

TELECONFERENCE MEETING  
STATE OF CALIFORNIA  
STATE LANDS COMMISSION

***ORIGINAL***

STATE CAPITOL  
ROOM 1114  
SACRAMENTO, CALIFORNIA

STATE CAPITOL  
ROOM 1145  
SACRAMENTO, CA 95814

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KATHRYN S. KENYON, CSR  
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APPEARANCES

COMMITTEE MEMBERS

Mr. Steve Westly, State Controller, Chairperson (via teleconference)

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

Mr. Michael C. Genest, Director of Finance, represented by Ms. Anne Sheehan (via teleconference)

STAFF

Mr. Paul Thayer, Executive Officer

Ms. Maurya Falkner, Environmental Program Manager

Ms. Kimberly Lunetta, Executive Assistant

ALSO PRESENT

Mr. John Berge, Pacific Merchant Shipping Association

Mr. David Bolland, Association of California Water Agencies

Mr. Andrew Cohen, San Francisco Estuary Institute (via teleconference)

Mr. Tim Eichenberg, Ocean Conservancy

Mr. Mark Holmes, The Bay Institute

Ms. Shannon McKinney, Legislative Aid for Senator Simitian

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PROCEEDINGS

CHAIRPERSON WESTLY: Well, good afternoon, everybody. I apologize for being a little late.

This is Steve Westly, and I would like to call the meeting of the State Lands Commission to order and Mr. Thayer -- and this is a telephone conference meeting -- will you please call the roll of the commissioners in attendance.

EXECUTIVE OFFICER THAYER: Certainly.

Chairman Westly?

CHAIRPERSON WESTLY: Here.

EXECUTIVE OFFICER THAYER: Commissioner Gonzalez?

ACTING COMMISSIONER GONZALEZ: Here.

EXECUTIVE OFFICER THAYER: Commissioner Sheehan?

ACTING COMMISSIONER SHEEHAN: Here.

EXECUTIVE OFFICER THAYER: We have three in attendance.

CHAIRPERSON WESTLY: And for the benefit of those members of the public attending this meeting, the State Lands Commission, which administers properties owned by the State as well as its mineral interests, today we will hear a proposal concerning the management of these public properties.

The first item of business is the adoption of the minutes from the Commissions meeting, and I would like to

1 ask my colleagues for a motion to approve the minutes.

2 CHAIRPERSON GONZALEZ: So moved.

3 ACTING COMMISSIONER SHEEHAN: I'll second.

4 CHAIRPERSON WESTLY: Great.

5 All in favor, please say aye.

6 (All ayes.)

7 CHAIRPERSON WESTLY: Thank you.

8 You didn't need a technical roll call for that, do  
9 you? Or do you?

10 EXECUTIVE OFFICER THAYER: I heard three ayes.

11 CHAIRPERSON WESTLY: Okay. Let's have a roll call  
12 vote on that.

13 ACTING COMMISSIONER SHEEHAN: Sure.

14 EXECUTIVE OFFICER THAYER: Okay.

15 Chairman Westly?

16 CHAIRPERSON WESTLY: Aye.

17 EXECUTIVE OFFICER THAYER: Commissioner Sheehan?

18 ACTING COMMISSIONER SHEEHAN: Aye.

19 EXECUTIVE OFFICER THAYER: Commissioner Gonzalez?

20 ACTING COMMISSIONER GONZALEZ: Aye.

21 CHAIRPERSON WESTLY: Okay. The minutes are  
22 unanimously adopted.

23 The next order of business is the Executive  
24 Officer's Report.

25 Mr. Thayer, would you, please?

1 EXECUTIVE OFFICER THAYER: Thank you, Chairman  
2 Westly.

3 I'm pleased to report that I do not have a report  
4 and will have a longer thing to say probably at the  
5 February meeting.

6 CHAIRPERSON WESTLY: All right.

7 Thank you very much.

8 Next order of business will be the regular  
9 calendar. This item concerns our report for the  
10 Legislature on ballast water discharge pursuant to my  
11 friend Joe Nation's bill.

12 EXECUTIVE OFFICER THAYER: Thank you,  
13 Mr. Chairman.

14 The Commission initially heard this at a meeting  
15 in San Diego in December. Basically this is a proposal --  
16 this is a staff report which responds to a legislative  
17 mandate, as you've identified Assemblymember Nation's  
18 bill. It requires the Commission to develop standards for  
19 improving ballast water management protection from  
20 invasive species in the state of California.

21 The bill requires that we submit this report by  
22 the end of this month.

23 At the December meeting there was some discussion  
24 about some additional enhancements to the report. In  
25 particular, in response to input from the audience and the

1 Commissioners' own concerns, the Commission asked staff to  
2 go back and examine whether or not there should be a  
3 deadline for meeting a zero detectable emission or  
4 discharge of organisms in ballast water. This has been  
5 added to the report which has been brought back to you  
6 today.

7           There was also some discussion from the State  
8 Water Resources Control Board who asked that language be  
9 inserted to make it clear that these standards are --  
10 should be complied with in a way so as to not adversely  
11 affect water quality. So that was also added to the  
12 bill -- excuse me, added to the staff report.

13           And the final change that was made in the report  
14 that was brought to you today involved changing kind of  
15 the wording of the recommendations. The initial report in  
16 December stated that these were recommendations to the  
17 Legislature for enactment or for codification.

18           We went back and looked at the AB 433, the bill  
19 that mandates the preparation of this report, and it  
20 doesn't really require that we make recommendations for  
21 legislation; instead that the recommendations be for the  
22 appropriate standards in California. And as the report  
23 now notes, there are a variety of ways that those  
24 standards could be implemented. But the intent of the  
25 legislation was to require us to go off and work with a

1 variety of experts to develop what the standards should  
2 be, but not make specific recommendations on how they  
3 would be implemented, so that change was made in the  
4 report as well.

5 I have with me today Maurya Falkner who heads up  
6 our ballast water program, is on our staff, and she's  
7 prepared to give a brief overview of the overall ballast  
8 water program in this report, if the Commission would  
9 like.

10 CHAIRPERSON WESTLY: Thank you, Paul.

11 I just want to thank Maurya for all of her work on  
12 this. I know you've done an awful lot of -- it's an  
13 important issue. It's something a lot of people don't  
14 know about, but I'm very eager to hear the report and just  
15 wanted to say thank you from all of us for doing that.

16 ENVIRONMENTAL PROGRAM MANAGER FALKNER: You're  
17 welcome.

18 EXECUTIVE OFFICER THAYER: We have several people  
19 here who have submitted speaker slips, and Commissioner  
20 Gonzalez could call upon them, if you'd like.

21 ACTING COMMISSIONER SHEEHAN: And Paul, this is  
22 Anne. I have -- Andrew Cohen is here in my office with  
23 me, who also would like to speak.

24 EXECUTIVE OFFICER THAYER: Great.

25 Is there anybody down there with you,

1 Mr. Chairman?

2 CHAIRPERSON WESTLY: There is one member from the  
3 public, but she does not want to speak at this time.

4 But maybe if Commissioner Gonzalez could go ahead  
5 and bring members of the public forward as is appropriate.

6 ACTING COMMISSIONER GONZALEZ: Okay.

7 Let's just start with Mark Holmes.

8 MR. HOLMES: Thank you.

9 I'm Mark Holmes. I'm Program Director for The Bay  
10 Institute. We're a nonprofit organization dedicated to  
11 restoring the estuary, and we work for the San Joaquin  
12 River to San Francisco Bay and the Delta as well.

13 I was a member of the advisory panel and  
14 participated in the development of the report that was  
15 submitted by the advisory panel. And I'm here to speak in  
16 support of the staff recommendation and to thank the staff  
17 for the outstanding work they did, putting this together.

18 I do want to mention one specific item in here  
19 that I talked about briefly with the staff, and have been  
20 given reassurance, but I do want to point it out just for  
21 your consideration.

22 The sixth recommendation in the draft report on  
23 roman IV asked to establish a recommendation to "establish  
24 a testing and evaluation center that provides industry  
25 developers and regulators an opportunity to take promising

1 technologies to working prototypes." And this is in the  
2 context of what the recommendations are for the State of  
3 California to do.

4 I have been reassured that the intent here is not  
5 for the program to be dependent upon the establishment of  
6 this center, but I just want to make it clear that our  
7 understanding is that industry is responsible for meeting  
8 the standards, meeting the schedule, regardless of whether  
9 a testing center is established by the State or not.

10 Since this could bring up an issue of funding beyond any  
11 fees that the industry might otherwise be assessed, I  
12 think it's important that whether or not the State is able  
13 to establish the center, the industry is still responsible  
14 to meet the standards in the schedule established in the  
15 report. So that's the only other comment I have.

16 And thank you again very much, Chairman Westly and  
17 Commissioners, for your work on this really important  
18 measure. So thanks very much.

19 CHAIRPERSON WESTLY: Thank you.

20 EXECUTIVE OFFICER THAYER: I might add, as staff,  
21 that the issue that Mark raises is important, and we want  
22 to make sure that the staff report and the Commissions  
23 Action is not misconstrued.

24 And I note that in the staff report we say that  
25 this infrastructure will be essential for the effective

1 implementation for performance standards, and I'm  
2 wondering if a way to deal with Mark's concern would be to  
3 change that report to just say, "would strongly contribute  
4 to the effective implementation." And the word  
5 "essential" kind of implies the concern that Mark's  
6 talking about. And by making that wording change, I think  
7 it probably makes the direction staff certainly wants to  
8 go in, and I presume, the Commission, more clear.

9 ACTING COMMISSIONER GONZALEZ: Okay. Are there  
10 any more questions for Mark?

11 No?

12 All right. Moving on to David Bolland from the  
13 Association of California Water Agencies.

14 MR. BOLLAND: Thank you.

15 My name is David Bolland. I'm Senior Regulatory  
16 Advocate for the Association of California Water Agencies.  
17 I also served on the advisory committee, and I first of  
18 all want to compliment the staff for the excellent work  
19 they did to pull together a diverse set of folks and a lot  
20 of concerns and interests and put together a solid effort  
21 to comply with this piece of legislation.

22 We are in support of the document as it stands,  
23 and we believe that the performance standards for ballast  
24 water are an important part of the environmental  
25 protections that are necessary in California, specifically

1 to protect water quality and water supply.

2 A lot of public water agencies are very concerned  
3 about invasive species right now. And we're particularly  
4 concerned about the effect of invasive species in the  
5 Delta, and we believe that this effort by the State will  
6 go some distance to precluding future problems that might  
7 have arisen if we didn't -- didn't persue these  
8 performance standards.

9 So we support the standards strongly and  
10 appreciate the work of the State Lands Commission in  
11 moving these standards forward.

12 CHAIRPERSON WESTLY: Thank you.

13 ACTING COMMISSIONER GONZALEZ: Thank you.

14 Next we have Tim Eichenberg from the Ocean  
15 Conservancy.

16 MR. EICHENBERG: My name is Tim Eichenberg. I am  
17 the Director of Pacific Office of the Ocean Conservancy.  
18 And the Ocean Conservancy was a member of the advisory  
19 panel, and we are speaking in support of the staff report  
20 recommendations.

21 At the risk of embarrassing Maurya, we want to  
22 compliment her on her effort again.

23 There are huge improvement and achievement. They  
24 are moving towards a zero discharge, which is called for  
25 under the Marine Invasive Species Act, as pointed out in

1 the report. A zero discharge is already required in some  
2 bodies of water under the Clean Water Act because under  
3 the TNDL provisions of the Clean Water Act including the  
4 San Francisco Bay. The report also points out that the  
5 IMO standards are inadequate and this would move beyond  
6 the IMO standards because they would only marginally  
7 improve current ballast water exchange requirements and  
8 are comparable to unmanaged ballast water for the smaller  
9 organisms themselves. This is pointed out on Page 35 of  
10 the report.

11 We also would like to point out that it's  
12 important that interim standards be implemented now  
13 because we believe that treatment technologies are  
14 currently available and achievable. We support ratcheting  
15 down the implementation of the interim standards when new  
16 technologies are achievable, consistent with Clean Water  
17 Act technology-based standards.

18 In implementing these technology-based standards  
19 through regulations as opposed to legislation, as the  
20 change is indicated in the report, will ease the  
21 implementation significantly rather than having to go back  
22 to the Legislature each time these standards would be  
23 changed. And we support that.

24 We urge the Commission to ensure that the  
25 triennial reviews and the initial reviews are substantive

1 and meaningful, that they actually look to provide  
2 significant research and development of the -- of  
3 technologies rather than just reviewing existing research  
4 and so forth.

5 And finally we would like to support reducing the  
6 final zero discharge standard from 2026 to 2020, because  
7 this will prevent numerous invasions and harm that would  
8 occur during that six-year period where the zero discharge  
9 standard would go into effect.

10 So that's basically what we had to say.

11 Thank you.

12 ACTING COMMISSIONER GONZALEZ: Okay. Thank you.

13 EXECUTIVE OFFICER THAYER: And, Mr. Chair --

14 CHAIRPERSON WESTLY: Thank you. I just want to  
15 thank you in particular. I think you did an awful lot of  
16 work with Cindy Aronberg on my staff and frankly all of us  
17 on this Board. It's a historic thing we're doing today,  
18 and I really wanted to single you out and just say thank  
19 you for what you have done.

20 MR. EICHENBERG: Thank you.

21 Really the work -- the major work was done by  
22 Sarah Newkirk who is no longer with us, but just carrying  
23 the ball for her. She's left to go back East, so she did  
24 a fantastic job on this.

25 CHAIRPERSON WESTLY: Thank you.

1 EXECUTIVE OFFICER THAYER: And also if I could  
2 clarify to make sure everyone's aware that the staff had  
3 originally considered the 2026 deadline for -- to add to  
4 the report when the Commission wanted to have a deadline  
5 given. This was a date that we understand was discussed  
6 although not adopted by the Committee that developed the  
7 draft standards. And after further discussion, staff has  
8 modified the report, so the deadline down in 2020 within  
9 the report. So the suggestion of Mr. Eichenberg has been  
10 adopted.

11 CHAIRPERSON WESTLY: Okay.

12 ACTING COMMISSIONER GONZALEZ: And our final  
13 speaker here is John Berge from the Pacific Merchant  
14 Shipping Association.

15 MR. BERGE: Thank you. John Berge, Vice President  
16 with Pacific Merchant Shipping Association.

17 I would like to join the rest of the crowd and  
18 express my thanks and admiration to the staff at State  
19 Lands. I think they also did a great job at facilitating  
20 both the working panel as well as this final product. And  
21 also thanks to the Commission to have the chance to  
22 provide comment today.

23 To start off with, I just want to reiterate that  
24 our industry strongly supports the California ballast  
25 water program, and we also support this move to develop or

1 establish performance standards, because I think, as most  
2 people agree, this is what we need to help drive any  
3 development of treatment technology.

4 We are grouped together with a couple of other  
5 industry participants, and the working panel did submit a  
6 minority report. Although we did agree on, I think, the  
7 majority of some of the issues with the Panel, there were  
8 a few issues that we did differ with. And if I could just  
9 touch on those points a little bit.

10 Because our industry is international in scope, we  
11 are obviously going to prefer international or federal  
12 standards as opposed to state-by-state standards. Now,  
13 this is not because their science is any better than  
14 California's science or vice versa. It's strictly an  
15 issue of providing some consistency for the operation of  
16 our vessels as in call ports throughout the world.

17 We also believe in this particular instance that  
18 it would likely be international or federal standards that  
19 will be the benchmark to drive any kind of a performance  
20 technology here.

21 I just want to point out that in the document or  
22 in the report, the staff did make the comment that there  
23 is no strong evidence that argues for a specific level of  
24 treatment. I think this essentially leaves us having to  
25 guess where we should be in terms of treatment technology

1 in the future as well as when that should be integrated  
2 into the world shipping fleet.

3 Of course this is balanced against where we hope  
4 to be in the future. I just hope that any public policy  
5 that's set by the Commission or the Legislature is based  
6 primarily on that educated guess and less on a wish.

7 I would also like to point out that I think one  
8 thing is certain, and that's that no matter what standard  
9 or target date that is chosen, it will likely not match  
10 reality, come 5, 10, or 15 years from now.

11 For that reason, we strongly support the  
12 recommendation in the report to have regular evaluations  
13 and reporting on the advancement of technology and  
14 management options to help determine whether changes, and  
15 I would say here, in either direction, would need to be  
16 made.

17 So in that regard I think we would also agree that  
18 regulation, as opposed to legislation, to establish the  
19 actual standards and implementation schedule would be the  
20 preferable method here to give us the best flexibility.

21 Finally, I would just also like to comment briefly  
22 on the recommendation to change the terminology from "best  
23 available technology" to "best achievable technology."

24 Currently, the statute indicates that it should be  
25 drawn on best available technology. And I understand the

1 staff's recommendation to move to achievable in terms of  
2 moving to the next level that's not particularly available  
3 today.

4           However, quite often the case what is best  
5 achievable is not necessarily feasible. So in that  
6 regard, we would recommend that the requirement for a best  
7 achievable technology be amended to say, "best achievable  
8 technology that is economically feasible."

9           And again, I look forward to working with State  
10 Lands staff in the future on this issue.

11           Thank you.

12           ACTING COMMISSIONER GONZALEZ: That's it here.

13           CHAIRPERSON WESTLY: Great.

14           At this point, unless there are other comments  
15 from the public, I would like to ask if there are any  
16 comments from the commissioners.

17           ACTING COMMISSIONER SHEEHAN: We do -- this is  
18 Anne Sheehan. I do have an individual here with me at  
19 Finance who I think I said had wanted to speak, a member  
20 of the public.

21           CHAIRPERSON WESTLY: Terrific, Anne. We would  
22 love to hear from your member --

23           ACTING COMMISSIONER SHEEHAN: Okay.

24           CHAIRPERSON WESTLY: -- there with you in Finance.

25           MR. COHEN: My name is Andrew Cohen. I'm a senior

1 marine biologist and the director of the Biological  
2 Invasions Program at the San Francisco Estuary Institute,  
3 which is a nonprofit research institute in Oakland.

4 I have been working on exotic species and ballast  
5 water issues for about 15 years. I helped Ted Lempert's  
6 office write the first ballast water bill in California in  
7 1999. And I was privileged to serve on the advisory panel  
8 this summer, this last summer, and I want to thank the  
9 Commission for that opportunity.

10 I have three areas of concern in the staff's  
11 report which I would like to touch on briefly:

12 The first had to do with the timing of  
13 implementation. I think the majority of the Committee was  
14 pleased to develop the recommendations for standards that  
15 we did. They are, in my view, quite strong standards and  
16 will be protective of the environment.

17 They also, I think, can be achieved if a major  
18 enough effort is put into it by the industry to do so by  
19 the time frame, but they will have to put in a major  
20 effort to do that. And because it is challenging, it is  
21 appropriate to review, as is proposed in the staff report,  
22 in 2008 or thereafter, whether it can really be achieved  
23 on that time frame. But I'm concerned about the basis for  
24 that review for what would constitute a case for delaying  
25 implementation. In my mind, delay should only be

1 acceptable if the industry has really made the maximum  
2 effort that can be expected of them. If they really  
3 invested all they can reasonably expect that they will  
4 invest, they put the time and attention into it, at that  
5 point, if they have not been able to develop the  
6 appropriate technology, then it seems appropriate to delay  
7 for a few years. But if that has not happened, then the  
8 implementation should go forward.

9           What it says on the staff report and all it says,  
10 although it seems to be in reference to this, is that the  
11 industry shall have made a good faith effort. It's  
12 possible that there was some specific legal meaning of  
13 that phrase that staff intended to cover my concerns. But  
14 I would feel better if it were clearer to the industry and  
15 clearer in terms of the State Lands' position, that the  
16 industry really was going to have to make the maximum  
17 effort that was feasible to do this.

18           The other part of this, and I touch on this  
19 because the issue arose in our advisory committee meetings  
20 and in a different context, but the burden of  
21 demonstrating that the maximum effort has been made really  
22 needs to be on the shipping industry because they are  
23 going to have to bring forward, of their own willingness,  
24 financial data on the industry and what its financial  
25 revenues or profits or in some way what its capacity is so

1 that the Commission can judge whether they have made the  
2 maximum investment that can be expected of them.

3 In the committee -- commission work -- excuse me,  
4 the panel work, when we were trying to decide what was  
5 economically feasible, one of the things we wanted to look  
6 at was what was the industry's capacity to pay for  
7 treatment, for high level of treatment. And we asked the  
8 shipping industry representatives to provide us  
9 information, and they very politely were of no use  
10 whatsoever in giving us information, which is entirely  
11 their right when they asked them information on the  
12 finances of the shipping industry, but I think it's not  
13 possible to make a decision about whether they have made  
14 the maximum effort unless they come forward with that.

15 The second issue has to do with what happens then  
16 in implementation, if there are ships that are not in  
17 compliance, few or many. And at that point I presume the  
18 State Lands Commission would find ships to discharge or  
19 untreated or inadequately ballast water, but under the  
20 current law, unless it's been changed since the  
21 reauthorization in 2003, the maximum penalty that you can  
22 apply to discharging ballast water, untreated ballast  
23 illegally, is \$5,000.

24 The ships have operating costs of 10, 20, \$30,000  
25 a day. A ship coming into port may pay close to a hundred

1 thousand dollars, and when you total up the pilot fees and  
2 wharfage fees and the costs incurred in coming into wharf  
3 and their normal operating costs -- and \$5,000 isn't a  
4 serious penalty, or even really a slap on the wrist. It's  
5 kind of pocket change. It's not enough money to induce  
6 industry to invest in costs that -- for example, the staff  
7 report estimates at between \$200,000 and \$5 million per  
8 ship to install a treatment plan, a \$5,000 fine just won't  
9 do it.

10 I do recommend that as you're addressing the other  
11 issues, that you address this issue as well, because it  
12 will be impossible to enforce this law without higher  
13 penalties being available to the Commission.

14 I would also recommend that the penalties be  
15 scaled to the size of the discharge if in fact the ships  
16 that carry discharge of the largest ballast water probably  
17 have the largest cost for treating it, and so the fines  
18 available to try and induce them to put in the treatment  
19 plant should also be higher. Or around \$50 per metric ton  
20 would probably get you in the right ballpark.

21 The last issue, and I will mention it very  
22 briefly, has to do with the -- what's the term I'm looking  
23 for -- the facility to assess and evaluate treatment in  
24 order to support a certification program. I'm not so  
25 concerned about the facility. I'm concerned about the

1 certification program, because I don't understand what it  
2 will do. We touched on this a couple of times in a panel  
3 discussion. The shipping industry wanted to have  
4 certified technology that they could stick on the ships  
5 and know that they were done.

6 The Panel members, at least many of them were wary  
7 of this, did not endorse this approach. The concern was  
8 that the shipping industry should have to meet the  
9 standards respective of whatever certification program  
10 there was. So I'm unclear. If technology is certified,  
11 the ships put on, do they still have to meet the standards  
12 regardless if they fail to meet the standards for whatever  
13 reason? Are there penalties? Will they be required to  
14 change the treatment?

15 If they are not, if putting certified equipment on  
16 the ship isn't enough to them and they still have to meet  
17 the standards, what's the point of the putting certified  
18 equipment on there?

19 So I really don't understand what this  
20 certification program does to meet the standards, and if  
21 it were my operation, I would be -- I'm willing to move  
22 forward with a request for a \$10-million facility to  
23 support the certification program until it was better  
24 spelled out.

25 I'm sorry if I took too long.

1 Thank you for listening to my comments.

2 EXECUTIVE OFFICER THAYER: If I could respond to  
3 some of those comments, Mr. Chair.

4 CHAIRPERSON WESTLY: Go ahead. Why don't you give  
5 a brief response.

6 We will see if anyone else from the public would  
7 like to speak, and then I think we probably should take  
8 some comments from the commissioners.

9 Go ahead, Mr. Thayer.

10 EXECUTIVE OFFICER THAYER: Sure. I will try and  
11 expedite this.

12 I think we're generally in agreement with most of  
13 the comments that Dr. Cohen made. Certainly should  
14 there be -- the point of the staff report in saying that  
15 there should be a good faith effort was not meant to set  
16 out a particular legal standard. But clearly we  
17 understand that there is going to be a strong burden on  
18 industry to demonstrate if it's not feasible to meet a  
19 technology standard and on staff, if it's going to  
20 recommend that some change occur either to legislation, if  
21 these standards are enacted to legislation, or to  
22 regulations, if that's how they're implemented.

23 So I don't see much space between what Dr. Cohen  
24 and is describing and us. Of course if and when that time  
25 came, and of course we're hoping it won't come -- we are

1 optimistic that these standards can be met -- that will be  
2 something that will be debated fully in public, and Dr.  
3 Cohen and others will have an opportunity to review how  
4 staff has dealt with that issue.

5           With respect to the penalties and enforcement  
6 issue, I think that's very important. I don't think our  
7 charge got into developing enforcement and penalty  
8 mechanisms, but clearly that's something that the  
9 Legislature should consider when it's deciding how to  
10 implement this. And it's something that we can work with  
11 the Legislature on, as that legislation is being  
12 developed, based on our own experience, and I'm sure Dr.  
13 Cohen would have that opportunity as well.

14           We didn't get into it again because the mandate in  
15 433 didn't suggest that we should. With respect to the  
16 tech eval center, I agree entirely with Dr. Cohen that the  
17 major thrust of this program should be based on meeting  
18 standards and not installing certified equipment.

19           I think it's important that we provide some  
20 assistance in evaluating that equipment so that we all  
21 know where we're going at the end of the day, but I think  
22 when would you look at our recommendation, we're mostly  
23 looking at that center to evaluate these technologies, to  
24 see whether they are going to work or not. And clearly if  
25 we're in a position where we can say that's not going to

1 work, the industry can't put it on board and later say,  
2 well, we didn't know that wasn't going to work. We've  
3 already told them it isn't. So the intent here is not to  
4 provide a certification that will get around the  
5 standards.

6 So again, in conclusion, I would say that staff  
7 shares many of these concerns, and there will be a lot of  
8 opportunities both in the implementation of these  
9 standards to work on them further.

10 CHAIRPERSON WESTLY: Thank you, Mr. Thayer.

11 At this point I would like to ask if any of the  
12 Commissioners would like to ask questions or say a word  
13 about this.

14 ACTING COMMISSIONER GONZALEZ: I'm okay. I have  
15 so many notes now. I'm trying to go back to my one  
16 concern.

17 So Anne, do you have anything?

18 ACTING COMMISSIONER SHEEHAN: The only comment  
19 that I would make is I have to compliment the staff since  
20 the last meeting and coming back and making the  
21 recommendations and then pulling this piece together.

22 I think it is important to set a standard and to  
23 set a goal. I think it's important that we work  
24 cooperatively with the industry to get there together so  
25 that we are not in an adversarial situation in the future

1 on this.

2 But I have to compliment the work, both of the  
3 task force and the staff, of pulling together what I think  
4 is a very good document.

5 CHAIRPERSON WESTLY: Commissioner Gonzalez, I will  
6 buy you some time here.

7 ACTING COMMISSIONER GONZALEZ: I actually found  
8 it.

9 CHAIRPERSON WESTLY: I understand the issues. I  
10 appreciate the gentleman from the industry coming.

11 You know, realistically, I think saying we will do  
12 this as long as it's economically feasible, I just --  
13 personally I don't believe we can go there. It's just too  
14 open ended, but I think what we do have here and what we  
15 have shown is that the Commission's willing to work  
16 collegially with the industry. I think we have a  
17 reasonable compromise and I think we are doing something  
18 that, frankly, is clearly in the best interest of the  
19 public. I think it will end up saving the State billions  
20 of dollars by keeping non-native species out of our  
21 habitat and from causing what can and has been shown to be  
22 a lot of damage. So I think we've got a great position.  
23 I'd certainly support it.

24 And Commissioner Gonzalez, I would like to ask for  
25 a motion, if you'd be willing to make one.

1           ACTING COMMISSIONER GONZALEZ: I do want to make a  
2 motion to support the staff recommendation with the only  
3 caveat being the word changing on the sixth  
4 recommendation, as proposed by Mr. Holmes, to ensure that  
5 we know it is the industry's burden and not the State's  
6 burden to make sure we are moving in that direction. But  
7 I think that that was a fairly minor change.

8           So with that change, I would like to make that  
9 motion that we accept the staff's recommendation.

10          EXECUTIVE OFFICER THAYER: Just to clarify, does  
11 the language I proposed, would that be considered okay?

12          MR. HOLMES: Yes.

13          EXECUTIVE OFFICER THAYER: Okay. Good.

14          ACTING COMMISSIONER SHEEHAN: Can you -- Paul, can  
15 you read -- make sure you read that language. Tell me  
16 what page.

17          ENVIRONMENTAL PROGRAM MANAGER FALKNER: It's on  
18 Page 42 of the report. It's recommendation number six.  
19 And it's the last sentence of that first paragraph.

20          And Paul, what did you want to -- it says right  
21 now, "This infrastructure will be essential for the  
22 effective implementation of performance standards and for  
23 the ongoing evaluation of technologies, once approved."

24          And we will change it to --

25          EXECUTIVE OFFICER THAYER: "This infrastructure

1 would" -- I wouldn't put "strongly." How about if we say  
2 "would substantially contribute to the effective  
3 implementation of performance standards and for the  
4 ongoing evaluation of technologies, once approved."

5 MR. HOLMES: Thank you.

6 ACTING COMMISSIONER SHEEHAN: All right. I just  
7 want to make sure I understand the change.

8 EXECUTIVE OFFICER THAYER: We would also have to  
9 put that towards -- in the forward as well which we  
10 could --

11 ACTING COMMISSIONER SHEEHAN: In the summary.

12 CHAIRPERSON WESTLY: Commissioner Gonzalez, I  
13 think that's absolutely reasonable, and I am more than  
14 happy to second the motion.

15 And a call of the roll, please.

16 EXECUTIVE OFFICER THAYER: Very well.

17 Chairman Westly?

18 CHAIRPERSON WESTLY: Aye.

19 EXECUTIVE OFFICER THAYER: Commissioner Sheehan?

20 ACTING COMMISSIONER SHEEHAN: Aye.

21 EXECUTIVE OFFICER THAYER: Commissioner Gonzalez?

22 ACTING COMMISSIONER GONZALEZ: Aye.

23 CHAIRPERSON WESTLY: Okay. I just want to thank  
24 the staff again. I want to thank members of the public  
25 for being here.

1           And I want to ask Mr. Thayer, is there other  
2 business?

3           EXECUTIVE OFFICER THAYER: No, that concludes --  
4 that concludes the business that we have on the agenda.

5           Of course, I just want to remind the Commission  
6 that our next meeting is February 9th at 10:00 a.m. in  
7 Sacramento.

8           CHAIRPERSON WESTLY: Terrific.

9           I will call for adjournment.

10          I want to thank all parties for being here.

11          I also want to recognize there is a gentleman from  
12 Princess Cruise Lines here. I want to thank him for being  
13 here as well.

14          Thank you.

15          We look forward to seeing you at the next meeting.

16          Thank you.

17          (Whereupon the Teleconference Meeting of the  
18 California State Lands Commission adjourned  
19 at 3:44 p.m.)

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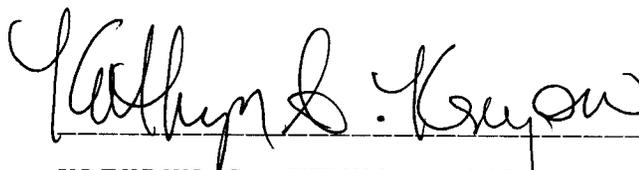
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2 I, KATHRYN S. KENYON, a Certified Shorthand Reporter  
3 of the State of California, do hereby certify:

4 That I am a disinterested person herein; that the  
5 foregoing Teleconference Meeting of the California State  
6 Lands Commission was reported in shorthand by me,  
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8 State of California, and thereafter transcribed into  
9 typewriting.

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

13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 2nd day of February, 2006.

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