

MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

ORIGINAL

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MONDAY, APRIL 17, 2006

10:22 A.M.

KATHRYN S. KENYON, CSR
CERTIFIED SHORTHAND REPORTER
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APPEARANCES

COMMISSION MEMBERS

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

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

Mr. Michael C. Genest, Director of Finance, represented by Ms. Anne Sheehan

STAFF

Mr. Paul Thayer, Executive Officer

Mr. Jack Rump, Chief Counsel

Mr. Alan Hager, Assistant Attorney General

Ms. Kimberly Lunetta, Executive Assistant

Mr. Tim Lipscomb

Ms. Grace Kato

ALSO PRESENT

Mr. Kevin Thomas, California American Water

Mr. Bill Aboudi

Ms. Sarah Abramson, Heal The Bay.

Mr. Tom Addison, Bay Area Air District.

Mr. Joe Baiunco, Recreational Boaters of California

Mr. David Bennett, Bennett Staheli Engineers

Mr. Brian Beveridge

Ms. Claudia Cappio, Oakland Base Reuse Authority

APPEARANCES CONTINUED

Mr. Thomas Clark, Port of Oakland

Mr. Joe Dillon, National Marine Fisheries Service

Mr. Tom Ford, Santa Monica Baykeeper Kelp Restoration and Monitoring Project

Mr. Dennis Gardemeyer, Reclamation District 2030

Mr. Joe Geever, Surfrider Foundation

Mr. Marco Gonzalez, Coast Law Group

Mr. Jack Gualco, AES Corporation

Ms. Angela Haren, California Coastkeeper Alliance

Mr. Michael Hertel, Southern California Edison

Ms. Laura Hunter, Environmental Health Coalition

Ms. Pamela Kershaw, Port of Oakland

Mr. Peter Kiel, Delta Wetlands Properties

Mr. Bill Krauss, Marine and Recreation Association, et al.

Mr. Steve Lowe, West Oakland Commerce Association

Mr. Bob Lucas, CCEEB

Ms. Julee Malinowski-Ball, Los Angeles Department of Water and Power

Mr. Frank Maxwell, PG&E

Ms. Carrie McNeil, Deltakeeper Chapter of Baykeeper

Mr. Dante John Nomellini, Reclamation Districts Nos. 2024, 2038

Mr. Bill Powers, Powers Engineering

Mr. Mark Rentz, Department of Pesticide Regulation

Ms. Linda Sheehan, California Coastkeeper Alliance

Mr. Scott Wetch, State Association of Electrical Workers,
et al.

Mr. Bill White, Shute, Mihaly & Weinberger

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1 morning; we have nothing to report.

2 (Laughter.)

3 CHAIRPERSON WESTLY: Having established that, the
4 next order of business is the adoption of the consent
5 calendar. And I would like to call on our Executive
6 Officer Paul Thayer to indicate which items we're going to
7 remove from the consent calendar.

8 EXECUTIVE OFFICER THAYER: There are two items,
9 Mr. Chair.

10 The first is Item 24. This item will be heard at
11 a later meeting perhaps in June, perhaps in August.

12 The second item is Item 61, which is the Long
13 Beach Annual Plan. And I understand that the Chair would
14 like a presentation on what jurisdiction the Commission
15 has over that, and so at the Chair's request we will
16 remove that and hear that at the end of the agenda, so
17 we're able to take care of all the other items.

18 CHAIRPERSON WESTLY: Terrific. Thank you, Paul.

19 Is there anyone in the audience who wishes to
20 speak on any items of the consent calendar?

21 If not, the remaining consent items will be taken
22 up as a group for single vote.

23 Hands?

24 Yes.

25 MEMBER OF THE PUBLIC: We wanted to speak on Item

1 59. Has that removed from the consent calendar?

2 EXECUTIVE OFFICER THAYER: It has not.

3 CHAIRPERSON WESTLY: It has not. Should we remove
4 that?

5 EXECUTIVE OFFICER THAYER: We just received a
6 speaker slip from several individuals indicating they
7 wanted to speak against that item. So by our rules we
8 have to agree with that on the consent calendar.

9 CHAIRPERSON WESTLY: So --

10 EXECUTIVE OFFICER THAYER: Which we'll probably
11 hear that at the end of the agenda.

12 CHAIRPERSON WESTLY: Thank you.

13 We'll put that at the end of the agenda. We will
14 ask that 59 be removed from the consent calendar as well.

15 Thank you, sir.

16 Anything else?

17 Then I'm going to go ahead and ask for a vote on
18 the consent calendar items.

19 COMMISSIONER BUSTAMANTE: So moved.

20 ACTING COMMISSIONER SHEEHAN: Second.

21 CHAIRPERSON WESTLY: All in favor, say "aye."

22 (Ayes.)

23 CHAIRPERSON WESTLY: Thank you.

24 Those items are removed.

25 At that point I would like to move ahead with Item

1 71, consideration of our resolution concerning
2 once-through cooling in California power generating
3 facilities.

4 May we have the staff presentation?

5 EXECUTIVE OFFICER THAYER: Certainly, Mr. Chair.

6 Staff has previously presented this item at the
7 February meeting. And we would like to once again go over
8 once-through cooling, which is the subject of this
9 resolution, its impacts, alternatives, the goals of the
10 resolution.

11 I'll also cover how the resolution has changed
12 since the Commission first heard the item in February and
13 the process we follow to make those changes. Many in the
14 audience would like to speak and they will elaborate on
15 both sides of the once-through cooling issue.

16 Once-through cooling involves the pumping of water
17 through power plants to condense spent steam after power
18 generation. This creates a vacuum to increase the
19 efficiency of the power plants and provides the water
20 necessary to create new steam.

21 There are 22 power plants along the California
22 coast, which are permitted to divert up to 17 million
23 gallons of water per day. There are a number of different
24 potential and actual harms that occur from once-through
25 cooling. They go by the names impingement, which refers

1 to the trapping of sea life against the water screens;
2 entrainment, which is where the sea life passes through
3 the power plant, through the pumps; and then there are
4 thermal impacts, because the exiting water from the power
5 plant is about 20 degrees warmer than the ocean.

6 So a variety of studies demonstrate the
7 environmental impacts of once-through cooling. A report
8 on the impacts from the San Onofre nuclear generating
9 station prepared for the Coastal Commission found that 20
10 to 57 tons of fish were killed annually. And another
11 study by Dr. Michael Foster from Moss Landing Marine Labs
12 calculated habitat impacts by figuring out how many
13 individual fish were killed and related that to the
14 natural density of fish. He concluded that the 13
15 California coastal plants caused fish losses that were
16 equivalent to the loss of 10,000 acres of bay and estuary
17 habitat. The volume of fish loss has also been estimated
18 to equal 8 to 30 percent of the Southern California sports
19 catch.

20 Alternatives to once-through cooling are several:
21 There are closed-loop systems where cooling water is
22 recirculated through the plant and cooled in towers; There
23 are two forms of dry-cooling systems where processed water
24 and air is air cooled in condensers; Wet-cooling systems
25 cool water through evaporation which requires makeup

1 cooling water. Use of waste water can also be used in the
2 alternative. Seawater, you still have a thermal impact
3 from that, but since you're not taking seawater to be
4 cooled, you don't have impingement. All of these
5 facilities require additional equipment and some of the
6 sites, the power plant sites, do not have sufficient space
7 to install them.

8 The cost of retrofitting existing plants varies
9 with specific site considerations. A California Energy
10 Commission report indicated that once-through cooling at
11 the El Segundo power plant would be accomplished using
12 wastewater, but that it would cost about \$12 million.

13 And there are potential other environmental side
14 effects from doing that. These impacts were recognized by
15 the federal agency, the U.S. EPA, in rules implementing
16 the Clean Water Act. With few exceptions, these rules
17 prohibit once-through cooling in new power plants and the
18 rules permit once-through cooling to continue in old
19 facilities, even when they are re-powered or updated, but
20 require mitigation or modification of the equipment to
21 reduce the environmental impacts.

22 The impact of once-through cooling has received
23 increasing attention from the California public and state
24 agencies. The State Water Resources Control Board has
25 required new studies and additional mitigation when

1 discharge permits are renewed. The Water Board conducted
2 a special workshop last December and is likely to consider
3 tougher standards later this year, before the Board.

4 The Energy Commission has estimated that the 22
5 coastal plants that use once-through cooling produce about
6 22 percent of the power that's consumed in California. So
7 these plants continue to play an important part in
8 California's energy supply. The State Lands Commission
9 does not have the same direct jurisdiction over these
10 power plants as the Water Board and the Energy Commission.
11 However, we do have a responsibility to protect the Public
12 Trust lands and resources that are on them. And most of
13 these coastal power plants rely on intakes and outfalls,
14 which are situated on those lands. So in that
15 circumstance, both the Commission for ungranted lands and
16 grantees for granted lands have leasing authority over
17 those facilities.

18 Therefore, it is important for the Commission to
19 consider the impacts of those facilities on Public Trust
20 lands. Over the past few years, the Commission has heard
21 from a variety of public interest groups who have spoken
22 about once-through cooling. Consistent with the
23 Commission's responsibilities and longtime involvement
24 with issues like once-through cooling, staff has prepared
25 a resolution with the assistance of the Chair staff to

1 deal with these impacts.

2 The Commission first heard this resolution on
3 February 17 of this year. The Commission put over making
4 a final decision, pending additional review by staff of
5 the concerns of stakeholders. We held stakeholder
6 meetings several weeks after the last meeting, which we
7 heard from the environmentalists, industry, and different
8 state agencies. We consulted additionally and further
9 with all of those groups after the stakeholders meetings
10 and worked extensively with your staff to generate a
11 modified resolution.

12 The revised resolution, I want to go over briefly
13 the terms in that and changes. It drops the 2020 deadline
14 within the first version of the resolution. Instead, the
15 resolution required today that the Commission and policy
16 be that there will be no leases for new power facilities
17 that are using once-through cooling, and would generally
18 require that other facilities, once-through cooling
19 facilities, on existing power plants conform with the
20 jurisdictional requirements of the Water Board and the
21 Energy Commission.

22 As stated before, the goal of this resolution is
23 not to shut down power plants but is to cause them to be
24 operating in an environmentally safe way while still using
25 California's energy supply.

1 Staff would like to note the extensive assistance
2 from the Chair staff in working through this revised
3 resolution and also the various groups who have made
4 suggestions, many of which show up in this resolution
5 today, to address their concerns. In particular, staff
6 would also like to thank the Energy Commission and the
7 Water Board for providing both written and oral input
8 through several pages from the Energy Commission last
9 week.

10 Staff believes that this revised resolution
11 appropriately represents the Commission's views of
12 once-through cooling and therefore recommends that the
13 Commission approve it. We do note that there will
14 probably be still some groups in opposition, but several
15 groups have dropped their objection based on the
16 Commission's changes that were made.

17 And this concludes staff's presentation.

18 CHAIRPERSON WESTLY: Terrific.

19 Thank you, Mr. Thayer. Let me compliment you,
20 again, for all the time and effort staff spent to try to
21 reach out to different community leaders to incorporate
22 all of their perspectives, to compromise a recommendation.

23 What I would like to do at this point is invite
24 members of the public to speak.

25 What I'm going to do, because we have a number of

1 people, is go through those who would like to speak in
2 opposition. First, we have a number of people who would
3 like to speak today, so I would like to ask people to keep
4 their comments to three minutes. This will enable us to
5 ensure that everybody has an opportunity to be heard.

6 I'm going to call people in groups of twos so that
7 one person can be on deck, but I would appreciate it if
8 Mr. Kevin Thomas of California American Water would come
9 first.

10 And if Mr. Michael Hertel of So Cal Edison could,
11 perhaps, be on deck.

12 Mr. Thomas. And if you would be willing to speak
13 at the end of the table here.

14 MR. THOMAS: Thank you. Again, my name is Kevin
15 Thomas, Environmental Services Manager at RBF Consulting.

16 And I just had a few comments. I want to make
17 sure that the Commission staff has on record our letter
18 from California American Water, dated March 29th.

19 EXECUTIVE OFFICER THAYER: Yes, we do.

20 MR. THOMAS: Okay.

21 And I guess one thing we were a little
22 disappointed in -- we appreciate some of the language
23 changes that were made in the resolution. We didn't see a
24 lot of discussion in the staff report as to how -- the
25 rather serious concerns addressed at the stakeholders

1 meeting were addressed in the resolution. And, in fact,
2 of the changes in the resolution, the new paragraphs, that
3 I've identified from the previous one, all seem to be more
4 aggressively worded and less favorable. And, in fact,
5 there's a paragraph added that deals with seawater
6 desalination, which is what I'm particularly interested
7 in, on behalf of California American Water.

8 It's not clear how the resolution, as it's
9 currently worded, affects collocated desalination
10 facilities. There's a whereas clause added that addresses
11 desalination, but desalination is not mentioned in any of
12 the resolved clauses. I just wanted to ask that question,
13 for clarification.

14 And then we just wanted to identify that some of
15 the changes in the resolution -- Again, we are in, for the
16 record, are in disagreement with, in opposition to the
17 resolution. There's a statement that's added to the
18 resolution that has to do with citing the Commission's
19 roles and responsibilities under its Public Trust
20 Doctrine. I would note that the Public Trust Doctrine on
21 the Commission's Web site conflicts with wording that's
22 included in the resolution.

23 The resolution says, "eliminating impacts in
24 accordance to the Public Trust." The Public Trust
25 Doctrine indicates, "consideration given to the context of

1 the project and the needs of a healthy California society
2 to meet the needs of the public, business, and the
3 environment," addressing the concept of balancing of
4 stewardship issues, which we believe is more appropriate.

5 And we're concerned that the resolution may not
6 only affect the power facilities' once-through cooling
7 systems, which of course collocated desal facilities are
8 relying upon. But should that power facility re-power or
9 go to a different type of technology, it's unclear in the
10 resolution how the State Lands Commission would view use
11 of those facilities for desalination. It's not a power
12 facility, obviously then. And that would include
13 potential use of those facilities for brine disposal even
14 if the desal facility were to use subsurface intake for
15 intake of seawater. Most of the facilities are
16 contemplating use of some sort of discharge, because the
17 subsurface discharge of brine is very complicated and much
18 less feasible.

19 And in the remaining 15 seconds, I guess, our
20 letter of March 29, I think, identified a number of issues
21 we believe are still applicable.

22 I would make one more comment that the addition to
23 the resolution about the feasibility of subsurface intake
24 at many locations, we question and disagree with that
25 statement.

1 Thank you.

2 CHAIRPERSON WESTLY: Thank you, Mr. Thomas.

3 Mr. Thayer, would you like to comment briefly
4 before we ask the gentleman to from So Cal Edison to come
5 forward?

6 EXECUTIVE OFFICER THAYER: There are two whereas
7 clauses in the resolution that speak specifically to
8 desalination. The first one suggests that the Commission
9 only should consider whether or not new desal facilities
10 would interfere with compliance with Section 316(b) of the
11 Clean Water Act, the federal Clean Water Act. The power
12 plants, we think, will have to conform with 316(b) anyway,
13 so the standard that we're reasserting here, that the
14 Commission should consider, is the same as the power plant
15 that complies with Water Board requirements and that type
16 of thing. It's not intended to specifically prevent the
17 installation of desalination facilities, only that the
18 Commission in its consideration of those facilities, the
19 leases for those facilities, make sure that it won't
20 preclude alternatives to once-through cooling and the
21 construction of other once-through cooling -- excuse me,
22 other cooling facilities.

23 And in a nutshell, the problem is that if a new
24 desal facility goes in on an existing power plant site, it
25 may use the exact same space that might have been usable

1 for alternative cooling facilities. And again, the
2 whereas does not dictate that the Commission take any
3 conclusion from that, merely to consider it.

4 With respect to the second whereas clause, which
5 talks about there being alternatives -- feasible
6 alternative -- feasible subsurface seawater intake
7 technology for many locations, that's true. And, in fact,
8 the Commission just last fall, approved a permit for a
9 test well in Orange County where the water would be drawn
10 from a well instead of from the open water and would be
11 used a for desalination facility. We don't disagree that
12 there are some places where that should not -- it's not
13 appropriate. And that's why we have a statement only
14 saying that in many locations, it's available.

15 CHAIRPERSON WESTLY: Great. Thank you,
16 Mr. Thayer.

17 The gentleman -- please identify yourself.

18 MR. HERTEL: Let me apologize first for my poor
19 handwriting.

20 Mr. Chairman, Members of the Commission, I'm
21 Michael Hertel. I'm director of corporate environmental
22 policy for Southern California Edison. And I would like
23 to say first that we appreciate this opportunity to appear
24 before you and especially all of the hard work that your
25 staff and, of course, the staff and all the members have

1 put in on this.

2 We're unfortunately still in an opposed position
3 and what I'd like to today is go over four resolved
4 changes that I would like to ask the Commission to
5 consider. And if these changes were to be accepted, we
6 would remove our opposition to the resolution. We think
7 it is much improved and we thank you for that.

8 As you may know, San Onofre, our nuclear power
9 plant station, is probably the most studied and regulated
10 once-through cooling system, I would guess on the planet,
11 but certainly within these United States. So we work
12 closely with this Commission, with the State Water
13 Resources Control Board and the San Diego Regional Board
14 and with the Coastal Commission, in particular, putting in
15 place mitigation that compensates for all of the impacts
16 that have been identified at that plant over perhaps a
17 15-year study period, both before or after the operation
18 of plants. So we are quite concerned about making sure
19 that that sort of motion continues.

20 With that said, let me suggest that the first
21 resolved clause, we would like to see the use of language
22 which uses several in the whereas clauses, namely to
23 insert language that says, "that eliminate or reduce the
24 insignificance of the impacts of once-through cooling."
25 We think that that makes a good deal of sense, because if

1 the cooling system, as in San Onofre, does not now, after
2 mitigation, significantly impact the environment, we think
3 that it should be fully permitted.

4 COMMISSIONER BUSTAMANTE: What resolved is that?

5 MR. HERTEL: The first resolved clause. It is the
6 first resolved clause that reads, "Resolved, by the State
7 Lands Commission that it urges California Energy
8 Commission...." And I bolded the change that we would
9 request in each of these cases.

10 In the second resolved clause, we would ask that
11 you add language that makes it clear that this Commission
12 will not approve leases for new plants, that do not have
13 cooling systems, that are not approved by the State Water
14 Resources Control Board. And you can see that I inserted
15 in a clause there to get that effect.

16 Now, we're not in the business of building new
17 power plants on the coast, but nevertheless our customers
18 depend heavily on the capacity -- not so much the energy,
19 that is how long the plant operates, but the plant be
20 there during the peak loads, in particular. And that's a
21 critical factor. And so we are concerned that if plants
22 can, in fact, meet the requirements of 316(b), which I
23 concur, are going to be very stringent, then we would like
24 to see that happen.

25 The third resolved clause, we want to make it

1 clear that -- I'm over.

2 CHAIRPERSON WESTLY: You should tie up very
3 quickly, but go ahead and finish your thoughts.

4 MR. HERTEL: The third resolved clause and the
5 fourth really relate to the same thing. And we would like
6 to see specified the agencies that you are referring to
7 before action by the Commission be taken, be specified as
8 they were in an earlier version of the resolution, namely
9 the State Water Resources Control Board and agencies that
10 are appropriately authorized to regulate or minimize the
11 impacts of once-through cooling.

12 And I thank you very much for your patience.

13 CHAIRPERSON WESTLY: Great. Thank you,
14 Mr. Hertel.

15 And if Mr. Lucas of CCEEB would come forward.

16 MR. LUCAS: Thank you.

17 CHAIRPERSON WESTLY: And on deck, Mr. Jackson
18 Gualco would be ready to come down.

19 MR. LUCAS: Thank you very much. I'm name is Bob
20 Lucas. I'm here representing the California Council for
21 Environmental and Economic Balance.

22 And as you will note, we have corresponded with
23 the State Lands Commission on both February 7th and
24 March 24th. We had some fairly detailed letters and
25 comments about environmental impacts of this resolution.

1 We appreciate the removal of the language that
2 would have constituted the ban on once-through cooling,
3 and we also appreciate the recognition of the
4 implementation of 316(b) by the State Water Resources
5 Control Board. But has already been pointed out, there
6 have been some new conditions that have been added to the
7 resolution, that we think that because of the ambiguity of
8 the language and because of the potential negative
9 consequences, will cause uncertainly to facility owners,
10 to the operator, to lenders, and to others that are
11 involved in these facilities.

12 As noted in our letters of March 24th and
13 February 7th, we seriously dispute the assumption that
14 alternatives to once-through cooling are environmentally
15 superior. As we informed you in our impact analysis, when
16 the efficiency penalty factors are applied to each plant,
17 the environmental consequences of converting to
18 once-through cooling facilities to alternative cooling is
19 quite significant, causing the degeneration of an
20 additional 28 megawatts to 1700 megawatts, depending upon
21 if these plants were converted to wet- or to dry-cooling.

22 The burning of the additional fossil fuel that
23 would result in degeneration of this energy to make up for
24 the energy penalty would result, in our estimates, between
25 300,000 and almost 2 million metric tons of additional

1 CO2, and at a time when we're very concerned with climate
2 change and global warming.

3 In addition, the burning of this additional fossil
4 fuel make up for this penalty, energy penalty, would
5 result in between 150 and a thousand tons of additional
6 NOx as well as between 27 and 160-some-odd tons of PM10,
7 statewide, yet all of these plans refer to alternative
8 cooling.

9 If they were to convert to wet cooling, we would
10 require approximately 20 billion gallons of fresh and
11 reclaimed water per year in order to accommodate that wet
12 cooling.

13 As we pointed out in our letter of March 24th, we
14 regard this resolution as a regulation. And we urge you
15 not to adopt it today, but rather to reconsider it within
16 the context of the Administrative Procedures Act and
17 provide everyone in the process afforded by that
18 protection.

19 We also ask that when you do that, that you apply
20 CEQA, because we think that there are significant
21 environmental impacts that are either being overlooked
22 here while you assume that once-through cooling is
23 environmentally friendly.

24 Finally, I would like to say that if you were to
25 go ahead and adopt it today, our current intent is to seek

1 a petition to the Office of Administrative Law and ask
2 that you consider this as an underground regulation.

3 Thank you very much.

4 CHAIRPERSON WESTLY: Thank you, Mr. Lucas.

5 Mr. Gualco, if you could come forward. And on
6 deck if we could have Ms. Malinowski-Ball come forward.

7 Mr. Gualco.

8 MR. GULACO: Thank you, Mr. Chair, and Members of
9 the Commission.

10 Jack Gualco on behalf AES Corporation, a rather
11 significant worldwide power producing entity with a rather
12 large presence on the California coast.

13 We first want to acknowledge the abolishment of
14 the language referencing the 2020 ban, and I want to
15 acknowledge Commission staff and you, Mr. Chairman, for
16 that positive move.

17 We do, however, have remaining concerns. And we
18 would like to associate our comments with those of
19 Dr. Hertel and Mr. Lucas. I think their points are very
20 well taken. We have some other specific comments to raise
21 on your 1, 2, 3, 4th resolved clause, referencing
22 alternative environmentally superior technology exist that
23 can be feasibly installed. We think that there certainly
24 ought to be a cost effectiveness test in that as well.
25 And would hope that you would consider that.

1 But I think the primary comment that we would like
2 to make today is this is, in fact, a 316(b) issue, and
3 that reliance ought to be placed full square on the state
4 and regional water quality control boards to ensure that
5 their delegation of authority from the legislature and
6 U.S. EPA are properly and fully and effectivity carried
7 out. And our concern is that any opportunity for
8 confusion between what's in the State Lands
9 Commission-adopted resolution and what will be a final set
10 of 316(b) guidance and regulatory requirements will cause
11 potential impacts on the grid at a time where California
12 needs to be adding reliability and stability.

13 For so for those reasons, we ask you not to adopt
14 the current resolution, and subject it to APA and CEQA.

15 CHAIRPERSON WESTLY: Thank you, Mr. Gualco.

16 Ms. Malinowski-Ball, if you could come forward.

17 And then Bill Powers could be on deck, please.

18 MR. MALINOWSKI-BALL: Thank you. My name is Julee
19 Malinowski-Ball. I'm here on behalf of the Los Angeles
20 Department of Water and Power.

21 I want to just make a couple points. First is a
22 clarification. The water that was transmitted -- The
23 letter that was transmitted to you last week was based
24 upon the first resolution, and it was just a recently
25 approved letter based on the first resolution. We are not

1 asking that this not be passed today. The Los Angeles
2 Department of Water and Power is still reviewing this, but
3 we do want to make a point that what we've seen so far
4 does take care of the first two points that we made in our
5 letter regarding the letting the 316(b) studies move
6 forward. And we appreciate the changes made to that. And
7 we will be sure to get it as immediately as possible from
8 your perspective and on the rest of the language.

9 CHAIRPERSON WESTLY: Great. Thank you very much.

10 Mr. Powers is in here. And then if we could have
11 Mr. Joe Dillon on deck please.

12 MR. POWERS: Bill Powers. Powers Engineering
13 speaking on behalf of my client, a technical background,
14 California Coastkeeper Alliance.

15 I would like to refer to this handout which covers
16 the technical points related to -- And by the way, I'm
17 speaking in support of the ban.

18 Like to begin just be running through some of the
19 these key points, that the steam plants are, in fact, very
20 low capacity factor units at this point: Less than
21 20 percent. The nuclear plants on the other hand are very
22 high usage plants, and obviously they need to be a focus
23 of this effort. It's important to point out that I think
24 the California Energy Commission -- most of us in the
25 business see these plants being phased out, modernized

1 with cycle plants as an objective of the California Energy
2 Action Plan. It's also happening organically on this
3 coast now. Many of the steam plants are old, 30 to 50
4 years old. Some of them 50 to 70 years old. And in 20
5 years they are going to be farther along than they are
6 now. They will be even farther along then.

7 Again, focusing on the nuclear plants for a
8 moment, they are already more complex retrofits planned
9 for those two nuclear plants than a cooling power
10 retrofit, and that is the steam generator replacements.
11 And in context, the California Energy Commission's
12 observations that a wet tower retrofit would jeopardize
13 the steam generator replacements, that's the time to do
14 it, when you are down for a major retrofit of that type.

15 The -- Another issue that's been brought up too is
16 air emissions. In fact, I think the industry is
17 overstating the efficiency penalty of doing these
18 retrofits by anywhere from the order 7 to 10, that the
19 efficiency penalty even for the nuclear plants would be in
20 the range of 1.5 percent. If you were to look at bringing
21 in 1.5 percent of power from a combined cycle plant, for
22 example, the emissions that would be generated by doing
23 that would -- in San Diego County, where San Onofre is
24 located, or in San Luis Obispo County or Diablo Canyon is
25 located -- these emissions would not even amount to major

1 source category. They would not require emission offsets.

2 Another major issue that comes up on the
3 environmental end is, in particular, salt drift from
4 towers. One thing I would like to point out is the issue
5 that gets raised repeatedly is there might not be enough
6 recycled water available for these towers, especially for
7 the nuclear plants. Saltwater is used in many parts of
8 the world: In towers, in nuclear plant cooling towers of
9 the United States, also in wet towers. And studies have
10 been done to determine the impact of salt drift into those
11 towers and found essentially no impact. So I wouldn't
12 limit your focus to just recycled water. Saltwater is
13 also a viable option. What's happening in other states --
14 New York is requiring a nuclear plant to be retrofit and
15 Massachusetts recently required a large coal plant to be
16 retrofit.

17 Thank you.

18 CHAIRPERSON WESTLY: Thank you, Mr. Powers.

19 Mr. Dillon, if you could come forward. And Mr.
20 Scott Wetch, if you could be on deck.

21 MR. DILLON: Good morning. My name is Joe Dillon.
22 I'm a regional water quality coordinator for the National
23 Marine Fisheries Service. We're an agency of the
24 Department of Commerce.

25 I'm here today to express our support for the

1 resolution. We have supported similar manners in front of
2 the Ocean Protection Council and the State Water Resources
3 Control Board.

4 I think that it is a good move for all the state
5 agencies in the entire state bureaucracy to discuss the
6 issues together and come together on it, so as not to be
7 splayed off and split.

8 In particular, I think this resolution has some
9 value because it addresses the weaknesses in the 316(b)
10 rules. And that pertains to the re-powering of power
11 plants. The 316(b) rules basically, as long as you don't
12 go out and touch the intake system, you don't
13 automatically fall under the most stringent -- which is
14 316(b) phase one rules -- you still fall under the 316(b)
15 phase two. And by you putting out here the explicitly
16 mentioning re-powering, you help to close that gap a
17 little bit.

18 As for desalination facilities, we agree with the
19 Coastal Commission that they need to be looked at
20 independently of the power plants that they want to
21 connect to, for the eventuality that those power plants
22 will close down. We think it's wise to do that planning
23 ahead of time. And then in the interim period, which
24 could be decades, collocation may actually be okay.

25 We are pleased that the resolution recognizes the

1 role of federal agencies as well as state agencies in this
2 process. I think we've been working very well with the
3 Energy Commission and State Water Resources Control Board
4 as this topic has evolved over the last few years and come
5 to promise. And we will continue our cooperative efforts
6 with the state agencies as well as with the producers as
7 they come forward on a project-by-project basis.

8 Thank you.

9 CHAIRPERSON WESTLY: Great. Thank you,
10 Mr. Dillon.

11 Mr. Wetch, if you could come forward. And then I
12 would like to ask Mr. Joe Geever to be on deck.

13 Scott?

14 MR. WETCH: Thank you, Mr. Chairman. I'll be
15 brief.

16 Scott Wetch on behalf of the State Association of
17 Electrical Workers, the Western States Council for Sheet
18 Metal Workers, the Coalition of Utility Employees, and
19 also today on behalf of the State Building Construction
20 Trades Council, couldn't be here today and asked me to
21 make a few comments on their behalf as well.

22 All of those organizations are neutral on the
23 resolution, but we felt it necessary to testify today
24 because at the last hearing we appeared in opposition to
25 the resolution and we wanted to thank you, thank and

1 commend, particularly your office, Mr. Chair, and
2 Lieutenant Governor's office, and Mr. Thayer and the
3 executive staff of the State Lands Commission, for
4 reaching out to the stakeholders, in particularly with
5 working with us to address several of the ambiguities that
6 we saw within the resolution.

7 And while we still believe that there's some more
8 work to be done, that perhaps the process didn't allow for
9 every issue to be resolved, and there's some terms that
10 still need to be fleshed out in the implementation.

11 The process that was followed in interim period
12 gives us the confidence that eventually we will get to
13 those issues as well. As so I think the process worked
14 well. And I wanted thank all of you for working with us,
15 particularly with the Lands Commission staff.

16 Thank you.

17 CHAIRPERSON WESTLY: Thank you, Mr. Wetch.

18 Joe, I'm fearful I'm mispronouncing your last
19 name.

20 MR. GEEVER: Joe Geever, G-E-E-V-E-R.

21 And I am the Southern California Regional Manager
22 for the Surfrider Foundation.

23 First, thanks for holding these hearings. We
24 appreciate it. I want to make a couple of general
25 comments and then focus on kind of the side issue of

1 collocated desal.

2 We're a little disappointed that the latest
3 version of your resolution is to delete the timeline for
4 once-through cooling. Nonetheless, we're very
5 appreciative of a clear statement from this Commission,
6 that California does not consider once-through cooling
7 best available technology. This industry has been on
8 notice to develop and convert to better technology since
9 the passage of the '72 Clean Water Act.

10 After more than three decades, the industry
11 continues to argue that the time is not right. We think
12 their message is clear. They have no intention of meeting
13 the performance standards or any of the federal 316(b)
14 rules, and will not see any reduction in marine life
15 mortality but just continued reliance on loopholes. Maybe
16 be even more distressing is this new reliance on the
17 antiquated cooling process, collocated desal.

18 We've repeatedly asked the industry to identify
19 the impacts of the desalination on marine life, assuming
20 the absence of once-through cooling. They've answered us
21 that CEQA doesn't require analysis because we're just
22 speculating that once-through cooling won't be available
23 in the future. Oddly enough, we think this desal argument
24 only highlights the need for a clear resolution of this
25 issue.

1 If desal proponents think it is only speculative
2 that coastal generators will employ best available
3 technology, then they need a clear statement to the
4 contrary. Let me be clear. The resolution doesn't
5 prohibit responsible desal. There's still enough time to
6 develop intake systems that don't rely on the destruction
7 of marine life. Right now, other countries are
8 successfully running desal facilities on subsurface
9 intake, and as we speak, California is spending millions
10 of dollars to research and develop desalination
11 technology. Just like the Clean Water Act, Section 3(b)
12 is a technology forcing provision for cooling water, your
13 resolution will be a technology forcing provision for
14 desal.

15 One final note on this unholy alliance between
16 desal and coastal generators. Now the generators are
17 telling you that upgrading their plant will cause a spike
18 in energy use and irreparable air quality degradation. We
19 don't agree that alternative cooling is nearly as
20 demanding as they would have you believe. But
21 interestingly enough, some of the same people are telling
22 you that -- that are telling you that, are also planning
23 to collocate 35 megawatt desal facilities. Where is the
24 concern for air quality impact from that demand?

25 I could go on, but you've got our letter, so I

1 think this is enough.

2 Thank you very much.

3 CHAIRPERSON WESTLY: Thank you, Mr. Geever.

4 I would like to ask Tom Addison to come forward.

5 And if we could have Sarah Abramson on deck, from
6 Heal the Bay.

7 Is Mr. Addison here?

8 Thank you. Just identify yourself for the record.

9 MR. ADDISON: Good morning. I'm Tom Addison with
10 the Bay Area Air District. And I'm here on behalf of the
11 State Association of Air Districts, the California Air
12 Pollution Control Officers Association. So CAPCOA is an
13 organization charged with permitting and enforcing laws
14 against stationary sources of air pollution, including
15 power plants of this state. Power plants are a
16 significant contributor to our air quality problems in the
17 state today.

18 Our request to you is that as you look at this
19 issue, you certainly consider all the environmental
20 impacts and consequences of your actions today.

21 We think the appropriate way to do that is with a
22 programmatic EIR on the issue of once-through cooling.
23 CAPCOA as an organization is not at all opposed to the
24 Commission taking action to address legitimate marine and
25 environmental impacts that once-through cooling practices

1 have today. We just ask that as you take action and look
2 at this issue, you consider the air quality and
3 consequences of any actions you do take.

4 CHAIRPERSON WESTLY: Terrific. Thank you very
5 much, Mr. Addison.

6 Ms. Abramson.

7 MS. ABRAMSON: Good morning, Chair Westly and
8 Commissioners. My name is Sarah Abramson and I'm a staff
9 scientist with Heal The Bay.

10 We're here today, speaking in support of the
11 resolution. We appreciate the State Lands Commission's
12 efforts to make an aggressive role on this issue.

13 Although we are a little disappointed that the
14 latest version of the resolution has removed the timeline,
15 we are supportive of the work the State Lands Commission
16 has done on this resolution and the latest version. We
17 urge the State Lands Commission to adopt it today.

18 This resolution reflects steps that need to be
19 taken to phase out once-through cooling. Industries'
20 claims that the loss of marine life caused by once-through
21 cooling are unfounded. The coastal and marine impacts
22 from once-through cooling are well documented.

23 Coastal power plants in California are estimated
24 to entrain and kill 50 million larvae each day. The
25 coastal power in Santa Monica Bay, alone, turn over and

1 entrain marine life of 13 percent of the bay every six
2 weeks. These are just a few of the offensive impacts of
3 once-through cooling. With the available and
4 cost-effective alternatives, such as dry cooling,
5 continued use of this antiquated technology is
6 unnecessary.

7 Thus, we thank the State Lands Commission for
8 drafting these resolutions and encourage you to advance
9 state policy by adopting it today.

10 Thank you.

11 CHAIRPERSON WESTLY: Thank you.

12 We have Ms. Angela Haren.

13 Then Mr. Tom Ford on deck.

14 MS. HAREN: Good morning. My name is Angela
15 Haren. I'm a programs manager with California Coastkeeper
16 Alliance. The Alliance represents ten waterkeeper groups
17 within the Oregon border to San Diego.

18 We would like to offer our support for
19 once-through cooling resolution and urge the members of
20 the Commission to adopt it today.

21 As the resolution acknowledges, once-through
22 cooling is an antiquated technology that causes ongoing
23 harm to our coastal environment. The economic value of
24 our marine and coastal resources is critically important,
25 here in California, where a large portion of our total

1 economic activity is fueled by a healthy coast and ocean.
2 Phasing out once-through cooling will help to protect
3 these economically valuable resources.

4 Cost effective alternatives to once-through
5 cooling are available. In California, these alternatives
6 are currently being used exclusively by inland power
7 plants who do not have access to the public resources that
8 the coastal plants currently exploit.

9 In the past, the regulated community has suggested
10 that phasing out once-through cooling would jeopardize the
11 reliability of the state's electrical grid. However, in
12 other states, such as Michigan and South Carolina, both
13 nuclear and steam plants are cost effectively and
14 efficiently retrofit to alternative cooling technologies,
15 without harm to their energy plan. Many plants around the
16 country have successfully begun implementing a range of
17 alternatives, including using recycled water for cooling.

18 The proposed resolution will help to advance a
19 much-needed statewide policy to phase out once-through
20 cooling and to ensure the continued reliability of the
21 electrical grid.

22 Further, we would like to note in that many of the
23 State Lands Commission's leases for these plants include
24 provisions for habitat protection. Some of these leases,
25 such as the one for the Contra Costa plant, include

1 specific language regarding steps the plants must take to
2 protect the environment and the State Lands Commission
3 reserves the right to impose measures to ensure
4 environmental protection. And a violation of this clause
5 constitutes grounds for termination of the lease.

6 We ask that the Commission exercise its powers to
7 enforce these conditions and encourage the Commission to
8 include the same environmental protection language for all
9 future leases, including these renewals.

10 We thank the State Lands Commission for
11 acknowledging this serious problem and for taking a
12 leadership role and protecting California's coastal
13 resources and economy.

14 Thank you.

15 CHAIRPERSON WESTLY: Thank you. Mr. Ford, if you
16 would be willing to come forward, and if we could have
17 Mr. Marco Gonzalez on deck.

18 MR. FORD: Thank you, Chair Westly, Commissioners.

19 My name is Tom Ford. I am the director of the
20 Santa Monica Baykeeper Kelp Restoration and Monitoring
21 Project, based in and around Santa Monica Bay.

22 I'll keep my comments pretty brief. We're looking
23 at an 80 percent reduction in plankton in California
24 current. That data has been collected by CalCOFI, through
25 our state agencies, and that 80 percent reduction has been

1 witnessed or described in the past 20 years. We're also
2 looking at an 80 percent reduction in kelp canopy along
3 the Southern California coast, for approximately the past
4 50 years, for data gathered by the California Department
5 of Fish and Game.

6 Looking at -- There's been a lot of conversation
7 about 316(b) issues. The federal law, to my
8 understanding, separates some of the impacts of plants
9 into 316(a) regarding the thermal effluent from some of
10 these plants. Some of those thermal effluent have been
11 best described or the best understood implications of
12 once-through cooling, specifically the loss of 150 acres
13 or so of giant kelp forest off the coast, near the San
14 Onofre Nuclear Generating Station.

15 Unquestionably, once-through cooling contributes
16 to these declines that we've witnessed off of our coast,
17 and your resolution will to the elimination of the
18 reduction of insignificance of these effects of
19 once-through cooling, aiding in the resilience and
20 recovery of our California coastal ocean, and has the
21 support of the Santa Monica Baykeeper.

22 Thank you for your time.

23 CHAIRPERSON WESTLY: Great. Thank you, Mr. Ford.

24 Mr. Gonzalez, if you could come forward.

25 And Laura Hunter could come down and be on deck.

1 Mr. Gonzalez.

2 MR. GONZALEZ: Thank you, Members of the
3 Commission.

4 My name is Marco Gonzalez. I'm a partner with
5 Coast Law Group in Encinitas. We represent a number of
6 environmental groups around the state. In particular,
7 today, I'm speaking on behalf of the San Diego chapter of
8 the Surfrider Foundation, San Diego Coastkeeper, and a
9 group called Heal the Ocean out of Santa Barbara. All of
10 those groups recognize the need to get rid of once-through
11 cooling and therefore are in support of the resolution.

12 Specifically, though, I want to address a couple
13 of the issues related to desalination. And I had the good
14 fortune of representing the environmental community on the
15 Department of Water Resources stakeholder process, on
16 desalination, the desalination task force. We toured the
17 state and looked at various proposals around the state on
18 how desal would be feasible. We talked a lot about this
19 issue of feasibility and how all of a sudden the cost of
20 desal has come into the realm of reasonableness in its
21 heightened elevation in the public side, that it's
22 something that we could actually achieve.

23 But as we got into it more and more, what we saw
24 is that its time has not yet come, that it's one giant
25 subsidy. And you can look at the subsidy as perhaps

1 Metropolitan Wastewater District decreasing the cost of it
2 or providing a straight-forward \$250 subsidy or you can
3 look at it as in-the-fence power. In order for it to be
4 feasible, it has to be collocated and has to find a way to
5 qualify for lower energy. But most importantly, the
6 subsidy of collocation, because of utilizing intake
7 infrastructure, is the most egregious subsidy that we
8 found out there.

9 Essentially, these plants cannot currently be done
10 in a cost-feasible way unless they were able to take
11 advantage of collocation. Now, we bandied about this
12 policy issue quite a bit in our stakeholder process. And
13 then low and behold, someone from the Encina power plant,
14 Rio Power, stands up and says, "We love desal because it
15 will extend the life of our Encina power plant, our
16 once-through cooled plant." We thought it bold that
17 someone would actually stand up and say that, but we knew
18 it was true.

19 Now, those will come before you and say, "Well,
20 once-through cooling can now be mitigated to a level of
21 insignificance." Southern California Edison is, in fact,
22 doing a giant mitigation program in the San Elijo Lagoon,
23 just as they did in the Batiqitos Lagoon, but they were
24 ordered to do that 20 years ago. So for 20 years the
25 Southern California bight has suffered from once-through

1 cooling, and now we're just starting to get a little bit
2 of mitigation. It has been estimated that SONGS alone,
3 the nuclear generating station, takes as much as
4 13 percent of the Southern California bight. Pete
5 Raimondi of UCSC made this finding on paper and presented
6 it to our desal group.

7 I would just urge you to take very seriously the
8 science behind this and not the speculation. There's a
9 reason that no new once-through cooling plants are being
10 permitted anywhere in this country. It's because it's an
11 outdated technology. And the last thing you should do is
12 allow the threat of no desal be any reason to continue it.

13 Thank you for your time.

14 CHAIRPERSON WESTLY: Thank you, Mr. Gonzalez.
15 Please say hello to my friend Rod Cogwell (phonetic).

16 Ms. Hunter, please.

17 MS. HUNTER: Good morning. My name is Laura
18 Hunter. I'm here with the Environmental Health Coalition.
19 We're an environmental justice organization operating in
20 the San Diego/Tijuana region.

21 I want to just raise a couple of points. We are
22 very concerned about this issue and very strongly support
23 your adoption of this resolution today.

24 Our particular expertise is the South Bay Power
25 Plant, and there's an emergency -- emerging consensus in

1 this region about -- in our region in San Diego about
2 this.

3 I will bring to you one of the very few
4 environmental stories that makes it the lead story in the
5 front page of the Union Tribune, above the fold, and it
6 was about the seawater intakes. I would like to pass
7 copies of that to you.

8 We also have a bipartisan coalition of elected
9 officials emerging, that are in support of getting rid of
10 the once-through cooling. I bring to you copies of Mayor
11 Steve Padilla's letter supporting this resolution and he
12 is mayor to the city that is host to the power plant.

13 And then last -- if I didn't have enough evidence
14 that the South Bay Power Plant is truly the poster child
15 for the most horrible things about power plants, the
16 Google alert that came out announcing the governor's
17 climate change initiative featured, again, the South Bay
18 Power Plant as the example.

19 Mr. Bustamante, I know you're very familiar with
20 our South Bay Power Plant, but I just want to review some
21 of the very severe and avoidable impacts of it. It scalds
22 off about 104 acres of field grass that we should have in
23 South San Diego Bay, but the water is too hot. It reduces
24 the impact of our ability to have a juvenile halibut
25 nursery. If we like big halibut, we got to have little

1 nurseries for little baby halibut. The water is too hot.
2 It drives them into the deeper water where they are
3 predated and the juvenile halibut fishery suffers a lot.
4 The marine life is degraded. For some species in the bay,
5 the power plant alone takes 50 percent of those species
6 every year.

7 I have to disagree and object to the
8 recommendations that were made to weaken the language from
9 Southern Cal Edison. In spite of these massive impacts
10 from the South Bay Power Plant, Duke and previous operates
11 say, "Well, yeah, we know it's hurting things, but these
12 are insignificant."

13 Unfortunately, the utilities tend to find -- never
14 find significance in lieu of all these degraded resources,
15 50 percent loss of species, and, again, they come up with
16 its insignificance. So we think you shouldn't add that.
17 I think as stunning and troubling as the CEC report was on
18 what the impacts are, they did not even include South Bay
19 or the Encina plant.

20 I'm almost out of the time, but I wanted to say,
21 we are delighted to replace the South Bay Power Plant. An
22 air-cool plant is being proposed by Duke. However, Duke
23 is selling that interest to LS Power. We don't know who
24 else is going to end up owning that power plant in the
25 future. You need to help us close the door so we will

1 never have to face once-through cooling in any replacement
2 plant.

3 If you want to know why it takes two and a half
4 years longer to get a once-through cool plant through the
5 system, it's because we have to fight so hard. We hope
6 that you will take your leadership role to set us on this
7 path to get rid of this destructive technology that really
8 needs to be phased out.

9 Thank you.

10 CHAIRPERSON WESTLY: Great. Thank you,
11 Ms. Hunter.

12 If Ms. McNeil could come forward and also Linda
13 Sheehan.

14 MS. McNEIL: Good morning. I'm Carrie McNeil, the
15 director of the Deltakeeper Chapter of Baykeeper.

16 And I just want to thank you for really taking a
17 leadership role on this important environmental issue.

18 And we are in support of the resolution, and not
19 just because of the coastal impacts that we've heard about
20 today, but also because two of these plants, in
21 particular, are real impacts to our inland waterways.

22 In the Delta, we've seen it in the headlines every
23 week: Delta is in crisis. We have severe fish declines
24 in shad, delta smelt, longfin smelt, and striped bass.
25 And in fact, both of those smelt species are protected

1 under the Endangered Species Act. And not only has
2 temperature caused a problem -- this is one of the most
3 sensitive parts of the estuary where the two plants are --
4 but we're really concerned about the direct mortality,
5 kind of the once-through killing that's caused by these
6 two plants.

7 A really recent March article in the *Contra Costa*
8 *Times* notes that in 1979, a consultant found 86 million
9 smelt and smelt larvae were sucked up each year by the two
10 Mirant plants. The Mirant never installed a screen, and
11 the U.S. Fish and Wildlife Service says that it appears
12 the company never monitored fish killed in the intake
13 pipes either. The Mirant plants draw in over 30,000 cubic
14 feet per second and with that, an unknown amount of smelt
15 and their larvae.

16 The Delta is the Pacific Coast's largest estuary.
17 And we are in severe ecological crisis. We can not let
18 these plants, whose permits don't even expire till 2024,
19 continue this once-through killing impact on our
20 ecosystem.

21 So thank you.

22 CHAIRPERSON WESTLY: Thank you.

23 Ms. Sheehan.

24 MS. SHEEHAN: Good morning. Linda Sheehan,
25 executive director for the California Coastkeeper

1 Alliance. I'm also speaking today on behalf of the
2 Institute for Fishery Resources and Pacific Coast
3 Federation of Fishermen's Associations, who could not be
4 here today. And I wanted to also thank you for your
5 leadership on this important issue in support of the
6 resolution that is before you.

7 I wanted to highlight a couple of additional
8 points about once-through cooling's impact on fishing.
9 We've heard a lot about overfishing and its impacts on
10 adult fish populations. But we're not going to get the
11 adult fish population back. Even if we address
12 overfishing, we've got to address the nurseries, the bait
13 fish, the bottom of the food chain, and the babies,
14 larvae. And all of those are impacted significantly by
15 once-through cooling, which is often located in areas that
16 are critical nurseries, such as the Elkhorn Slough. And
17 also the Pittsburg plant has a cooling-water system that
18 takes directly from a nursery area for striped bass.
19 These are all critical impacts that are generally not
20 addressed. The impacts that we do hear about that have
21 been addressed, and then not necessarily addressed, but
22 monitored extensively, such as the San Onofre. In every
23 case where we actually use some booking, we find severe,
24 severe impacts. And action is taken as a result of that.
25 But in a lot of cases, we just don't know.

1 As Ms. McNeil just indicated, Mirant facility,
2 according to Fish and Wildlife Services, never monitored
3 the fish kill at its intake pipes, ever. We just don't
4 know what's going on there.

5 And so as a result, I would suggest, if you were
6 inclined to amend the resolution today, three things. And
7 they are all in our letter dated April 4th, with respect
8 to these conditions and lease fees.

9 Two, with respect to lease conditions, that the
10 State Lands Commission put amendments that they will not
11 include conditions that are tied to environmental
12 performance, similar to the one that Ms. Haren cited
13 earlier, with respect to the Contra Costa facility, citing
14 the termination of the lease if environmental regulations
15 are not followed.

16 Second, to state that the State Lands Commission
17 will immediately implement all such conditions that do
18 exist.

19 And then third, that the resolution address lease
20 fees and specifically stated lease fees provide sufficient
21 funds for comprehensive monitoring, which we are just not
22 seeing, as well as recompensing the people of the state
23 for the lost value of the resources, and then also simply
24 to provide adequate staff oversight.

25 We sent in our letter to you a table that detailed

1 a number of the lease fees that are being paid today to
2 State Lands: The Diablo facility pays \$20 a year; El
3 Segundo pays 2100 for 50 years total; and Huntington Beach
4 pays no more than \$200 a year.

5 The land grant facilities are paying hundreds of
6 thousands a year. But even that may not be enough to
7 provide adequate staff, comprehensive monitoring, and
8 recompense to the people of California.

9 So again, thank you for your leadership. I
10 support the resolution. I would ask that these amendments
11 be taken, but in the alternative, I would ask that you
12 adopt the resolution as written and address those as you
13 implement it.

14 Thank you.

15 CHAIRPERSON WESTLY: Great. Thank you,
16 Ms. Sheehan.

17 At this point, we would like to move things
18 forward. There are a number of other items on the agenda.
19 What I would like to do is now ask for comments from any
20 of my colleagues on the Board, the other commissioners,
21 before proceeding to a vote.

22 ACTING COMMISSIONER SHEEHAN: Yeah.

23 CHAIRPERSON WESTLY: Ms. Sheehan.

24 ACTING COMMISSIONER SHEEHAN: I've got a couple of
25 questions. And specifically, Paul, if you could address

1 the 316(a) and (b) process and the interaction of this and
2 the process at the Water Board and what they are doing on
3 these regulations. Because I seem to hear different
4 things from some of the witnesses who testified, in terms
5 of how they see the interaction of this with the Water
6 Board and the role -- our enforcement role of these
7 requirements versus the Water Board's.

8 EXECUTIVE OFFICER THAYER: 316(b) is a provision
9 of the Clean Water Act, which has been litigated over
10 because outside groups have believed that the federal EPA
11 was not properly implementing that. As a result of that
12 implication, new rules were promulgated over the last five
13 years, dealing with once-through cooling.

14 These are implemented today by the Regional Water
15 Quality Control Board. The rules generally provide that
16 there be no new power plants with once-through cooling and
17 that existing power plants with once-through cooling adopt
18 mitigation measures or modify those once-through cooling
19 facilities to reduce the impact that occurs.

20 The State Water Resources Control Board, as
21 implementation -- its own independent implementation of
22 the Clean Water Act will be considering, later this year,
23 rules which will be even tougher than the federal rules.
24 The resolution has been crafted predominantly -- there are
25 a variety of clauses in here -- but predominantly to have

1 the Commission track that process in its own review of
2 leases.

3 So the resolution says that the Commission will
4 not approve once-through cooling on new power plants, much
5 as the existing rules provide for that, and provide that
6 the Commission would consider compliance with the 316(b)
7 rules by the existing power plants when it issues its
8 leases.

9 To go one step further with that, I did want to
10 respond as well to the comments from Mr. Lucas regarding
11 compliance with CEQA and the Office of Administrative Law
12 and Procedures and emphasize that this is a resolution.
13 The Commission could have chosen to adopt regulations,
14 which would have been much more hard to pass, and I think
15 this resolution reflects the fact that these issues --
16 that it's progressing and it's under change. And
17 therefore, the Commission has latitude to adopt a variety
18 of approaches, even after adopting this resolution, as
19 individual leases come before it and that we would be
20 applying CEQA to those individual leases and don't need to
21 do it to through this resolution.

22 The earlier version of the resolution, in fact,
23 did have CEQA problems and worked with the AG's office to
24 eliminate those. So some of the concerns of Mr. Lucas
25 might have been true for the earlier version, but we have

1 attempted to address those.

2 CHAIRPERSON WESTLY: Thank you, Ms. Sheehan.
3 Mr. Bustamante.

4 COMMISSIONER BUSTAMANTE: Thank you, Mr. Chairman.
5 Once-through cooling is an antiquated technology.
6 I don't think there's any question about that. And
7 California has got to be able to move forward despite the
8 difficulties in dealing with the complexities of this
9 issue.

10 I frankly think that the only time that you have
11 change is through conflict. And this conflict that we've
12 seen in this debate here has been a valuable discussion, I
13 believe. A discussion that has discussed all of its
14 complexities, has dealt with the issues, that the impacts
15 that it has on the grid, on business, on labor, on the
16 environment, I think it's been a wonderful debate to have.
17 I think it's -- When I first heard the debate and I
18 thought, Mr. Chairman, what the heck do you think you're
19 doing? And as we got into the debate, I started to see
20 that there really is a genuine need for more of the
21 leaders to be able to bring issues like this to the
22 forefront.

23 I remember having a discuss with an administrative
24 representative in my office, regarding this issue. And I
25 said, "You know, it may be difficult to get through this

1 debate. But it's a good debate to have." And the fact
2 that labor, industry, and many environmental groups
3 participated in the process to try to find how to resolve
4 the unintended consequences, which is one of the biggest
5 things that we have to deal with as government and whether
6 we're making a law or regulation or we're trying to move
7 forward at a progressive agenda. Unintended consequences
8 usually foul the kind of public policy debate later on,
9 because you haven't had the chance to have all the
10 stakeholders at the table. We were able to do that.

11 I think this is very strategic and tactful
12 statement. I think it minimizes efforts in dealing with
13 the issues of the grid. I think it minimizes the issues
14 of trying to deal with the different power plants and
15 different positions that they are in, but also it's a
16 strategic and tactful position on trying to move
17 California forward on what I believe to be a very
18 important debate as to whether or not we're going to
19 protect our coast or we're going to continue to give it
20 lip service.

21 I'm also disappointed that we didn't have a
22 deadline, but I think that the overall issue of the
23 resolution and resolving it in the way we have, I think
24 it's a final result of the stakeholders having their best
25 debate foot forward and coming to a consensus, I think, or

1 as close to consensus on an issue that we possibly can.

2 And for those who are interested in the issue of
3 desal I am sure we're going to give you the same
4 opportunity at some point to involve yourselves in that
5 debate, as we have on this wonderful public policy debate
6 as well. So, you know, for those of you who are waiting
7 for that debate, don't worry. I'm sure it will come.

8 Mr. Chairman, with that, I would just like to urge
9 support of the resolution.

10 CHAIRPERSON WESTLY: Thank you, Lieutenant
11 Governor Bustamante.

12 I concur with everything the lieutenant governor
13 said. I just want to thank staff for a smart, responsible
14 solution for that issue. I was happy to postpone this
15 issue at the last meeting to allow more time for all of
16 the stakeholders to come together to give us more time to
17 get our arms around a solution that spoke to the majority
18 people's views. There is no perfection in Sacramento. I
19 think we've taken a huge step towards a smart solution,
20 and I want to commend everybody involved. I support this
21 initiative. I think this it is a responsible balance
22 between the many different viewpoints. And I think -- At
23 this point, I would like to entertain a motion.

24 COMMISSIONER BUSTAMANTE: So moved.

25 ACTING COMMISSIONER SHEEHAN: Second.

1 CHAIRPERSON WESTLY: All in favor, please say
2 "aye."

3 (Ayes.)

4 CHAIRPERSON WESTLY: Motion carries.

5 Was that unanimous, Ms. Sheehan?

6 Terrific.

7 I would like to thank all the members of the
8 public for being here. We appreciate the many of you who
9 have come a long way. Thank you.

10 At this point I would like to move to Item 72,
11 consideration of a resolution considering supporting
12 development of alternative copper-based vessel paint.

13 If people could step out as quickly as possible,
14 we would be grateful.

15 COMMISSIONER BUSTAMANTE: Thank you for the quiet
16 departure.

17 CHAIRPERSON WESTLY: If you could reserve your
18 comments for outside, I'm going to ask Mr. Thayer to
19 present his report.

20 EXECUTIVE OFFICER THAYER: The resolution has to
21 do with the use of copper-based paints on the hulls of
22 ships in California, boats in California. Like the
23 once-through cooling resolution, this resolution regarding
24 copper-based paints was on the agenda at the February 17th
25 meeting for the Commission for consideration. And as was

1 the case with the once-through cooling resolution, the
2 Chair and the Commission asked that it be put over so that
3 individual stakeholders would have additional time to
4 review the proposed resolution and for additional staff
5 meetings to occur to -- with respect to the stakeholders.

6 The copper-based paints are used by many
7 commercial and recreational vehicles to prevent organisms
8 from fouling hulls. Fouled vessels move more slowly and
9 use more fuel to go equivalent distance. Copper and other
10 ingredients kills organisms that try to attach to the
11 hulls. The paint slowly leaches into the water. Copper
12 is known to adversely affect the early growth and
13 reproductive cycles of hull-fouling organisms but also
14 fish, mussels, and snails. And suspended copper also
15 affects phytoplankton and zooplankton, the basis for life
16 and water ecosystems.

17 State Lands Commission is involved with this issue
18 again because of our concern over the impacts of the
19 Public Trust uses for copper-based paint. It's the same
20 sort of issue that the Commission has been involved with,
21 with contamination of its Public Trust resources and other
22 parts of the state as well.

23 As requested by the Commission, the staff has met
24 with representatives of the boating community, paint
25 manufacturers, and others. The resolution has been

1 heavily modified to accurately reflect the work of other
2 state agencies and to recognize various steps that may be
3 taken to address marine copper paint.

4 As with the once-through cooling resolution, some
5 groups have dropped the opposition to this resolution
6 because of the changes we've made, while others will
7 continue to be opposed.

8 Staff believes that this resolution appropriately
9 records the Commission's concerns of the problems
10 associated with the use of copper-based paint and the work
11 of appropriate agencies to resolve those problems. Staff
12 therefore recommends that the Commission adopt the
13 proposed resolution.

14 CHAIRPERSON WESTLY: Thank you, Mr. Thayer.

15 We have a number of speakers here. And since
16 there are still of number of issues, come up and be as
17 brief as you can.

18 If Mr. Bill Krauss could come forward, speaking in
19 opposition. And also, forgive me here, but Mr. Joseph
20 Baiunco from the Recreational Boaters of California could
21 perhaps be on deck.

22 MR. KRAUSS: Members, thank you very much. My
23 name is Bill Krauss, representing the Marine Recreation
24 Association, which is the private marine owners and
25 operators; the California Association of Harbor Masters

1 and Port Captains, which are the municipal marina
2 managers; the California Department of Harbors
3 Associations, which is a similar group to the second
4 group; the Northern California Marine Association, which
5 is a northern California boat dealers; Western Boating
6 Safety Group, which has about 18,000 boaters.

7 I'd like to thank you for this opportunity. Let
8 me say at the outset that our opposition could be best
9 characterized as a soft opposed. There's one remaining
10 issue. We have worked with Mr. Thayer; we raised in our
11 letter, I believe, an issue with two whereas clauses and
12 as well as one of the resolved clauses. And we have one
13 issue left with the tenth whereas clause wherein it makes
14 a reference to the development of effective, cost
15 efficient alternative. It would be enhanced through,
16 among other things, additional research, which we agree
17 with, and the adoption of the statewide TMD alternative to
18 copper. We don't know that.

19 Let me also say that we are very supportive of the
20 concept and the approach and what the Commission has
21 attempted to do, which is to look at this issue. We're
22 actually also supportive of what the Department of
23 Pesticide Regulations is doing, which is to begin a
24 two-year study of the issue. And we've given the access
25 and will be given the access to our members' marinas, use

1 of boats, whatever is necessary, so that we can get to a
2 careful analysis and a solid basis of information to which
3 can be used for making decisions about how to deal with
4 copper-based anti-fouling paints.

5 So we don't have really a problem with the concept
6 of the resolution. We don't have a problem with the
7 study. We just have a little bit of an issue with sort of
8 the -- We did initially, with a couple of declarations
9 from our point of view, sort of conclusions that were
10 drawn in the resolution. And the one remaining issue that
11 we have is this tenth whereas clause where it says the
12 statewide TMDL would -- would not lead to additional
13 research. We don't know that. We don't know if that's
14 true. We don't know what the best solution will be, if a
15 TMDL is the best approach. And so we would ask and have
16 asked that that be removed, that reference at the end of
17 that whereas clause. And that's our remanning issue.

18 COMMISSIONER BUSTAMANTE: I'm sorry. I didn't get
19 your name.

20 MR. KRAUSS: I'm sorry. Bill Krauss and about six
21 boating groups; boat dealers; marine operators; individual
22 boaters; Marine Recreation Association; California
23 Association of Harbor Masters and Port Captains;
24 California Marine Parks; Harbors Association; Northern
25 California Marine Association; and the Western Boating and

1 Safety Group.

2 COMMISSIONER BUSTAMANTE: I would have guessed by
3 your comments that you were representing the paint
4 companies.

5 MR. KRAUSS: Our issue -- Interestingly enough,
6 our position that we have on this is because -- Many of
7 our members have leases, the State Lands leases and if
8 this becomes a policy statement of the State Lands
9 Commission, the concern is that ultimately it would lead
10 to marine operators becoming sort of bottle paint cops,
11 because as conditions of leases -- so that's where our
12 concern comes in.

13 COMMISSIONER BUSTAMANTE: But you're not opposed
14 to us finding alternatives to copper paints?

15 MR. KRAUSS: We encourage it. And we are helping
16 the Department of Pesticide Regulations in their efforts
17 to do their study.

18 COMMISSIONER BUSTAMANTE: I was a little unclear.

19 MR. KRAUSS: Generally, we're supportive. It's a
20 draft to work with the issue.

21 ACTING COMMISSIONER SHEEHAN: I guess following up
22 on the question, the concern that you have about becoming
23 the enforcers of this, I don't know if staff wants to
24 address that.

25 EXECUTIVE OFFICER THAYER: This is a resolution

1 like the last one. And as such, it doesn't impose any
2 requirements on any boaters or lessees.

3 ACTING COMMISSIONER SHEEHAN: It's not the
4 intention of the Commission through this to make your
5 clients boating cops, I guess, to use your term.

6 MR. KRAUSS: The concern is the regulations that
7 dictate how the State Lands Commission will manage their
8 leases. In one spot it says they have broad discretion to
9 manage their leases. And in another spot it said that
10 such leases shall conform with policy regulations and some
11 other words. And I'm sure Paul knows them better than I
12 do.

13 So the concern that if this becomes a policy
14 statement, that that would drive them in that direction,
15 ultimately. And not today, you're right. Absolutely, it
16 has no effect today.

17 ACTING COMMISSIONER SHEEHAN: Right. But if the
18 process of it becomes policy then you would have the
19 opportunity to come and discuss how that policy would be
20 implemented and what the role of their clients would be.

21 MR. KRAUSS: Absolutely.

22 ACTING COMMISSIONER SHEEHAN: That would be the
23 place for that discussion.

24 MR. KRAUSS: Yes.

25 CHAIRPERSON WESTLY: Mr. Bustamante.

1 COMMISSIONER BUSTAMANTE: The job of most of your
2 clients is to manage; right?

3 MR. KRAUSS: Well, there's -- The largest of those
4 clients is the private marine owners and operators, which
5 is Marine Recreation Association. They are privately held
6 marinas that the water side of their marina is operated
7 through a lease from the State Lands Commission, so they
8 get to use the Public Trust through a lease.

9 COMMISSIONER BUSTAMANTE: And in order to be able
10 to do that, you have to comply with due diligence and
11 other kinds of activities. So if you were aware that
12 there was an issue of copper affecting that which you are
13 managing, you would want to resolve those issues.

14 MR. KRAUSS: Absolutely. The trick with the
15 marina operator, though, is that they have no care,
16 custody, or control of the vessel. So it gets a little
17 dicey when, if there was a regulation or requirement for
18 them to -- because you can't tell by looking at a bottle
19 paint that they would have an obligation to somehow decide
20 if that is copper based or not, when they don't really
21 have any control over the vessel. That's where it gets a
22 little tricky, which is our concern.

23 CHAIRPERSON WESTLY: Thank you, Mr. Krauss, very
24 much for being here.

25 And Mr. Baiunco.

1 MR. BAIUNCO: My name is Joe Baiunco. I'm a
2 president of Recreational Boaters of California --

3 THE REPORTER: Could you speak into the
4 microphone.

5 MR. BAIUNCO: Yes, ma'am.

6 I have three issues of that we wrote, and we have
7 a letter which we wrote back on April 12th, in opposition
8 to the resolution. And I have some comments. And the
9 comments, first of all, the resolution indicate that the
10 San Diego Water Board estimates that there's two and a
11 half tons of copper leaching into the Shelter Island base
12 annually from the anti-fouling paint coating vessel hulls.
13 I don't know what mathematical equation was used to come
14 up with that number, but the report of the copper
15 anti-fouling environmental program knows that worldwide
16 amount of leaching copper annually is 1500 tons. This
17 would indicate that two and a half tons is attributed to
18 approximately 1700 boats, is somewhat overestimated.

19 The resolution also notes mortality rate for sea
20 creatures is due to the high concentration of copper in
21 the water column and many more, probably beyond San
22 Diego's higher concentrations. Therefore, as far as we
23 can tell, there are -- these statements are not supported
24 by any scientific studies that have been done.

25 The resolution also notes that a sea grant study

1 that indicate non-copper-based paints reduce costs. This
2 information is based on an erroneous assumption that paint
3 builds up and hulls must be stripped every six paintings.
4 In essence, reported data states that paint lasts two and
5 a half years. This equates to 15 years. I've been in
6 boating for over 35 years, own three boats, and I've never
7 stripped my hull before painting. In fact, except for
8 hardcore racing sailors, I have never known anyone that
9 strips their hull before painting. Using a 20-foot boat
10 as a basis for comparison, it would cost approximately
11 \$8,000 for a nontoxic paint suggested in the sea grant
12 study as opposed to approximately 1600 for the current
13 paints.

14 Further, when you consider the additional cleaning
15 necessary because of the non-copper paint, the cost over a
16 15-year period would be approximately 27,600 as opposed to
17 \$17,100 for the current paints and increase of
18 approximately 70 percent.

19 Beyond the above statements, this resolution is
20 premature, we believe, because it does not address the
21 invasive species problem nor is it based upon any unbiased
22 scientific studies.

23 The EPA has revised its position for measuring
24 toxicity of metals from the counting of atoms to the
25 Biotic Ligand Model for fresh water, because it proves

1 that the old model resulted in excessive regulation. The
2 Biotic Ligand Model is now being developed for marine
3 applications, and the literature and data review process
4 provides considerable support to suggest that if
5 bioavailability is not considered, then any marine copper
6 criteria would be too low and overregulated.

7 And I also have attached to that a mathematical
8 equation, if you would like to take a look at that.

9 Thank you.

10 CHAIRPERSON WESTLY: I would like to have Laura
11 Hunter and Mark Rentz come forward, if we could.

12 MS. HUNTER: Hello, again. My name is Laura
13 Hunter, representing Environmental Health Coalition.

14 And we also have had quite a long history of this
15 issue. I wanted to speak in strong support today of your
16 adoption of this resolution, in a way, for a lot of the
17 same reasons. This is another chronic problem that we
18 have plaguing our oceans, our bays, and waterways. We got
19 rid of the TBT and replaced it with something not quite as
20 devastating, but still devastating in its own way. And
21 now we need to move to the next step on that. We think
22 this is really a good first step.

23 It was interesting how the consensus or the
24 working group that came together in San Diego came
25 together. It was really over a regulatory relief item

1 scenario. The boat yards, we had worked very closely with
2 them on significant permitting issues because of copper in
3 their discharges from the paint. And they had just gone
4 through very, very expensive cleanups of sediments that
5 had been laced with these toxic chemicals. So they really
6 got religion in all of that, and they said, "We need to
7 find another way." The boatyards, actually, many of them
8 became our allies to figure out what can we do to not have
9 this -- face this problem again.

10 So we spent quite a bit of time in the legislature
11 working group. I think you've all seen the study, the
12 economic study, that was done on this. We worked on that,
13 my memory is, at least a year. We -- All interests were
14 represented: Recreational boaters were there, marina
15 operators, environmental groups, agencies. We hashed
16 through all the data. We worked on it very hard and we
17 did find that there were two scenarios under which we
18 could really phase this material out and get us on a new
19 track for cleaner bottom ink that would not have the
20 environmental impacts of these two.

21 One thing that I would suggest, if possible, and
22 this probably won't be popular. But this is the kind of
23 thing that I think should be a consideration for subsidy
24 of some kind. We are in the habit of trying to subsidize
25 people from behaviors we are trying to encourage. I have,

1 you know -- The carpool lane passed on my hybrid. We did
2 that to try to encourage the right behavior. We are
3 subsidizing solar panel purchases because we want to
4 encourage early adoption of more sustainable technologies.
5 Nontoxic hull coatings are exactly this kind of technology
6 that we should be helping boat owners to do, helping
7 people who are ready to try that. We can do a
8 low-interest loan or different subsidies or programs. I
9 really hope you'll look at that because this is, again, a
10 way we can keep voting, a way we can protect our
11 environment. And it's a really good policy statement, and
12 I thank you for thinking think of it. And I hope you will
13 adopt it.

14 CHAIRPERSON WESTLY: Thank you very much.

15 Mr. Rentz, if you could come forward and then
16 Ms. Sheehan.

17 MR. RENTZ: Mark Rentz, R-E-N-T-Z, Deputy Director
18 for Department of Pesticide Regulation.

19 Thank you for the opportunity to come before you
20 today, Commission. First and foremost, I want to extend
21 my appreciation to Mr. Thayer and your staff for sitting
22 down to take this opportunity between your last meeting
23 and this meeting to discuss with us some of our concerns.

24 Our concerns, as they apply directly to the
25 Department of Pesticide Regulations are found, were found

1 in the second resolved paragraph of your resolution, that
2 starts "Resolved that the Commission urges the U.S. EPA,
3 State Water Resources Control Board, and California
4 Department of Pesticide Regulation...." That language has
5 been modified to address the Department's concern and
6 we're appreciative of that.

7 I also want to take this opportunity, since the
8 language states that we should assign highest priority to
9 our efforts, to determine the scope of the potential
10 environmental impacts. And it has been referenced in our
11 studies.

12 To just tell you what has gone into play since
13 your February meeting, State Water Resources Control Board
14 and Department of Pesticide Regulation have been for,
15 about a year, negotiating an agreement in a contract, and
16 we have now finalized that agreement and contract to do a
17 statewide monitoring effort of representative marinas,
18 sampling, statistically valid sampling effort to determine
19 the extent of the environmental impacts with regards to
20 copper anti-fouling paints.

21 We are in the process now, working with the State
22 Water Resources Control Board to develop our final
23 monitoring plan of the quality assurances that are
24 necessary, such as statistical analysis, scientific
25 analysis.

1 It is our plan to conduct that study this summer
2 and fall, if it takes that long to get all our sampling
3 done. And our plan at this stage of the game is to have a
4 final report out in early first half of 2007. That will
5 help give us a base for determining how broad the issue is
6 and help us decide what action, if any, are necessary and
7 appropriate in a regulatory arena.

8 At the same time, we recognize, and I think it's
9 been brought up by other speakers, that there's a real
10 opportunity here to work with State Water Resources
11 Control Board, State Lands Commission, Department of Boats
12 and Waterways, and other interested parties in the boating
13 community, environmental community to start to promote --
14 and there has been a promotion of proactive efforts to
15 address anti-fouling paints for some of them. I won't
16 repeat them. And we will continue to support those
17 efforts and strongly encourage those efforts. We will be
18 glad to come back and report to you when our final report
19 is out so you know the findings.

20 And finally, let me conclude by saying, we
21 encourage your staff to continue to participate in the
22 ongoing efforts we have now.

23 Any questions I can answer for you all?

24 CHAIRPERSON WESTLY: Thank you, Mr. Rentz.

25 MR. RENTZ: Thank you for the time.

1 CHAIRPERSON WESTLY: Ms. Sheehan, welcome back.
2 And if we could have Marco Gonzalez.

3 MS. SHEEHAN: Good morning. Linda Sheehan,
4 Executive Director of the California Coastkeeper Alliance,
5 representing eleven waterkeepers from the Oregon border to
6 San Diego.

7 I would like to thank you, again, to support the
8 resolution before you. It affects tide lines, so it's a
9 particularly appropriate issue for the Commission to be
10 taking up.

11 I support the finding of the sea grant study that
12 performed the basis for the resolution. And I thought
13 that those sea grant findings were particularly relevant
14 in light of the fact that San Diego marinas are being
15 listed potentially as impaired by dissolved copper. I was
16 actually co-chair for a number of years on a public
17 advisory group process set by Denise Ducheny to draft the
18 current process for identifying impaired waters through
19 the state.

20 And that process, which we very carefully drafted
21 in the stakeholder group, was applied for the first time
22 in the last year. And the fact that these waters are
23 showing up as impaired under this very carefully drafted
24 process and somewhat conservative process indicates that
25 there is quite a significant problem in San Diego that

1 needs to be addressed. And as part of my experience
2 working for that process, it became evident that sometimes
3 it takes a number of years for the state regional water
4 boards to be able to tackle some of these waters that are
5 impaired.

6 And so that provides even more impetus for the
7 resolution that's before you, to takes action now, and ask
8 other state agencies to take action now, rather than wait.

9 So thank you very much.

10 CHAIRPERSON WESTLY: Thank you, Ms. Sheehan.

11 Mr. Gonzalez.

12 MR. GONZALEZ: Once again, Marco Gonzalez, Coast
13 Law Group. I'm here to talk about this matter on behalf
14 of the Surfrider Foundation, San Diego Coastkeeper, and
15 the Environmental Health Coalition.

16 All of these groups are particularly interested in
17 the microcosm that we have in San Diego Bay, because it's
18 very important that the state relies on where it's going
19 through there is what the entire state is and will be
20 going through.

21 We originally started talking about the Shelter
22 Island Yacht Basin and the TMBL that was required there.
23 And as those marinas were being put under the scrutiny of
24 the TMBL process, it became clear that there really wasn't
25 monitoring going on in the rest of San Diego Bay to

1 identify whether other marinas and harbors have the same
2 problem.

3 At Shelter Island Yacht Basin, it was clear.

4 More than 90 percent of the copper loading into
5 that basin was coming from passive leaching from these
6 paints. The regional board delayed issuance of the TMDL
7 and studied the rest of the bay. Low and behold, all of
8 the other marinas and harbors in San Diego Bay were
9 listed.

10 We're very confident that as these monitoring
11 programs move through the state -- Marina del Rey,
12 Newport, Morro Bay -- all of them will have the same
13 copper problems. Any place that you don't have
14 recirculation of the water, you have this copper-loading
15 issue.

16 The recreational boaters of California would like
17 to talk about there not being science. Sea Grant looked
18 at more than 30 studies that talked about the negative
19 impacts of the copper and specifically dissolved copper in
20 the water column. Now, they like to say that there's no
21 evidence that the Shelter Island Yacht Basin has been
22 destroyed by copper despite all this loading, but I ask
23 you, as a responsible trust agency, why do we have a wait
24 until the resource is gone, before we start taking actions
25 to protect it? A, we know that copper is bad for it. B,

1 we know that it's coming from passive leaching from the
2 hulls. Let's do something about it.

3 The regional water quality control board did, in
4 fact, pass a TMBL, but what people forget, or don't like
5 to talk about so much, is the compliance schedule. It's
6 not happening next year. It's not happening in five
7 years. They give them 15 years which begins to roll after
8 a 2-year grace period. In 17 years they will have to
9 achieve a 76 percent reduction in copper. That doesn't
10 sound too tough to me. And I was following closely the
11 UCC grant study that said in order to do it in the least
12 economically harmful way to the boaters, that timeframe
13 would be necessary.

14 I just think there's a lot of chicken little going
15 around this state. A lot of the recreational boaters just
16 resist change, the same way they did when Tribunal Tim was
17 outlawed. Yes, we have to go after the navy. Yes, we
18 have to go after the shipping industry. But eventually,
19 we're going to have to use alternatives, whether it's
20 ceramic or epoxy, whether we have to clean our boats once
21 a week or three time a week. At the end of the day, we
22 cannot continue to load these pollutants on your Trust
23 lands.

24 I thank you for your making this resolution.

25 CHAIRPERSON WESTLY: Thank you.

1 At that point, I'd like to turn to the other
2 Commissioners to see if there are any questions. If not,
3 I will ask for a motion.

4 COMMISSIONER BUSTAMANTE: Question.

5 Paul, is there anything in any of these studies
6 that have taken place as to whether or not urban runoff or
7 other kinds of things have had as great an impact in terms
8 of copper? Is this a partial answer that we're talking
9 about here? Or not that we don't have to resolve this
10 issue, but is there other factors to the issue of copper
11 in our estuaries, in our bays, in our ports, in our
12 marinas?

13 EXECUTIVE OFFICER THAYER: There are other
14 contributions to copper in water. And there's no doubt
15 that as we clean up our estuaries, we are going to have to
16 look at storm water, runoff, that kind of thing. But I
17 think what the San Diego Regional Water Quality Control
18 Board found was that at least in places where there are
19 concentrated marinas, a lot of boats, that that's the
20 principal cause from those locations. There's no doubt
21 that there are other problems.

22 COMMISSIONER BUSTAMANTE: Obviously there ought to
23 be more studies, and it might be something that the Oceans
24 Protection Council might be able to fund. And we would
25 look for them to not only try to resolve the issue of

1 paint but also try to identify some of the other sources
2 that comes from, you know, other urban areas that also
3 contribute to this kind of -- We all know that copper is
4 something that we need to have in the environment, but in
5 concentrations it ends up being as big a killer as well as
6 something that devastates human life. So it's really
7 something that we have to deal with. It really is a
8 health issue. We cannot have a healthy coastal area when
9 there's concentrations of any of these deadly materials
10 and metals in our waterways, so maybe we can also see if
11 there's a way of being able to identify other sources for
12 this sort of concentrations.

13 EXECUTIVE OFFICER THAYER: Certainly. And the
14 Chair is now sitting on that council, and I think it's
15 something we can discuss this week. So it's something we
16 could bring up.

17 CHAIRPERSON WESTLY: Great.

18 At that point, I would like to entertain a motion.

19 ACTING COMMISSIONER SHEEHAN: Oh --

20 CHAIRPERSON WESTLY: I'm sorry. Commissioner
21 Sheehan.

22 ACTING COMMISSIONER SHEEHAN: A couple of things
23 on this.

24 I will support this resolution. I do think some
25 of the issues raised that we will continue working on with

1 the marina operators and the boat owners. I think it's a
2 good step, though, in terms of the right direction. And
3 similar to the previous resolution, it's not perfect, but
4 it's a good step forward, and we need to keep moving on
5 this. So while the issues I think were raised by
6 Mr. Krauss and others are legitimate, and I know the staff
7 has been working with them. We need to keep the debate
8 and discussion going on these issues.

9 I will move the resolution.

10 COMMISSIONER BUSTAMANTE: Second.

11 CHAIRPERSON WESTLY: All in favor, please say
12 "aye."

13 (Ayes.)

14 CHAIRPERSON WESTLY: The motion passes.

15 Thank you very much, again, members of the public.
16 And I wanted to thank you, the staff, for navigating this
17 issue.

18 I would like now to move to Item 73 concerning the
19 application by PG&E for a natural gas line in the Delta.

20 May we have a staff presentation, if we could.

21 I'd like to ask members to exit quietly, if they
22 could.

23 Mr. Thayer.

24 EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.

25 The staff presentation is going to be done by Tim

1 Lipscomb, who is the negotiator for the Commission on this
2 task.

3 MR. LIPSCOMB: My name is Tim Lipscomb, and I am a
4 public land management specialist within the land
5 management division.

6 I will be presenting the background information
7 regarding the proposed Pacific Gas and Electric Company,
8 pipeline 57C, reliability project, Calendar Item No. 73.

9 There are three actions that the staff is asking
10 the Commission to consider today:

11 First is to adopt the mitigated negative
12 declaration that has been prepared under the staff's
13 direction by the environmental consultant, EIP Associates;

14 Second is to adopt the mitigated -- mitigation
15 monitoring program;

16 And the third action is authorize issuance of a
17 general lease, right-of-way use to the Pacific Gas and
18 Electric Company for the proposed construction of a new
19 24-inch natural gas pipeline.

20 PG&E proposed to install and operate the new
21 natural gas pipeline, line 57C, just south of the existing
22 line, 57B, in the Sacramento San Joaquin Delta area.

23 Line 57C will originate next to the McDonald
24 Island station and travel southwest through McDonald
25 Island, Lower Jones Tract, Bacon Island, and terminate at

1 Palm Tract. The pipeline will be approximately 6.4 miles
2 long. However, only 2,312 feet of this distance will
3 cross State lands.

4 PG&E has stated that the purpose of this project
5 is to provide a second pipeline for the transmission of
6 gas from PG&E's McDonald Island storage facility to the
7 Bay Area pipeline loop, which is an important supply link
8 for natural gas to the Bay Area.

9 The current pipeline system provides no backup in
10 the event of failure and will rely on 57B. Should 57B
11 fail, all gas stored at McDonald Island facility would be
12 unavailable for PG&E's gas transmissions system and the
13 Bay Area loop.

14 The new pipeline, line 57C, would therefore
15 improve the reliability of natural gas delivery from the
16 McDonald Island facility. The new pipeline will be
17 installed using a common trenching technique on land and
18 the horizontal directional drilling method under all
19 waterway crossings and most irrigation canals. The drill
20 entry points on each side of the effective waterways will
21 be located approximately 2300 feet from the landward sides
22 of the waterways' levees. The Latham Slough, Middle
23 River, and Old River crossings will be drilled to a depth
24 of approximately 70 to 90 feet below the river bottoms.

25 The pipelines will be constructed, tested, and

1 tested to meet the U.S. Department of Transportation
2 Construction and Safety Standards outlined in Title 49 of
3 the Code of Federal Regulations, Section 192, which covers
4 minimum code, federal code of -- excuse me, the minimum
5 federal standards for transportation of natural gas by
6 pipeline. These regulations are intended to protect the
7 public and prevent natural gas accidents and failures and
8 include specifications from material selection and
9 qualification, minimum design standards, and protection of
10 the pipeline from corrosion. Once constructed, the
11 pipeline system will be operated and maintained in
12 accordance with all federal and state regulations.

13 The engineering for the pipeline has been reviewed
14 by an independent consultant, David Bennett. Staff
15 believes that in all issues regarding pipelines, safety
16 issues have been adequately addressed.

17 Mr. Dwight Sanders, chief of our division of
18 environmental planning and management is available to
19 describe the environmental process in more detail, if
20 desired by the Commission.

21 CHAIRPERSON WESTLY: Thank you.

22 Unless there are any questions, I would love to
23 ask Frank Maxwell to come forward, from PG&E. And also
24 Dante John Nomellini could also come forward and be on
25 deck.

1 MR. MAXWELL: Good morning. I'm Frank Maxwell.
2 I'm the project manager for the line 57C project. I've
3 been a PG&E employee for 20 years, and I worked with the
4 natural gas pipelines during that time, designed
5 construction and safety enforcement or safety reviews.

6 And as you have seen from the comments that are on
7 the record that our opponents have raised significant
8 concerns regarding the levees and the impact that a
9 pipeline installation would have on the levees. PG&E is
10 very concerned with the levees, themselves. Our existing
11 single pipeline, line 57B, that transmits gas between the
12 McDonald Island Storage Field and the gas backbone system,
13 runs directly through the levees in the Delta. Some of
14 these levees are very close to the lower -- excuse me,
15 Upper Jones Levee breach that occurred in June of 2004,
16 which raised concerns to an even greater level of PG&E
17 about the reliability of the pipeline.

18 We continuously monitor the pipeline. We've
19 evaluated its fitness and service and feel confident that
20 it is a reliable pipeline. But a second pipeline, we
21 believe, is necessary to make sure that this gas is
22 applied. It's critical to the state of California that it
23 remains in service.

24 As I said, line 57B is the only pipeline that is
25 in operation. It transmits 85 percent of our natural gas

1 storage gas to the backbone system. If it was to go out
2 of service during a cold winter event, it would have a
3 significant impact on the gas customers in the state of
4 California with -- excuse me, economic impacts of
5 200 million to 1 billion dollars for our economic study of
6 the impacts. Some of the concerned parties with regards
7 to the impact on the levees have put Mr. Bavold
8 (phonetic) -- in a letter stating concerns with regards to
9 the length and characteristics of the drills, the
10 horizontal directional drills used on the project. And
11 Mr. Bavold's experience is with much shorter drills in the
12 Delta, although he does raise some valid concerns with
13 regards to our drilling activities that we planned for the
14 project. And we will address those concerns that he has
15 brought forth: Through the installation of downhill mud
16 drilling, pressure monitoring, and piezometers near the
17 drilling head, to measure the effect on the surrounding
18 soil of our drills.

19 As stated, our drills are going to be 70 to
20 90 feet below the waterway system and up to a hundred feet
21 below the top of the levees. Through direct experience,
22 our consultants have with the Lodi Gas Storage Project,
23 installation of the 24-inch pipeline --

24 EXECUTIVE OFFICER THAYER: Could you wrap up?

25 MR. MAXWELL: Okay.

1 We found that the surrounding soil did not have
2 a -- was not significantly impacted by the drills.

3 CHAIRPERSON WESTLY: Great. Thank you,
4 Mr. Maxwell.

5 Mr. Nomellini. And Mr. Peter Kiel, be on deck.

6 MR. NOMELLINI: Mr. Chairman, Members of the
7 Commission, I'm Dante John Nomellini. I'm counsel for two
8 of the reclamation districts that the proposed pipeline
9 will cross, Reclamation Districts Number 2024, which
10 includes Palm Tract, and the infamous Reclamation District
11 2038, Lower Jones Tract, that has suffered from the recent
12 levee failure of June 2004 and previously in September of
13 1980. The reclamation districts are, in my view,
14 responsible agencies. You have assumed the role of lead
15 agency under CEQA.

16 The districts are very, very concerned with any
17 increase in risk of failure. And most of you are familiar
18 with the -- we're in a flood event right now. The Delta
19 is somewhat unique in comparison to other river systems in
20 that our lands surface is below the water level at all
21 times. So we have a constant threat of flooding, and
22 therefore the techniques that are used to install these
23 pipelines are of a great importance to us.

24 Our people are supportive of the idea of an
25 additional pipeline. There are two in place now. One is

1 out of service. The issue of whether or not that could be
2 put back into service, we think is legitimate. We met
3 initially with PG&E to let them know the district
4 concerns. We wanted to make sure that we had a
5 perpendicular crossing rather than a diagonal one or an
6 angular one, because it reduces the distance through which
7 our levee will be impacted, not only by the borings, but
8 by potential levee failure due to pipeline bursting or
9 some other anomaly in the future. We also talked about
10 grounding. We've had problems with these borings before,
11 none of which have been as long as the proposed borings
12 here. And we have leaks. We've had unsuccessful borings.
13 Maybe there's all kinds of reasons for it: The technique
14 and the contractor, whatever.

15 Your people and your environmental assessment
16 found this to be a significant impact, and it is. The
17 risk of levee failure, the risk of levees is a significant
18 impact. What we take issue with is dealing with it on the
19 basis of a mitigated negative declaration. And our
20 request to you is that you reject the mitigated negative
21 declaration and direct that a focus CEQA environmental
22 impact report be done on the risk to the levees.

23 This is too important of a problem. These long
24 distances raise significant pressure underground. This
25 could fracture the underground. And all of the evidence

1 that's been presented to your people simply says, this,
2 that, and the other thing can reduce the risk. There's no
3 evidence to say the risk is eliminated. And I suspect we
4 can't eliminate entirely the risk, but we can do a much
5 better job than what's been done.

6 And unfortunately, you guys aren't in the levee
7 business. We are. You are the lead agency. That's why
8 we're here.

9 CHAIRPERSON WESTLY: Thank you, Mr. Nomellini.

10 COMMISSIONER BUSTAMANTE: Can we have the staff
11 respond to the -- he's basically saying that the process
12 we're about to embark on is providing a greater risk to
13 the levee process. Is that the staff position?

14 EXECUTIVE OFFICER THAYER: When we received
15 Mr. Nomellini's letters, we contracted with an outside
16 engineer to review them. And that gentleman is here
17 today. But the conclusions were that because the levee or
18 the pipeline is so deep, it's got to go through the
19 levee -- it goes underneath it, 70 feet or more -- that
20 there weren't going to be impacts directly to the levees
21 from where this pipeline is going to be located.

22 That engineer did make some recommendations on how
23 the project could be performed more safely due to with
24 some other considerations. And those would be required as
25 a Commission concern.

1 COMMISSIONER BUSTAMANTE: What about that the text
2 that allows for addition? Did he make any concern about
3 that?

4 EXECUTIVE OFFICER THAYER: He concluded that on
5 balance, the approach taken in this project is
6 appropriate. It's the best one to be taken.

7 COMMISSIONER BUSTAMANTE: And the distance, the
8 extra indicated there's a longer distance on the land. Is
9 it significant?

10 EXECUTIVE OFFICER THAYER: It is longer, but it's
11 deep enough so the impact isn't that great. But
12 furthermore, there is some thought that if water is -- I'm
13 not an engineer. I'm saying what he would say. And it
14 would be better to talk to him. But he concluded that
15 there is some reduction from having a long boring because
16 if water were ever to seep along that pipeline, that it
17 would have a further distance to go in order to get
18 underneath the levee. So having that longer bore would
19 actually be safer in that circumstance, for that cause.
20 But it's a different issue from what Mr. Nomellini would
21 raise.

22 CHAIRPERSON WESTLY: Thank you, Mr. Nomellini.

23 Are there any other questions?

24 Mr. Kiel.

25 MR. KIEL: Good morning, Commissioners. Peter

1 Kiel representing Delta Wetlands Properties, owner of
2 Bacon Island and Reclamation District Number 2028, which
3 is responsible for protecting Bacon Island from flooding
4 and other hazards.

5 We generally support PG&E's efforts to improve the
6 safety and reliability of its pipeline processes.

7 We also appreciate staff's efforts to address our
8 technical concerns in response to comments. However, we
9 do share Mr. Nomellini's concerns that the project doesn't
10 address the full scope of levee failure risk opposed by
11 this project and PG&E's two other gas pipelines.

12 If the Commission adopts this mitigated negative
13 declaration today in its current form, then we will work
14 to address all these outstanding issues when PG&E proposes
15 RD 2028 for an encroachment permit.

16 Thank you very much.

17 CHAIRPERSON WESTLY: Thank you, Mr. Kiel.

18 I would like to ask the other commissioners if
19 they have questions. And then I have a comment here.

20 COMMISSIONER BUSTAMANTE: I would like to hear
21 from the engineer.

22 EXECUTIVE OFFICER THAYER: Certainly.

23 Mr. Bennett.

24 COMMISSIONER BUSTAMANTE: Did you read
25 Mr. Nomellini's concerns?

1 MR. BENNETT: Yes, I did.

2 COMMISSIONER BUSTAMANTE: Do you want to give us
3 why he's right, and you're wrong?

4 (Laughter.)

5 MR. BENNETT: Well, I reviewed the project
6 documentation. And to give you a little background on
7 myself, I spent my first lifetime with the U.S. Army Corps
8 of Engineers Waterways Experiment Station. It's a
9 research facility in Vicksburg, Mississippi. And a lot of
10 our responsibilities concerned the mainline levees along
11 the Mississippi River. And during the early to mid '90s,
12 there was a great concern about the use of directional
13 drilling, going under the levees there. And one of the
14 things that we did in our research capacity was that we
15 conducted some directional drilling under levees that were
16 to be abandoned, and we were allowed to do an autopsy of
17 these. So we actually dug up the levees. We had dyed
18 drilling fluid to get a good idea of where it went. And
19 we also had piezometers and other monitoring devices to
20 monitor downhill pressures and increases in groundwater
21 pressures.

22 So I believe I speak with some authority about the
23 process. And when you're talking about the danger to the
24 levees, one of the concerns is the distance. And I
25 believe that the PG&E and its consultants have addressed

1 this issue by siting the pipeline very deep and also
2 having the entry and exit points a sufficient distance
3 from the toes of these levees such that the risk is
4 essentially negligible. And in fact, in the Corps of
5 Engineers Engineer Manual on levees, in 1998, it was
6 modified to take into account the results of our research
7 and, in fact, establish minimum setback distances and
8 depths and also talk about monitoring requirements and the
9 investigations to assess the conditions. And I believe
10 that PG&E and their consultants have taken these things to
11 heart and tried to address every one of those concerns.

12 To me, the project seems to be very well
13 engineered. And as Mr. Nomellini says, I don't believe
14 the risk is zero. I don't know that any engineered
15 project risk can be made to be zero or we wouldn't build
16 anything.

17 CHAIRPERSON WESTLY: Okay. Thank you.

18 I have a question for Mr. Thayer.

19 Am I right to understand that the pipeline meets
20 more stringent standards than are legally required, i.e.
21 standards that are applicable to urban areas, pipelines
22 that go through fields, pastures, and so on?

23 EXECUTIVE OFFICER THAYER: I believe that's the
24 case.

25 CHAIRPERSON WESTLY: Okay. Thank you.

1 I have no further questions.

2 Mr. Bustamante?

3 Hearing none, may I ask for a motion?

4 ACTING COMMISSIONER SHEEHAN: I will move the
5 staff recommendation.

6 EXECUTIVE OFFICER THAYER: Dennis.

7 ACTING COMMISSIONER SHEEHAN: Oh.

8 EXECUTIVE OFFICER THAYER: Is there one more
9 speaker on it?

10 CHAIRPERSON WESTLY: Is there another speak on
11 Item No. 73?

12 MR. GARDEMEYER: My name is Dennis Gardemeyer.

13 CHAIRPERSON WESTLY: We didn't get your card.

14 MR. GARDEMEYER: I'm President of Reclamation
15 District 2030 -- that's McDonald Island -- and I'm a
16 landowner and farmer.

17 I have been a landowner on McDonald Island since
18 1974. In 1982 we suffered on McDonald Island of a
19 catastrophic flooding event -- flooding event, rather. So
20 I've dealt with floods. I farm on other islands as well
21 and have fought floods for many years.

22 So I'm very concerned about any levee crossing and
23 particularly concerned with a levee crossing, the size of
24 the one proposed by PG&E. That's a 24-inch line.

25 I might tell you, though, that we on the islands

1 because we're below the surface of the water some 20 feet,
2 some cases deeper, we, for the most part, receive our
3 water through siphon pipes. And we also have to pump
4 water out of the island. And so we have many crossings
5 and many pipe crossings through the islands and a
6 concern -- So we have many instances of pipes going
7 through the levees. And we're very watchful of the
8 procedures in the constructing of these pipes.

9 I have read everything that's been provided to me,
10 which is some 3 inches or so of documents. And as the
11 president of the reclamation district, I felt it necessary
12 to do so. And from my vantage point, I believe that that
13 particular crossing and how this is engineered is a far
14 cry better than the other two lines that they currently
15 have. And again, I'm no engineer, but I can read. And I
16 would rather see the pipe 90 feet below my levee and even
17 on a bias than I would perpendicular and through the
18 levee. And so I speak in favor.

19 Also I might add that PG&E has been a very good
20 landowner and a neighbor here on McDonald Island, and I've
21 had many problems over the years with actions taken by
22 PG&E and we've been able to work them out amicably. And I
23 believe we would be able to work them out in this case as
24 well.

25 Thank you.

1 CHAIRPERSON WESTLY: Thank you.

2 Do I have a motion?

3 ACTING COMMISSIONER SHEEHAN: Yes. I will move
4 the staff recommendation.

5 COMMISSIONER BUSTAMANTE: Second.

6 CHAIRPERSON WESTLY: All in favor, please say
7 "aye."

8 (Ayes.)

9 CHAIRPERSON WESTLY: Thank you very much, members
10 of the public, for being here.

11 At this point, I -- we will go back to Item 61.

12 EXECUTIVE OFFICER THAYER: The chair had asked
13 that this item be removed in order to review the
14 Commission's jurisdiction over the Long Beach unit.

15 And both Alan Hager is here, from the Attorney
16 General's Office, and we have representatives from the
17 City as well.

18 But perhaps I can provide the comments that are
19 necessary.

20 CHAIRPERSON WESTLY: Please, Mr. Thayer.

21 EXECUTIVE OFFICER THAYER: In general, this is an
22 area which was granted to the City of Long Beach, years
23 ago, by legislative grants in the '50s. Oil was
24 discovered on -- in this area. And the legislature
25 stepped in because we felt the volume of oil there and the

1 amount of money to be made from the oil, frankly, was such
2 that it was inappropriate to leave those state resources
3 with the city.

4 Legislation was adopted to so-called Chapter 138
5 in, I think, 1964, which formally established the
6 relationship between the city, the state, and the
7 contractor, the oil company that's operating the unit
8 there.

9 And basically it left the city in charge of the
10 operations. The city has a division of several dozen
11 engineers and others that monitor day-to-day activity
12 there. They have responsibility over safety, those kinds
13 of issues.

14 In 138 there was an allowance for the Commission
15 to review the annual plan that was prepared for that
16 operation. But I believe, generally, the intent of that
17 was to ensure, frankly, that the state got the money that
18 was due it, and that the costs were reasonable.

19 This scope of review for the Commission in
20 reviewing that annual plan is extremely focused. And that
21 is, the only basis for modification of the plan is to be
22 consistent with the five-year program that has been
23 previously adopted for the operation of Long Beach unit.

24 Staff has reviewed this annual plan, which is in
25 Item 61, and found that there was no variance from the

1 five-year program that it previously been approved. And
2 therefore, staff believes that the Commission is required
3 by law, generally, to approve this in that circumstance.

4 CHAIRPERSON WESTLY: Thank you, Mr. Thayer.

5 Do -- I don't see any members of the public have
6 asked to speak. But what I would like to do is to ask my
7 colleagues, Mr. Bustamante or Ms. Sheehan, if they have a
8 question.

9 Other than that, I did have a question for
10 Mr. Hager.

11 ACTING COMMISSIONER SHEEHAN: I was just going to
12 say, was there anything you wanted to add to Mr. Thayer's
13 comments on this?

14 ASSISTANT ATTORNEY GENERAL HAGER: No, not really.
15 I mean, I could say more but I think he said it very
16 succinctly.

17 CHAIRPERSON WESTLY: Okay. Mr. Hager, let me just
18 make sure I'm crystal clear on this. So you're
19 essentially saying that we're required, legally, to
20 approve the lease. Is that --

21 ASSISTANT ATTORNEY GENERAL HAGER: Yes.

22 CHAIRPERSON WESTLY: Okay. This is what we
23 understood. And I guess your legal counsel has stated
24 that the attorney general has confirmed it and far be it
25 for me --

1 EXECUTIVE OFFICER THAYER: That's correct.

2 CHAIRPERSON WESTLY: And I believe we do need take
3 a vote on this. May I have a --

4 ACTING COMMISSIONER SHEEHAN: I will move the
5 staff recommendation.

6 COMMISSIONER BUSTAMANTE: Second.

7 CHAIRPERSON WESTLY: Great.

8 All in favor, please say "aye."

9 (Ayes.)

10 CHAIRPERSON WESTLY: Great. Thank you very, very
11 much.

12 At this point we have one final issue.

13 I need to excuse myself, so I'm going to turn it
14 over to my more-than-able Deputy Controller Ms. Aronberg.

15 And we will address Item 59, which was just taken
16 off the consent calendar.

17 Mr. Thayer, if you would, please.

18 EXECUTIVE OFFICER THAYER: Thank you very much.

19 I believe this calendar item will be presented by
20 Grace Kato.

21 MS. KATO: Good afternoon, Commissioners.

22 My name is Grace Kato, a member of your staff,
23 assigned to granted lands matters in the Northern
24 California area that includes military bases that have
25 granted lands within them, such as Hunters Point, Treasure

1 Island, and the Oakland Army Base.

2 To start, the Oakland Army Base is a 422-acre site
3 near the Bay Bridge toll plaza in Oakland. The site is
4 shown in the large placard before you. This Base was put
5 on the Base Realignment and Closure Commission list in
6 1995 and was actually closed in 1999.

7 The purpose of this calendar item is to seek your
8 authorization to complete a settlement of land title
9 questions involving the base. These questions deal with
10 whether some or all of the land at the Base is subject to
11 the Public Trust and to grants of Public Trust lands made
12 over the years to the City of Oakland.

13 Without a settlement and exchange, this area would
14 be subject to lengthy litigation on several legal and
15 factual issues that have been outlined in the calendar
16 item before you. Through Chapter 664, Statutes of 2005,
17 the legislature authorized the settlement and the physical
18 location of Public Trust lands to exist at the conclusion
19 of the settlement.

20 The settlement will involve two types of land
21 within the base. The first are Public Trust lands within
22 what has been called the Port Development Area. The Public
23 Trust area is shown in various shades of green on the
24 placards. This will entail the 141-acres site to the east
25 of Maritime Street. This area is crucial to the Port of

1 Oakland operations now and in the future. It is also the
2 land called out for port priority uses in the San
3 Francisco Bay Conservation and Development Commission's
4 Seaport Study. There will also be Public Trust lands along
5 all of the water that is parallel with the bridge
6 approach. This land is planned to become public parks and
7 trails.

8 The second type of property will be land that is
9 not subject to the Public Trust when the agreement and all
10 of its deeds have been recorded. This land lies within the
11 area that is known as the Gateway Development Area and is
12 located back from the water's edge, shown in the colored
13 sections on the placard.

14 To address hazardous substances at the Base, the
15 Department of Toxic Substances Control, DTSC, has approved
16 a Final Remedial Action Plan and Final Risk Management
17 Plan -- together known as the RAP/RMP -- back in 2002. The
18 staff of the State Lands Commission has been in contact
19 with DTSC to verify that remedial actions for the Public
20 Trust Lands to be received through the agreement is being
21 achieved within the timeframe and according to the
22 standards of the RAP/RMP and the consent agreement. Staff
23 of DTSC has confirmed this is in fact the case. Also,
24 staff has verified that there are no land use covenants or
25 restrictions on the Public Trust parcels, other than the

1 existing Covenant to Restrict Use of Property, that impede
2 its use for Public Trust and Granted Lands Trust purposes.

3 The City of Oakland, through its various agencies,
4 have considered this settlement and have approved it.
5 There has surfaced the issue as to whether sufficient
6 acreage has been set aside at the Oakland Army Base, by
7 the port and the City, for trucks that move product in and
8 out of the Port of Oakland. That is a concern of the West
9 Oakland community and of some trucking businesses in the
10 area.

11 The matter before the Commission today is a
12 settlement of a title dispute. However, we do believe it
13 is important to ask the City and the port to try to
14 resolve this issue with truckers and the community.
15 Representatives of the City and port are here to discuss
16 their progress on this issue. But in brief, the City and
17 port have been working to accommodate trucks outside of
18 West Oakland neighborhoods and to provide a more
19 compatible set of land use standards to minimize future
20 impacts. The proposed settlement and exchange will not
21 alter the BCDC Seaport Plan directive that calls for the
22 Port to provide 15 acres of truck parking and maritime
23 ancillary use in addition to the 75 acres already so
24 designated. Following the seaport plan the City of Oakland
25 is required to provide an additional 15 acres for said

1 uses.

2 The 2002 Oakland Army Base Environmental Impact
3 Report contains a number of mitigation measures that are
4 to be implemented in conjunction with the future
5 development of the base, including the development of a
6 truck management plan.

7 An important point to remember is that entry into
8 the Oakland Army Base settlement agreement does not
9 foreclose a resolution of the truck space issue. The City
10 or the port, or both, may agree after the settlement is
11 completed to expand the land committed to these uses
12 within the areas they will control.

13 In conclusion, your staff recommends that you
14 authorize the executive officer and the Office of the
15 Attorney General to complete the settlement exchange
16 agreement and all of the steps necessary to implement it.
17 Through the agreement, a large amount of land in this
18 crucial area will be brought into the Public Trust, and
19 expensive and uncertain litigation will be avoided.

20 Staff and representatives of the City and Port of
21 Oakland and respective agencies are here to answer any
22 questions you may have.

23 Thank you.

24 ACTING CHAIRPERSON ARONBERG: Thank you very much.

25 Mr. Thayer, there are no speaker cards on this

1 issue. Do you have any comments?

2 EXECUTIVE OFFICER THAYER: No. I think Grace
3 pretty well covered it. This is a matter where we're
4 mostly involved in ensuring that the Public Trust land, to
5 which the State has ownership, is maintained. And there's
6 an exchange in place here to make the land which is most
7 susceptible to public use available to the port and that
8 port, which is within the trust document, but which is not
9 useful to the trust, will be given to the City with a
10 similar amount of land, but it's not currently brought
11 into the Trust. So it balances the books, in essence, in
12 a way that will make the land most useful for Trust
13 purposes. And so that's the question before us mostly
14 today is, Is this exchange appropriate?

15 ACTING CHAIRPERSON ARONBERG: Thank you.

16 We've got some speaker cards. We've got Steve
17 Lowe. We've got Brian Beveridge on deck please who will
18 then be followed by Claudia Cappio.

19 Please state your full name and your organization
20 for the record.

21 MR. LOWE: My name is Steve Lowe, and I'm vice
22 president of the West Oakland Commerce Association. I
23 also am a member of the West Oakland Project Area
24 Committee, the West Oakland Toxics Reduction
25 Collaborative, and the West Oakland Community Advisory

1 Group for the Oakland Army Base. And of course the West
2 Oakland Commerce Association represents most of the major
3 businesses that surround the Port of Oakland.

4 Thanks for letting me go first. We have other
5 speakers who would like to follow -- Mr. Bill Aboudi,
6 who's out in the audience, he will probably follow me
7 because he represents the truckers in West Oakland, and
8 Mr. Brian Beveridge is co-chair of the West Oakland Toxics
9 Reduction Collaborative.

10 Well, I guess this all has to do with the sea
11 notes. Originally the land that we're talking about was
12 all held in the tide lands trust and it's supposed to be
13 used for expansion of the port or the well being of the
14 port, including the idea that the maritime ancillary
15 support services would be adequate land upon which to
16 expand or at least just to operate.

17 I think the BCDC made a major mistake when they
18 were calculating the amount of land that was needed. And
19 when you look at the numbers that have been submitted,
20 we're talking about some -- I think the port was thinking
21 that there would be about a doubling of traffic of
22 throughput by year 2020. We're now hearing from this
23 movement action plan integration work group that it might
24 be as much as four times as much in 2020.

25 So what happens to all the trucks that will be at

1 the Port of Oakland needed to move that cargo? The port
2 maintains it. A lot of that will be taken out by rail,
3 but there's still an estimation that we'll be facing at
4 least half, again, as many trucks are as needed now to
5 offer the Port of Oakland. And we don't feel that there
6 is a sufficient coordination between what the goods
7 movements action plan is working on at this point and what
8 the port and the City are doing now.

9 So I think what we're saying is that we're
10 tentatively in support of this action today, that you're
11 being asked to take. If there is a contingency that
12 maritime industrial support can be guaranteed or
13 prioritized, then I think we would be more in support.

14 ACTING CHAIRPERSON ARONBERG: Thank you, Mr. Lowe.

15 COMMISSIONER BUSTAMANTE: Could you -- What would
16 that casino come from? I don't understand that part.

17 MR. LOWE: When we were first beginning to talk
18 about the types and best use of the Army base, the City of
19 Oakland had before it -- would have a casino there. And
20 so it began to change the way that the city was looking at
21 the plan as an opportunity. You also talked about putting
22 movie studios there. We also talked about moving on a
23 road area, all this stuff that's been prioritized over
24 maritime support. So what makes the port strong? And
25 therefore what makes the regional economy strong is

1 maritime support.

2 It was eliminated, unfortunately, in BCDC's
3 original analysis, because the throughput studies were
4 done at the Port of L.A. and Long Beach, where this kind
5 of support is easy to relocate in areas around the port
6 because there is sufficient land. In West Oakland where
7 the residential is right up against the port, there really
8 isn't sufficient room. So the community has been saying,
9 "Can we move all of these trucks out of the community and
10 on to the Army base?" The original idea of 30 acres being
11 sufficient to do that seems to us it may be on the low
12 side. We'd like to see that confirmed by a study that's
13 been done by the movement action group.

14 Does that answer your questions?

15 COMMISSIONER BUSTAMANTE: Yeah. Thank you.

16 ACTING CHAIRPERSON ARONBERG: Mr. Lowe, go ahead.
17 We're going to move to Mr. Aboudi who I guess you said
18 would follow you.

19 MR. LOWE: I think as a representative of the
20 truckers, he can speak more specifically to this.

21 ACTING CHAIRPERSON ARONBERG: And then we'll have
22 Mr. Beveridge and then Ms. Cappio.

23 MR. ABOUDI: Hello. My name is Bill Aboudi. I'm
24 a trucker in the Port of Oakland.

25 THE REPORTER: Spell your last name, please.

1 MR. ABOUDI: A-B-O-U-D-I.

2 We're in support of this movement. We're actually
3 hoping it would move as quickly as possible. We've been
4 waiting for this land since 2000. We were promised a
5 space in West Oakland onto the Army base. And we're still
6 on a month-to-month lease and we would like to get it to
7 be a permanent location. We're treated as if we don't
8 exist, we're not needed at the port. And anybody with
9 commerce will tell you that trucks are needed to move the
10 cargo from the Port of Oakland to the trains, to the
11 barges, or whatever way they need to move them.

12 We would like to emphasize, again, that we would
13 like the 30 acres that are in addition to the 75 acres
14 that the port has already designated for maritime uses,
15 and make that very clear in our agreement with BCDC was
16 for trucking priority use. And we would like it to be a
17 permanent location and decided as soon as possible.

18 Thank you.

19 ACTING CHAIRPERSON ARONBERG: Thank you.

20 Mr. Beveridge is next. And then Claudia Cappio
21 could be on deck. She will then be followed by Thomas
22 Clark.

23 MR. BEVERIDGE: Hello. My name is Brian
24 Beveridge. I'm a resident of West Oakland. My
25 neighborhood is just on the right of that big green

1 section there, just across the freeway from the port. And
2 we are -- we have trucks on our streets every day.
3 Hundreds of trucks on our streets every day. We have
4 truck parking lots in our community. There's about 60
5 truck-related businesses in our community: Truck repair
6 shops, food service places that the truckers come and
7 double park in the streets. Trucks park on our
8 residential streets even though they are posted. They
9 park over the weekends and they park at night because
10 there's nowhere else for them to park. There's no
11 organized, centralized places for trucks in Oakland or at
12 the port.

13 Additionally, the City nor the port -- and you can
14 see the way this land was originally divided up and the
15 uses for this land that are proposed: Auto malls, movie
16 studios, resort hotels. Neither the port or the City want
17 to take responsibility for truck-related businesses.

18 The MTC zone's own report on industrial
19 clustering -- which is something I never thought I would
20 be reading, as a community member -- says that this
21 represents about 24,000 jobs in the County of Alameda.

22 No real study has been done that we can see on the
23 impact of having trucking and these related industries out
24 of our community, although we want them out of our
25 community. If no allowance -- If no significant allowance

1 is made for these industries at the port, then where are
2 they going to go? Are they going to move to the Central
3 Valley? Where the warehouses go, the trucks go. Where
4 the trucks go, the warehouses go. This industry exists as
5 a cluster.

6 And if -- Once this land is transferred and sold
7 to developers or whatever is planned to do with it, this
8 is the last big parcel that's available in Oakland near
9 the port that can be used for this kind of land planning.

10 We consider this a land planning issue and it's a
11 land planning issue that functions as a pollution
12 mitigation issue in our community. By using good planning
13 we can move these businesses out of our community, but
14 frankly, 30 acres won't do it. And we can't even get a
15 commitment that the 30 acres is continuous. It would be
16 an acre here, an acre there, scattered all over port
17 property. It could be odd chunks of the City's land.

18 We're trying to get -- The long-term expectation
19 is it could take 200 acres to satisfy the needs of trucks
20 and transportation at the port, if the port's expansion
21 happens the way it's expected.

22 This decision you're making, we feel, is our last
23 bit of leverage. Other than that, we're just -- we've had
24 promises from a variety of agencies.

25 ACTING CHAIRPERSON ARONBERG: Thank you. Thank

1 you very much.

2 COMMISSIONER BUSTAMANTE: Is there anything in
3 here that indicates that the port will be working out this
4 issue of truck traffic with the community?

5 EXECUTIVE OFFICER THAYER: There is a -- There is
6 nothing in the staff recommendation as to specific
7 conditions. There is a long letter that we received this
8 week from the Port of Oakland when we asked them about
9 this issue. I think there's others that have alluded to
10 something that's been cooking for some time. It's a local
11 planning issue. It's also something that BCDC of their
12 port master planning effort has looked at. But there are
13 representatives, I think -- Mr. Chark and others from the
14 port here -- who can indicate how they intend to respond
15 to this.

16 COMMISSIONER BUSTAMANTE: Okay. Are they here?

17 EXECUTIVE OFFICER THAYER: Yes.

18 I think Tom Clark.

19 ACTING CHAIRPERSON ARONBERG: Tom Clark is on
20 deck. And did you feel that he was needed sort of to keep
21 a natural order of things?

22 EXECUTIVE OFFICER THAYER: The order does not
23 matter.

24 MS. CAPPIO: Good afternoon, Commissioners. My
25 name is Claudia Cappio. And I'm the director of planning,

1 building and the Oakland Base Reuse Authority, for the
2 City of Oakland.

3 I would like to just comment on the issue here
4 before you today, which I believe the truck exchange makes
5 a lot of sense. But there is a continuing issue with
6 accommodating trucking maritime support activities, and we
7 believe that the trust exchange accomplishes four key
8 objectives to getting this issue resolved:

9 First, it will result in a net increase in the
10 amount of land in the Trust, thereby obviously looking
11 toward the port being able to expand and make the
12 necessary capital investment it needs to make to remain
13 competitive and invest in infrastructure which includes
14 roadway and rail.

15 Secondly, it allows redevelopment to occur with
16 the implementation of BCDC's requirement as has been
17 previously mentioned again, a minimum of 30 acres split
18 between the port and the City for maritime support
19 activities.

20 And next, in relation to the redevelopment
21 efforts, we have a series of mitigation measures that were
22 required by the Oakland Army Base EIR. And that includes
23 a truck management plan that is a combination of land use
24 policy, roadway and truck use route enforcement, and
25 obviously a accommodating trucks elsewhere, other than the

1 West Oakland community. And we have been working very
2 hard in the last five or six years to reduce the land use
3 conflicts in West Oakland. It is historic. It is hard.
4 There are many, many conflicts, and we believe that this
5 trust exchange will enable and is a key part of reducing
6 these specific conflicts.

7 I would be happy to answer any specific questions.

8 Thank you.

9 ACTING CHAIRPERSON ARONBERG: Thank you. Does
10 anyone have any questions?

11 COMMISSIONER BUSTAMANTE: Has the City asked for a
12 specific plan from the port on how they are going to
13 mitigate this issue?

14 MS. CAPPIO: The City and the port are working
15 very cooperatively, together. We are neighbors in the
16 Oakland Army Base area. And we are currently looking at
17 infrastructure planning and other major activities to make
18 sure that we do have space reserved that makes sense for
19 their innermobile rail facility and secondary trucking
20 activities of reserving actual physical space --

21 COMMISSIONER BUSTAMANTE: How much?

22 MS. CAPPIO: Well, at this point it's about 15
23 acres. The truck -- You can ask the port about what
24 trucking facilities they have there now. We have -- the
25 city has reserved 15 acres. We're currently using 15

1 areas, again, cooperating with the port for a intermediate
2 facility for the truckers. And we will again be
3 coordinating our land planning efforts with the port to
4 accommodate the acreage that's necessary.

5 COMMISSIONER BUSTAMANTE: Do you know how much
6 they have now?

7 MS. CAPPIO: They can answer that specifically.

8 COMMISSIONER BUSTAMANTE: Has the City done any
9 kind of a review of how much they have? And you've given
10 some kind of an estimate you think they need to have?

11 MS. CAPPIO: I know that the port has done that,
12 but what we've been doing is monitoring the land and the
13 use of the trucking facilities that we do have now. And
14 we've been keeping that -- those records.

15 COMMISSIONER BUSTAMANTE: Okay. I guess we'll
16 talk to the reporter.

17 ACTING CHAIRPERSON ARONBERG: Mr. Clark will be
18 followed by Andrew Clough.

19 MR. CLARK: My name is Thomas D. Clark. I'm the
20 assistant attorney for the Port of Oakland.

21 The port has approximately 75 acres of parking use
22 at the present time. We established a new 19 acre parcel,
23 which is 4 acres above what would be required by BCDC when
24 we begin developing the Oakland Army Base. So we've more
25 than provided the parking do date that is required by the

1 BCDC plan. The port is in the process of acquiring land
2 designated by BCDC for long-term permanent use for the 15
3 additional acres of parking.

4 The question, What enforcement mechanism is there?
5 How can we guarantee this? There's already been reference
6 to mitigation and monitoring plan that's a part of the
7 approval of the environmental impact report.

8 In addition to that, the Port of Oakland needs
9 permits from the bay commission and development
10 commission, any time it undertakes major development on
11 the waterfront. And that's the point at which BCDC and
12 I'm sure the trucking interests are going to ask, Where
13 are you on your parking? Are you below? Are you above?
14 What's going on? We will have to justify where we are
15 each time when we go after the permits for development.

16 The development has not begun at this time. This
17 Trust exchange and boundary settlement agreement is one of
18 the last steps that has to be taken in order for the
19 development to begin. But we are ahead of the trucking
20 area we're supposed to provide when we do get it
21 developed.

22 COMMISSIONER BUSTAMANTE: I think BCDC does great
23 work.

24 But if I could just ask, do you have a sense of
25 how many -- how many trucks you have and how many acres

1 would be necessary to take the burden off of the
2 surrounding residential communities?

3 MR. CLARK: Well, I have to say, when my client
4 thought that the BCDC process began, that it had adequate
5 acres. As a result of the trucking concerns raised by the
6 folks that you heard speak earlier, BCDC decided to be
7 conservative and they bumped up the acres by 30 acres.
8 They split it between the City and the port. I'm not an
9 independent expert in the field, but certainly the port
10 feels that the 30 acres in addition to what it already
11 had --

12 COMMISSIONER BUSTAMANTE: In addition to the 75?

13 MR. CLARK: Yes, in addition to the 75.

14 COMMISSIONER BUSTAMANTE: So it's adding 30 acres?

15 MR. CLARK: That is correct.

16 COMMISSIONER BUSTAMANTE: But the city
17 representative has indicated it's 15 acres.

18 MR. CLARK: The City will provide 15, and the port
19 will provide 15, for a total of 30.

20 COMMISSIONER BUSTAMANTE: 30 more acres.

21 And your analysis, does that resolve the double
22 parking and the overnight parking activities requiring
23 truckers to have kind of like put themselves in the middle
24 of a residential area or to be able to resolve the
25 decision?

1 MR. CLARK: I believe, together with the other
2 programs, the city and the port have underway truck
3 routes, land use restrictions that will go a long way to
4 solving the problem. And I just want to emphasize --

5 COMMISSIONER BUSTAMANTE: Do the truckers agree
6 with you?

7 MR. CLARK: I don't know because I know many of
8 the truckers who are a thorn in the sides of the residents
9 are not necessarily port related. There's a major freeway
10 near this area and a lot of trucking activities are not
11 port related. But clearly to the extent that it is port
12 related, the port believes that it has more than adequate
13 parking.

14 COMMISSIONER BUSTAMANTE: So would you consider
15 those off-the-freeway trucks that are in residential
16 areas, would you consider that to be a major problem in
17 the residential communities, or would you think that's
18 maybe an addition to the major problem that takes place as
19 a result of the port activity?

20 Because there's a difference in it. You could
21 have a highway go by, and you might have some of that
22 taking place. But is it relatively insignificant to the
23 problem? And the major problem is still with port
24 activities.

25 MR. CLARK: I don't think there is a major problem

1 with the port activities or the future on the parking that
2 we have in place. But I want to emphasize, I'm not that
3 familiar with traffic studies. That's not my field.

4 COMMISSIONER BUSTAMANTE: Is there anybody from
5 the port that may have done that study or has had a chance
6 to prove that issue?

7 MR. CLARK: I don't know if there's anyone here
8 today. I can ask. There is another speaker here on
9 behalf of the port who may have more information than I
10 do.

11 COMMISSIONER BUSTAMANTE: Thank you.

12 THE REPORTER: Could we take a break, please.
13 We've been going for two and a half hours.

14 ACTING CHAIRPERSON ARONBERG: Sure. Let's take a
15 10-minute break.

16 (Thereupon a break was taken in
17 proceedings.)

18 ACTING CHAIRPERSON ARONBERG: Let's go back on the
19 record.

20 MR. KERSHAW: Good afternoon, Chair, and other
21 members of the Commission.

22 I'm Pamela Kershaw with the Port of Oakland.
23 Thank you for allowing me to address you this afternoon.

24 Just to make this very brief, the Port of Oakland
25 fully supports the matter this afternoon and hopes to move

1 forward on this resolution. With respect to truck
2 parking, currently, as the previous speakers indicated,
3 have a parking lot devoted to truck parking, which is
4 approximately 17 to 19 acres, depending on how you count
5 that, which operates at about 70 percent occupancy. So it
6 is not fully utilized. It has been in existence. We've
7 kind of moved it in several locations over the past year
8 or more, but it's never been fully occupied.

9 We anticipate in August the fee transfer of that
10 exact property will go to the City. The City has
11 indicated they will keep that lot in existence until their
12 plans are finalized at which point they may have to adjust
13 or move it slightly to other areas of the base. And we
14 have identified an interim location on the port side for
15 15 acres in an area called our MSC, our Maritime Support
16 Center area, which is port-owned land, which we will
17 reconfigure for the truck parking. We haven't conveyed
18 that to all our independent truck parking groups. We
19 continue to work with them. We have an ongoing mitigation
20 monitoring program, part of our certified 2002 EIR that
21 both the port and city adopted take that very seriously,
22 in addition to our BCDC port plan amendment. And we are
23 currently in negotiations for additional property from
24 BNSF, from Caltrans, Wood Street, and West Grant to
25 provide a long-term 15-acre truck parking solution.

1 ACTING CHAIRPERSON ARONBERG: If the interim
2 location is not satisfactory --

3 MR. KERSHAW: We do believe the issue of trucking
4 is addressed in our current and future plans for the base.

5 And with that I'll end my comments unless you have
6 any questions.

7 COMMISSIONER BUSTAMANTE: You know, we want the
8 port facility to grow and expand and to get to the next
9 level. And this is clearly one of the ways we are able to
10 do that. But also we want to try to mitigate the kinds of
11 problems that they place in the community. From what I
12 think I just heard you say, although you didn't actually
13 say the words, is that you have a commitment to resolving
14 this issue.

15 MR. KERSHAW: Absolutely, we do.

16 COMMISSIONER BUSTAMANTE: What I want to make sure
17 you do is that when you're doing it, you're not double
18 counting. You're not doing the shell game. You're not
19 giving 40 acres to some trucker and saying that that's
20 parking space. You're not double counting on the ten
21 acres that you have for depot repair. You're not double
22 counting, trying to build a number up so that you make it
23 sound as if you're trying to do it. Do you know what I
24 mean?

25 MR. KERSHAW: Absolutely. We have no intention

1 of --

2 COMMISSIONER BUSTAMANTE: We have trucks in the
3 residential area.

4 MR. KERSHAW: Absolutely, we have trucks in
5 residential area --

6 COMMISSIONER BUSTAMANTE: All right. Go ahead and
7 get them out of there. As long as they are affiliated
8 with the port, we need to get them out of there.

9 So I think that, you know, even the truckers and
10 folks who are here, who raise an issue, they want this to
11 move forward. They want this to go. They think it has an
12 opportunity to be able to go and resolve those issues but
13 also to be able to make the community better and even the
14 port better. And the fact that you're going to have an
15 opportunity to do more redevelopment and additional kinds
16 of activities, you should be able to get your areas
17 squared away so that you can value at your facilities,
18 etc. Those are all good things to take place. So as
19 you're doing all those good things for the port, just make
20 sure you're doing good things for the rest of the people.

21 I don't mean this to be a lecture, but there needs
22 to be some balance in this process. And until -- I mean,
23 I think that this thing is going to go today. It was
24 scheduled for consent. But I will tell you that if this
25 was -- if I thought this was the only check on this, I

1 would postpone this issue. Because I don't think you guys
2 have been truthful. And frankly, I don't think that you
3 play square with the folks who are raising a very serious
4 issue to you, when you have the opportunity in this
5 transfer process to actually fix it.

6 So if it wasn't for the fact that there's a city
7 and a BCDC review and a lot of other things that are
8 still -- that you have instructions saying -- I would hold
9 this thing over indefinitely until we were able to come to
10 a conclusion on the issue of parking.

11 Since I think that there are -- This issue is
12 something that we can move forward with expectation that
13 there is other agencies that are going to hold your guys'
14 feet to the fire on this, I'm going to support this --
15 support this item.

16 But I really want to admonish, and again, I don't
17 mean this in any way other than what should be fair play
18 here. You guys are value-adding your facility. So trying
19 to mitigate some of the issues in the community is the
20 right thing to do.

21 MR. KERSHAW: Agreed. Thank you.

22 COMMISSIONER BUSTAMANTE: All right.

23 ACTING CHAIRPERSON ARONBERG: Ms. Sheehan?

24 ACTING COMMISSIONER SHEEHAN: No.

25 ACTING CHAIRPERSON ARONBERG: Move on to

1 Mr. White. And then we'll have Mr. Lowe's brief rebuttal.

2 MR. WHITE: Commissioners, my name is Bill White.
3 I'm an attorney with Shute, Mihaly & Weinberger,
4 representing the Oakland Base Reuse Authority, which
5 probably owns most of the properties subject to the
6 exchange.

7 I think the message that the various entities that
8 are party to this agreement are going to take home with
9 them is loud and clear. The issue of truck parking and
10 other port ancillary uses is a very important one and I
11 think we all understand that.

12 As Mr. Beveridge mentioned, it is a land planning
13 issue and it's also an enforcement issue. We have trucks
14 on the street. You know, one reason that we have that is
15 because it's difficult -- it has been difficult to enforce
16 existing restrictions on parking. And Ms. Cappio is still
17 here, if you do want to ask her any questions about what
18 has been done to date. And, in fact, a lot has been done
19 in terms of enforcement, in terms of increasing
20 restrictions and land use planning, and she can elaborate
21 on that a little bit, if necessary.

22 But what we have before us today really is a land
23 title settlement, and I just want to emphasize that. And
24 right now all of the lands that are subject to this
25 exchange is about 345, 350 acres. They are all subject to

1 title uncertainty. And it's unclear whether the trust
2 applies to any of these lands. There's not one acre of
3 land in there in which the Trust clearly applies. And
4 this is a settlement. And as a result of the settlement,
5 over approximately two thirds of the land will actually be
6 confirmed or placed in the Trust and only about one third
7 removed from the trust. So it's really a net benefit for
8 the Trust, as you know. The Trust -- these various port
9 ancillaries are consistent with the Trust.

10 At the same time, on the non-Trust lands, there's
11 nothing about this exchange that precludes their use for
12 truck parking or other port ancillary uses as well.

13 So I just wanted to emphasize that this is a
14 long-range planning issue. BCDC has looked at this
15 before. The legislature, in the Oakland Army Base
16 Exchange Act, recognizes this issue and recognizes that
17 BCDC has addressed it and in fact on that basis, actually
18 blessed this configuration. But there's obviously more
19 that needs to be done, going forward. Things change.
20 Obviously the problem is not solved and it needs to be.
21 So that will be taking place as land use planning goes
22 forward. And BCDC is there to make sure that adequate
23 land is set aside for that purpose.

24 ACTING CHAIRPERSON ARONBERG: Thank you,
25 Mr. White.

1 We'll have Mr. Lowe's rebuttal.

2 And in the meantime, I would like to say that even
3 though we're going to wind up supporting this, sounds like
4 what staff is telling us is that technically this is
5 something that's in our power. Requirements have been met
6 and it's something that staff supports. But Lieutenant
7 Governor is more happy than not that there are other
8 checks in the process so that we can move forward.

9 MR. LOWE: Well, we hope that those checks and
10 balances are there, if you can.

11 ACTING CHAIRPERSON ARONBERG: Mr. Lowe, if you
12 could keep your comments to one minute for your rebuttal.
13 The lights will not, I think, react appropriately, but Ms.
14 Lunetta will indicate when the minute is over.

15 MR. LOWE: Okay. I want to congratulate
16 Lieutenant Governor on this issue of the port.

17 If the planning that you've asked for were there,
18 it would have begun already. It has not. It has been a
19 deep source of frustration to all of us in the community.
20 And again, I would like to say, you know, we have
21 community members, stakeholders here who have not be
22 involved in this process. And we want to make sure that
23 there's some way you can guarantee that. That's why we've
24 come and asked for your help in this.

25 Thank you for your admonitions. And let's hope

1 that we can go forward in a more constructive fashion than
2 we had before.

3 ACTING CHAIRPERSON ARONBERG: Thank you very much.
4 Any comments from the commissioners?

5 ACTING COMMISSIONER SHEEHAN: Just in terms of
6 after we take the action, I think it would be helpful to
7 communicate on behalf of the commission members to support
8 the comments of the lieutenant governor, that we do hope
9 they will continue this discussion and address issues, and
10 communicate something in writing in addition to the action
11 that we talked about.

12 EXECUTIVE OFFICER THAYER: If the Commission so
13 wishes, I will write a letter on its behalf.

14 ACTING CHAIRPERSON ARONBERG: That's the intent of
15 the commission. I see a lot of head nodding.

16 EXECUTIVE OFFICER THAYER: The other thing is
17 although I sometimes hate to make these connections, I
18 think the port will be back before the Commission in three
19 or four or five months and perhaps we will ask them for an
20 update.

21 COMMISSIONER BUSTAMANTE: So we do have some
22 authority over it, not that there would be any connection.

23 (Laughter.)

24 ACTING CHAIRPERSON ARONBERG: Do we have a motion?

25 ACTING COMMISSIONER SHEEHAN: Yeah. I will move

1 the staff recommendation.

2 ACTING CHAIRPERSON ARONBERG: Second?

3 COMMISSIONER BUSTAMANTE: Second.

4 ACTING CHAIRPERSON ARONBERG: All in favor?

5 (Ayes.)

6 ACTING CHAIRPERSON ARONBERG: Opposed?

7 The motion carries.

8 Okay. That concludes the regular calendar.

9 I don't have any cards for general public comment,
10 which is a little unusual, so unless there's someone that
11 raises his or her hand, there's no public comment.

12 There's no closed session today, so that concludes
13 the open meeting. Since there is no other business before
14 us, let's adjourn.

15 (Whereupon the Meeting of the California
16 State Lands Commission adjourned at
17 1:02 p.m.)

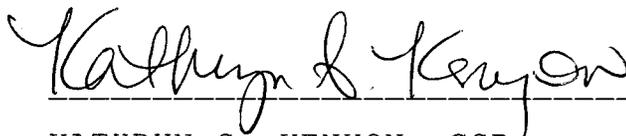
1 CERTIFICATE OF REPORTER

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 Meeting of the California State Lands Commission
6 was reported in shorthand by me, Kathryn S. Kenyon, a
7 Certified Shorthand Reporter of the State of California,
8 and thereafter transcribed into typewriting.

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

12 IN WITNESS WHEREOF, I have hereunto set my hand
13 this 4th day of May, 2006.

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23 KATHRYN S. KENYON, CSR

24 Certified Shorthand Reporter

25 License No. 13061