MEETING

OF THE

STATE LANDS COMMISSION

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ROOM 1030

400 R STREET

SACRAMENTO, CALIFORNIA

WEDNESDAY, APRIL 6, 1994

2:40 P.M.

Nadine J. Parks
Shorthand Reporter

MEMBERS PRESENT

Gray Davis, State Controller, Chairman

Leo T. McCarthy, Lieutenant Governor, Commissioner

Theresa Parker for Russell S. Gould, Director of Finance, Commissioner

Staff:

Charles Warren, Executive Officer
Jim Trout, Assistant Executive Officer
Robert Hight, Chief Counsel
Jane Sekelsky, Chief, Land Management Division

Also Present:

Jan Stevens, Deputy Attorney General
Christine Sproul, Deputy Attorney General

I N D E X

		PAGE
Proceedings		1
AGENDA ITEMS:		
III	Confirmation of Minutes for Meeting of March 8, 1994	2
IV	Consent Calendar, C01 through C52, with the exclusion of C40, 47, and 49	
	Commission Action	3
V	Regular Calendar	
Item 53	(Pulled)	
Item 54	Presentation by	
	Jane Sekelsky Chief, Land Management Division	4
	Questions/Comments	9
	Robert Faber, Esq. Counsel for Applicant	11
	Questions/Comments	16
	Continuation of Presentation by Mr. Faber	18
	Questions/Comments	23
	Michael Valentine Staff Counsel	27
	Questions/Comments	
	Miriam Green Marian Green Associates	29
	Questions/Comments	33

INDEX, continued. . .

		PAGE
AGENDA ITEMS:		
Item 54	Fred Meyer Associate Biologist Department of Fish & Game	42
	Questions/Comments	42
	Gary Kaveney Applicant	52
	Questions/Comments	53
	Motion to Adopt EIR, with recommendation to Staff	69
	Commission Action	69
Tribute to Charles Warren, Retiring Executive Officer		70
Adjournment		77
Certificate of Reporter Environmental Consultant		78

1 P R O C E E D I N G S

2 --o0o--

3 CHAIRMAN DAVIS: I'll call the meeting of the

4 State Lands Commission to order. The Secretary will call

5 the roll. I notice that all of us are here, but somebody

6 should call the roll. Can you hear me?

7 (There were a chorus of "noes.")

8 Can you hear me now?

9 The Chair notes the presence of a quorum. I

10 called the meeting to order, and I just wanted the Secretary

11 to call the roll if you would so we can formally record that

12 everyone is present.

13 EXECUTIVE OFFICER WARREN: Gray Davis?

14 CHAIRMAN DAVIS: Present.

15 EXECUTIVE OFFICER WARREN: Leo McCarthy?

16 COMMISSIONER MC CARTHY: Present.

17 EXECUTIVE OFFICER WARREN: Theresa Parker?

18 COMMISSIONER PARKER: Present.

19 EXECUTIVE OFFICER WARREN: All members of the

20 Commission are present, Mr. Chairman.

21 CHAIRMAN DAVIS: Good. Let's move to Item III, to

22 the Executive Director, to confirm the minutes of the last

23 meeting.

24 We've got a summary -- can you hear me now?

25 (Thereupon, after noticing his microphone was

1 cutting in and out, the Chairman remarked on
2 the problem.)
3 Can someone adjust this microphone system so I can
4 be heard in the back of the room? Does this work any
5 better? How about now?
6 (Thereupon, the staff tried adjusting the
7 system without success, and the building
8 maintenance man was summoned.)
9 How about now?
10 MR. HIGHT: It appears to be as high as it will
11 go.
12 CHAIRMAN DAVIS: Can you hear me now?
13 All right, I'll speak -- (shouting) Can you hear
14 me now?
15 (Laughter.)
16 CHAIRMAN DAVIS: I'll just shout.
17 The next item of business is to adopt the minutes
18 of the last meeting. We have the minutes before us. Do I
19 have a motion to that effect?
20 COMMISSIONER MC CARTHY: I move.
21 CHAIRMAN DAVIS: Moved. Is there any objection?
22 COMMISSIONER PARKER: No.
23 CHAIRMAN DAVIS: Okay. The minutes of our
24 previous meeting are adopted.
25 That takes us to Item IV, which is the consent

1 calendar.

2 EXECUTIVE OFFICER WARREN: Mr. Chairman, if I may,

3 before proceeding to the consent calendar, there are three

4 of those items which have been removed. They are Items 40,

5 47, and 49 on the consent calendar.

6 And while I'm about it, on the regular calendar,

7 there are two items, on of which should be removed -- that's

8 Item 53 -- leaving for your consideration the sole regular

9 calendar item, No. 54.

10 So, you'll approve the consent calendar, as

11 amended.

12 CHAIRMAN DAVIS: Do the members have any

13 objections to the consent calendar?

14 COMMISSIONER PARKER: Move the consent calendar,

15 as amended.

16 CHAIRMAN DAVIS: It's been moved. And hearing no

17 objection, the consent calendar is adopted. And that was

18 the consent calendar minus Items 40, 47, and 49.

19 Item 53 has been withdrawn, so the sole item of

20 business before us today is Item 54.

21 You want to explain the matter before us, Mr.

22 Warren?

23 EXECUTIVE OFFICER WARREN: Mr. Chairman, Item 54

24 is the consideration of an application by one Gary Kaveney

25 for a commercial lease to construct and operate a marina at

1 Verona in Sutter County.
2 Jane Sekelsky, who is the Chief of our Land
3 Management Division, will present this item.
4 MS. SEKELSKY: Can all of you hear me?
5 (There was a chorus of "noes.")
6 Okay. For the record, my name is Jane Sekelsky,
7 Chief of the Land Management Division.
8 The application before you today is for the
9 construction and operation of a commercial marina on the
10 Sacramento River, approximately 15 miles north of Sacramento
11 and just below the confluence of the Sacramento and Feather
12 Rivers.
13 Although the proposed project is relatively small,
14 it raises substantial issues concerning the potential
15 adverse environmental impacts and conflicting public trust
16 uses.
17 You have before you a rather lengthy staff report,
18 together with several exhibits. I also understand that the
19 applicant's representative, Mr. Faber, has presented you
20 with an alternative calendar item, including revised CEQA
21 findings and lease language, and that he will address you in
22 support of the proposed project this afternoon.
23 We have also provided you and Mr. Faber with
24 additional materials for your reference in considering this
25 item.

1 Included is an aerial photograph of the proposed
2 project site with the proposed project indicated on it, a
3 diagram of the proposed project showing existing facilities
4 in blue and the proposed facilities in yellow, and four
5 letters regarding the proposed project.
6 We understand that your time today is limited.
7 And, so, we'd like to briefly walk you through the most
8 critical portions of the staff's calendar item.
9 You will find, beginning at Calendar Page 393 a
10 discussion of four major issues raised by the application.
11 First, the physical constraints of the project
12 site: Based upon analysis of available information, staff
13 believes that there may be a need for dredging for
14 structural bank protection to maintain the proposed
15 facility.
16 Mr. Kaveney disagrees and, therefore, has neither
17 included provisions for that in his cost estimates nor have
18 we included provisions for that in the lease that is
19 attached to your package as a possible option for you to act
20 upon.
21 Second, the proposed project has a clear potential
22 to adversely impact both riparian and aquatic habitats of
23 the species that depend upon them, including but not limited
24 to threatened and endangered species.
25 Of particular concern is that the installation,

1 maintenance, and increased use of the project area will be
2 consumptive of shaded marine aquatic habitat, an essential
3 component of critical habitat for the Chinook salmon, a
4 State listed endangered and a federally listed threatened
5 species.
6 Third, we have received written documentation from
7 both the Department of Fish & Game and from Mr. John
8 Morrison, who makes his living as a commercial fishing
9 guide, that the proposed project site is and has long been
10 used by fishermen.
11 Note that one of the letters included in your
12 supplemental packet is from the Department of Fish & Game,
13 and withdraws an earlier objection to the project solely
14 because it is not the Department's policy to oppose projects
15 on the basis of specific recreational opportunities at a
16 single geographic location. The letter does not retract the
17 earlier statements indicating that this is, in fact, an
18 active area for angling and for general fishing activities.
19 The Commission on this issue is faced with a very
20 difficult decision of competing public trust uses -- on the
21 one hand, an established public use for fishing; and, on the
22 other hand, a private marina, which would provide berthing
23 for boats in the range generally of 35 to 40 feet.
24 Finally, the staff's analysis addresses the
25 financial aspects of the proposal.

1 As you will note, on page -- I believe on page
2 398, the staff has drawn four conclusions: One, that the
3 applicant's projected costs may be a little low. Again,
4 that's based primarily on the staff's belief that there may
5 be a need for structural bank protection and for dredging in
6 the project area, which the applicant has not included in
7 his project description.
8 The projected income may be a little high,
9 primarily because the applicant appears to be assuming an
10 adjustment of income at a higher rate than the normal rate
11 of inflation over the last five years or the average rate of
12 inflation over the last five years.
13 In addition, the Commission was particularly
14 interested, when this item was first addressed in December
15 of 1992, with the employment opportunities -- the economic
16 benefits of this project.
17 We know that in Exhibit F attached to your
18 calendar item, which is what the applicant has submitted to
19 us as their financial analysis, they indicate a payroll for
20 the marina alone in the first year of operation of
21 approximately $7500. And after 10 years of operation, it
22 will be approximately $17,800.
23 Beginning at page 398 of your calendar item, staff
24 has set forth three options for Commission action: Denial
25 of the project as proposed, but allowing the existing

1 facilities to remain actively used; a reduced project
2 alternative suggested by the Department of Fish & Game,
3 which the Department believes would provide most of the
4 public benefits that could be gained from this project in
5 terms of allowing the fishing to continue, allowing a little
6 more access for boaters, and still not interfere with the
7 angling activities that are already established on the site.
8 And, finally, the option of approval of this
9 project with the conditions proposed by staff to avoid or
10 mitigate adverse environmental impacts and to lessen risks
11 to the State.
12 The lease conditions recommended by the staff,
13 assuming the Commission should authorize the lease, are
14 summarized beginning at page 399 in your calendar item. The
15 full context of the conditions is included in Exhibit G to
16 your item, which is the staff's proposal for a lease
17 document should the Commission choose to issue a lease.
18 The three options described above are set forth
19 for Commission consideration as Options A, B, and C in your
20 findings section of the calendar item, beginning at page
21 400.
22 The calendar item is designed to enable the
23 Commission to adopt any of the three options in its entirety
24 as each of those options would stand alone.
25 Finally, Mr. Faber has provided the staff with a

1 copy of his proposed calendar item about 11:30 this morning,
2 and we have had insufficient time to conduct any detailed
3 review.
4 However, a brief review indiciates that there may
5 be points of conflict with what we understand to be the
6 facts of this case, even some previously provided by the
7 applicant, and the item as Mr. Faber has drafted it.
8 We're particularly concerned that Mr. Faber's
9 findings appear to be inconsistent with and not supported by
10 a document, the EIR. Rather than take up any more of your
11 time from the staff's perspective, we're prepared to answer
12 any questions you may have either now or in response to Mr.
13 Faber's presentation.
14 CHAIRMAN DAVIS: Could you summarize the
15 mitigation that you would propose if the Commission were to
16 approve this project?
17 MS. SEKELSKY: There are several different items.
18 The primary item, which is unique to this project, in that
19 it is designed for this specific project, is the
20 revegetation plan. There are many items of mitigation in
21 the lease document itself that stem from the carrying
22 capacity study done years ago where we're requiring pumpouts
23 and that type of thing.
24 But the revegetation plan is established -- is
25 recommended by staff to establish a multistory/multilevel

1 vegetation growing in the area along and on the bank.
2 The Commission's jurisdiction does not extend to
3 the land on top of the bank, or at least -- I shouldn't say
4 it doesn't, but at this point in time we are not asserting
5 that.
6 And, so, it is within the Commission's
7 jurisdiction to impose mitigations for vegetation along the
8 bank. We propose placing willows and scrub plants along the
9 bank and also to require the applicant to provide limited
10 public access through that area so that the plants may
11 become established and may provided the type of shaded
12 riverine aquatic habitat and riparian habitat that is needed
13 in this area.
14 It's my understanding that Mr. Faber proposes a
15 less dense, less natural type of habitat in the area. My
16 understanding is that he proposes to plant willows, but he
17 also proposes a grassy bank, which would probably encourage
18 the public to come through that area. And our intent would
19 be to try to discourage public access through there to
20 provide the maximum extent of protection to the shaded
21 riverine habitat, which is so critical to the fishery.
22 CHAIRMAN DAVIS: Any questions from any members?
23 Is there anyone else, Mr. Warren, that wants to comment on
24 the staff's report before we go to the witnesses?
25 EXECUTIVE OFFICER WARREN: No, Mr. Chairman. I

1 should note that you have a statement from five individuals
2 who wish to make a presentation. I take it the first one
3 would be Mr. Faber.
4 CHAIRMAN DAVIS: Well, I note that we have an
5 elected official here, Supervisor Carpenter.
6 EXECUTIVE OFFICER WARREN: That's on the consent
7 calendar item. He was here only if there was a question
8 about it.
9 CHAIRMAN DAVIS: All right. Let's begin with Mr.
10 Faber.
11 MR. FABER: My name is Robert Faber.
12 (Thereupon, the reporter requested Mr. Faber
13 to speak into a microphone.)
14 MR. FABER: I'm here on behalf of the Applicant,
15 Gary Kaveney. Can you hear?
16 (The response was negative.)
17 MR. FABER: Is it adequate if I talk like this?
18 Is this loud enough for everyone to hear?
19 CHAIRMAN DAVIS: Can you hear him in the back?
20 MR. FABER: I'd be happy to try one of these. Is
21 that better?
22 My name is Robert Faber. I'm here on behalf of
23 Gary Kaveney.
24 Considering the extensiveness of this calendar
25 item and the limitation of your time, I'll try to make just

1 a few summary remarks and then hit on some of the individual
2 points. I note that at least one Commissioner did not hear
3 some of this when we made a presentation in the summer of
4 '91, but I think it's important to bear in mind, and I will
5 try and address in the course of my comments various issues
6 which staff has brought up as well as some additional
7 information which should come to the Commission.
8 First of all, the history of the project is that
9 this is the final stage of the project that was authorized
10 in 1976 by the Commission, by Sutter county, and various
11 other agencies. That is to say that the Commission at that
12 time authorized a marina larger than the one which is
13 proposed, campground facilities, both launch ramp and other
14 facilities.
15 For economic reasons, at the end of the 1970s, the
16 applicant gave back a portion of the lease area that had not
17 been marina; did, however, go ahead and put in a campground
18 and launch ramp.
19 So, a number of those facilities were installed
20 and have been installed for a considerable period of time.
21 Then, in 1990, he decided to go back and complete
22 the marina part of the project. In doing so, he obtained
23 all the federal permits that were necessary and appropriate
24 to obtain and several of the State permits that were
25 appropriate to be obtained, and wound up with some remaining

1 issues with the Lands Commission permit and Sutter County
2 permit.
3 So, I wanted to give you that perspective to show
4 that it's not just a new application or a new project.
5 I did want to address the question which I
6 believe Commissioner McCarthy asked at your last December
7 17th hearing with regard to the income generated and the
8 expenditures on the project.
9 What we see is that someplace in the vicinity of
10 20 to 30 construction jobs would be generated to produce
11 this project. A good deal of it has already been incurred,
12 and I'll explain why. And then there's the management job
13 on the facility itself on an ongoing basis.
14 There will also be in the vicinity of 3500 to
15 $5,000 a year, which comes to the Commission by way of
16 rental; something in excess of 20,000 a year, which will go
17 to the county by way of sales tax and that sort of thing.
18 The Applicant spent approximately $270,000 to
19 acquire the property and to put in the original campground
20 and launch ramp.
21 The Applicant has also spent another $215,000 for
22 the docks and the pilings for this facility. And I know
23 that there's a disagreement between staff and ourselves.
24 And I'll just mention briefly that there was a letter which
25 came to the Applicant in 1991, in August, in which it was

1 indicated that there were -- first of all, you have to
2 understand that it's been over a year that I've been
3 involved trying to work on the State Lands Commission -- and
4 he received a letter which said, here are two copies of the
5 lease. Sign it in front of Notary Public and give it back
6 to us, and then we'll go ahead and -- oh, and send us the
7 rent, and then we'll process what needs to be passed on by
8 the Commission.
9 Well, he was under the assumption, obviously
10 incorrectly at that time, that he should go ahead and put in
11 the marina. And, so, he spent $215,000 to acquire the docks
12 pursuant to this, and I simply want you to be aware of the
13 fact of the status that we're in.
14 I want to turn to --
15 CHAIRMAN DAVIS: Do you have the document with you
16 that you claim gave the owner the confidence to go ahead and
17 expend money?
18 MR. FABER: Yes, I do.
19 CHAIRMAN DAVIS: Is that in our package?
20 MS. SEKELSKY: No, it is isn't. We have a copy of
21 it, though.
22 MR. FABER: I can give you a copy of that letter
23 and I also have copies for staff. It'll take just a second.
24 COMMISSIONER PARKER: Was this letter
25 subsequently-- was there further communication subsequently

1 sent?

2 MS. SEKELSKY: Yes, there was.

3 COMMISSIONER PARKER: And how quickly was that

4 sent?

5 MS. SEKELSKY: Within 30 days. This letter, as

6 you will note, indicates that the staff is preparing to take

7 this to the Commission. It does not indicate that the lease

8 is going into effect. And, in addition, the lease terms

9 provide very expressly that the lease does not go into

10 effect until the Commission has acted to approve it.

11 Granted, the letter sounds as though there is

12 going to be a favorable recommendation from staff to the

13 Commission in the near future. However, the lease which the

14 Applicant signed at that time made it very clear that

15 Commission approval was necessary before anything is

16 assured.

17 And this type of letter, at the time, was fairly

18 standard to make things move as quickly as possible for the

19 applicants, so that, when all the information was available,

20 we could quickly get it to the Commission.

21 In this case, after that letter was sent out, the

22 response to the initial study that had been circulated under

23 CEQA indicated that there were very serious concerns of

24 which staff had not been previously aware, and that an EIR

25 would be necessary.

1 And within a month, we sent notification that that
2 was the case, and that -- it was about when our discussions
3 with the Applicant fell apart, because the Applicant
4 disagreed and did not believe an EIR was necessary.
5 CHAIRMAN DAVIS: Do we have copies of the
6 subsequent letter from the staff, basically, withdrawing
7 whatever he perceived was the authority --
8 MS. SEKELSKY: No. I'm sorry, I do not. I didn't
9 bring it. Excuse me. We did.
10 MR. FABER: The primary reason why I brought that
11 up was the question did come up at the December 17th
12 hearing. And I felt that you should have a copy of the
13 letter and be more fully informed of what happened.
14 With regard to whether it was normal practice,
15 you'll note in the package that I gave you a letter dated
16 October 8th, 1993, from Duncan Simmons, staff counsel.
17 (Thereupon, the reporter requested that
18 Mr. Faber speak into the microphone.)
19 MR. FABER: If I could make it longer, I would.
20 In that letter, you will note that he indicates that it's
21 not the normal practice to have this kind of letter go out
22 prior to environmental documentation being done.
23 So, with all due respect, I think you should be
24 aware that, last October, unlike staff's position on this,
25 it was not a normal occurrence to have sent out that letter.

1 CHAIRMAN DAVIS: Which one? The August 9th letter
2 or the August 29th letter?
3 MR. FABER: Neither letter.
4 CHAIRMAN DAVIS: Do you dispute that?
5 MS. SEKELSKY: I cannot address whether these
6 letters would normally go out before the environmental
7 documentation or circulation was completed. But I can tell
8 you that the staff, in an effort to make the process move as
9 quickly as possible based on the information we have, will
10 often send these leases out early in the process, so that
11 they can recognize if there are any disputes with the
12 applicant over the lease terms.
13 CHAIRMAN DAVIS: Well, I would imagine that, at a
14 minimum, you would say, whatever the effect of the August
15 9th letter or August 29th, that's not going to go away.
16 MS. SEKELSKY: That's correct. And, again, the
17 lease document that the Applicant did sign and send in would
18 have indicated early that the lease is not effective until
19 approved by the Commission.
20 COMMISSIONER PARKER: Was there a document sent?
21 Was there a lease signed and sent back by the Applicant --
22 MS. SEKELSKY: Yes, there was.
23 COMMISSIONER PARKER: -- during that timeframe?
24 MS. SEKELSKY: Yes.
25 COMMISSIONER PARKER: What was the date that they

1 transmitted that lease back?

2 MR. FABER: Three days later, August the 12th. It

3 was signed, notarized, and included a check for rent.

4 CHAIRMAN DAVIS: Your point is that you feel that

5 you have a -- you're operating under the assumption you had

6 a legally binding commitment or at least a very positive

7 indication to proceed.

8 MR. FABER: Well, certainly, that was what he felt

9 was being communicated to him. But I think that there are a

10 number of other issues. And what I want you to do is see

11 the totality of the situation, and that's one simple fact.

12 The next issue that I wanted to discuss was the

13 characterization of the area where the marina is to be

14 constructed if it's authorized by the Commission.

15 This is an area just south of the confluence of

16 the Feather and the Sacramento Rivers in a clearly developed

17 agricultural part of the Sacramento Valley.

18 Looking at the property from either the waterside

19 or from the landside, there are several things that should

20 be aware or obvious (sic) and pointed out.

21 First of all, this is not an unusual type of

22 facility they have in this area. Whether you proceed

23 downriver from either the Sacramento or the Feather River,

24 or where those two come together, which is not quite in

25 front where the site is but actually upstream of it, you can

1 see another marina which is already in existence at that
2 general vicinity. That's Verona Joe's Marina (phonetic),
3 which is about three-quarters of a mile downstream.
4 Secondly, this is an area where there is a good
5 deal of rip-rap. There is some riparian vegetation in this
6 general vicinity. It is interesting that, although there's
7 only about three percent of riparian vegetation in the
8 Sacramento Valley than used to be (sic), in this particular
9 site, it has increased within the last 50 years on this
10 stretch of the river.
11 And, also, you should be aware that there is, on
12 the parcels immediately downstream and immediately upstream,
13 a lot of illegal camping. Informally, individuals from the
14 Department of Fish & Game have indicated to the manager,
15 when visiting, there's a real problem with riparian habitat
16 because there's a lot of illegal camping that takes place.
17 People come in and cut them, build fires, leave
18 trash, and they tear down a lot of habitat.
19 In contrast, this is a piece of property where the
20 Applicant has been very concerned with trying to increase
21 the riparian value. The property has been planted. There
22 are places where the bank has been stabilized that Mr.
23 Kaveney has done, as well as other types of vegetation in
24 order to establish the bank.
25 The fact is that he is probably as concerned as

1 anyone to arrest the erosion there and make sure that that
2 bank is as viable as possible.
3 In fact, one of the unfortunate things about the
4 project approach that we're facing is, it's not that he is
5 opposed to a revegetation plan; it's that he has always had
6 in mind having a revegetation plan on property, which he
7 understands to be his property, and he has successfully
8 engaged in this earlier revegetation. In fact, a number of
9 the trees that are on the bank now that we are at risk of
10 losing are ones that he planted but, because of present
11 erosion, we may well lose those.
12 So, it's important to understand that he wants to
13 do these things. He wants to have an environmentally
14 responsible project and always has wanted to.
15 One thing in contrast to what Jane Sekelsky said
16 was, he does not plan on planting grass on the bank. His
17 ideas are not totally dissimilar; they are quite similar to
18 what the staff has proposed as far as the revegetation plan.
19 The trouble is that he may choose to plant at a
20 different time, meaning different season, not to delay for a
21 long time, but it's his property that he's trying to manage.
22 And although, certainly, some of it is going to be State
23 Lands' property, and he's willing to work with staff, the
24 troublesome thing is to be mandated to have a specific plan,
25 when this is something that he's been trying to do and

1 wanting to do.

2 I believe there is a statement in an editorial in

3 the Business Journal, Mr. Davis, that you wrote, which says,

4 "Even the best intention of business sometimes should not go

5 unpunished."

6 And, so, no matter how you feel, he's trying to do

7 the right thing, and somebody's saying that we want you to

8 do more and better even if it's not something we have

9 jurisdiction over.

10 So, I wanted you to understand that it's not

11 something he's resistant to doing. He's very, very

12 interested in putting in a revegetation plan along this

13 bank, which is largely exclusively native vegetation, but he

14 would like to choose how to do that. His choices would not

15 be the dissimilar to what staff is suggesting. He may

16 choose to put in some netting, biodegradable netting, which

17 is not specified in the staff's revegetation plan.

18 I specifically want to address the issue of shaded

19 riverine aquatic habitat. This is a biologic term which is

20 important to a number of species. It is important to a

21 number of species and is, as stated, for some endangered

22 species. It is not present in any significant amount on the

23 project site. There are a couple of trees that are along

24 the top, widely spaced. And we are at risk of actually

25 losing those if we don't stabilize the bank, and that is

1 what we want to do.

2 The property actually runs east and west, so that

3 there's not a great deal of habitat that is actually

4 existent at the site.

5 Lastly, I wanted to point out that in the package

6 of material that we provided to your office this morning,

7 there is an Option D, which is different from the options

8 that have been provided by the Commission up to this point.

9 It is most similar to Item C, in that it authorizes the

10 project. But it has attached to it the findings that the

11 Commission could make. It also is accompanied by the CEQA

12 findings the Commission would need to make. And with

13 respect to the differential that exists in the certification

14 of the EIR, the comments which we provided to the EIR when

15 it was in the draft form about the mitigation monitoring

16 plan, as well as changes in the EIR, which we believe are

17 factually correct and would also support the determination.

18 So that, as a whole, you could adopt Item No. D as

19 an alternative the Commission may want to accept.

20 There are a couple of issues that exist as far as

21 what the lease document is. And if I could take just a

22 minute, a very short time to go through them -- we were

23 provided last evening at five o'clock a copy of the lease in

24 its relatively final form. The last couple of pages, in

25 fact, in the packet, I have provided additional amendments

1 to the lease. I believe staff has a copy of those
2 amendments. And depending on whether or not the
3 Commissioners want to go ahead and authorize the project, we
4 can look at those individual lease amendment items.
5 Specifically, they have to do with placement of
6 the marina with bank stabilization, for instance.
7 Currently, there is just adjacent to the bank some materials
8 that are the leftovers of the old launch ramp. And what
9 we're proposing to do is take those remnants which are at
10 the river bottom, move them over underneath the trees in
11 order to shore up the trees; so that, when the planting
12 takes place we have as good a possibility of saving those
13 trees as possible.
14 Staff does not want us to do that dredging of that
15 material. That material has cobbles and rock and stuff.
16 And, basically, we have addressed that directly to you as to
17 how you want to handle it.
18 So, those are the types of specific issues. But
19 perhaps what we first need to do is face the question as to
20 whether the Commission is going to be willing to issue a
21 lease here.
22 CHAIRMAN DAVIS: All right. First, I just want to
23 offer a couple of comments. I guess the staff has not had a
24 chance to analyze Option D?
25 MS. SEKELSKY: That is correct.

1 CHAIRMAN DAVIS: Are these amendment items that
2 Mr. Faber discussed in the same category?
3 MS. SEKELSKY: Yes, that is correct. We have had
4 some discussion with Mr. Faber about some of the changes he
5 proposes to the lease. We have not had an opportunity to
6 resolve those.
7 And, as Mr. Faber points out, staff is opposed to
8 placement of the materials that he characterizes as cobble
9 and rock, which we believe may constitute more something
10 like rubble, leftover concrete/asphalt materials, around the
11 base of the trees. We have serious misgivings about that
12 type of activity.
13 The placement issue that he refers to is of
14 serious concern for two -- actually three primary reasons.
15 The placement issue has to do with the location of
16 the facility relative to the bank, the distance of the
17 docking facility from the bank. We want to be assured,
18 given the fact that the waters between the dock and the bank
19 and the dock tend to be very shallow at certain times of
20 year, that there's is adequate depth for boats to navigate
21 behind the dock.
22 Because, in fact, his projections include
23 accommodating up to 20 boats on the landward side of the
24 dock, and we need to be sure that they have adequate depth
25 to navigate through there and adequate clearance distance

1 from the bank itself, so that there is turning room so that
2 they can move through there without digging up the bottom,
3 without tearing away further the bank or impacting the bank
4 and habitat in some way.
5 In addition, to the extent that trees along the
6 bank do fall into the water, the closer this facility is to
7 the land, the more demand there will be to remove those
8 trees from the water. Removal of trees, stubs, snags, roots
9 from the submerged area is consumptive of SRA. The SRA that
10 he speaks of and that we've spoken of includes not only
11 vegetation growing on the bank, but vegetation that is in
12 the water itself. So that we're concerned that we not
13 create a situation where there is a need to remove even
14 further vegetation in SRA that he's proposing as part of his
15 application.
16 In addition, there is a problem that is raised by
17 moving the marina further out and that is, the further the
18 marina is placed into the stream, the more interference
19 there is with the established public fishing use. And the
20 further into the stream -- in which these fish migrate back
21 and forth -- the marina is placed, the greater the
22 possibility of impact on the fish migration that's --
23 CHAIRMAN DAVIS: I don't want to get into all the
24 objections. I just want to, you know -- I gather the answer
25 is no. You've not analyzed the --

1 MS. SEKELSKY: Well, we have analyzed it, and we
2 are not happy with the language that he's proposed.
3 CHAIRMAN DAVIS: Okay. Got you. Now, I propose
4 that we go ahead with the other witnesses, unless the
5 members have other questions.
6 COMMISSIONER PARKER: That's fine. I'd prefer to
7 ask further questions at a later time if that is possible.
8 CHAIRMAN DAVIS: All right. Is there any
9 particular order, Mr. Faber, that you'd like these people to
10 testify?
11 MR. FABER: We had one who will be able to answer
12 any questions that the Commissioners may have. What are the
13 names that you have and I can tell you.
14 CHAIRMAN DAVIS: There's Amanda Stennick,
15 consultant, if it's necessary, following Mr. Faber; Gary
16 Kaveney, Fred Meyer, and we have Miriam Green.
17 MR. FABER: Amanda, Miriam, and Gary, I think it
18 depends on some of the additional discussion that may need
19 to take place. I would like to reserve them to address some
20 of other issues that may come up here; and, if so, then the
21 others may need to speak. Mr. Kaveney, for instance, is the
22 project Applicant, and he is here to answer questions if
23 needed.
24 Miriam Green is the individual who headed the team
25 to draw up the EIR. It probably would be useful for her to

1 describe the process that has gone on from her perspective
2 and to brief you on the background. Not untypically, the
3 applicant pays for the EIR consultant. We asked for
4 recommendations. Staff recommended Ms. Green.
5 I think she's done a good job. And so, she
6 probably has some additional information that would be
7 useful.
8 CHAIRMAN DAVIS: Okay. Fine. Ms. Green?
9 MR. VALENTINE: Mr. Chairman, my name is Michael
10 Valentine. I'm a staff counsel.
11 Miriam Green is the consultant under contract to
12 the State Lands Commission to prepare this document. If
13 she's here to offer -- to respond to questions of the
14 Commission or those of the public may have on that process,
15 I think that's fine.
16 But if she is here to testify as to the procedures
17 that were followed or the manner in which she addressed the
18 staff's concerns on the environmental issues presented, we
19 don't believe that's appropriate, nor do we believe it's
20 relevant to any issue currently pending before this body.
21 CHAIRMAN DAVIS: She's a member of the public.
22 She's entitled to speak.
23 MR. VALENTINE: She is also a contractor under
24 contract to the State Lands Commission.
25 CHAIRMAN DAVIS: I assume everyone has a vested

1 interest, including the staff. That's what we're here for,
2 is to make a judgment. Do the members have a problem
3 hearing from Ms. Green?
4 (Thereupon, the members of the Commission
5 consulted with each other outside the
6 hearing of the reporter.)
7 CHAIRMAN DAVIS: Ms. Green, I think what the staff
8 is saying to you is, if you would like to testify in favor
9 of this project, that's fine. But they think somehow that
10 discredits your ability to be fair and objective in the
11 analysis of these matters in the future. I don't
12 particularly share that view. I think --
13 MS. GREEN: (From the audience.) I'm not going to
14 go into the process we went through with the EIR, things
15 that went on. I'm here to respond to things that staff said
16 that I feel are not representative of the actual EIR, and
17 I'd like to address those. So, I'm here to speak
18 objectively, and I'm not going into the EIR precess, if
19 that's okay.
20 COMMISSIONER PARKER: So, you're here to clarify
21 what was in it?
22 MS. GREEN: I'm here to clarify a few points that
23 I had wanted to bring up, but because of some things I heard
24 this morning -- I mean this afternoon, I just want to
25 clarify to the Commission what our findings were. So, I

1 think it's your decision.
2 CHAIRMAN DAVIS: All right. We have no problem.
3 MS. GREEN: My name is Miriam Green, and I'm the
4 owner of Miriam Green Associates, the consulting firm who
5 was the lead in preparing the draft and final EIRs for the
6 project.
7 (Thereupon, the reporter requested
8 Ms. Green to speak into the microphone.)
9 As I said, I'm here on behalf of the consulting
10 team and not at the request of either Bob Faber or Gary
11 Kaveney.
12 There were some statements that were made today
13 that I would like to clarify what the consultants found in
14 their last year of work on this project.
15 One, as far as the pilings that are shown in the
16 document as 30-feet out on the river, and whether or not
17 they may or may not be required, the pilings can easily be
18 moved out 40 or 50 feet. The river is 500 feet wide at this
19 point. There is considerable room to move the pilings
20 outward and not interfere with the main thoroughfare for
21 boating activities, and there is nothing opposite this
22 project site on the other bank, as another marina or any
23 kind of boating facility.
24 So, there is room there to make sure that the
25 pilings are put in at the proper locations.

1 As far as the Swainson's hawk issue, which is a
2 threatened species on behalf of the State of California --
3 it does not have federal status -- there are mitigation
4 measures included in the draft EIR which would prevent
5 impacts to nesting Swainson's hawks. And Swainson's hawks
6 have nested successfully adjacent to the project site
7 immediately downstream and directly across the river in the
8 last few years.
9 They have not nested at the project site. And
10 because the project site is used year-round as a campground
11 and launch ramp, it is unlikely that they would next at the
12 project site.
13 If the marina were in place, from just knowing the
14 biology of the species, there is no reason that the birds
15 would not continue to use the site across the river or the
16 site immediately downstream. We know of other nests along
17 the Sacramento River, including one immediately adjacent to
18 the Sacramento Yacht Club and other -- close to other
19 marinas that birds are still nesting with the marina in
20 place.
21 As far as winter run salmon, there again is
22 mitigation included in the draft EIR that would alleviate
23 any impacts to winter run salmon caused by the construction
24 of this project.
25 Now, there were two options -- I believe they were

1 A and B in your packets. One was denial of the project and
2 one was the Department of Fish & Game alternative.
3 In the Fish & Game alternative, they have said,
4 well, maybe we should just have day-use docks and not the
5 marina. The day-use docks and where the marina is being
6 placed would not interfere with angling opportunities. We
7 have visited the site. I personally visited the site on at
8 least 10 occasions. And I have talked to recreational
9 fishermen, fishing guides, water skiers, jet skiers,
10 campers, and other recreational boaters to find out where
11 people fish, where they water ski, and general use of the
12 project site.
13 No one told me that they fished in the river
14 adjacent to the project site, and not one of the 28 people
15 who responded to the NOPs said anything above the marina
16 displacing boat fishing opportunities in this area.
17 Another point was brought up as --
18 CHAIRMAN DAVIS: Excuse me just a second. Were
19 they aware that a marina was proposed for that site?
20 MS. GREEN: Yes. Yes, that was made very clear.
21 And the people that responded in writing to the NOP were
22 actually responding to a written project description that
23 was sent out, which included a description of the marina,
24 the continued operation of the campground and launch ramp,
25 and the fact that an EIR was going to be prepared on this

1 project.

2 The revegetation plan that is included in the

3 document, whether or not it's exactly as we proposed it or,

4 as Mr. Kaveney would like to see it, the fact is that the

5 bank right now is unprotected. It is eroding. I have

6 pictures with me of the bank itself during summer, during

7 winter of the launch ramp use, and of the various views of

8 the project site if you would like to see that.

9 There are also colored pictures in the draft EIR.

10 But the marina, if it were built, would have two access ways

11 connecting the marina itself to the shore. If the access

12 ramps are there, people would not use the banks. They would

13 go from the marina, walk over the access ramp, which would

14 be like a bridge similar to the other marinas along the

15 river, to get to the shore.

16 Right now, people are beaching their boats at the

17 downstream end of the launch ramp, and they are waiting

18 there while their drivers go and park their car and their

19 boat trailer.

20 So, sometimes, there's congestion around the

21 launch ramp as these people wait. They only have to do that

22 with day-use docks and, so, they want to climb up the bank.

23 If the marina's there, the marina patrons won't be

24 using the launch ramp. They will be using the accessway to

25 get to their boat slip, and then they will be exiting the

1 marina proper not where the launch ramp is, but in a totally
2 opposite direction.
3 So, it's been designed to minimize or alleviate,
4 or there just won't be conflicts between what's going at the
5 launch ramp and the marina.
6 So, as far as marina people causing more damage to
7 the bank, we just do not believe that that will be the case.
8 And that's after visiting many of the other marinas along
9 the river watching the operations, and that's what we're
10 basing a lot of our judgments on.
11 So, if you have any questions, I'd be glad to
12 answer them. As I said, I have pictures of the site if
13 you'd like to see them.
14 CHAIRMAN DAVIS: All right. If they're available,
15 I'd like to see them.
16 Any questions?
17 COMMISSIONER MC CARTHY: I have one question of
18 the staff. If the Commissioners were to assume that witness
19 Miriam Green's interpretation of the facts were accurate,
20 what would be left in the case for us to deny the
21 application before us?
22 MS. SEKELSKY: You still have the major issue of
23 conflicting public trust uses, even if you assume that all
24 of the environmental impacts can be mitigated to an
25 acceptable level. And you will find that in your Option 3,

1 while we're not comfortable that all the mitigations built
2 into the lease, as drafted by staff, will be successful, we
3 believe that a finding can be made that those conditions, if
4 successful, will mitigate to an acceptable level, you still
5 have a major difficulty under of an established public use
6 of fishing in the area versus this marina, which would
7 restrict the use and interfere with existing fishing uses.
8 Ms. Green indicates that no one responded to the
9 NOP indicating that that would be the case. In fact, the
10 Department of Fish & Game did so respond in the recent days
11 and -- included in your packet -- have documented that
12 through their staff memos. And we have received the
13 additional testimony through a letter from Mr. John
14 Morrison, a fishing guide, who has indicated clearly that
15 this is an established area for fishing.
16 COMMISSIONER MC CARTHY: What is the form of the
17 evidence? How many people who would fish here or angle in
18 this area have responded within the -- how many have been
19 informed and how many responded that there would be
20 interference with existing uses?
21 MS. SEKELSKY: In terms of how many were informed,
22 I cannot tell you that. The mailing did not go to
23 individuals who fish in that area, unless someone had
24 expressed an interest to us, or unless someone was a member
25 of one of the people (sic) notified through our

1 environmental review process.

2 Certainly, the Department of Fish & Game was so

3 notified. We have this indication from Mr. Morrison. He

4 learned of the project originally, I believe, through the

5 Applicant, and subsequently had reviewed some of the

6 documentation. So, we did not go out and try to identify

7 individuals who fish in the area. Of the people that we

8 know, again the Department, we have in your packet a letter,

9 a staff memo, that indicates that he has cited several

10 fishermen in that area have actually censused their fish

11 take on occasions, where he can indicate to you that that's

12 where they caught these fish.

13 COMMISSIONER MC CARTHY: Have you looked at the

14 Department of Fish & Game's analysis of -- opinion from

15 fishermen or women in the area?

16 MS. GREEN: In fact, I spoke to Fish & Game. I've

17 seen their letter as well. And I also spoke to the same

18 person, Mr. Morrison, and got a different answer. I also

19 spoke to Leo Gorton (phonetic), which is a fisherman out

20 there, and I believe Chris Hammond (phonetic) is a fishing

21 guide, and my personal communications are included in the

22 draft EIR. And the fishing guide and the fishermen that I

23 spoke to -- there and by telephone -- did not indicate that

24 they fished -- and when I say the "project site," I mean

25 directly in front of the site where the marina would be, so

1 that they would actually be displaced.
2 COMMISSIONER MC CARTHY: Where the heavy bought
3 activity would result from the intrusion of a marina.
4 MS. GREEN: In that whole area, that's not where
5 we ever visually saw or, from our personal communications,
6 people said they fish.
7 The majority of fishing takes place -- you can go
8 up there on any busy weekend or in the morning and see it's
9 at the confluence, just around the confluence and below.
10 It's below Mr. Kaveney's project site between there and
11 Verona Joe's. And other people I talked to, when they left
12 the launch ramp to get in their boats, they'd say, "Well, I
13 can't tell you where my favorite spots are." But when they
14 left the launch ramp, they were gone.
15 But the fishing -- the two in particular, Fish &
16 Game had asked me to speak to fishing guides, and they
17 mentioned Leo Lorton (sic) and Chris Hammond. And I did
18 speak to him. And they did not -- they did not see a
19 problem with the marina.
20 MS. SEKELSKY: If I may read from Mr. Morrison's
21 letter, he indicates that, "After studying the site layout
22 of the new proposed floating dock on the Sacramento
23 River..., I will have to withdraw my letter," which is a
24 letter of recommendation of approval. "The new dock will be
25 right on the migrating path of the shad fish. The shad at

1 this site migrate 10 to 50 feet offshore and about 8 to 12
2 feet deep. This is exactly where the proposed floating
3 dock/marina will be.
4 "All species of fish seem to be on the decline,
5 and the (sic) project will interfere with an already
6 declining fishing (sic) population."
7 In addition, I note that Mr. Fred Meyer from the
8 Department of Fish & Game is here in the audience and is
9 probably available to answer questions, if you have any
10 more, about this site.
11 COMMISSIONER MC CARTHY: Ms. Green, did you study
12 the points just made by the --
13 MS. GREEN: He has changed his earlier position.
14 But I had talked to him, and the letter I have, he had no
15 problem with the project. This is news to me.
16 COMMISSIONER MC CARTHY: The point of the
17 migratory path of this particular species, have you studied
18 that point in your EIR?
19 MS. GREEN: We've discussed the fact that fish do
20 migrate. Oftentimes, they are following the colder plume of
21 the Feather River. Now, if a marina were in place, that's
22 not to say they can't still do that.
23 I mean, there's other marinas in place along the
24 river, and they are migrating through. So, we could get
25 into a back-and-forth argument here. We have discussed that

1 in the document, yes.

2 COMMISSIONER MC CARTHY: I think the point we face

3 is that with each individual marina application, it's a

4 measured amount of damage on each of these points. And what

5 we're ;trying to grasp in some way is what the cumulative

6 effect is of the ongoing series of applications to establish

7 marinas in the area.

8 That's a little bit hard to grab hold of.

9 MS. GREEN: There's a very detailed cumulative

10 analysis in the draft EIR. The fisheries are certainly

11 included in that discussion.

12 COMMISSIONER MC CARTHY: Relating to the impacts

13 of this marina where it builds plus the marinas that

14 already exist, what we're trying to get is not just that,

15 but marinas in the future, the applications that come before

16 us, which is a little bit hard.

17 MS. GREEN: I'm sorry. I understand. If you've

18 got no further questions, I'll go get the pictures just so

19 that I can have them for you to see.

20 COMMISSIONER PARKER: I don't have any.

21 COMMISSIONER MC CARTHY: Thanks.

22 CHAIRMAN DAVIS: Now, I gather, Mr. Faber, you

23 want this Commission to decide on the central question of

24 whether or not you're entitled to build a marina there, and

25 then you'll have individual points that you want to make; is

1 that correct?

2 I'm unclear as to why you didn't want the other

3 three people to speak on the application.

4 MR. FABER: Well, with regard to Mr. Meyer, it's

5 entirely up to him when and whether he wants to speak. We

6 didn't ask him to come here and speak. That's up to him.

7 In regard to Mr. Kaveney, unfortunate in this

8 case, it's far more complex than it needs to be. It's a

9 fairly simple application before you for a marina. And in

10 most cases, it could have been handled very, very easily.

11 Staff has raised so many different issues that are

12 very, very unusual for this process that we're left with a

13 lot of little details, which -- if we don't have to get to

14 right away, probably all better off not to right at this

15 minute. I don't care whether we deal with all of these

16 broader issues first and, after we've heard everything, you

17 make a decision or if you want to look at some of them as we

18 go along.

19 For instance, though, in what Ms. Green just

20 provided, there is information that I think would be helpful

21 to the Commission, which -- depending on what type of

22 questions you have. And I want to address one of those

23 questions. And that is, we're looking here at two issues.

24 One is fisheries, and there's a complete cumulative impact

25 analysis in the draft EIR and the finalizing EIR to conclude

1 that we aren't going to have an effect on the fisheries in
2 respect to what you're talking about.
3 The question that remains is the question of loss
4 of angling opportunities. And that is one where we have met
5 for the last couple of years with the Department of Fish &
6 Game. Specifically, when we realized that there was a
7 difference of opinion, we said, "Our understanding is that
8 there is no fishing at this site; that the fishing will not
9 be displaced by this marina."
10 Somebody in the Department of Fish & Game had the
11 opinion that it would. That was an opinion, and I respect
12 that in some cases. But we decided that we would both go
13 and collect whatever information we could to bring to bear
14 on that point. So far, the Department has provided, as far
15 as I can see, an opinion, and this letter from Mr. Morrison.
16 And, as I understand from Mr. Kaveney, Mr. Morrison has
17 recently had a change of heart within the last -- whatever
18 period of time it's been.
19 But what we did at the request of the Department
20 of Fish & Game is we collected some 20 or 30 letters of
21 people who supported the docks in those locations because it
22 would not be a problem and it would be a good thing for the
23 angling public.
24 And 25 or 23 of those letters are in the draft EIR
25 that you folks have had available to you. In addition, I

1 have reviewed photographs, aerial photographs, spanning some
2 40 years of the area. And what we see in those photographs
3 supports exactly what we're saying; that the fishing takes
4 place upstream of the confluence, across on the other side
5 of the river, or down below.
6 And what troubled us is we keep providing
7 information and somebody keeps saying, "Well, it's our
8 opinion it's a problem," even if it isn't. So, the one
9 other thing that we've done within the last month is that
10 the manager out at the facility has made available a piece
11 of paper, asking the question, "Do you fish right here in
12 front? Is this going to be a problem?"
13 We have 185 people that said it's not a problem.
14 So, we're trying to address that issue. But, for the life
15 of us, we can't find any significant credible information
16 that it's going to be a negative impact on the fishing
17 opportunities.
18 So, it's these detailed issues, and I can, you
19 know, make a presentation on a few more of them, but I was
20 hoping that we could get a general sense if you wanted to
21 try and go forward with a lease, which I highly endorse --
22 we've put the provisions there in Option D so that you can
23 find that it would be a good project, including all of the
24 environmental documentation as well, then we might be able
25 to shorten the process, and that was my thought.

1 CHAIRMAN DAVIS: Is there a representative from
2 Fish & Game present? Would you step forward, please?
3 Please identify yourself.
4 MR. MEYER: My name is Fred Meyer. I filled out a
5 card if you had any questions that you would like to ask.
6 I'd be happy to respond.
7 CHAIRMAN DAVIS: It seems that one of these
8 central points of contention is whether or not the migrating
9 of threatened species will be adversely affected by the
10 construction of the marina and the related issue of whether
11 or not the fishing preferences of local fishermen will be
12 subordinated by the construction of this marina.
13 Do you have any specific information you can share
14 with us on either of those subjects?
15 MR. MEYER: Yes, I do. I think the main problem
16 we have, in fairness to all parties, is that they're not
17 asking the right question. The Department of Fish & Game
18 has done a number of studies in the Feather River in order
19 to evaluate, for instance, a coated wire tagging study on
20 spring run salmon. We have done creel census work and have
21 done aerial surveys south of -- myself have done, as well
22 as Larry Preston, who is the biologist that worked with me.
23 And this occurred about 10 to 15 years ago. If
24 you're a fisherman, you remember 10, 15 years ago, that the
25 fishing was a lot better. The striped bass populations were

1 in a lot better shape. Certainly, the salmon runs hadn't
2 been impacted by six years of drought. The river flows were
3 higher. Six years of drought have hurt our river flows.
4 And deposition at the mouth of the Feather is directly
5 related to how much has been carried away by the river.
6 So, things were different, and I can assure you
7 that, when we did those surveys, there were two areas
8 downstream from the mouth of the Feather and the Sacramento
9 system that were extremely, heavily fished, so much so that
10 the Department opposed a marina near the mouth of the
11 American River for the reason that there were boats so
12 tightly packed they were bouncing on each other.
13 At the mouth of the Feather, for instance, the
14 common fishing method during the salmon run -- which again
15 is seasonal; we're talking about a short period of the year,
16 September/October. The same thing with the striped bass
17 run, you're talking May/June.
18 So, if you go out there and go out and ask
19 fishermen, are you going to fish there, they would say, no,
20 they go cat fishing somewhere else.
21 So, it's a matter of asking the right question, if
22 you would, the common problem with surveys of any kind.
23 When we did our aerial surveys, there would be
24 upwards of 50 boats fishing in the area of the mouth of the
25 Feather. Now, I will readily admit that the best fishing is

1 around the wing walls where the rainfalls have created deep
2 pools or pockets to fish the hole in (sic). By the same
3 token, when the salmon runs were good, there were people
4 fishing literally gunneling out; the boats were tied to each
5 other to prevent from banging off each other, clear up to
6 where they were interfering with people launching and
7 pulling. And this was 10 years ago when we did our surveys.
8 I'm not aware that that type of use has really
9 gotten that much poorer in the last four or five years.
10 But, according to some of the guides subsequent to our
11 comments, I found out that, you know, the river's shallower
12 there now. The fisheries have declined, so the number of
13 people fishing is a lot less.
14 But I'm anticipating that with the six years of
15 drought -- this year, I guess, you could count it as seven--
16 somebody is going to be over. And, someday, the fishing
17 there may recover, and that type of fishing use is going to
18 be there again.
19 If there's a marina, especially considering the
20 approach area that's needed for these large boats to get
21 into those slips, it's not just the physical marina which
22 you should consider, but also the approach area. It's going
23 to be very difficult to anchor your boat and fish there when
24 you have a 36-foot boat you're trying to maneuver into this
25 slip.

1 So, again, I think that some of the problems we're
2 having here with whether or not this is a heavily used area
3 is a matter of asking the right question.
4 CHAIRMAN DAVIS: Am I correctly inferring from
5 your comments that whatever problems there may be with fish
6 or people today -- fish and persons today, those problems
7 would probably be much greater when the drought is over and
8 the fish are more abundant?
9 MR. MEYER: That's correct.
10 CHAIRMAN DAVIS: And I guess the policy judgment
11 for us to, you know, whether boating is as legitimate a use
12 as fishing in the river use, and how do you balance the
13 equity.
14 MR. MEYER: Exactly.
15 CHAIRMAN DAVIS: Given -- when was the last time
16 Fish & Game did a survey in this area?
17 MR. MEYER: It was over 10 years ago.
18 CHAIRMAN DAVIS: Is there anything besides this
19 anecdotal testimony or --
20 MR. MEYER: No.
21 CHAIRMAN DAVIS: Any informal conversations that
22 leads you to your current evaluation of the situation? We
23 had a drought. There's no question about that. Have you
24 gone up to talk to fishermen as to where the fish are in
25 that particular area there the marina's proposed?

1 MR. MEYER: No, we haven't. The only handle we
2 have on the salmon runs for the Feather and upper
3 Sacramento, for instance, were spawning stock surveys. And
4 the runs were definitely down; in the last three or four
5 years, the runs have been way below normal.
6 CHAIRMAN DAVIS: And what do you attribute that to
7 primarily?
8 MR. MEYER: A combination of El Nino type
9 conditions in the ocean and the drought affecting the
10 naturally produced fish.
11 CHAIRMAN DAVIS: To what extent do the existing
12 marinas contribute to that development?
13 MR. MEYER: In terms of reducing the fish
14 populations themselves, very little.
15 COMMISSIONER PARKER: Mr. Meyer, just a quick
16 question. You paint a picture of previous days when there
17 were so much fish that the boaters sort of bouncing off one
18 another. If the fishing conditions improve -- although this
19 marina would take up some space -- would there not be such
20 an abundance of fish around the marina to essentially
21 satisfy fisherpersons that might --
22 MR. MEYER: Well, you can always say that. But
23 it's not the way it works. Fish migrate with certain
24 patterns or for reasons of water temperature, water clarity;
25 in this case, we're dealing with the plume of water coming

1 out of the Feather River that is meeting the warm, very
2 murky water of the Sacramento River. It's very clear on
3 some of the aerial photos. And the fish want to stay in
4 that nice, clean water, just like you and I, in the nice,
5 cold Feather River water. And, as a result, if you're going
6 to catch a fish, you've got to fish where the fish are.
7 And, as a result, there's a very limited area
8 where that's true. If you go downstream near Joe's place,
9 and pretty much that's starting to mix in and it's warmer,
10 and it's murky. So, you've got about -- down to Joe's
11 place, it's what, three-quarters of a mile? You've got less
12 than that -- you've got a concentration in there for the
13 salmon. And that's where you've got to fish if you want to
14 catch them, because they're not going to be in any
15 concentration anywhere else.
16 So, while it's true you could say you could go up
17 the Feather and catch them up there. That's not true at
18 all, because the holes in the upper Feather are already
19 saturated with boats as well as every other for instance --
20 CHAIRMAN DAVIS: You heard Ms. Green --
21 MR. MEYER: -- concentration.
22 CHAIRMAN DAVIS: You heard Ms. Green's testimony?
23 MR. MEYER: Yes, I did.
24 CHAIRMAN DAVIS: Did you -- what was your reaction
25 to her comments that -- based on whatever it was -- out of

1 28 or 29 interviews, that people did not prefer to fish in
2 the area where the marina would be located?
3 MR. MEYER: Well, again, it's the use factor. it
4 relates again to, you know, the surveys made at the time the
5 populations were low, the fishing pressure is relatively
6 low. Give them a choice, every fishermen wants to fish in
7 the prime spots. By the same token, when the fish
8 populations are high, you can still catch fish in the poorer
9 spots. And, as a result, even though the marina where the
10 boats are is one of the -- not one of the prime spots, it's
11 still -- you can still catch fish there. And, as a result,
12 you know, it's a function of timing. You've got to ask the
13 right questions of the people that are actually going to
14 fish for salmon, for instance, you don't go out in July and
15 ask them.
16 CHAIRMAN DAVIS: Let me ask the $64 question. If
17 you were sitting where we're sitting --
18 (Laughter.)
19 CHAIRMAN DAVIS: -- what would you do?
20 MR. MEYER: If I was God.
21 CHAIRMAN DAVIS: What would be your advice? What
22 would your guidance be?
23 MR. MEYER: Well, my guidance would be -- I think
24 the Department of Fish & Game's position is the day-use dock
25 has offsetting public benefits; therefore, you know, that's

1 probably a good thing to have. The instream storage of
2 these boats could be done any number of places up and down
3 the Sacramento River. And the very obvious place would be
4 immediately across from the marina. That area of the river
5 is in the warm, murky Sacramento River water, very lightly
6 fished.
7 It's not as convenient for the large boat owners.
8 They would have to get a skiff to take them over to their
9 dock. But there are other places where instream storage of
10 these large boats could take place that would be far less,
11 far less damaging to the existing public uses.
12 CHAIRMAN DAVIS: Are most of your concerns
13 addressed in Option 3, which I think is before the
14 Commission, which allows us to approve the project given
15 certain mitigating conditions, are have you not seen that
16 option?
17 MR. MEYER: I just read it as I picked up the
18 information material at the door. No, it's not. In other
19 words, that still allows the marina to take up some of the
20 best fishing area in the whole Sacramento River.
21 CHAIRMAN DAVIS: Okay. May I ask you another
22 question? What if you assume that the drought is the order
23 of the day?
24 MR. MEYER: And the fish populations are going to
25 continue to decline and --

1 CHAIRMAN DAVIS: Yes.

2 MR. MEYER: Jeez, I don't know. We'd all move to

3 Oregon? I don't know.

4 (Laughter.)

5 MR. MEYER: You know, obviously, you know, we have

6 a period -- this is not only in terms of periods of the

7 year, but also between years when the fish populations are

8 high, when the river flows are higher, there's going to be a

9 lot more use of the marina sites than we do when the river

10 flows are lower.

11 If you assume that we're going to have drought

12 from now on, we're all in big trouble, including the

13 fishermen. It wouldn't make any difference.

14 CHAIRMAN DAVIS: I don't know what the historical

15 patterns are, but --

16 MR. MEYER: I think you'll find, if you look at

17 the last six -- the six drought years in a row that we had,

18 that that was the worst dry period they could find. In

19 looking at tree rings, there was one possible place in the

20 history of California where they had tree rings that may

21 have been that severe.

22 But you're looking at one in a thousand year

23 occurrence. Hopefully, it's not going to happen again, but

24 this year's dry, too. So, we'll have to start breeding the

25 fish with desert tortoises or something.

1 (Laughter.)

2 COMMISSIONER PARKER: Is salmon the only fish

3 that's impacted or are there varieties of species of fish --

4 are they all impacted, or just the salmon?

5 MR. MEYER: The three major species that this

6 area is heavily used by the fishermen, is American shad, and

7 the striped bass, and the Chinook salmon and steelhead,

8 which is four. The steelhead populations are, of course,

9 way down, too. I didn't mention those.

10 But most steelhead fishermen fish upriver. So,

11 they incidentally catch steelhead when they're fishing for

12 salmon. That's what it amounts to.

13 So, you really got three species. They're all

14 anadromous species. They all come in certain times of the

15 year, the only time they're there.

16 COMMISSIONER PARKER: So, the steelhead fishermen

17 are not impacted by this marina?

18 MR. MEYER: Not in the --

19 COMMISSIONER PARKER: And the shad fisherman is

20 the second --

21 MR. MEYER: Right.

22 COMMISSIONER PARKER: -- fisherman that is, and

23 then the striped bass fisherman.

24 MR. MEYER: That's correct. And I could throw in

25 the people that fish for steelhead, catfish, and people who

1 fish for black bass n the area. And that's true, but it's a
2 very minor thing compared to the salmon and steelhead, or
3 the salmon, American shad, and the striped bass.
4 CHAIRMAN DAVIS: But, you know, as I said, we've
5 got -- my inclination would be to find -- would be to
6 instruct the staff to sit down with Fish & Game and the
7 Applicant to see if there's a way that we can mitigate the
8 development of the marina.
9 Do you think that could be done?
10 MR. MEYER: Yes.
11 CHAIRMAN DAVIS: Would you be willing to
12 participate in those discussions?
13 MR. FABER: Sure.
14 MS. SEKELSKY: Mr. Chairman, we do have -- one
15 difficulty with that is that we have to act on this project
16 today because of the 884 constraints of -- time constraints.
17 CHAIRMAN DAVIS: Unless they waive the time.
18 MR. HIGHT: The easy solution to that, Mr.
19 Chairman, is to deny it without prejudice, so that the time
20 limit stops, but we can continue the discussions.
21 CHAIRMAN DAVIS: Yes, Mr. Kaveney?
22 MR. KAVENEY: Yes. I have three things that might
23 be of interest to you. First of all, I am --
24 CHAIRMAN DAVIS: Thank you very much, Meyer.
25 MR. KAVENEY: I am an avid fisherman. I have

1 fished this exact vicinity since 1965, consecutively, every
2 year. And I've caught my share of fish, as well as I've
3 come home empty-handed. I have first a letter from the Fish
4 & Game, which was sent to -- on the original EIR that was
5 done on this project in 1976, and the project consisted of a
6 much larger project which stuck out into the river 125 feet
7 as opposed to this one sticking out about 80 feet.
8 They were in favor of the project.
9 Secondly, I --
10 CHAIRMAN DAVIS: And they have subsequently
11 changed their minds.
12 MR. KAVENEY: Presently, they have -- we've got
13 two letters, one saying that they don't oppose the project
14 and one saying they do oppose the project.
15 These two photographs are aerial photographs taken
16 during the salmon season. One of them is in the year 1974,
17 was a particularly good year. This is September 10th of
18 1974.
19 (Thereupon, Mr. Kaveney approached the dias
20 to display his photographs to the members of
21 the Commission.)
22 This is the project site.
23 (Thereupon, Mr. Kaveney proceeded to speak
24 to the Commission while displaying documents
25 outside of the hearing of the reporter.)

1 This is an extremely good year when the salmon
2 fishing was really good. And this is in 1955.
3 COMMISSIONER PARKER: The court reporter can't
4 hear you.
5 MR. KAVENEY: 1955.
6 (Thereupon the court reporter repeated her
7 request for Mr. Kaveney to speak up.)
8 MR. KAVENEY: This is a photograph taken by the
9 Corps of Engineers in 1955 during -- it also is the fall of
10 1955. October 12th of 1955. Again, it shows the fishermen
11 lined up, particularly at the wing dams, below the marina
12 site, which is where the old marina was, the prior marina
13 operator had a small marina there.
14 COMMISSIONER PARKER: And where is your marina?
15 MR. KAVENEY: Our marina sits just about like
16 that, right in this area. The boats enter at an angle, so
17 they don't interfere with anything below. They come up the
18 river and enter at a 30-degree angle, 30-degree angle to the
19 bank.
20 CHAIRMAN DAVIS: Okay. Thank you.
21 All right. The Lieutenant Governor said he would
22 be back in 15 minutes. Are there any other questions or
23 witnesses you wish to --
24 COMMISSIONER PARKER: No. I just actually had a
25 question that I could ask Mr. Faber about the material you

1 submitted this morning vis-a-vis the staff material
2 regarding the financial statement.
3 The first question I have was, the staff made, in
4 their document, a note that the cost of the environmental
5 impact report by the owner was approximately $24,000. In
6 your document this morning, it says that the Applicant had
7 paid more than a hundred thousand dollars for the completion
8 of this.
9 Could you give me some sense of the difference?
10 MR. FABER: I believe staff is reflecting payments
11 that have been made to the staff alone and not the EIR
12 consultant. To give you a perspective on this -- and I
13 would ask Ms. Green to confirm this -- what was the
14 Sacramento Yacht Club amount that you received?
15 MS. GREEN: (From the audience) I believe the
16 Sacramento Yacht Club EIR draft and final was more than
17 $35,000.
18 MR. FABER: That was approximately $35,000 EIR
19 payments to her and then another 20,000 to the Commission.
20 In this case, Mr. Kaveney has paid nearly $30,000
21 to the Commission plus over 80,000 for this EIR, and the
22 cost of the project has greatly escalated. But that's the
23 reason for the difference between those two figures. I
24 thought it was appropriate, if somebody's going to make a
25 statement about the cost of the EIR, it's not just the

1 payment to staff.

2 COMMISSIONER PARKER: And Mr. Kaveney has

3 essentially the materials already purchased for this

4 project?

5 MR. KAVENEY: Yes. They're sitting over there on

6 the site of the campground area.

7 COMMISSIONER PARKER: Then the statement that Ms.

8 Green made earlier with respect to the dredging issue, since

9 that's not included in your cost projections, but one way to

10 mitigate that would be to locate the docks further out,

11 which she said could be done.

12 Does that add to the financial impact? Would you

13 need more materials if you were to do that?

14 MR. FABER: No. But, you see, the situation is

15 that staff's continuing concern about this and wanting to

16 move it further out is based on information in the draft EIR

17 that was developed for hydrologic purposes, not for

18 aesthetic purposes. What that means is, in the hydrology

19 section of the draft, there was a survey done of what the

20 river bottom looked like.

21 In the near shore area, that is a fairly

22 inaccurate survey. It's inaccurate because of the way the

23 information was collected is that you put the boat on the

24 surface and run a fathometer. And, as you go across the

25 river, you see what the readings are.

1 But the problem is that you can't get real close
2 to the bank and there's a plus or minus -- and I believe
3 the finalized drafts of the horizontal distance is plus or
4 minus 20 feet.
5 Well, that's not any particular consequence for
6 hydrology purposes. Because when a river that's 500-feet
7 wide, if you're close to, you know, 20 feet, that's only a
8 four percent differential. It's not a big deal. But in
9 terms of what the actual depth right there at the site is,
10 it is not an accurate characterization.
11 Even with that information, however, what Mr.
12 Kaveney has been able to determine is that the marina can be
13 located 30 feet off the shore; that's where it's projected
14 to be. The existing materials can be used for that purpose,
15 and that shouldn't be any problem whatsoever. And there
16 will be plenty of room for the boats to have access to the
17 side tie, which is between the docks and the bank
18 application. Furthermore, he specifically has gone out and
19 measured it on several occasions, which would verify that
20 there's plenty of water down there. We just see that there
21 is no issue there with regard to needing to dredge in order
22 to put this marina in.
23 COMMISSIONER PARKER: My concern is the fiscal
24 impact from the standpoint is if you were looking at how
25 close the margin of profit there may be for this project if

1 dredging were also included, plus, obviously, the time
2 delays; that is not part of or that not been included in the
3 environmental impact, nor has it been included in the cost
4 figures from the standpoint -- nor in the approval process
5 before the Lands Commission that would then have to be
6 sought and that's delays added onto the project. My concern
7 is that if that were -- I'm playing the Devil's Advocate --
8 if that were to be added on, would Mr. Kaveney potentially
9 be able to complete his project? And how much of a
10 detriment would that, given the margin, impact that profit
11 margin of your operations?
12 MR. FABER: If the question is, is there a
13 significant economic impact moving it out another 10 feet,
14 15 feet, or something like that, I'll see if I'm incorrect.
15 I don't think that that is economically viable in terms of
16 the construction of the marina. And he would -- I mean he's
17 willing to site that according to what would make sure that
18 we have enough water depth there. And that's not a problem.
19 In fact, you know, in conversations within the last couple
20 of weeks with staff, I think we had more or less come to a
21 resolution on that issue.
22 I'd like to hear some language I'm proposing for
23 the lease in order to capture what I think we've agreed to.
24 But I don't think that there's any problem with placement of
25 the marina in that respect.

1 COMMISSIONER PARKER: With respect to this --
2 (Thereupon, Ms. Parker proceeded to speak
3 outside of the perimeter of the microphone,
4 which caused the reporter to miss a few words
5 which were not captured on tape.)
6 COMMISSIONER PARKER: -- dredging problem, does
7 that add any further impacts from the standpoint of the
8 fishermen?
9 MS. SEKELSKY: That is our concern. To begin
10 with, to choose at this point in time a specific distance
11 offshore -- and "shore" is a difficult term to use here. We
12 don't know if we're talking about a high flow shore, a low
13 flow shore, many things come into this. But in any event,
14 to place it further out, of course, interferes more with the
15 fishing activities that take place out there.
16 In addition, there's been some reference to the
17 fathometric surveys of the conditions, the depth, and shape
18 of the river bottom. It varies from day to day, from season
19 to season depending on the activities that take place there.
20 So, there is no way, I think, that provides us absolute
21 certainty that dredging will not be required; that clearance
22 will be sufficient. But we believe that, if the marina is
23 sited further offshore, you stand less of a chance of those
24 problems arising; again, however, you do raise the
25 additional interference with the fishing activity.

1 MR. FABER: Could I direct your attention to the
2 proposed amendments; that is the fourth set of documents
3 that I provided this morning. It's perhaps --
4 CHAIRMAN DAVIS: I'm not sure that's going to do
5 any good, because the staff has not had a chance to analyze
6 that.
7 MR. FABER: I was just going to directly suggest
8 how we were going to handle that, the difference between
9 what staff provided me last night and what we're suggesting.
10 COMMISSIONER PARKER: I think that goes back to
11 your earlier comments, Mr. Chairman, with respect to trying
12 to see a resolution between the parties could be
13 accomplished.
14 CHAIRMAN DAVIS: Do you feel you need any other
15 information?
16 COMMISSIONER PARKER: No.
17 MS. SEKELSKY: Mr. Chairman, before a decision is
18 made on that -- and I appreciate the time constraints that
19 you're working under -- there are several points that Mr.
20 Faber has raised that I believe, from the staff perspective,
21 could use some clarification, and we'd be more than happy to
22 provide that, if you'd like, on the issue of whether or not
23 there is some accommodation that can be made here.
24 Both the environment document and some of the
25 correspondence that we've received, as has been pointed out,

1 have indicated that there is an interference issue with
2 existing fishing.
3 The Department of Fish & Game, in one of their
4 comment letters, indicated that the second alternative that
5 is in your findings would be their best guess at how an
6 expanded marina operation occur without interfering with
7 those facilities.
8 Mr. Meyer has indicated as well that the
9 Department has fairly strong feelings about this area, and
10 it's my understanding -- Bob, correct me if I'm wrong on
11 this -- that, when staff has discussed that second
12 alternative with Mr. Faber, he has represented that his
13 client would not be interested in using that alternative.
14 So, I'm not entirely sure that further discussions would be
15 productive here.
16 CHAIRMAN DAVIS: Well, I appreciate that
17 perspective. I would be inclined to entertain a motion to
18 approve the project subject to a resolution of the concerns
19 raised by Fish & Game here today, and ask that our staff
20 work with Fish & Game and the Applicant to see if, in 30
21 days, without any additional cost to the Applicant, those
22 concerns could not be erased.
23 Mr. Hight, is that a legal motion?
24 MR. HIGHT: I think we'd need to --
25 CHAIRMAN DAVIS: We'd need 55 days to start the

1 process over again and all this stuff?

2 MR. HIGHT: Right. That's legal. If it's a

3 delegation to staff to work with Fish & Game to -- let me

4 try to rephrase your motion and see if we get there.

5 You're approving it subject to staff, and Fish &

6 Game, and the Applicant agreeing on mitigation conditions

7 that would be acceptable to all in order to place the

8 marina.

9 CHAIRMAN DAVIS: In part, because Mr. Meyer

10 thought there were preferable mitigation measures to the

11 ones in our staff's recommendation to us.

12 MR. HIGHT: Correct.

13 CHAIRMAN DAVIS: And since they have a particular

14 expertise in these matters, I think we should give them a

15 chance to improve upon the conditions that we have.

16 COMMISSIONER PARKER: Mr. Chairman, I just want to

17 ask a question for clarification. Are we talking about -- I

18 mean, I know that one of the options that we were presented

19 by staff was -- that Fish & Game was involved in -- was to

20 have just day-use facilities approved. You're talking about

21 trying to actually do the marina?

22 CHAIRMAN DAVIS: Right.

23 COMMISSIONER PARKER: Okay. Fine.

24 CHAIRMAN DAVIS: If we can reach an accommodation

25 with Fish & Game, and the Applicant, and our staff.

1 In other words, we'd direct the staff to try and
2 come back with a yes and not come back with no.
3 MR. HIGHT: Right.
4 We have two ways of going. We can either just
5 deny it and direct us to go work with them and we bring it
6 back in 30 days, or I think, in order to get the mitigation
7 requirements necessary, you would need to approve staff's
8 recommendation No. C, and then depending upon the outcome of
9 the negotiations with Fish & Game, we can modify those, as
10 necessary, at the next Commission meeting.
11 CHAIRMAN DAVIS: So, you would suggest that a
12 motion be made to adopt Option C, as presented by the
13 Commission, subject to any modifications that subsequent
14 staff discussions with Fish & Game and with the Applicant --
15 MR. HIGHT: Yes.
16 CHAIRMAN DAVIS: -- would result? That would be a
17 legal motion?
18 MR. HIGHT: Yes.
19 CHAIRMAN DAVIS: Anyone want to make that motion?
20 COMMISSIONER PARKER: Just one question before we
21 do that. I think I'm comfortable with that. I just am
22 somewhat concerned with this issue earlier on about Mr.
23 Kaveney believing that he felt that he had prior Commission
24 approval, went out and purchased a substantial amount of
25 materials, and then found himself in this situation.

1 And, although I would like to have us move forward
2 from an affirmative standpoint of trying to get the issue
3 resolved, I would also be somewhat concerned about people
4 believing that, you know, this was an absolute done deal and
5 that they are --
6 I guess that's my hesitation about that. So, if
7 we could have a motion be worded in such a way that we
8 obviously -- that it's the desire of the Commission to have
9 the project occur, but until some subsequent action --
10 CHAIRMAN DAVIS: Oh, I think we ought to just say
11 this is not an approval; this is a sense of the Commission
12 that they want to approve the project, but they want the
13 benefit of Fish & Game's refinements on the conditions
14 approved in Option C.
15 COMMISSIONER PARKER: Yeah. I just wanted --
16 (Thereupon, Commissioner Parker's trailing
17 comment was not captured by the reporter and
18 was not on the tape.)
19 CHAIRMAN DAVIS: Robert?
20 MR. HIGHT: Yes. Would you give me one-half of a
21 minute?
22 (Thereupon, there was a pause in the
23 proceedings to allow staff to consult.)
24 MR. HIGHT: Mr. Chairman, we have arrived at a
25 solution, and we're always prepared to give you options.

1 One, deny without prejudice; two, certify the EIR,
2 but do nothing as to the lease, so that we have an
3 opportunity to negotiate with Fish & Game and then come back
4 with the exact terms, so that there's no mistake or any
5 issue about what the actual terms would be.
6 COMMISSIONER MC CARTHY: Question, Mr. Chairman.
7 CHAIRMAN DAVIS: Yes.
8 COMMISSIONER MC CARTHY: If we were to certify the
9 EIR, aren't you now going to discuss some conditions that
10 might inconsistent with findings in the EIR?
11 MR. FABER: MR. FABER: Yes.
12 MS. SPROUL: The EIR -- excuse me. I'm Christine
13 Sproul. I'm a Deputy Attorney General. I'm here with Jan
14 Stevens today in case there were questions that came up that
15 we could help with.
16 The EIR provides information to you and
17 certification would indicate that the document satisfies all
18 the procedural and substantive requirements of CEQA, but
19 leaves to the Commission the actual findings as to whether
20 there are significant effects and the means of mitigating
21 them through project approval and conditions.
22 CHAIRMAN DAVIS: Thank you.
23 COMMISSIONER MC CARTHY: That's fine.
24 CHAIRMAN DAVIS: Okay. If we take that option,
25 what have we accomplished?

1 MS. SEKELSKY: You comply with the requirements of
2 884. The statute requires that we accept the document
3 within one year.
4 MS. HIGHT: And you have given us clear direction
5 to diligently work with Fish & Game and the Applicant to
6 come back with a project that meets your requirements, and
7 we would attempt to do that at the next Commission meeting.
8 CHAIRMAN DAVIS: Mr. Faber, do you have a problem
9 with this approach?
10 MR. FABER: I do have some problem with it.
11 CHAIRMAN DAVIS: I hope it's not too serious.
12 (Laughter.)
13 MR. FABER: I would like to suggest an
14 alternative. Under the Permit Streamlining Act, the
15 Applicant can grant an extension, and within the context of
16 what is being suggested here, of 30 days. I checked with my
17 client and he would be willing to, you know, make that 30-
18 day extension and we can deal with the issues that may arise
19 as a result of the certification of the EIR in conjunction
20 with these other issues.
21 I understand that staff may not have had a chance
22 to fully look at what we gave them this morning, but were
23 simply hampered by trying to get the information that we
24 only got from them last night. And the interim 30-day
25 period presumably would resolve a number of those issues.

1 CHAIRMAN DAVIS: Why is that preferable to
2 certifying the EIR?
3 MR. FABER: Well, simply that there are, I
4 believe, and it would be up to the ultimate -- you know,
5 further discussion, but I believe that there are statements,
6 as the EIR in its finalized addendum currently sits,
7 inaccurate statements. And I'd like to have an opportunity
8 to try and present the information so that we can have a
9 good, clean, factual set of statements on which to base the
10 lease document.
11 If your decision is to go ahead and certify the
12 EIR right now, then, we feel that the lease documents
13 thereafter -- our belief would be that it would be better to
14 do both of them. And it is an option that we would be happy
15 to do, is to grant the time so that that could happen later
16 on, 30 days from now.
17 CHAIRMAN DAVIS: Does that leave us can he waive
18 it up to a certain point?
19 MR. HIGHT: Yes. He can waive up to 90 days and,
20 I guess, depending upon the schedule of the Commission, we
21 do not at the present time have another meeting set. We
22 might want to take a shade more than 30, just for your
23 convenience.
24 COMMISSIONER PARKER: Mr. Faber, can I ask a
25 question? Does that really -- I'm trying to think about

1 being in your shoes or your client -- put you in a more
2 favorable position from the standpoint of merely an
3 extension as opposed to staff's recommendation, which, to
4 me, included a direction from the Commission to find a
5 solution?
6 MR. FABER: Well, I wasn't sure that I understood
7 that the -- the nature of the motion you might have make
8 would be to adopt Item C and, therefore, say, yes, we do
9 want to have a marina. We accept that. And my
10 understanding was that even that decision was really going
11 to be postponed for 30 days.
12 COMMISSIONER PARKER: I heard Mr. Hight say that,
13 when he reiterated the motion, to come back with a project.
14 CHAIRMAN DAVIS: That's the sense of the
15 Commission
16 MR. FABER: All right.
17 CHAIRMAN DAVIS: So, with that understanding, do
18 you have any objection to us adopting the EIR?
19 MR. FABER: I would prefer that we looked at
20 another alternative, but if that's the will of the
21 Commission, I certainly want to move this along. You have
22 to remember that we've already had a year's period, and then
23 we were denied without prejudice, and now we've had another
24 considerably more than a year.
25 So, we really do want to move this along. And if

1 that's the best way to move it along, we'll go along with
2 it.
3 COMMISSIONER PARKER: Is 60 days sufficient?
4 MR. HIGHT: Yes.
5 COMMISSIONER PARKER: Okay.
6 CHAIRMAN DAVIS: All right. As it was suggested
7 to the Commission members, we will adopt the EIR, direct the
8 Commission to work with the Applicant and Fish & Game to
9 come back with a proposed -- come back with a proposal for
10 the marina and give them 60 days to do it.
11 COMMISSIONER PARKER: I move that recommendation.
12 CHAIRMAN DAVIS: Okay. Any objection?
13 COMMISSIONER MC CARTHY: No.
14 CHAIRMAN DAVIS: Okay. It's unanimously adopted.
15 MR. FABER: Thank you, Commissioners.
16 CHAIRMAN DAVIS: Is there any other items?
17 MR. HIGHT: No other formal items, Mr. Chairman.
18 You may have something else that you want to do.
19 CHAIRMAN DAVIS: Yes. We want to acknowledge the
20 departure of one of the finest people ever to grace the
21 halls of Sacramento, our Executive Director, Charlie Warren,
22 who I first knew as a 31-year-old kid who thought I knew
23 everything. And he was --
24 EXECUTIVE OFFICER WARREN: You did.
25 CHAIRMAN DAVIS: I thought I did. He was a wise

1 Assemblyman then. Subsequent to that,, he was honored by a
2 presidential appointment to chair the Council on
3 Environmental Quality under President Carter.
4 Subsequent to -- somewhat subsequent to that, he
5 came back to Sacramento and back into the environmental
6 movement. And more recently, he's joined our Commission as
7 Executive Director. He has really been at the forefront of
8 almost all the Commission's achievements from the Oil Spill
9 & Prevention Act to the most recent mapping of the
10 California rivers to the additional River Parkway programs.
11 There's just a remarkable body of work during -- four years?
12 How long has it been, Charlie, four years?
13 EXECUTIVE OFFICER WARREN: A little over four
14 years.
15 CHAIRMAN DAVIS: We truly will miss you. You
16 really gave soul and energy and passion to the Commission,
17 even when I disagreed with you, you had a lot of passion and
18 generally almost always doing the right thing.
19 So, we'll miss you enormously. And before I
20 present you with a little remembrance from the Commission, I
21 want to call on your longtime friend and protege, former
22 Speaker --
23 (Laughter.)
24 CHAIRMAN DAVIS: -- the author of the Permit
25 Streamlining bill and many other things, Lieutenant Governor

1 McCarthy.

2 COMMISSIONER MC CARTHY: Thank you, Mr. Chairman.
3 Well, I've been honored with many titles in my life, and I
4 have reached the peak here today to be called a protege of
5 Charles Warren.

6 I only want to say this briefly. I think I've
7 done a lot of things in 30 years of elective office, and I
8 leave elective office at the end of this year, as two or
9 three of you may have heard.

10 But I think one of the best things I did was
11 persuade Charles Warren to take the position of Executive
12 Officer. Most elected officials tend to view public policy
13 in a three to six-year timeframe if you're lucky. Charles
14 Warren looks at the next century.

15 I remember, among many pieces of legislation of
16 which he was the primary author, during his years in the
17 State Assembly, one in particular that illustrated that --
18 at a time when California was 10 million people fewer and
19 100,000 industries smaller, Charles Warren, and then Senator
20 Al Alquist authored the Energy Commission law of the State
21 of California. And it's had a great deal to do with
22 constructively supporting development in a State that was at
23 that time pell-mell -- and will be again -- in its
24 development schemes.

25 That legislative effort met enormous resistance,

1 and it wasn't easily explainable in terms of how it helps us
2 in next year's election, because it was something that
3 looked way out several generations ahead, and tried to bring
4 some sense of order to one major component of State
5 development and conservation.
6 And he's done a number of things like that that
7 the Chair just referred to on the State Lands Commission
8 with the support of an excellent staff. I'm particularly
9 proud of the Oil Spill Prevention and Response Act. It was
10 amended it somewhat after we gave the draft. But between
11 our legal staff, our nonlegal staff, the Attorney General's
12 Office staff, and, of course, the astute observations of the
13 members of the Commission, we put a very good piece of
14 legislation before the California Legislature. And I think
15 what happened there was the cohesive tenacity shown by our
16 Executive Officer.
17 And then there are a sequence of events where he's
18 been very tenacious -- the Mono Lake fight with the City of
19 Los Angeles. And I'm glad -- you know, one of these years,
20 we'll actually reconcile over those things, but we've made
21 some progress in that direction.
22 There's just been a series of things, plus
23 developing of even increasing professional esprit de corps
24 in the ranks of the Commission itself.
25 So, I want to thank you very much as a

1 professional and as a friend. I'm very proud of what you've
2 done as Executive Officer, and I wish you much happiness in
3 your retirement -- retirement for you, which will be a lot
4 of activity.
5 Thank you very much, Charlie.
6 (Applause.)
7 EXECUTIVE OFFICER WARREN: Thank you.
8 COMMISSIONER PARKER: I was going to add that,
9 unfortunately, my introduction to Mr. Warren was also the
10 point in time when I was informed he was leaving. So, I
11 feel very much like ships passing in the night. But I
12 wanted to add my congratulations.
13 EXECUTIVE OFFICER WARREN: Thank you so much. If
14 I may impose on the Commission just for a minute or less, I
15 do want to thank you very much for the honor. It has been
16 my privilege to serve this Commission. I enjoyed being your
17 Executive Officer for the four years plus. Now, I do want
18 to say that what has made it a pleasure, other than serving
19 under this Commission, has been to work with the staff of
20 the Commission. I've served in government in many
21 capacities. I've had an opportunity to work with and, in
22 many cases, supervise staff.
23 That, which you have on this Commission, in my
24 opinion, is the most professional, competent, and public-
25 spirited staff of which I've had the privilege to. I leave

1 you in very good hands. I leave them with a great deal of
2 sadness. I leave you with less sadness.
3 (Laughter.)
4 EXECUTIVE OFFICER WARREN: For obvious reasons.
5 The opportunity to work with you and the staff on the issues
6 that come before the State Lands Commission has been
7 interesting and indeed at times exhilarating. It's
8 permitted an opportunity for some innovation and
9 imagination, which the legislative experience permitted me
10 to acquire. And I'm grateful for having the opportunity to
11 put that experience into some practice.
12 I hope that, recognizing that some of the
13 decisions we've made have been inappropriate, I think, as a
14 body, they represent work for which we can all be proud.
15 So, once again, I'd like to say thank you for the
16 opportunity. I look forward with great anticipation to some
17 active retirement years. And I leave public service with
18 some sadness, but with also some excitement.
19 Thank you very much for the privilege again.
20 (Applause.)
21 CHAIRMAN DAVIS: Why don't you come up here so we
22 can give you a couple of plaques.
23 Let me just note some of the things that have
24 happened on Charles' tenure. And, obviously, everyone in
25 this room on the Commission staff have participated

1 enormously. But just a couple -- the Oil Spill Prevention
2 and Response Act, the bill that I spoke to, the resolution
3 of the Mono Lake and Mono Basin controversy.
4 (Thereupon, because Chairman Davis was not
5 at a microphone, and the reporter didn't
6 consider it proper to interrupt, not all
7 accomplishments noted on a plaque were heard
8 by the reporter.)
9 These are five or six substantial pieces of work. And
10 you're given this with our heartfelt affection.
11 (Applause.)
12 CHAIRMAN DAVIS: A copy of the two landmark
13 reports that the Commission authored -- the Delta Estuary
14 Report and the California Rivers Report. Congratulations.
15 EXECUTIVE OFFICER WARREN: Thank you very much
16 again.
17 (Thereupon, there was a photographic session
18 held.)
19 CHAIRMAN DAVIS: Is there a final official -- as a
20 final act, Mr. Warren, is there any other business?
21 EXECUTIVE OFFICER WARREN: Yes. I think, if I may
22 recommend to the Chairman --
23 CHAIRMAN DAVIS: Do you want to introduce the new
24 Executive Officer?
25 EXECUTIVE OFFICER WARREN: Yes. It's my privilege

1 to announce that, as a personnel matter, the Commissioners
2 met this afternoon and selected its new Executive Officer, a
3 close colleague of mine and your General Counsel, Robert
4 Hight.
5 (Applause.)
6 MR. HIGHT: Thank you very much. I'll attempt to
7 follow in Charles' footsteps, which will be most difficult.
8 CHAIRMAN DAVIS: Charles will keep you apprised of
9 your progress in that, as well he should.
10 COMMISSIONER MC CARTHY: Mr. Chairman, I would
11 move that Robert Hight succeed Charles Warren as Executive
12 Officer of the California State Lands Commission, with the
13 brief comment that we were fortunate to have more than one
14 excellent choice, but I think the Commission was confident
15 that Mr. Hight would do a very good job in keeping the
16 Commission's work going.
17 CHAIRMAN DAVIS: Do you wish to offer any
18 comments?
19 COMMISSIONER PARKER: No.
20 CHAIRMAN DAVIS: I'd just like to say I have a lot
21 of confidence in this staff, and while on rare occasions we
22 disagree, largely it's because, as elected members, we have
23 to balance in a lot of equities. I have a great respect for
24 the dedication and the conviction of the staff. And having
25 been in and out of government for a long time now, I know

1 that this is a first-rate operation. We felt that for the
2 balance of our terms, it made sense to look within the
3 staff. And, clearly, we were very impressed with Bob's
4 competence as legal counsel, and we're looking forward to
5 his role as Executive Officer. And if he screws up, we'll
6 bump him back.
7 (Laughter.)
8 CHAIRMAN DAVIS: And get somebody else.
9 Is there any other business to come before the
10 Commission today? If not, the meeting stands adjourned.
11 (Thereupon, the meeting was adjourned
12 at 4:40 p.m.)
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CERTIFICATE OF SHORTHAND REPORTER

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I, Nadine J. Parks, a shorthand reporter of the State of California, do hereby certify that I am a disinterested person herein; that the foregoing proceedings were reported by me in shorthand writing, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of May, 1994.

Nadine J. Parks

Nadine J. Parks
Shorthand Reporter