECUTIVE OFFICER THAYER: But to supplement that, as Maurya's pointed out, there is a requirement that they use best available technologies. And my understanding of ballast water management in general is that it's sort of a frontier sort of program and that there's a lot of new technology being developed. In fact, the Commission had approved grants to work on some of those for other than barges at the last meeting.

And so what's true today with respect to what's safe and is the best that a barge can do might not be true tomorrow. And these regs are written in a way that if the
technology is developed and it is feasible and safe, that
they would be required to carry that out. And that
flexibility is contained in there.

ENVIRONMENTAL PROGRAM MANAGER FALKNER:

Exactly. Things are moving forward and there
are -- and I think it's important that -- the legislation
spent a great deal of time during 2003 reauthorizing this
act, and part of that process was to remove the exemptions
that had been in the law. And so right now the only
exemption is for true gray hulls, military vessels, and
vessels in innocent passage. And they removed the other
exemptions in there for the reasons that Mr. Thayer just
mentioned, that technology is advancing, and rather than
set these guys aside on remaining, you know, biological
reason for it, let's work within the confines of the
technology that we have at hand.

Another issue that came up is -- don't relate to
safety concerns but relates to hardship issues. And,
again, I think that within the regulation we have included
a process by which shipowner/operators can come to us and
then we can come to you to act to request alternatives to
the prescribed management guideline -- management options
that are listed in the regulation. And that's the way,
again, to avoid doing the exemption and dealing with that
scenario. Rather, sit down with the industry over the
next several months and figure out the best way that they
can, if not meet the letter of the law, meet the intent of
the law and the regulation.

CHAIRPERSON BUSTAMANTE: And the basic process
for asking for exemption is what?

ENVIRONMENTAL PROGRAM MANAGER FALKNER: They
would come to either Mr. Thayer or Mr. Gregory or me with
a letter requesting that we consider an alternative
management practice. You would work with that industry in
developing basically a calendar item on the staff report
on the applicability of the -- of what they're requesting.
And if it at least meets the intent of the law, then it
would come to you at a Commission meeting and request for
approval of an alternative action.

That's under the scenario of somebody who knows.
I do this voyage and 75 percent of the time I know I can
do it; 25 percent of the time I'm not sure I can do it or
I'm pretty sure I can't. This is what I'm proposing for
that 25 percent of the time. Then we could come to you
with that request.

The alternative is we do have, as you may recall,
some limited delegation of authority to deal with those
timely requests, somebody's coming down from Seattle, it's
been horrible weather and they can't do an exchange in --
you know, in a certain location; can they do something
else? And we have the authority -- Mr. Thayer has the authority to grant those timely types of requests.

CHAIRPERSON BUSTAMANTE: I was just concerned that the process would be such that you would have to come through us and then it would take a very long time to get authorization to be able to do that. Where it should be probably vested more in the staff to be able to do that on a regular basis, so that when things take place or the request comes in, you're not going to be holding back somebody from doing something when it's going to be necessary. So --

ENVIRONMENTAL PROGRAM MANAGER FALKNER: I'm hoping -- keep my fingers crossed. We have six months from the time the regulation is signed until it's implemented. And that was --

ACTING COMMISSIONER SHEEHAN: Yeah, my only issue is as long as there is a process that somebody isn't sitting offshore waiting for the Commission to have their next meeting.

(Laughter.)

ENVIRONMENTAL PROGRAM MANAGER FALKNER: Sorry, we're not meeting again until August.

No, that's not going to happen.

(Laughter.)

ENVIRONMENTAL PROGRAM MANAGER FALKNER: Again,
that's the thing. You do have the delegation of authority to deal with those kind of timely issues. And then other issues where -- let's say, this law doesn't go into effect probably until in January 2006, we have at least two more Commission meetings. I'm hoping, you know -- I'm hoping that that will be the case, once it gets through here, to get it into the Office of Administrative Law and signed. So at least six months before --

ACTING COMMISSIONER SHEEHAN: And you would begin the process for them to petition the Commission and the staff in how you would handle that to come up to be presented to the Commission at one of those meetings --

ENVIRONMENTAL PROGRAM MANAGER FALKNER: That's correct. That allows you to exert your authority and also allows it to be in a public forum so that any interested parties can be involved as well.

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ENVIRONMENTAL PROGRAM MANAGER FALKNER: The other issue that came up and has come up repeatedly is our shared waters designation. And we pulled together data that are available on species -- nonindigenous species occurrences within -- there were two issues that came up: The San Diego to Los Angeles route and then the San Francisco to Eureka route. These are granted short duration voyages. But in looking at the data and talking
to the scientific experts, the scientific experts strongly recommend us not allowing port-to-port transfers between these two -- those two pairs of ports. And one of the reasons is -- this table that I've presented up here, these data were collected by the Department of Fish & Game during the first phase of the ballast water program in 2001, and it's complemented by data that have been collected by experts in the Bay Area. And what we did is we looked at the degree of overlap between those port complexes, how many species were unique to L.A. -- nonindigenous species unique to L.A. that weren't found in San Diego and vice versa, and San Francisco versus Eureka. And it's a pretty frightening number of lack of overlap. And so you have 142 species that are found in L.A. that aren't found in San Diego and a huge number of -- 315 species that are found in San Francisco and not in Eureka. And this suggests that allowing port-to-port transfers is going to just expand those numbers. It's going to decrease the differences between those ports and potentially the expansion of those species beyond those ports as well.

So, again, for those vessels where a short duration in conducting an exchange is going to be a severe hardship, we do have a process involved again petitioning for alternatives that we can address those situations.
So the other issue that came up was the IMO resolution that was passed in February of 2004. And some of the federal legislation includes language that basically says if a vessel is going to have an undue delay or a deviation in their voyage, they don't have to comply. And staff is very opposed to including that kind of language in these regulations for the reasons that I've listed there and are listed in the staff report. We believe it's insufficient language for a regulation. It may be okay for an IMO resolution, which is a guideline; but that it's inadequate at the regulatory level.

It has no definition or boundaries to it. So conceivably somebody could say, "Hey, it's going to cost me, you know, another half hour of voyage time" or "I'm going to have to deviate two miles from my intended voyage, and so, you know, I'm not going to comply."

And, finally, you know, according to our legal counsel, they do not believe -- he does not believe that it's going to meet the clarity standard within the Office of Administration Procedures Act.

So, again, we would rather not -- we don't want that language included for those reasons.

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ENVIRONMENTAL PROGRAM MANAGER FALKNER: Finally, they have -- the industry has requested that we review the
regulations. They had originally wanted us to put language in the regulation that would require us to review the impacts after 6 to 12 months. We're opposed to putting that kind of language in the regulation. But we have asked that the Commission direct staff for us to review those regs after they're implemented, and we can report back to the Commission as well as to the Legislature in our biennial report that's due in January of 2007.

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ENVIRONMENTAL PROGRAM MANAGER FALKNER: So, in conclusion, the regulations that we've developed, we believe they recognize operational realities in operating in California; they recognize sensitive resource areas, the need for simplicity, which will hopefully encourage and ensure compliance. We address the shared waters issue, making L.A. and Long Beach shared waters and then San Francisco Bay/Delta ports shared waters. They address the safety concerns. The safety issue is clearly listed in the regulation. Mechanisms by which alternatives can be applied for and time until the rule actually goes into effect. So this just restates that.

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ENVIRONMENTAL PROGRAM MANAGER FALKNER: I'd be more than welcome to answer any other questions that you
CHAIRPERSON BUSTAMANTE: Any questions from the members?

ACTING COMMISSIONER ARONBERG: Can we just hear from the speakers?

CHAIRPERSON BUSTAMANTE: We have speakers. I believe we have five. The first is Erin Simmons, and then Jeff Browning, and then Linda Sheehan, Abe Doherty, and Karen Reyna.

MS. SIMMONS: Good morning, Lieutenant Governor Bustamante.

CHAIRPERSON BUSTAMANTE: Give your name for the record please.

MS. SIMMONS: I'm sorry. Erin Simmons with the Ocean Conservancy.

The following comments are submitted on behalf of my co-workers -- of the Ocean Conservancy. And I believe you have a copy of our comment letter of support.

We have more information than ever of the damaging effects of invasive species entered -- in ballast water. The costs associated with invasive species, both ecological and economic, are staggering and far outweigh the costs of complying with these regulations.

Ballast water is the number one source of marine invasions, and experts have reported that invasion
resulted intercoastal traffic is a very serious problem. California is the first state in the nation to pass a law mandating controls on ballast water discharges into state waters. But we are behind the times because of our failure to regulate coastal traffic, which Washington and Oregon have been doing since 2000 and 2002 respectively.

Today you're hearing from the shipping industry that they should not have to exchange ballast water when it's inconvenient for them to do so. We strongly oppose any amendments that would permit a shipper to avoid ballast water exchange because of undue delay or deviation. Such an exemption would be tantamount to declining to regulate at all.

The regulations that you have in front of you were developed with the assistance of a technical Advisory group in which the shipping industry was adequately represented and heard.

The proposed regulations are protective and will permit the defense of California waters against new and costly invasions by -- alien organisms. They contain reasonable emergency exemptions and provisions for protecting the safety of the ship and its crew. The regulations are flexible and include a range of options for compliance, a range that will only grow as the
Commission and Coast Guard approve additional ballast water management methods.

In sum, we strongly urge you to adopt the regulations as proposed. The Ocean Conservancy thanks staff and the technical advisory group for their hard work in the development of the proposed regulations. And thanks to the Commission for hearing these remarks.

CHAIRPERSON BUSTAMANTE: Any questions?

Jeff Browning.

Thank you.

MS. SIMMONS: Thank you.

MR. BROWNING: Good morning. Good morning, Commission, Mr. Chair. I'm Jeff Browning. I'm representing the American Waterways Operators, Inland Boatmen's Union, and the Sause Brothers Ocean Towing Company. I believe you have the comments from AWO and the Sause Brothers on file. I'm not sure if you have the Inland Boatmen's Union.

So I'd like to read that in a bit.

Our concern as industry and an operator is the safety of the crew. Maurya did point that out. We would like though an exemption that takes unmanned barges, towed unmanned barges and have them exempt. There is no time that we can put people on board at sea. It's -- calm waters, rough waters, it's unsafe.
There's a second issue that hasn't been addressed. These barges do have ballast systems on them. But they do not under a loaded situation allow for ballast water exchange. If we were to fill the tanks up -- the ballast tanks up at the same time as the cargo, the barges would sink. They can't do it. They don't have the capacity to do it.

And that's our entire fleet. Sause Brothers represents probably 50 percent of the barges that Maurya pointed out.

Third, now we have an environmental issue if we do do this ballast water exchange, because we have tanker fleets, oil barges and cargo barges, and that would be a pollution issue.

At this point I'd like to read the Inland Boatmen's Union letter in support of the opposition -- not opposition, but giving the unmanned tow barges an exemption.

It was addressed to Maurya Falkner.

"Dear Ms. Falkner: Inland Boatmen Union represents many crew members, including tug and barge operations running West Coast routes from Alaska to California, including Hawaii.

"The proposed legislation regarding ballast water treatment that California State Lands is considering will
expose tug owners to extremely dangerous conditions. To
port unmanned barges in an open ocean on a regular basis
poses serious safety concerns for crew members as well as
the tug and barges. It's extremely dangerous even in calm
waters to transfer crew members from tugs to barges.
Trying to go alongside a barge in open ocean when you do
not have to is going to get us a crew member killed.

"We request that you consider tug and barge
operations exempt from legislation regarding ballast water
treatment."

So, in closing, we are requesting that the regs
be modified to give an exemption for unmanned tow barges.

CHAIRPERSON BUSTAMANTE: Okay. How does that
impact the regulations that you're proposing right now,
staff?

ENVIRONMENTAL PROGRAM MANAGER FALKNER: Well,
again, I think that, you know, we are opposed to any
blanket exemptions. But we recognize the safety issue and
that we're more than willing to work within the confines
of that safety issue and provide them with -- I guess
maybe exemption is the wrong word. We want them to still
minimize the ballast water discharges, practice good
housekeeping, submit the ballast water report forms like
they're doing now, submit the fee like they're doing now.
And if we can't because of technology insufficiencies at
this point have them conduct in exchange for a discharge
to a shoreside treatment facility or some other option,
then because of those safety issues they will be granted
that, okay. You don't have to do a near-coast exchange.
Still have to comply will all the rest of the components
of the law.

An exemption to me says you're out, you don't
have to do anything, the law doesn't apply to you any
longer; which is actually a step back for us, because
we're already getting forms -- we're already, you know,
working with these individuals on a regular basis. So it
wouldn't change much from what they're doing right now if
we utilized our process within the proposed regulation.

CHAIRPERSON BUSTAMANTE: They would be required?

ENVIRONMENTAL PROGRAM MANAGER FALKNER: They
would not be required to do the near coastal exchange due
to the extreme safety concerns. However, I think we would
definitely want to be sitting down with them and looking
at exploring other options. And it may not -- we may not
have any other options right now or in the next year. But
there are potential shoreside treatment. It's up in the
air. There's nothing available right now. But that's an
option. There are technologies that are coming down that
are being looked at now. But those are potential options.

So rather than exempt them from the whole
program, ask them to work within this. You know, we recognize -- we don't want them trying to put people from a boat to a barge and having somebody get killed. That's not the intent of this.

CHAIRPERSON BUSTAMANTE: What is the basic difference in operations that you see in reading the regulations as proposed and what you're currently doing?

MR. BROWNING: Well, the difference would require us to do a ballast water exchange at sea. I agree with Maurya, we agree with Maurya that we will continue to have best practices on the ballast that we do carry. That would minimize that. We'll continue to do the reporting and the fee.

Our exemption is purely for the ballast water exchange at sea. That's where the safety issue comes in. On safety exemption, it's regular business for us. And unmanned towed barges should be looked at as something that cannot do that.

CHAIRPERSON BUSTAMANTE: Well, according to staff, you heard what the response was, is that this regulation would not require you -- in the event that you believe there was safety and you were able to present that to the staff, that there would be an exemption for all safety.

SO does it really have an impact on what you're
currently doing?

MR. BROWNING: We would be more comfortable if it was in the reg that the barges -- unmanned towed barges were named in there as something that did not have to do that.

CHAIRPERSON BUSTAMANTE: But in terms of your operations, in terms of what you're actually doing, would these regulations as proposed have any effect at all in terms of your operations?

MR. BROWNING: If we were able to use the safety exemption each time, we could run the way we're running right now.

CHAIRPERSON BUSTAMANTE: Okay. Please.

ACTING COMMISSIONER SHEEHAN: Along the same lines of what the Lieutenant Governor said. Is it a presumption issue, that you were presumed to be required to do this unless you get an exemption, whereas right now you are not presumed to be required to do this? Is this a legal issue or is it more just an operational issue?

MR. BROWNING: I'm not sure I can answer that. It could be both. Our -- we -- the safety exemption is a simple process. We can write it into our plan as a safety exemption. But we would like the Commission to recognize that we're unique in how we operate.

ACTING COMMISSIONER SHEEHAN: Okay.
EXECUTIVE OFFICER THAYER: I think -- at a staff level one thing we talked about doing to make this issue clear, crystal clear, is write them a letter which basically says, you know, under existing law, under our regulations and with the existing state of technology, we believe that the safety exemption allows you to conduct operations without conducting mid-ocean -- or whatever it is -- near-ocean ballast water exchanges.

The letter would probably go on and say, however, your voyages are subject, as everybody else is, to the requirement of looking for feasible measures and also providing the reports so that we have the data on what's happening out there. And, you know, as a means to provide some comfort, to make it clear that we as a commission don't intend to come after them if they're using the safety exemption under the present situation.

CHAIRPERSON BUSTAMANTE: I think what the Commissioner is saying it's not a matter of comfort. I think she's suggesting perhaps -- maybe I should let you go ahead and speak -- but it sounds like legal matters, whether there's a legal presumption could mean it could have an impact on insurance, it could have an impact on the broader things, and is there a way of being able to resolve the legal issue --

ACTING COMMISSIONER SHEEHAN: I see lots of
pointing fingers.

EXECUTIVE OFFICER THAYER: I think everyone's looking for Mark Meier, who is the attorney who's worked --

ACTING COMMISSIONER SHEEHAN: Can I just --

MR. BROWNING: Yes.

ACTING COMMISSIONER SHEEHAN: That is what --
maybe I'm reading this incorrectly -- but that is sort of the issue I see. Because from an operational perspective nothing would change. But the way the regulations, it is -- you are now required to do this unless you get the exemption. And so there was a presumption that you will comply unless you somehow get the exemption. And so my question is trying to deal with the operational. It doesn't sound like it would change really the operations, because until there's some other technology that would allow the industry to do this, you will continue to operate like you are now. And the issue would be: Notwithstanding that fact, are we creating a new legal burden for them or someone who could go after them, even though everybody agreed they can't do it now? I think that -- that's what I see as sort of the sort of the splitting of hairs the issue here. And so how could we address that issue so that operationally you're still doing the same, but re haven't somehow created --
CHAIRPERSON BUSTAMANTE: Paul, I think not only a letter from the regulatory agency, but perhaps a letter from the Attorney General's office would help clarify legal matters rather than thinking of this as an issue of comfort. I know you used the word -- but it's a -- it could be --

EXECUTIVE OFFICER THAYER: No, we don't intend to have that effect at all. And I don't know whether Mark has -- Mark's the attorney -- Mark Meier with the State Lands Commission who's worked on this.

SENIOR STAFF COUNSEL MEIER: Yeah, Mark Meier, Senior Staff Counsel for the Commission.

There are several different ways you could do it. You could draft an exemption from the exchange requirements, specifically narrowly focused on the need that -- if an exchange required the transfer of personnel from a tug to a barge, then you could say that for safety considerations you were exempt from the exchange requirement. That would be a blanket exemption.

It could be -- I think we could probably draft it as narrowly as possible. It would require us to go out and do a -- I believe a 15-day recirculation of the regulations.

CHAIRPERSON BUSTAMANTE: I don't think that's the -- where we're headed.
SENIOR STAFF COUNSEL MEIER: But the point is that from a legal presumption standpoint, it seems to me to be a better way to go -- what I'm trying to say is the -- I think the exemption already exists legally under the proposed regulations, the safety exemption. The question is is whether or not there's sufficient clarity that this safety exemption covers the transfer of personnel from the tug to the barge. And so if you had a letter directed to the ship operator saying, "You are exempt from" -- "this particular barge from this particular activity," then it seems to me you've met all your presumptions there. And in a way it's more narrowly defined, narrowed focused on this particular company and this particular activity, as opposed to a blanket exemption where you still have to go through a legal interpretation whether this applies to you or not.

CHAIRPERSON BUSTAMANTE: Any thoughts about, you know, an AG opinion or --

ASSISTANT ATTORNEY GENERAL HAGER: Well, you don't want to --

CHAIRPERSON BUSTAMANTE: I'm not trying to put anybody on the hook here. I'm just trying to figure out how to resolve it.

ASSISTANT ATTORNEY GENERAL HAGER: No, no.

I will agree with Mark. I think the point of --
the difference is: Is that what triggers the exemption? Is it an action by staff or is it the regulation itself? And I think the staff is saying it should be an action by staff, and that should create the same result. But it leaves the discretion -- or the action, I should say, with the staff.

SENIOR STAFF COUNSEL MEIER: The regulatory exemption already exists. It's the safety exemption. What we're doing is interpreting that exemption as it applies to this particular case. And it seems to -- it's my feeling that, from a legal standpoint and from a comfort standpoint, if I had a letter saying, the Sause Brothers, that these barges are exempt from exchanges insofar as they require need to transfer personnel from the tug to the barge, that's clearer than having a blanket exemption that you still have to go through the legal interpretation of deciding whether or not it applies to --

CHAIRPERSON BUSTAMANTE: Not being an attorney, I'd like to see the three attorneys not their heads in some kind of consensus.

ASSISTANT ATTORNEY GENERAL HAGER: Yes.

CHAIRPERSON BUSTAMANTE: Okay?

Let the record show that the three attorneys all nodded in consensus.

UNKNOWN SPEAKER: In the affirmative.
CHAIRPERSON BUSTAMANTE: In the affirmative.
Thank you. Another attorney.

(Laughter.)

SENIOR STAFF COUNSEL MEIER: I think that one of the things that helps us in this case is that there are a defined number of barges that we're talking about. We can write letters that address specific barges. We don't need -- we're not talking about 150, 200 barges here.

CHAIRPERSON BUSTAMANTE: Okay. Thank you.
Is there any other comments or --

MR. BROWNING: I do have a question.
I do agree with the letter concept or the regulation because they both will work.
My question is: If we do get a letter naming the operation and the safety hazards, you know, that's fine. But will this letter -- you know, we've been doing this business and this trade for 50 some years and intend to for that far out in the future. Will this letter stand for that long of a time?

CHAIRPERSON BUSTAMANTE: Do you mean in the future?

MR. BROWNING: Yes.

CHAIRPERSON BUSTAMANTE: I don't think so.

MR. BROWNING: For that reason, that's why I would like to see something put in the regulations that
specifically names, you know, these barges -- unmanned
towed barges, so, you know, we don't have to go to another
letter to the next Commission.

CHAIRPERSON BUSTAMANTE: I understand.

ENVIRONMENTAL PROGRAM MANAGER FALKNER: The law
sunsets in 2010. So, you know, for all we know, there
won't be a reauthorization. And so we -- because of the
question of the future.

MR. BROWNING: I understand that. But it would
give the industry a comfort, you know, if we could get,
you know, just that narrowed down to just the ballast
water exchange for unmanned tow barges.

SENIOR STAFF COUNSEL MEIER: If the letter is
issued by the Commission staff pursuant to a delegation,
then it carries the same authority as the Commission. If
the Commission itself directly authorizes this particular
letter or signs the letter itself or if staff signs the
letter -- if Paul signs the letter on behalf of the
Commission, it's an action of the Commission. It carries
from Commission to Commission. So that's -- the letter
would remain in effect until it canceled.

CHAIRPERSON BUSTAMANTE: That doesn't mean he has
an exemption for 50 years, is what he's looking for.

SENIOR STAFF COUNSEL MEIER: It would depend on
how the letter is written.
ACTING COMMISSIONER SHEEHAN: Well, but the --

SENIOR STAFF COUNSEL MEIER: And he would never
have an exemption for longer than four years because
the --

ACTING COMMISSIONER SHEEHAN: Right. I mean the
authority for the letter is the statute that caused these
regulations to be developed.

SENIOR STAFF COUNSEL MEIER: Right.

ACTING COMMISSIONER SHEEHAN: And if the statute
expires in 2010 --

SENIOR STAFF COUNSEL MEIER: But it would depend
on what the legislative action -- what legislative
action --

EXECUTIVE OFFICER THAYER: But it has to be a
legislative action if these regulations go away in four
years.

ACTING COMMISSIONER SHEEHAN: The statute goes
away. Now, what would happen, my guess would be, the
Legislature would come back to figure out, you know, "All
right, have we learned anything new, new technology? Are
we going to extend it? Are we going to change?" you know;
which at that point then we would have to revisit the
issue.

SENIOR STAFF COUNSEL MEIER: That's the purpose
of the sunset provision, to revisit this issue to --
ACTING COMMISSIONER SHEEHAN: Correct. Exactly, to come back and see, okay, what has changed?

So the letter would go, at least I would read it, as long as the statute and regulations implementing that statute are in effect. And then the issue would have to be revisited at that point in time.

CHAIRPERSON BUSTAMANTE: Okay?

Thank you, sir.

MR. BROWNING: Thank you.

CHAIRPERSON BUSTAMANTE: Linda.

Please give your name for the record.

MS. SHEEHAN: Good morning, Chair Bustamante, members of the Commission. I'm Linda Sheehan. I'm the Executive Director of the California Coast Keeper Alliance.

The Coast Keeper Alliance represents ten individual water keepers from Humboldt Bay down to San Diego, and so we represent every port in the state, and members have great interest in these proceedings.

In my prior position with Ocean Conservancy I was quite active for eight years on the invasive species issues, including acting sponsor of AB 703 and AB 433, the enacting legislation that produced the regulations before you today. And I did attend to workshops that were put on by staff to help draft these proposed regulations. And I
can attest that staff did an excellent job in conducting outreach and communication with members of the regulated community, not only in California but up and down the coast, the entire Pacific Coast to try to gain the type of consistency that is so important in making sure that these work in the long term.

I do want to address the point of the -- the point that's been discussed here today, a little bit about the exemption.

I have some concerns about blanket exemptions in general, because the way that the law and regulations are drafted is with a focus on best available technology economically feasible. And that is -- it's in the statute. And, as Mr. Thayer said earlier, it's a changing dynamic. It could change from, you know, week to week. Who knows when the next new silver bullet's going to come out to address this problem. And so it is something that needs to be periodically evaluated. So I would certainly oppose any type of blanket exemption.

And one way to address sort of an ongoing safety exemption might be to go through the alternatives process, a petition for alternative action, which is detailed in the regulations and which allows for the Commission and the public to appropriately weigh in on what the best available technology economically feasible is and whether
the action in light of safety or other concerns is appropriate. And I think that that is an excellent system, and it could address pretty much any concern that comes up. And so I would encourage you to adopt the regulations for that purpose.

If you have any questions, I'd be more than happy to answer them.

CHAIRPERSON BUSTAMANTE: Thank you.

MS. SHEEHAN: Thank you.

CHAIRPERSON BUSTAMANTE: Abe Doherty.

MR. DOHERTY: Good morning. My name is Abe Doherty, and I'm a project manager of the California Coastal Conservancy. I'm here today to speak in favor of the proposed regulations as proposed by staff.

As you know, Mr. Chair, last week I brought projects to the California -- Protection Council for restoration of hill grass and native oysters in San Francisco Bay.

The Coastal Conservancy is currently spending millions of dollars to restore important habitat in the estuaries and the coastal areas of California. And invasive species really threatened these restoration projects. So whatever we can do to limit the introduction and spread of invasives in the state, we really encourage that to happen.
And the Coastal Conservancy is also spending millions of dollars to manage invasive species. And prevention of these invasives in the first place is the most cost effective, in some cases the only, way to manage these species.

So, in conclusion, these invasives threaten the significant investment the state is currently making to restore habitat and to actually manage the species that have already been introduced. So I'm here to speak in favor of passing the proposed regulations as proposed by staff.

Thank you.

CHAIRPERSON BUSTAMANTE: Thank you.

Karen.

MS. REYNA: Hello. For the record, my name is Karen Reyna, a resource protection specialist for the Gulf of the Farallones National Marine Sanctuary.

The National Marine Sanctuary Program is a program of NOAA federal program. And there are four sanctuaries in California: Channel Islands, Monterey Bay, Gulf of the Farallones, and Cordell Bank. Our areas include surrounding the Channel Islands and all areas between Cambria and Bodega Bay.

And we also sent a letter, which I hope you received. We support the staff recommendation for the
proposed regulations. And we actually work with the Coastal Conservancy on eradicating and preventing invasive species. We manage Tomales Bay. And that's one of the areas that we've had problems. And then we're right off the Golden Gate. So this is an issue of concern for us.

This is also a timely decision for you and for us, because it complements a proposed regulation that we have, by all California sanctuaries in our management plan and review process. And that regulation is to prohibit the discharge of non-indigenous species. So this complements it quite well.

And that's pretty much it. Thank you.

I can answer any questions.

CHAIRPERSON BUSTAMANTE: Thank you.

The last speaker we have is Jason Lewis.

MR. LEWIS: Good morning. For the record, I'm Jason Lewis, Vice President of the American Waterways operators for the Pacific Region.

Actually I just want to -- I'll be very brief. I want to echo the support for Mr. Browning's statements earlier.

A few points that I've heard involve consistency, for one. And when we look at Washington, Oregon and California, with consistency we're talking about Washington's self-propelled vessels. And this captures
your unmanned tank barges because they're not self-propelled, because we're including everything that floats. We're putting it in there.

The other thing is about the exemption. When we look at this, we're looking at something that the staff at this time can decide that it's unsafe to do this. Tomorrow the staff can say, "Well, you know, really we've had a new innovation in the boats that are used for opening the tug to the barge. And because of that I really think it's safe." Or "Now we've developed a $50,000 ionization process that you should be able to effect on your barge, and you shouldn't be exempt from this. We're going to rescind our letter." Because the letter's really dependent upon the staff who are issuing it and upon the Commission.

And I think this is a very important issue. And I consider ourselves out on the frontier of this, and that's why we're so aware of it. Right now there's nothing going on.

I've also heard that it expires in 2010, in four years, and that we shouldn't write anything in exemption list because it would be too far reaching. Well, I personally don't see any technology coming down the pipe in the next four years that's going to allow us to do this safely.
So if we have the commitment that you're willing to say, "Okay, look, we trust that you're actually doing the work to go out and look at the technology, maybe we should revisit this in a year or two and look at" -- maybe our exemption isn't warranted because there's something out there that allows us to do it. But to go the other way, we kind of have to be at the -- really at the mercy of the staff saying, "Okay. It's safe" or "unsafe and we're going to rescind the letter" or -- I know dealing with other states, I've dealt with that on other issues. And I just -- I would hate to see someone get hurt because of that. I mean those decisions really need to be made with taking safety into account.

And that's all I have.

CHAIRPERSON BUSTAMANTE: Is there a -- I thought I heard earlier. Wasn't there a set period in which we're going to review these regulations by the Commission?

EXECUTIVE OFFICER THAYER: The Commission in the staff recommendation will be directing staff to come back in 12 months and report to the Commission at an open hearing such as this, where people from the industry can testify as to the effect.

The other thing I'd like to point out is that --

CHAIRPERSON BUSTAMANTE: So we'll be reviewing in one year?
EXECUTIVE OFFICER THAYER: Yes.

And the other thing I'd like to point out is that no matter what staff does with this letter, two things are true: First, the regulations are worded in a way that this -- the safety exemption is not something that's decided upon by staff. They don't apply to us for a safety exemption. The master of the vessel can claim that safety exemption. If staff disagrees, ultimately we have to file some sort of litigation. And we could not do that without coming back to the Commission for approval.

So staff does not have the unilateral authority to enforce this in a way absent Commission input on this.

ENVIRONMENTAL PROGRAM MANAGER FALKNER: Also, I think the -- the regulation and the law is very clear, is the responsibility for the vessel, the crew, and the cargo rests with the captain. So it really is your members' responsibilities to determine, if this is a safety issue, they better not do it, because they're not absolved of that responsibility. We're not taking that responsibility. It's the responsibility of the captain and the crew to determine that.

And as Paul said, if you claim a safety exemption and we disagree with you, we'll come back to you. But that is your -- that's a captain's exemption to take. It's not our decision. It's not their decision.
CHAIRPERSON BUSTAMANTE: So the presumption I guess here is that you're making the call on safety and you make that determination. And if we -- as was said here twice now, if we disagree, there will be some type of legal action that will have to come through us. You'll have a chance to be able to come back here and talk about that as we consider legal action. In the meantime, we will have a one-year period in which to review this matter so that you'll be able to come back and talk about exactly what the experiences are with your industry and this regulation.

MR. LEWIS: Thank you.

CHAIRPERSON BUSTAMANTE: All right, sir.

ACTING COMMISSIONER ARONBERG: I'd like to make a motion to adopt staff's recommendation, with the caveat that a letter as discussed will be provided, and then we show that that letter is satisfactory to Ms. Sheehan and the other folks who spoke on that before the letter goes out.

ACTING COMMISSIONER SHEEHAN: I'll second.

CHAIRPERSON BUSTAMANTE: The motion's been made and seconded.

And so let the record show that the vote is unanimous.

And you will be running those letters by us
before they go out?

EXECUTIVE OFFICER THAYER: Yes, sir.

CHAIRPERSON BUSTAMANTE: Okay. Very good.

I think that ends our regular calendar; is that correct?

EXECUTIVE OFFICER THAYER: As long as there's no public comment.

CHAIRPERSON BUSTAMANTE: Public comment. Okay.

Is there any public comment on any particular issue that you'd like to bring before the State Lands Commission?

Seeing none, that ends our regular calendar.

And we will be going into closed calendar. So those of you who are not a part of this closed session, would you please begin to exit.

(Thereupon the California State Lands Commission open session meeting adjourned at 11:30 a.m.)
CERTIFICATE OF REPORTER

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of July, 2005.

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