

MEETING  
BEFORE THE  
STATE LANDS COMMISSION  
STATE OF CALIFORNIA

COPY

STATE CAPITOL  
ROOM 112  
SACRAMENTO, CALIFORNIA

THURSDAY, JULY 6, 1995

2:00 P.M.

Nadine J. Parks  
Shorthand Reporter

MEMBERS PRESENT

Gray Davis, Lieutenant Governor, Chairman

Kathleen Connell, Ph.D., State Controller, Commissioner

Theresa Parker for Russell S. Gould, Director of Finance

Staff:

Robert Hight  
Executive Officer

James Trout  
Assistant Executive Officer

Jack Rump  
Chief Counsel

Also Present:

Jan Stevens  
Deputy Attorney General

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CHAIRMAN DAVIS: Call this meeting of the Lands Commission to order; note that all three Commissioners are present, and ask for a motion to approve the minutes of the last meeting.

COMMISSIONER CONNELL: Motion to approve.

CHAIRMAN DAVIS: That motion is approved.  
Let's move to the consent calendar.

EXECUTIVE OFFICER HIGHT: Mr. Chairman, Items C21, 39, 45, and 79, and 58 are removed -- pulled from any further action by the Commission. And we would like to remove from the consent calendar Item No. ---

COMMISSIONER PARKER: 62.

COMMISSIONER CONNELL: 73.

EXECUTIVE OFFICER HIGHT: 73, Yes. And as soon as the consent calendar is approved, we'd like to take up Item 73 first.

COMMISSIONER CONNELL: Yes. I'll move the consent calendar.

COMMISSIONER PARKER: I concur.

CHAIRMAN DAVIS: Okay. That's unanimous.

EXECUTIVE OFFICER HIGHT: Item 73, Mr. Chairman, is an issue at Lake Tahoe involving the bankruptcy of a marina lease from the Commission called K & C Marine.

1           The specific issue before the Commission today is  
 2 whether or not the Commission should approve the sale,  
 3 pursuant to the bankruptcy court, of the K & C Marine lease  
 4 to the Marina Investment Group, which was previously called  
 5 the Danville Group.

6           It is the staff's recommendation that the  
 7 Commission should reject the sale of this lease until or  
 8 unless the Marine Investment Group can prove, either through  
 9 agreement of parties or through litigation, that they have  
 10 littoral rights and upland access to the marina.

11           There is conflicting testimony and evidence as to  
 12 whether or not the Marina Investment Group has an easement  
 13 right and littoral access. In the event that they do not,  
 14 it would be difficult, if not impossible, for them to  
 15 operate the marina lease, therefore placing the Commission  
 16 and the Commission's lease in a very difficult position.

17           So, it is staff's recommendation that until that  
 18 issue is resolved, the Commission reject the application to  
 19 sell the marina lease.

20           CHAIRMAN DAVIS: Well, this would seem to be a  
 21 question of fact. Has the staff made any independent  
 22 determination?

23           EXECUTIVE OFFICER HIGHT: The staff -- this issue  
 24 only -- we're working on it is the easy answer. At this  
 25 point, we have not -- this issue only surfaced late last

1 week, and it contains voluminous title records. And at this  
2 point, we do not have an opinion one way or the other.

3 CHAIRMAN DAVIS: It doesn't sound like it's ready  
4 for adjudication today.

5 EXECUTIVE OFFICER HIGHT: That would be the  
6 staff's recommendation.

7 COMMISSIONER CONNELL: I actually, having read the  
8 staff report, unless there are people --- are there people  
9 now in the audience on this issue?

10 CHAIRMAN DAVIS: Well, Senator Leslie wants to  
11 speak. I think we should hear from him. I note there's  
12 several parties to this dispute that want to be heard, but I  
13 don't know how we can adjudicate the matter without a  
14 recommendation on these two critical points from the staff,  
15 because that is our obligation as the Commission to resolve  
16 those two issues.

17 EXECUTIVE OFFICER HIGHT: Yes. The Commission's  
18 existing lease requires the lessee have littoral and  
19 riparian rights. And if, in fact, those rights don't exist  
20 in the Marina Investment Group, it would violate the -- I  
21 mean the Danville Investment Group -- the Danville and  
22 Marina Investment Group are one and the same. It would  
23 violate the terms of the Commission's lease.

24 COMMISSIONER CONNELL: Bob, can I get  
25 clarification? Does the Commission have to take formal

1 action of no action in order to preserve our legal mandate  
2 in this situation? I'm concerned, Mr. Chair, that we not  
3 just delay it; that if we need to take no action so that the  
4 bankruptcy court gets a firm understanding of the issue and  
5 this Commission's position on that, do we need to take no  
6 action formally? If so, I would like to --

7 CHAIRMAN DAVIS: Let's ask the Attorney General  
8 for his guidance.

9 MR. STEVENS: Mr. Chairman, if the Commission  
10 fails to approve the assumption and assignment and its  
11 meeting today, I think we would report that to the  
12 bankruptcy court on the 10th, and the court would then take  
13 action pursuant to its own jurisdiction accordingly.

14 So, I guess the simple answer is, no, that formal  
15 action would not be required if that's the Commission's  
16 feeling that it's not ready to take such action.

17 COMMISSIONER PARKER: Mr. Chairman, can I ask a  
18 question?

19 CHAIRMAN DAVIS: Sure.

20 COMMISSIONER PARKER: It's my understanding that  
21 the bankruptcy court had, to some extent, changed their  
22 position relative to the State Lands Commission action. In  
23 other words, at one point in time, I thought their response  
24 was, pending no action on our part, they would assume that  
25 we were okay with whatever happened in the court, and they



1 would move accordingly.

2 EXECUTIVE OFFICER HIGHT: Originally, the  
3 bankruptcy court conditioned on approval of the Commission.

4 COMMISSIONER PARKER: Okay.

5 EXECUTIVE OFFICER HIGHT: That has been changed  
6 slightly to a position that now states --

7 COMMISSIONER PARKER: If we don't say no, they're  
8 going to proceed.

9 EXECUTIVE OFFICER HIGHT: They have the option --

10 COMMISSIONER PARKER: Have the option.

11 EXECUTIVE OFFICER HIGHT: -- to proceed.

12 CHAIRMAN DAVIS: Well, the Chair will certainly  
13 entertain a motion, if this becomes appropriate at some  
14 point, that there's insufficient evidence for us to provide  
15 the necessary concurrence, and we're denying the application  
16 without prejudice. Wouldn't that cover all the bases?

17 EXECUTIVE OFFICER HIGHT: I think so.

18 CHAIRMAN DAVIS: Jan?

19 MR. STEVENS: Yes, it would.

20 CHAIRMAN DAVIS: All right.

21 COMMISSIONER CONNELL: Is there a second issue as  
22 well about the continued operation of the marina in the  
23 interim?

24 EXECUTIVE OFFICER HIGHT: There is. Yes, there's  
25 an issue of who will operate the marina, and we have been

1 advised that the Marina Lessee Owners Association is willing  
2 to operate the marina in an interim basis until the parties  
3 resolve their dispute as to who has access and littoral  
4 rights.

5 CHAIRMAN DAVIS: Does there need to be any formal  
6 contract or understanding with the Commission? Does that --

7 EXECUTIVE OFFICER HIGHT: I think that if the  
8 Commissioners authorize staff to negotiate and enter into a  
9 management agreement, in the event that would be necessary,  
10 that that would cover that aspect.

11 CHAIRMAN DAVIS: Okay. Let's hear from -- if  
12 there's no objection, let's hear from Senator Leslie.

13 SENATOR LESLIE: Thank you, Mr. Chairman. I think  
14 the fact that I would be first, you would have questions  
15 that maybe would be better to hear from the proponents and  
16 opponents, and maybe towards the end I could add --

17 CHAIRMAN DAVIS: The Commission is of the view  
18 that this matter is not right for our determination, and  
19 it's come to us so late that, while we may give people the  
20 courtesy of saying something, it's very unlikely that we're  
21 going to approve it.

22 SENATOR LESLIE: Okay. Let me go ahead, then.

23 CHAIRMAN DAVIS: But we'll hear you as a courtesy  
24 to you, sir.

25 SENATOR LESLIE: Thank you. Well, I appreciate it

1 very much. This area is in the 1st Senate District.  
2 Obviously, it's one of the most important areas around the  
3 edges of Lake Tahoe. And the disposition that's finally  
4 taken is critically important to the entire North Tahoe  
5 community.

6 It is exceedingly important that the people with  
7 the littoral rights -- hopefully, I'm pronouncing that word  
8 right; I just learned it last week -- that they have the  
9 control of the marina operation. It will not function  
10 properly if this is divided.

11 My understanding is that's your long-standing  
12 policy here anyway. And so, I just came to support the  
13 staff recommendation that this be denied if you do without  
14 prejudice, or whatever your policy is. I think that's fine.  
15 But I think it's very critically important that you do go  
16 along with the staff recommendation on this, and I just  
17 wanted to make that view known.

18 Thank you for giving me an opportunity to be here.

19 CHAIRMAN DAVIS: Thank you for being here.

20 The Chair would be willing to hear one- or  
21 two-minute presentations, not to exceed that, from the  
22 people who come to speak to try and briefly say why you  
23 think upland access or littoral rights attend, you would be  
24 helping guide the staff to come to a determination as to  
25 whether or not those rights do exist.

1           And, as the Commission, we're obligated to find  
2 that you either have upland access or littoral rights before  
3 we can consider an applicant to handle these  
4 responsibilities.

5           So, it's not necessary that people speak today,  
6 but I know that people have come and are prepared to speak,  
7 and I don't want to deny you that opportunity.

8           So, we'll be willing to hear people for, say, two  
9 minutes to just briefly guide the staff so that we can make  
10 a determination.

11           And I have before me the following people that  
12 want to speak. And I'd be inclined to take them in this in  
13 this order. We've heard from Senator Leslie.

14           Mr. Hoffman has asked to speak; Greg Lien, I  
15 believe, has asked to speak; Tom Willoughby has asked to  
16 speak; Beverly McFarland has asked to speak.

17           Those are the four people. So, again, nobody's  
18 obligated to speak, but if, I'll take them in this order.

19           Mr. Hoffman, if you want to say something, you're  
20 welcome for two minutes.

21           MR. HOFFMAN: Mr. Chairman, members of the  
22 Commission. I'm Larry Hoffman. I'm the attorney for the  
23 Boat Owners Association.

24           And just very quickly, so you can understand the  
25 dynamics, this association runs much like a homeowners

1 association. Each of the boat owners has a sublease of the  
2 little piece of sand beneath their dock. The dock floats  
3 above it. That's the system of the common property around.

4 So, the Commission's aware of it -- I don't know  
5 if there's any good pictures going on -- but if you look at  
6 this drawing up here, everything you see inside the marina  
7 wall is occupied by our association members.

8 On the side closest to the gentleman up there is a  
9 gas pump, which is not operating right now, and a place for  
10 a turbo, which is not operating. And then, lakeward, out  
11 towards where it says K & C Marine, there's 31 buoys. The  
12 association has no interest in those buoys.

13 I do want to say to the Chairman and the  
14 Commission that I, first of all, want to commend the staff  
15 on the homework they've done very quickly here, and they  
16 have gotten on top of this.

17 It's our view, as the association -- and we're  
18 the, I think, really the real parties of interest in terms  
19 of how this marina is operated. We've looked very closely  
20 at the two competing interests here and what's not only in  
21 the interest of the association, but in the interest of how  
22 do you do a sort of a safe and sane management of a marina?

23 And it makes absolutely no sense to us to have a  
24 landlord, which would your lessee under your lease, a  
25 landlord who really doesn't have control of the back shore.

1 All of the services for the marina -- gas pump and  
2 boat entry, maintenance, and all of that -- for those of you  
3 that have been to Lake Tahoe, that's in the buildings that  
4 are adjacent to the Roundhouse Mall are in that back shore  
5 area. So, it's critically important to us that we have a  
6 back shore owner that's capable to operate.

7 We also are aware of the track record of the two  
8 competing parties. One of the parties that's before you to  
9 have the lease assigned is essentially the same player.  
10 It's reworked again. And they brought the lease into  
11 default and we're now underneath that default trying to cure  
12 it because we're the sublessees who have the right to cure  
13 it.

14 Having watched this very closely, I was in court  
15 the other day when the judge was hearing this, as was the  
16 Attorney General's Office and your attorneys, and I think  
17 that it is important that the Commission take definitive  
18 action.

19 I note that the Chairman has indicated a motion to  
20 deny without prejudice, and I think that might work.

21 The staff's language is to reject approval of the  
22 assumption. And frankly, I think that's even a clearer  
23 message to the judge. And I would encourage that kind of  
24 language. I think if the judge gets a mixed signal, then he  
25 has the power under the Federal Bankruptcy Law to step in

1 and do what he thinks right.

2           So, I think if the Commission says that there are  
3 strong policy reasons why the lease ought to be rejected  
4 now, even though the parties could come back in and explain  
5 those to the judge, it's my sense the judge -- on the basis  
6 of comity -- would honor the Commission's view on that and,  
7 therefore, we would encourage the staff language -- staff  
8 approach to this with the Attorney General, or whoever  
9 represents the Commission, to make the appropriate comments  
10 to the court.

11           If that were to occur and the lease is rejected,  
12 we're confident from the association's standpoint that our  
13 members are adequately protected. We've also indicated to  
14 Mr. Hight a willingness on a short-term basis here to enter  
15 into a management agreement to manage it until the ownership  
16 issue's can be shaken out. And, as a practical matter,  
17 that's what we do anyway. We've got -- there are 159 slips,  
18 and they're our members. That means security, and trash,  
19 and all those kind of things. And we'll take care of that.

20           So, we're prepared to work with the Commission on  
21 that. We're not necessarily saying, you know, who's right  
22 or wrong on the access issue, but we do believe it's  
23 important that the back shore owner be the ultimate person  
24 that is responsible for the marina.

25           Be glad to entertain any questions.

1 CHAIRMAN DAVIS: Do we have any? Thank you very  
2 much, Mr. Hoffman.

3 The next name that was given to me was Mr. Lien.  
4 How do you pronounce that?

5 MR. LIEN: Lien.

6 CHAIRMAN DAVIS: Lien. Okay.

7 MR. LIEN: Thank you. For the record, Gregg Lien,  
8 representing the Gibb Trust. And I had wanted to thank your  
9 staff as well. There's a lot of material they've had to go  
10 through over the past week or so.

11 But I'd like to reiterate a couple of points. The  
12 first thing is that the applicants -- in this particular  
13 case, the proposed buyers -- have completely failed in their  
14 burden of proof. They have a burden of proof under Section  
15 2000 of the Administrative Code to prove that they are  
16 either the littoral owners or that they are the best  
17 qualified applicants.

18 In this particular case, they have very clearly  
19 shown neither. And what's needed here is, as staff has  
20 suggested, an outright rejection of their application at  
21 this juncture.

22 I trust your secretary has handed to you a package  
23 that we prepared. If we had more time, we'd lead you  
24 through this step by step to show you quite clearly that the  
25 Gibb Trust is the littoral owner and there is no question



1 about that, really, in our mind.

2 If I might very briefly just show you the issue --  
3 and the backup documents are now of record, I trust, in your  
4 packet.

5 This is the meander line of Lake Tahoe. As you  
6 can see, these alleged shoreline parcels that are over here  
7 on your exhibit in red here are created by the movement of  
8 the meander line across the shore.

9 According to the law, the meander line does not  
10 set forth where the boundary between littoral property and  
11 the body of water is. That does not occur by that  
12 mechanism. Under State law, Civil Code Section 830, as well  
13 as well-settled decisional law, the low water mark sets the  
14 boundary.

15 So, it's not this line at all. That really is  
16 just smoke and mirrors. And, again, unless some contrary  
17 intent is shown in deed or otherwise, it's very clear that  
18 my client, the Gibb Trust, owns all the way to the low water  
19 mark of Lake Tahoe.

20 And by the way, on that intent point, we have --  
21 and I believe it's Exhibit F -- we have an exhibit from the  
22 original surveyor -- excuse me, that was Exhibit E -- saying  
23 that there was no intent here to create any intervening  
24 parcels such as those that are shown in red here.

25 In other words, our clients clearly are the

1 littoral property owners.

2           The other pole of the test that you, as the  
3 Commissioners, here are charged with is finding who may be  
4 best qualified if you can't reach an issue -- reach a  
5 decision on the issue of littoral ownership. Clearly, Mr.  
6 Gibb is the best qualified. He owns all of the upland  
7 property. It would be totally impractical for anyone, other  
8 than Mr. Gibb, who owns this property, to really support a  
9 marina.

10           The boat lift accesses are here. Unless you've  
11 got control of those, you can't even get boats in. The  
12 parking is back up here (indicating on map). The gas tanks,  
13 the fuel, the fuel stop here at the marina are back here.  
14 Clearly, you just can't run a marina without that.

15           and in terms of your precedent, I don't believe  
16 this Commission has ever come anywhere close to granting a  
17 lease under such a thin level of proof that you have before  
18 you today. It would be absolutely unprecedented.

19           Finally, the last exhibit that I've presented to  
20 you is a letter from the Port of Oakland on behalf of Mr.  
21 Gibb from Charles Foster, who's the Executive Director. Mr.  
22 Gibb has run marinas for over 30 years, has an exemplary  
23 record in that regard, and you can review that letter at  
24 your leisure.

25           To conclude, again, for reasons related to

1 bankruptcy law and so on, it is absolutely critical from our  
2 judgment that this application be rejected, quite clearly,  
3 as your staff has suggested, not an equivocal come-see-us-  
4 later; but at least, insofar as today, it is clear they have  
5 failed to meet their burden of proof -- either as to  
6 littoral ownership or as to being the best qualified  
7 perspective lessee.

8           And on that basis, we would ask you to reject the  
9 lease.

10           Any questions?

11           CHAIRMAN DAVIS: Yes, I have a question.

12           It may not go directly to the issue before us, but  
13 it's a matter of interest to me, and I suspect to my  
14 colleagues.

15           Mr. Gibb -- the Gibb Trust was initially chosen as  
16 the successful bidder and subsequently withdrew. Can you  
17 tell us if there are any plans for them to resubmit a bid,  
18 or does he have any interest in facilitating the appropriate  
19 bidder to come forward to discharge these responsibilities?

20           MR. LIEN: Mr. Gibb is willing to discharge  
21 responsibilities under the lease; however, because of the  
22 number of players -- and this gets -- it's a complex  
23 situation, as I'm sure your staff will agree. There are a  
24 number of players involved. One of them is the Bank of the  
25 West, which holds the paper. In this particular regard, it

1 was strictly a business decision that the dollars had gotten  
2 too high, a number of things that happened.

3 K & C, for example, had leased the property from  
4 Mr. Gibb for a number of years. And during that period of  
5 time, it had a fuel spill that contaminated the property  
6 that now will cost a pretty penny to clean up. There's a  
7 large amount of deferred maintenance and so on, and the  
8 dollars were just getting too high.

9 And on that basis, Mr. Gibb withdrew his bid.  
10 Perhaps if he had known some of the terms that had been  
11 offered to the new group that's coming before you today,  
12 perhaps he would have reconsidered, but he wasn't offered  
13 the same terms.

14 So, again, a lot of this has been fast and loose.  
15 But what we do know is, today, he cannot proceed, and this  
16 is before you.

17 CHAIRMAN DAVIS: And another question, probably  
18 best put to the Attorney General or staff.

19 Do we have any liability issues if we were to  
20 permit the boat owners to essentially operate the marina for  
21 us during the interim period of time?

22 MR. STEVENS: I think this would best put to the  
23 staff, Mr. Chairman, because it's a question of adequate  
24 insurance coverage or indemnification.

25 EXECUTIVE OFFICER HIGHT: Yes. We have discussed

1 that option and we understand that the homeowners  
2 association and the slip owners association would be willing  
3 to basically provide insurance, so the Commission would not  
4 be placed in any liability.

5 CHAIRMAN DAVIS: Okay. Any questions from my  
6 colleagues?

7 All right. Thank you very much.

8 MR. LIEN: Thank you.

9 CHAIRMAN DAVIS: Next to speak is Mr. Willoughby.

10 MR. WILLOUGHBY: Mr. Chairman, could I defer to my  
11 client, Ms. McFarland, the Chapter 11 -- soon to be Chapter  
12 7 -- trustee first?

13 CHAIRMAN DAVIS: Sure.

14 MR. WILLOUGHBY: And I can answer any legal  
15 questions second. Would you like me to come up?

16 CHAIRMAN DAVIS: Why don't you both come up.

17 MS. MC FARLAND: Good afternoon, Chairman and  
18 members of the Committee (sic). My name is Beverly  
19 McFarland. I'm the Chapter 11 trustee, and have been of  
20 record, as appointed through Federal Bankruptcy Court, since  
21 March 30th of 1995. The debtor is called K & C Marine,  
22 doing business as Halva (phonetic) Boat Company.

23 The debtor has been in bankruptcy since March 7th  
24 of 1994, and was a debtor in possession, operating this  
25 marina.

1           Since my appointment, I was entrusted by the U.S.  
2 Bankruptcy Court to manage the property. It was subject to  
3 financial constraints, which would be obviously fairly  
4 expensive to manage such a property over the length of time,  
5 such as I've been of record.

6           My main purpose in this case was to continue the  
7 business of the subject debtor for the benefit of maximizing  
8 any dollars that they could derive for the purposes of the  
9 creditors, including Mr. Gibb, who is also a creditor.

10           My involvement extended to working through many of  
11 the defaults, which with the State Lands Commission and  
12 their staff members -- predominantly Mr. Jim Frey and Judy  
13 Ludlow -- which I have done.

14           There still remains a default pertaining to the  
15 general repair of the marina, which is in process.

16           I'm here today to request, please, that the  
17 Commission consider two things when you are considering what  
18 you will do with this marina, and who this lease will be  
19 ultimately transferred to.

20           The first one would obviously be, on behalf of the  
21 estate, that you approve the transfer of the State Lands  
22 Lease No. 706.1 to Tahoe Marina Investments, Inc., which is  
23 a new group of individuals. It was somewhat erroneously  
24 stated by the previous counsel that these are the same  
25 individuals that previously defaulted on the lease. They

1 are not.

2 The debtor was a general -- was represented by a  
3 general partner by the name of Mr. John V. Kerns. He is not  
4 a part of this investment group and never planned to be.  
5 This investment pertains to a group of outside investors,  
6 number one; and, number two, a group of investors that  
7 represents in excess of between 25 and 30 percent of the  
8 slip ownership and are actually a part of the same  
9 association that is disputing the transfer of this lease.

10 The people have invested and will invest in excess  
11 of a million dollars total in this package. Mr. Gibb has  
12 invested zero. Mr. Gibb is the uplands owner or purports to  
13 be. We purport that we do have access. And I find it very  
14 interesting that the gentleman that presented their case did  
15 not mention the fact that the declaration of Tahoe Boat  
16 Company, Harbor Protective Restrictions, was recorded in  
17 1982. And it is the declaration on behalf of the  
18 association, as stated right here that clearly states that  
19 there is access along the entire seawall of this marina for  
20 15 feet.

21 It also states that there is access of ingress and  
22 egress for vehicles and boats. It also states that there is  
23 provisions for launching. It also states that normal marina  
24 activities will be carried forth. And then you have to  
25 defer to your lease, and it's subject to the approval of the

1 State Lands Commission pertaining to things like  
2 concessions, et cetera, et cetera.

3           These are recorded documents, ladies and  
4 gentlemen, and we have title reports to evidence that.  
5 There was a mistaken transfer of land that you were given a  
6 presentation of. It amounts to four flags. We do not  
7 recognize that. We feel that may be a quiet title action;  
8 however, there is still access beyond that.

9           I would like to say that the new entity has  
10 already provided insurance. I have it in my hand -- one  
11 million dollars liability. And as far as the bankruptcy  
12 court and the trustee is concerned, I also have adequate  
13 protection on the underlying personal property to this  
14 estate.

15           I would appreciate it that, in the event -- as I  
16 say, I wanted to ask, with respect to the Commission, if you  
17 would consider two items today. If you would consider,  
18 number one, the approval of this land lease; two, this new  
19 entity, the Tahoe Marina Investment, Inc. And, number two,  
20 if you do not approve the lease today, if you would simply  
21 not object to our transfer of the lease to this entity in  
22 the U.S. Bankruptcy Court at our hearing on July 10th at  
23 3:00 p.m. in the afternoon here in Sacramento in Judge David  
24 E. Russell's court.

25           I thank you for your time, and we'd be willing to



1 answer questions. And I would like to defer to counsel for  
2 a moment.

3 MR. WILLOUGHBY: Would you like to have questions  
4 or --

5 CHAIRMAN DAVIS: Did I understand you correctly,  
6 Ms. McFarland, that you said that about 30 percent -- phrase  
7 it another way -- that this new group, the Tahoe group,  
8 includes about 30 percent of the slip owners who, in turn,  
9 have come here opposing this -- the approval of this  
10 assignment?

11 MS. MC FARLAND: No, sir. This new group  
12 represents people that own slips to the tune of about 30  
13 percent, which would also include that which K & C owns. In  
14 other words, the new group representing this are not  
15 represented amongst the people you see in the second row.  
16 They are a part of the new investment group. And it deletes  
17 Mr. Kerns. He is not a part of this investment group, who  
18 was the original general partner of the debtor.

19 COMMISSIONER CONNELL: I have a question, Mr.  
20 Chair, regarding the land. Could show us on a photo of the  
21 land or on the chart that's up here where you maintain you  
22 have access?

23 MS. MC FARLAND: Yes. It's quite easily seen. It  
24 essentially is the aqua portion. And that is stated in the  
25 declaration for the association as written by the original

1 declarant, which was the debtor.

2 COMMISSIONER CONNELL: And that goes across the  
3 shoreline. How do you have access back to Road 28, or do  
4 you maintain that you do?

5 MS. MC FARLAND: Yes, ma'am. There is -- there  
6 are two facets of that access. Number one, the declaration  
7 itself states that vehicles and boats shall have access from  
8 the main road to the marina. And the upper portion of that  
9 road was abandoned to K & C Marine. The lower portion of  
10 the road is simply an easement to the marina. And it also  
11 includes a pedestrian easement, both to the marina and  
12 cross-ways from the marina.

13 It essentially follows the aqua line as you see  
14 it.

15 I would be happy to submit these documents for the  
16 Commission; however, we did have a meeting with your staff,  
17 and we did produce a full packet of these documents and  
18 others for them to review last week.

19 CHAIRMAN DAVIS: Theresa?

20 COMMISSIONER PARKER: I'm fine.

21 CHAIRMAN DAVIS: I have a question of the staff.

22 What is your response to Mrs. McFarland's response  
23 to the Commissioner's question and their representation that  
24 they have access to Road 28?

25 EXECUTIVE OFFICER HIGHT: There are counter-

1 documents that, until we dig to the bottom of, would seem to  
2 indicate that those rights either don't exist or exist in  
3 favor of the slip owners association and their personal  
4 rights with them rather than something that can be  
5 transferred.

6 And that's the issue that we haven't gotten to the  
7 bottom of yet. And that issue is, we think, murky enough to  
8 cause us concern that there may not be access.

9 COMMISSIONER PARKER: Mr. Chairman, I think you  
10 had started this out by saying that it seemed to be an issue  
11 of fact. And I guess the dilemma we have before us is  
12 whether or not we have enough factual basis to make any  
13 decision.

14 I'm personally uncomfortable from the standpoint  
15 of what the staff was telling us, and I think the concern  
16 about the ongoing maintenance of the marina is a secondary  
17 issue, but we need to determine these matters of fact before  
18 we can then make the determination from the standpoint of  
19 the lease. I would be uncomfortable having to make a  
20 decision today based on facts that are not available to us  
21 today.

22 COMMISSIONER CONNELL: I share your concerns. I  
23 am still not clear on the Attorney General's comment earlier  
24 to my question. I just want to clarify. If we take the  
25 action that is recommended by the staff, we're taking a

1 definitive position, as I read it, there's a motion to take  
2 no action and a motion to allow the marina association to  
3 operate the slips in the interim period.

4 If we don't take that specific language, are we  
5 still giving enough direction to the bankruptcy court to do  
6 what the Chair initially suggested, which was to basically  
7 delay action of this Board?

8 CHAIRMAN DAVIS: No, I don't -- I think we should  
9 make it clear that we are rejecting the application;  
10 however, in my judgment, that would be without prejudice if,  
11 at some future time, additional information came to us that  
12 persuaded us they did have littoral rights and did have  
13 access and/or they were the best qualified candidate.

14 Right now, we have the staff position to advise us  
15 on the first issue, so I don't see how we can act. But  
16 counsel has suggested that we need to act decisively to  
17 communicate to the court that we are rejecting this  
18 application. That's what I'm trying to accomplish.

19 COMMISSIONER CONNELL: Then I would move the staff  
20 recommendation with the additional language that we're  
21 moving it without prejudice, which I think is important.

22 MR. WILLOUGHBY: Mr. Chairman, could I just  
23 address it before you move, just one second about the  
24 bankruptcy?

25 CHAIRMAN DAVIS: Sure.

1           MR. WILLOUGHBY: I think one point that has not  
2 been brought out here is that this is a disaster case. I  
3 don't know how much experience the Committee has had -- the  
4 Commission has had with bankruptcies, but this is a terrible  
5 case that has been winding out of control in the bankruptcy  
6 court for over a year now.

7           We would have liked to sell this property to Mr.  
8 Gibb, because it would have been the easiest possible sale.  
9 But selling this property to Mr. Gibb became impossible when  
10 he withdrew his offer. Basically, the only other entity  
11 that has enough economic interest to step into this case to  
12 solve the problems are the owners of this 24 to 30 slips,  
13 this other group, it's called --

14           Mr. Bill Robothan (phonetic) owns over 20 slips.  
15 Basically, if you do not take action and if the bankruptcy  
16 court does not confirm this sale, what will happen is that  
17 everything will go back to the debtor. The million-six lien  
18 will remain on the marina. The bank will have to try to put  
19 a receiver in. You're going to have litigation between the  
20 bankruptcy estate and the parties that were here today,  
21 probably for violations of the automatic stay.

22           This is going to be a litigation mess for months  
23 and years to come.

24           What we see is that this marina has operated with  
25 this status of easement and with those parcels mistakenly

1 deeded for over six years. The only logical thing is to  
2 sell it. We are trying to solve it. Ms. McFarland has not  
3 only a fiduciary duty to the creditors, but a fiduciary duty  
4 to try to continue the operation of the business under the  
5 Bonner Mall case, which is a 9th Circuit decision.

6 And this sale, unique, solves the million-six bank  
7 loan. As a condition to the sale, they have to buy the bank  
8 loan for 800,000.

9 So, they're going to come in and pay 800,000 for  
10 the bank loan, 200,000 to the estate to basically solve  
11 litigation that we have against the buyers for preferences.

12 And the marina goes forward and operates as it  
13 always has. I mean, I see that if this sale is not  
14 confirmed on Monday, you're going to see litigation forever  
15 over this thing. But if it's confirmed on Monday, my  
16 feeling will be that the judge will determine whether  
17 there's access, whether there's littoral rights, whether the  
18 deed was mistakenly deeded (sic), and that will solve the  
19 litigation. Because Gibb has already opposed this sale, the  
20 Gibb Trust. They will be collaterally estopped, if the  
21 judge decides it on Monday, is our view.

22 And they will have the full opportunity to put all  
23 the evidence that they want to put on on Monday.

24 Now, they're the ones that are stepping in here  
25 and trying to do whatever they're trying to do today. I

1 don't really know. They didn't ask for a new lease in the  
2 Gibb Trust's name.

3 But I don't know who the new lessee is going to  
4 be. The master lease is the master lease. It's owned by K  
5 & C Marine. You know, the subleases are subject to the  
6 master lease. The subleases may have a right to cure the  
7 master lease, but they don't have a right to substitute in  
8 as the master lessee.

9 My view is that if you terminate the master lease,  
10 you will have terminated all the subleases, and you will  
11 have created \$4.5 million in damages for all the subtenants,  
12 all the slip owners who paid good money to K & C Marine and  
13 who were taken.

14 I mean, I think that we cannot terminate this  
15 master lease, because that would cause damages that we could  
16 never fathom to try to sort out.

17 CHAIRMAN DAVIS: We're not terminating anything.

18 MR. WILLOUGHBY: No, I understand.

19 CHAIRMAN DAVIS: You came to us with very little  
20 time and you're asking us to make a judgment, which our  
21 staff is not ready to make.

22 MR. WILLOUGHBY: No, I understand that.

23 CHAIRMAN DAVIS: Now, if the court wants to  
24 continue on the 10th, it's going to be their action that  
25 precipitates all of ours that you have just suggested, not

1 our action. But we're willing to act decisively when the  
2 staff can come back and tell us, in their judgment, whether  
3 there's access or ownership of littoral rights.

4 And you have to cross that barrier. We can't  
5 cross that barrier.

6 MS. MC FARLAND: We certainly do ask that you  
7 consider making no decision today, if you don't feel  
8 prepared to make it, rather than a decision that may not be  
9 in the best interest of the public good, or the U.S.  
10 Bankruptcy Court.

11 MR. WILLOUGHBY: And we would ask that you let the  
12 Gibb Trust and the association put on their evidence on  
13 Monday, and let us put on our evidence, and let the judge  
14 decide.

15 MS. MC FARLAND: The court has spent substantial  
16 dollars and volumes of time, and the trustee has done the  
17 same doing due diligence on this matter. We apologize for  
18 the short timeframe, but there is no money to run an estate  
19 under a trustee under these circumstances. We had no choice  
20 but to defer to the federal court.

21 And we ask that, if you don't feel qualified and  
22 complete with your information at this time, that you not  
23 make a decision, and let the federal judge make the  
24 decision, and not oppose our action at this time. Because  
25 we definitely, strongly feel that if Mr. Gibb so intended to



1 own this property, he would have come forward instead of  
2 creating obstacles. And, you know, he has not.

3 CHAIRMAN DAVIS: Well, I respect your point of  
4 view. We have to be responsive to what our attorney  
5 advises us, the Attorney General and what our staff advises  
6 us. And they both are suggesting that we cannot approve  
7 this application because we don't have a factual basis upon  
8 which to make a final. Am I stating that correctly, Jan?

9 MR. STEVENS: Yes. I think a denial without  
10 prejudice, which is what I understand is before the  
11 Commission at this time, would not amount to any kind of --  
12 even a quasi-adjudication that either the bidder is  
13 unqualified or that he -- the bidder lacks littoral status.

14 I think, secondly, it amounts -- and it might lead  
15 us to a conclusion that this time there was inadequate  
16 evidence before the Commission to justify the assignment of  
17 the lease. And the burden, of course, is upon the applicant  
18 in this case.

19 MS. MC FARLAND: Thank you, sir.

20 MR. WILLOUGHBY: Thank you.

21 CHAIRMAN DAVIS: All right.

22 MR. LIEN: (From the audience) May I have some  
23 time to respond?

24 CHAIRMAN DAVIS: No. I think we're basically  
25 making this decision on procedural grounds. We're not

1 making any substantive decision today. We're saying we  
2 don't have the information to make a decision; therefore,  
3 we're rejecting the application that's before us.

4 MR. LIEN: So, in other words, they've failed to  
5 meet their burden of proof, and that's what you're  
6 indicating to them today.

7 CHAIRMAN DAVIS: They failed to meet it today.  
8 they may be able to meet it at some subsequent point. When  
9 do we meet next, in August?

10 EXECUTIVE OFFICER HIGHT: Probably not in early  
11 August, mid-August.

12 CHAIRMAN DAVIS: Anyone else want to speak to the  
13 motion? All right.

14 COMMISSIONER CONNELL: I don't think the motion  
15 had a second.

16 COMMISSIONER PARKER: You have a second.

17 CHAIRMAN DAVIS: Jan, could you maybe phrase the  
18 motion so we all understand it?

19 MR. STEVENS: It incorporated the staff  
20 recommendation. Reject approval of the assumption and sale  
21 with adequate assurances of future performance of Lease PRC  
22 706.1 from K & C Marine to the Marina Investment Group,  
23 unless and until the parties agree, or a court of competent  
24 jurisdiction rules that the Marina Investment Group has  
25 littoral ownership or use rights and adequate or appropriate

1 access rights across the uplands, and the Marina Investment  
2 Group can assure the Commission staff of its ability to cure  
3 the lease defaults and adequately perform the lease  
4 covenants in the future, with the condition that approval is  
5 rejected without prejudice.

6 Authorize the staff and Office of the Attorney  
7 General to take whatever steps, including entering into an  
8 interim management agreement, as are necessary, to assure  
9 that the defaults of the lease are cured or, in the  
10 alternative, to terminate the lease.

11 CHAIRMAN DAVIS: That's the motion before the  
12 Commission.

13 Will you call the role here?

14 COMMISSION SECRETARY: Commissioner Connell?

15 COMMISSIONER CONNELL: Yes.

16 COMMISSION SECRETARY: Commissioner Parker?

17 COMMISSIONER PARKER: Yes.

18 COMMISSION SECRETARY: Chairman Davis?

19 CHAIRMAN DAVIS: Yes.

20 All right. That deals with Item 73.

21 EXECUTIVE OFFICER HIGHT: The next item, Mr.  
22 Chairman, is Item 86, which is the Tuscarora Gas pipeline  
23 issue that was before the Commission at its last meeting.

24 And I'd like to ask Jane Sekelsky, who is Manager  
25 of the Commission's Land Management Section, to present that

1 item.

2 MS. SEKELSKY: For the record, I am Jane Sekelsky,  
3 Chief of the Land Management Division.

4 Item No. 86 before you today involves a proposal  
5 by the Tuscarora Gas Transmission Company to construct a  
6 four-inch diameter gas line across State-owned lands in the  
7 bed of the North and South Forks of the Pit River in Modoc  
8 County.

9 As you will recall, these proposed crossings were  
10 before you at the May 3rd meeting as part of a larger  
11 package, which included three other river crossings and  
12 eight school lands crossings.

13 In response to objections by the adjoining upland  
14 owner, Mr. Talbott, the Commission deferred action on the  
15 two crossings which are before you today in hopes that  
16 Tuscarora and Mr. Talbott could resolve their differences.

17 Staff has since met with Mr. Talbott, his  
18 attorney, representatives of Tuscarora, and our EIR  
19 consultant. It is our understanding that all but two of Mr.  
20 Talbott's concerns have been addressed.

21 Mr. Talbott remains concerned that the project  
22 will adversely impact wildlife which frequent his property.

23 On the exhibit, you can see the area of greatest  
24 concern is the area shaded in yellow. But Mr. Talbott's  
25 property does extend south of that area.

1           Mr. Talbott argues the location of the pipeline on  
2 his property will encourage the placement of other utilities  
3 in the same corridor, increasing the burden on wildlife and  
4 their habitat. He further fears that in the event a  
5 pipeline rupture occurs and construction activity is  
6 necessary to complete repairs, that resident wildlife will  
7 be injured or killed, particularly if this happens during  
8 the antelope kidding season.

9           Mr. Talbott has recommended an alternate route,  
10 shown in green on the exhibit, which would avoid his  
11 property and which he believes would be potentially less  
12 harmful to wildlife. Mr. Talbott is here today to present  
13 you his position.

14           Tuscarora continues to favor the proposed route,  
15 shown in purple on the exhibit, which crosses Mr. Talbott's  
16 property. And their preference is based both on engineering  
17 and fiscal perspectives.

18           We understand that Tuscarora has commenced  
19 condemnation against Mr. Talbott and has been granted an  
20 order of immediate possession entitling them to enter the  
21 property effective June 19th of 1995.

22           Tuscarora is also represented here today to  
23 explain their position and answer any questions you may  
24 have.

25           Staff has reviewed the positions and concerns of

1 both parties and, on balance, has concluded that the  
2 proposed route -- that advocated by Tuscarora to cross Mr.  
3 Talbott's property, shown again in purple -- is preferable.  
4 We believe the risk of accident during the limited antelope  
5 kidding season, while there, is remote.

6 In order to pursue the alternative route,  
7 additional analysis of possible environmental and cultural  
8 resource impacts would be necessary. Tuscarora would have  
9 to obtain an amendment of their FERC license and would have  
10 to obtain rights-of-way over properties owned by Modoc  
11 County, the City of Alturas, and at least one private  
12 property owner.

13 The alternative route poses the possibility of  
14 additional expense up to \$215,000 over the proposed route,  
15 which cost will ultimately be passed along to customers in  
16 the Alturas area.

17 Based on these factors, staff has recommended  
18 approval of the route proposed by Tuscarora and shown on the  
19 exhibit as the proposed route.

20 CHAIRMAN DAVIS: It seemed to me we had a very  
21 lengthy discussion on this before. Was any progress made  
22 during their last meeting to resolve any of the differences?  
23 What's changed since this issue came before us?

24 MS. SEKELSKY: My feeling is that the progress we  
25 had made was to better refine the remaining issues. Mr.

1 Talbott --

2 CHAIRMAN DAVIS: Have we solved any issues? Was  
3 there any agreement on anything?

4 MS. SEKELSKY: Yeah, I think that there was. I  
5 think that one of the --

6 CHAIRMAN DAVIS: I've really lost my patience with  
7 this issue for the record.

8 MS. SEKELSKY: Mr. Talbott, in both of his  
9 responses to the draft EIR and before you in May, indicated  
10 some concern about the potential future use of his property  
11 for growing wild rice or for creating irrigation systems.  
12 And Tuscarora has agreed to accommodate any such needs on  
13 his part; in fact, to help him design and implement an  
14 irrigation system should that be necessary.

15 Other than that, I would say very little has been  
16 agreed upon. Mr. Talbott has agreed that the southerly  
17 portion of the route shown in purple is not objectionable to  
18 him on his property. But he is still --

19 CHAIRMAN DAVIS: Doesn't that represent progress  
20 since our last meeting?

21 MS. SEKELSKY: I believe that it does represent  
22 progress; however, the crux of the matter is that he still  
23 strongly objects to the northerly portion of the route. And  
24 that is the portion which I understand is most critical to  
25 the project from Tuscarora's perspective.

1           COMMISSIONER PARKER: That's the portion that  
2 would require a new EIR, the extension into the green?

3           MS. SEKELSKY: No, the routes shown in purple  
4 require no further analysis. On the green, yes. Yes, on  
5 the green, there are two issues that would have to be  
6 addressed. We have in the existing environmental impact  
7 report, we have, in fact, analyzed the biology of the area  
8 and the baseline information about the area through which  
9 the green route would travel -- but for one thing, and that  
10 is the cultural resource issue. We have preliminary  
11 evidence that in the northerly half of that area, there  
12 could be very well be the existence of an historic Indian  
13 village with the possibility of burial grounds involved.

14           Survey work for that same issue was done on Mr.  
15 Talbott's property, and it was found that there was nothing  
16 to preclude the use of the purple route. However, we would  
17 have to go out and do that survey work on the green route to  
18 assure that there is no problem there.

19           If a problem is identified, it could impact how  
20 the route is developed, and it could also actually preclude  
21 the use of that area, depending on what resources are  
22 identified.

23           In addition, if the method of crossing the river  
24 must change in moving to the alternate green route, then  
25 additional environmental analysis would have to be done as



1 to that construction method.

2 COMMISSIONER CONNELL: I had a question, Mr.  
3 Chair.

4 Let me understand. Mr. Talbott is saying that  
5 everything south of Road 54 would be agreeable to him now as  
6 part of the whole route.

7 MS. SEKELSKY: That is my understanding, yes.

8 COMMISSIONER CONNELL: Why is that acceptable to  
9 him, if it's on his land, if north of Road 54 is not  
10 acceptable? Is it just the elk grazing issue or the elk  
11 kidding issue?

12 MS. SEKELSKY: Yeah, my understanding is that it  
13 is the habitat value that exists in the upper northerly  
14 portion that concerns him, yes.

15 COMMISSIONER PARKER: Can I ask a question?  
16 What is the approximate distance between where the  
17 purple line is and the green line on either side of Route 54  
18 where you have the greatest bend into the yellow area? Is  
19 that a mile, miles?

20 EXECUTIVE OFFICER HIGHT: It's less than a mile.

21 COMMISSIONER PARKER: Okay. Are there antelope  
22 that are grazing on the other side of Road 54, or are they  
23 between the green line and the purple line and on the other  
24 side of the green line?

25 EXECUTIVE OFFICER HIGHT: Antelope kind of

1 predominate the area from the wildlife refuge east to past  
2 where Jim is standing.

3 COMMISSIONER PARKER: So, I guess if Mr. Talbott's  
4 concerned about the impact to antelope kidding, isn't that  
5 going to happen no matter where the line is? I mean, isn't  
6 that going to happen whether it's the green line or the  
7 purple line?

8 EXECUTIVE OFFICER HIGHT: That would be our  
9 belief, yes.

10 MS. SEKELSKY: We understand that that would be  
11 true. There is a possibility that there would be less  
12 likelihood of damage with the green line in that northerly  
13 stretch, because there is already disturbance of that land.  
14 Construction work has already occurred there. There some  
15 improvements, some buildings.

16 However, the type of disruption that might occur  
17 is largely because of noise, which would cause the antelope  
18 to abandon the young before the young are able to travel on  
19 their own.

20 And if there were heavy construction equipment,  
21 the noise of that could easily disturb the antelope in the  
22 area shown in yellow. However, if the construction  
23 equipment is not in that area, it theoretically wouldn't run  
24 over the young.

25 CHAIRMAN DAVIS: Has there been any discussions

1 about compensation for any taking that occurs on Mr.  
2 Talbott's property?

3 MS. SEKELSKY: We have not been involved in those  
4 discussions. That is a matter for Mr. Talbott and Tuscarora  
5 through the condemnation proceeding.

6 COMMISSIONER CONNELL: What is the timing of the  
7 delay if we were to suggest that we wanted the line  
8 realigned north of Road 54 on the green, and kept the line  
9 south of 54 in the purple, what are we talking about in  
10 terms of time delay?

11 MS. SEKELSKY: I would like to ask Tuscarora to  
12 address that. My understanding is that it could be a matter  
13 of a month or so or it could be considerably longer.

14 COMMISSIONER CONNELL: Are they here?

15 MS. SEKELSKY: Yes. Yes. Tuscarora is here.  
16 They would need to apply to FERC for an amendment to their  
17 license. That process normally would take a minimum of two  
18 weeks, probably longer.

19 The assessment of cultural resources, I can't tell  
20 you how long that would take. I would prefer that they  
21 answer that question.

22 CHAIRMAN DAVIS: All right. Let's do this. Since  
23 we've heard this issue ad nauseam at the last meeting, I'm  
24 going to limit everyone to -- there's only three speakers  
25 here, so I'll limit them to three minutes each.

1           We'll start with Mr. Talbott. Let's see, there's  
2 Curtis Talbott and Robert Talbott.

3           MR. TALBOTT: Yes. My son is going to help me --  
4 we have some pictures to show you.

5           CHAIRMAN DAVIS: All right.

6           MR. TALBOTT: My son's going to pass them -- walk  
7 'em past so you can take a look. What it depicts is the  
8 west side of the road where I recommend to be taken, which  
9 is all owned by public lands.

10          CHAIRMAN DAVIS: Okay. You're going to be the  
11 only one that's going to address the issues and your son  
12 will assist you.

13          MR. TALBOTT: Right. Exactly.

14          CHAIRMAN DAVIS: All right. Then you have three  
15 minutes. Go ahead.

16          MR. TALBOTT: And the other side of the road,  
17 which is my land, these pictures are taken opposite each  
18 other so you can get an idea what we're looking at.

19                 I don't want to challenge anybody here, but I  
20 don't see any possibility for antelope grazing or birthing  
21 on the side where the dumps are and the city sewer plant,  
22 and all the buildings, and all of the landfill, and all of  
23 the gouging of dirt that's taken place over there. I've  
24 never myself seen an animal over there.

25                 On the other hand, you can see in those pictures,

1 there are 25 animals out there right now. There was at the  
2 time these pictures -- these pictures were taken right  
3 before our meeting about a month and a half ago.

4 This is the other side. You can see that these --  
5 besides the noise, there's not really -- antelope are very  
6 skittish animals, and they're not likely to spend any time  
7 on that sided. I've never seen them over there.

8 Okay. Now, the next set of pictures is going a  
9 little further north. This is near the sewer plant.

10 (Thereupon, the reporter requested the  
11 witness to speak into a microphone, but  
12 he did not comply and, in fact, walked  
13 away from the witness table.)

14 MR. TALBOTT: This is near the sewer plant over  
15 here. This is the west side of the road. Again, I would  
16 wonder why animals would want to be anywhere along that side  
17 of the road.

18 This is, again, city and county owned property.  
19 This side is my property. The Pit River runs right along  
20 here. The National Wildlife Refuge -- in fact, you can see  
21 Canadian geese out in the fields. They're there with the  
22 babies in the nests. And the last set of pictures, I think  
23 it's kind of dramatic. This is the actual South Fork of the  
24 Pit. And, again, you can see this is the sewer plant over  
25 here. You can see all the landfill that's taken place. You

1 can see the mountains that have been gouged down in the  
2 background. I wonder how anybody could find any Indian  
3 relics here when you've seen all the abuse that's taken  
4 place on this land. I can't imagine there being anything  
5 left there.

6 This is the other side of the road that runs  
7 through my property. You can see the waters flood up very  
8 high. This is wetland. You can see the well I've got  
9 there. I just can't -- to me, it's just amazing how anybody  
10 could imagine there would not be that wildlife to run  
11 through those prime lands.

12 To back up my statements, I've had two letters --  
13 well, one letter and an offer for a second. The manager of  
14 the National Wildlife Refuge, Dave Johnson, has written a  
15 letter here stating basically -- you know, -- it was sent to  
16 us last night. And no one has had a chance to read this  
17 other than Curt.

18 But, basically, it says in here that -- he doesn't  
19 see that the pipeline on either location is going to impact  
20 the National Wildlife Refuge, but he strongly recommends  
21 that the pipeline be placed over on the green side or the  
22 alternate side, particularly down in the wetlands area. He  
23 uses those terms, wetlands area, to prevent any further  
24 encroachment. And he also points out, which is true, that  
25 I've been working with the National Wildlife Refuge.

1 I'm involved with a program called Partners in  
2 Wildlife. And what we're going to do is we're going to  
3 fence off portions of this river on both sides to look to  
4 protect the wildlife. And, of course, the manager of that  
5 refuge is concerned about that, because of the fact that  
6 we're putting work in to improve the habitat and this is  
7 eroding it away.

8 I'd like to say one little thing before I get into  
9 the meat of this thing. I look at encroachment -- my whole  
10 argument here is not because I want to grow rice or this or  
11 that. It's mainly because I look at encroachment like  
12 snowflakes. It just comes down a little bit at a time here  
13 and there, and pretty soon the whole ground's covered, and  
14 it never melts away.

15 And that's how our wildlife have been driven onto  
16 these small little refuges. The antelope count in this area  
17 has gone down from what it used to be. And I, as a  
18 landowner, am trying to bring some of that back by donating  
19 large portions of my land just for that purpose.

20 So, that's where I'm coming from.

21 There was a lot of issues about the dollars that  
22 Tuscarora would have to spend if they took the alternative  
23 route. And I think that we kinda stuck ourselves in the  
24 foot here with a problem. The whole issue comes down to  
25 directional drilling versus open cut. Open cut, according

1 to Tuscarora's own geologist, is the normal method for  
2 crossing rivers.

3           Directional drilling always comes with a risk  
4 factor. You've heard risk, risk, risk. In their own report  
5 they state that there is 12 to 15 feet on their proposed  
6 route on my property of base rock, or what they call  
7 consolidated material, above the bedrock, which -- and,  
8 again, in their own report directional drilling contracts  
9 prefer 20 feet of coverage over the top. So, the big issue  
10 is -- the bit problem with directional drilling is they pump  
11 a slurry down through to get the chips out as they drill  
12 this hole underneath. And if they should have an eruption  
13 up into the streambed -- by the time this occurs -- they  
14 pump this at 500 psi, which is really high pressure -- the  
15 streambed is just immediately polluted.

16           The Fish & Game Department, California Fish &  
17 Game, I spoke with this gentleman in charge of this area.  
18 He pointed out to me that the Fish & Game does not favor  
19 directional drilling over open cut. In fact, they have big  
20 concerns with directional drilling.

21           I guess the biggest problem with directional  
22 drilling is that you don't know, when you go into this  
23 thing, -- it's a roll of the dice -- if you're going to have  
24 an eruption or not. There's no -- it's not an open cut type  
25 work. Whereas, the open cut, there's opportunities to



1 observe what's going on and do something about it while it's  
2 happening.

3           The whole issue with dollars -- yes, if Tuscarora  
4 should have a failure when they do the directional drilling  
5 either on my property or on the alternate route -- which, in  
6 both cases, there's a risk factor here, and all these  
7 letters indicate that. Then they'll have to go with open  
8 cut, which is a double-dip for them; it's twice as much  
9 expense.

10           I keep asking myself -- I've been to these  
11 meetings. I've listened to their -- this is one of my first  
12 meetings up at there at the land -- and Barry Singleton  
13 there, the chief engineer, made a big issue about the fact  
14 that even on my property it wasn't really deep as they'd  
15 like to happen. There was a risk there.

16           And then at our last meeting here at the State  
17 Lands Commission meeting, they brought another geologist in.  
18 They'd done further reports, and discovered that on the  
19 other side of the road there was, yes, about the same kind  
20 of bottom, but there was some additional problems with the  
21 other side of the road.

22           The bottom line is that he pointed out again that  
23 there was a risk involved. And I keep asking -- I've been  
24 asking all along why are we insisting on directional  
25 drilling? It seems to me that with the open cut method

1 there is no risk. It's a slam/dunk in everybody's terms.

2 Yes, there's disturbance of the streambed, but the  
3 Fish & Game's remarks are that they intend to monitor both  
4 cases very closely to make sure they meet the standards.  
5 And should they fail, then they're going to shut the program  
6 down till they get it corrected.

7 So, I guess I'm trying to point out that I think  
8 we've kind of got ourselves stuck in this hole. We can't  
9 move it over because they claim there's more risk on the  
10 other side. But, in fact, it's risky on both sides. And  
11 the open cut method is used -- in fact, they're using it on  
12 some of the other parcels and some of the other rivers.

13 I'd just kind of like to run down the upstream  
14 crossing to the downstream, the alternate crossing --

15 CHAIRMAN DAVIS: Can you do that in about a  
16 minute?

17 MR. TALBOTT: Yeah. I'm just about done.

18 On the down -- on the upstream crossing, which is  
19 across my land, there's encroachment on the wildlife. Just  
20 the very act of having that thing there, possible rupture in  
21 the future, the period of time that it's tore up is an  
22 encroachment.

23 Going on the other side, there'd be no  
24 encroachment.

25 Possible failure of the drilling process -- with

1 the open cut, there is no possible failure. With the  
2 directional drilling, there surely is. And, of course,  
3 there's the doubling of the cost if they have to do it  
4 twice. And there's every possibility they're going to have  
5 a failure.

6 There's a possibility, if they do the downstream  
7 drilling, again, you have the National Wildlife Refuge.  
8 Dave Johnson's offered -- he has two dams on his refuge,  
9 diversion dams, and he said that, to enhance the open cut  
10 method, which is where they've got to pump the water around  
11 to dam the river for a few hours to make this pipe trench,  
12 he can reduce the flow of Pit River down to substantially  
13 lower levels to help them facilitate that. And he's offered  
14 to do that.

15 And, of course, we've heard about the kidding  
16 ground, should there be a break during the kidding time, the  
17 mother antelopes usually abandon their young. That would  
18 not happen if it was on the other side.

19 And I guess that's about all I really need to  
20 cover.

21 CHAIRMAN DAVIS: Okay.

22 MR. TALBOTT: So, I'm proposing that we do the --  
23 oh, one last point.

24 The Fish & Wildlife -- the Fish & Game Department,  
25 who is really the people that have to monitor this stream,

1 has offered to come back and do a pros and con study of both  
2 sides.

3 CHAIRMAN DAVIS: Wait a second. Is anybody here  
4 representing Fish & Game's point of view? Are there any  
5 letters from them?

6 MR. TALBOTT: There's a letter here.

7 EXECUTIVE OFFICER HIGHT: I think there's a letter  
8 in your packet.

9 MR. TALBOTT: And he's documented everything I've  
10 said.

11 CHAIRMAN DAVIS: Okay.

12 MR. TALBOTT: So, all I want to say is that he's  
13 offered to come and do a study to determine if, in fact,  
14 what I'm saying is true. Now, we've already got the input  
15 from Dave Johnson, who manages the National Wildlife Refuge,  
16 they would prefer the pipe be on the alternate route and not  
17 disturb the wetlands habitat that we have here.

18 So, my suggest is, if there's any way possible, to  
19 go back and do these studies. I really don't think we're  
20 going to find any Indian relics, although that's a  
21 possibility I suppose. But, certainly, we need the input of  
22 the Fish & Game Department as to what they recommend.

23 CHAIRMAN DAVIS: All right. Does anybody have any  
24 questions?

25 COMMISSIONER CONNELL: Mr. Chair, I have a

1 question of Bob, if I may.

2 Do we, as the Commission, have any authority over  
3 this issue of directional digging versus open cuts?

4 EXECUTIVE OFFICER HIGHT: That is probably one of  
5 the major issues that the Commission has authority over,  
6 because it's that issue that the Commission can direct on  
7 how to cross the State-owned land.

8 COMMISSIONER CONNELL: Could you respond on the  
9 testimony we've just heard on this issue?

10 EXECUTIVE OFFICER HIGHT: Yes.

11 It's my understanding that a committee of all the  
12 affected agencies -- the Fish & Wildlife, Fish & Game, BLM--  
13 met onsite in various areas where there would be crossings.  
14 And they determined that directional drilling was the most  
15 appropriate means here on these two particular crossings.

16 Staff is concerned that the trenching method will  
17 create, in effect, a weaker bank system, which is conducive  
18 to erosion during flooding times. So, that's the reason  
19 that directional drilling was chosen on this particular  
20 site.

21 COMMISSIONER CONNELL: Thank you.

22 CHAIRMAN DAVIS: Theresa?

23 COMMISSIONER PARKER: No. I'm anxious to hear  
24 from the gas company.

25 CHAIRMAN DAVIS: Okay. Thank you.

1           Let's see. I think, actually for the record,  
2           Curtis, we gave you both your three minutes and Robert's.  
3           So, we'll give Mr. Galbraith up to six minutes, since I  
4           assume you're the only one speaking on your side.

5           (Thereupon, there was a pause in the  
6           proceedings to allow the reporter to  
7           replenish her paper.)

8           MR. GALBRAITH: Good afternoon. Thank you for the  
9           extra time.

10          My name is Greg Galbraith. I represent Tuscarora  
11          Gas Transmission Company.

12          At the risk of stating what's already been stated,  
13          I would like to go ahead and just clearly restate our  
14          reasons for wanting to stick with our proposed route. First  
15          of all, it is, in fact, the best engineering and  
16          construction alternative. We've gone back and reexamined  
17          that many times and come always to the same conclusion.

18          Second, all the environmental work is done. The  
19          route has been approved by FERC, and that was a major  
20          milestone, an important one, not one that we have to want to  
21          go redo on another route.

22          Tuscarora, on this proposed route, has all the  
23          right-of-way lined up and we are, in fact, ready to start.  
24          As of June 19th, we even got the title to the property.

25          All previous attempts to come to arrive at a

1 compromise solution with Mr. Talbott have failed, almost  
2 miserably I might add.

3 We have tried to meet and address every one of his  
4 concerns and without success.

5 The other is schedule and cost. Taking a look at  
6 schedule, I talked to our cultural resources coordinator  
7 today to get a little better handle on what exactly is going  
8 on on the alternate relative to cultural resources. What he  
9 told me basically was that it was a hot locus of cultural  
10 resources out there, and it's very unpredictable what we  
11 may, in fact, find.

12 Although one thing is certain, we will find sites  
13 and we will have to treat them. In treating those sites,  
14 getting a determination of eligibility and noneligibility,  
15 would take a minimum -- he said two and a half to three  
16 months. And he said, well, the way things have been going,  
17 better figure three months.

18 And then, assuming that we may not have to do any  
19 more work, and maybe we're only talking about three months  
20 at that point. But there's a very good likelihood we will  
21 have to follow through and do data recovery. Data recovery  
22 would take another month at a substantial cost increase  
23 there as well.

24 So, we could be looking at a schedule out four  
25 months; if we started today, we're into October already, and

1 that jeopardizes our 1995 construction schedule on this  
2 particular lateral.

3           Okay. On the cost, the route that Tuscarora  
4 proposes holds right now at \$825,000. I might add that  
5 that's more than we estimated initially. The Alturas City  
6 is not a large load, and the revenues off of that are not  
7 large, so the economics of following through with this  
8 lateral are shaky at best. And, however, Tuscarora  
9 recognizes that serving the City of Alturas is the right  
10 thing to do. We've always shown that to be one of the major  
11 benefits of the project, even at the risk or -- even knowing  
12 and accepting the fact that the main line construction is,  
13 in fact, subsidizing the portion of the Alturas lateral.

14           However, every dollar increase just makes those  
15 economics look even worse and makes it a more difficult  
16 decision for Tuscarora to proceed with construction of that  
17 lateral.

18           Just to give you a rough -- let me just throw  
19 these numbers out. We're looking at -- if we had -- if all  
20 the risks proved to be unsubstantiated, we're looking at  
21 least another 75,000 to go to the alternate route. That  
22 would push it up to about 900,000.

23           Failure on one of the crossings would add 70,000;  
24 so we're at 970. A second failure, which there's a  
25 possibility of two failures on the downstream or the



1 alternate route, that's another 70,000. And pretty soon,  
2 we're up to a million.

3 Now, if you throw in the testing at \$15,000 for  
4 the alternative route, there's additional dollars. The data  
5 recovery could be anywhere from 50 to \$100,000.

6 So, Tuscarora finds itself in the position of  
7 having to ask itself is it really worth it? And maybe we  
8 say, no, and wait for Alturas to come back with a greater  
9 load at some point in the future and something that we can  
10 justify a little better economically.

11 Now, the flaw there -- if I can just take a few  
12 more minutes here -- is that, if we do not construct this  
13 lateral with this main line construction, what would happen  
14 is Alturas would essentially have to pay for the incremental  
15 cost of that lateral at some future point.

16 Right now, at this point in time, we have the  
17 ability or we have -- well, we have the ability to roll in  
18 the cost of that lateral, even accepting the fact that it's  
19 more expensive than it's worth, we can roll that into our  
20 main line construction and the dollars somewhat get lost in  
21 it. Maybe a better way to put it is the current customers  
22 would have no objection to that at this point in time.

23 If we have to go back in a year and add this,  
24 there is an incremental cost, and there is a chance -- I  
25 can't tell you right now what those chances are -- but there

1 is a chance that the City of Alturas would have to pay an  
2 incremental increase in their rate to take gas off the  
3 Tuscarora pipeline.

4 I did ask the general manager of Tuscarora this  
5 morning what that might mean in real dollars, and it could  
6 be as much as a \$200,000 adder in total the first year, and  
7 then it would increase every year thereafter if that did, in  
8 fact, happen.

9 So, I just throw that out for your consideration.  
10 That's not much in the way of factual, but it is there and  
11 something to think about.

12 So, with that, I guess Tuscarora is at the point  
13 right now where we just -- given that we cannot come to a  
14 compromise after repeated efforts and, you know, the  
15 inflexibility on the part of Mr. Talbott to let us pursue  
16 the route that we want. We don't even -- at this point,  
17 we'd just like to go with the route that we have permitted  
18 and the one that we do have the ability to construct on  
19 tomorrow. That's the one we'd like to stay with, although  
20 we will still stand by our previous commitments to Mr.  
21 Talbott and to the Commission staff to look at a -- well,  
22 we've already looked at a compromise. I would hope we could  
23 come to a decision today.

24 With that, I guess I'd like to finish.

25 CHAIRMAN DAVIS: You may have covered this while I

1 was out of the room. If so, forgive me.

2           Where does this issue stand procedurally? Does  
3 the City of Alturas approve this project? When you were  
4 last before us, I don't think they had. Have they in  
5 between our Commission meetings?

6           MR. GALBRAITH: The City of Alturas, they don't  
7 have any approval authority for the project. What they are  
8 is a customer. They did, in fact, sign in 1993, a precedent  
9 agreement, which is a preliminary contractual arrangement to  
10 take 500 dec therms per day load off the Tuscarora pipeline.

11           Due to the local politics, they have not, as of  
12 this date, executed a TSA or what we call a transportation  
13 service agreement. However, like I say, it was mostly local  
14 politics that has delayed that.

15           Some things have happened. They have had a recall  
16 of the City Council. The new City Council is very  
17 enthusiastic about the lateral and about the prospects of  
18 getting natural gas into the community of Alturas.

19           They have approved a prison, which is a load.  
20 They're looking to the other large commercialized -- the  
21 hospital, for instance, and, in fact, see the possibilities  
22 of taking gas very quickly to selected customers, and those  
23 would be the large commercial.

24           They will sign an agreement. My boss told me  
25 basically 30 to 60 days. You know, if the question comes

1 up, say 60 days. But we do expect we'll get a  
2 transportation service agreement executed with them in the  
3 near future.

4 CHAIRMAN DAVIS: Bob, do we need special action  
5 from any other body before we act on this?

6 EXECUTIVE OFFICER HIGHT: No.

7 CHAIRMAN DAVIS: When they originally came here,  
8 they needed some other official action, but they wanted to  
9 stay on track, so they were bringing the matter to the Lands  
10 Commission to save time.

11 EXECUTIVE OFFICER HIGHT: There is no other action  
12 necessary.

13 COMMISSIONER CONNELL: Mr. Chair, I have a  
14 question.

15 CHAIRMAN DAVIS: Sure.

16 COMMISSIONER CONNELL: You say there hasn't been  
17 any compromise, but maybe it's naivete on my part, but I  
18 think that there has been a compromise. I mean, from what  
19 I'm hearing Mr. Talbott say, if I recorded my notes  
20 correctly, Mr. Talbott is willing to have you build your  
21 pipeline on his property; in other words, following the  
22 purpose course indicated on this map in front of us on  
23 Exhibit B, south of Road 54.

24 Now, he was not willing to do that prior to our  
25 discussion -- our prior discussion at this Commission

1 meeting. So, I do think there has been some compromise  
2 there. I guess my question to you is, seeing how Mr.  
3 Talbott has compromised on the southern part of the route,  
4 what would you suggest as a compromise north of Road 54?  
5 What would you entertain with Mr. Talbott as a possible  
6 compromise?

7 MR. GALBRAITH: Okay. I guess the way I'd like to  
8 respond to that is that, unless I've missed something here,  
9 and that's entirely possible, I believe that was our  
10 compromise on the southern end of 54, to move out. I  
11 believe.

12 Now, north of 54, we would like to maintain the,  
13 you know, the river crossings, because that's at the heart  
14 of -- other than scheduling costs, that's basically the  
15 heart of the engineering and construction best solution.

16 North of Highway 54, I suppose we could -- you  
17 know, we would be willing -- certainly willing to take that  
18 a little further north. The trouble is, is still want to  
19 hang with the river crossings. Those are important to us.

20 COMMISSIONER PARKER: Could you show us what that  
21 would be?

22 (Thereupon, Mr. Galbraith approached  
23 a chart away from the witness table  
24 and away from a microphone.))

25 MR. GALBRAITH: Sure. We would be willing to --

1 again, you know, it would be kind of a compromise on this  
2 route. Of course, that doesn't help the cultural resources  
3 problem, which could be significant.

4 I suppose we would be willing to try and extend  
5 this a little further, a little further down to the extent  
6 possible to stay along the road. At some point, we'd have  
7 to work our way back into the pipeline at these two  
8 crossings.

9 Something tells me and I'm reasonably certain of  
10 this, the reason for this jog here that you see in the  
11 purple route is because of rock outcropping there.

12 COMMISSIONER CONNELL: Would the rock outcropping,  
13 would that be more expensive then for you to go the purple  
14 route rather than the green route north of 54?

15 MR. GALBRAITH: No, because what happens is, as  
16 you move easterly, you move off of what we call a rock bench  
17 down to the silt or sediment. And the lowland there is  
18 filled with sediment, which allows the directional drilling  
19 to take place.

20 Like I said, you've got about 15 feet of dirt  
21 fill, and then when you get into rock, the basalt, that's  
22 the stuff that's very difficult to fight with.

23 So, that's the reason why you want these  
24 crossings; that's not to say that our crossings will not rip  
25 through.

1           (Thereupon, Mr. Galbraith continued to  
2           speak up on the dais in front of the chart  
3           outside the hearing of the reporter.)

4           COMMISSIONER CONNELL: How rapidly will it take  
5           you to go this route starting at the bottom of the chart,  
6           moving north.

7           MR. GALBRAITH: We planned to start that around  
8           the first week of September and finish about the first of  
9           November.

10          COMMISSIONER CONNELL: So, that if you were  
11          delayed into the month of October, using your schedule, you  
12          would lose effectively a 30 days construction period when  
13          you would have been in the field. You would have to halt  
14          construction?

15          MR. GALBRAITH: What I can't tell you is if there  
16          are any biological restrictions, so that would become a time  
17          thing with winter coming on.

18          COMMISSIONER CONNELL: I guess I'm trying to  
19          understand if we can evoke a compromise here that gives Mr.  
20          Talbot some satisfaction north of Route 54 and doesn't  
21          delay you at some level of cost that it becomes prohibitive.  
22          Because I've heard your numbers regarding the costs that are  
23          going to be passed on to the users.

24                 I am trying to figure out what that delay range  
25                 might be, realistically, if we were to discuss going your

1 route south of 54, your alignment, which would be the purple  
2 is my understanding, and then look at the situation of  
3 moving -- if environmentally it is safe to do so -- to the  
4 green route north of 54, to delay and study the route north  
5 of 54, if you took until October, what would that do to your  
6 timing in the field?

7 It's my understanding that the Commission gave you  
8 authority last time to build north of this area and south of  
9 the area, so that you're moving in both directions now to  
10 this site; is that correct?

11 MR. GALBRAITH: Yes.

12 COMMISSIONER CONNELL: Right. So, your  
13 construction crews are somewhere approaching this site as we  
14 continue this discussion. My question, I guess, is at what  
15 point will we interrupt the construction crews from moving  
16 further north?

17 At what point were they expected to be in the area  
18 north of 54?

19 MR. GALBRAITH: This lateral is four-inch -- is  
20 short; it wouldn't necessarily take -- to answer your  
21 question, it would probably just delay that. We would delay  
22 the construction until the following year if we couldn't  
23 start on. If you start in October, you start to push  
24 winter.

25 COMMISSIONER CONNELL: You would delay that



1 segment, but you will have completed the other segments  
2 leading up to that; is that correct?

3 MR. GALBRAITH: Our main line is going to proceed.  
4 The lateral is pretty much a stand-along project. Now, you  
5 can look at it in terms of --

6 COMMISSIONER PARKER: So, if that were to occur,  
7 would the dollar value of that particular portion of the  
8 line then have to be compensated for on a stand-alone basis  
9 if you waited until the following year to construct it?

10 MR. GALBRAITH: That's right.

11 COMMISSIONER PARKER: So, if you construct now,  
12 the dollar value of the line is incorporated into the rates  
13 being paid by all of the consumers on the line?

14 MR. GALBRAITH: Yes. I can't tell you -- here's  
15 what we've tried to do. We still try, even if we  
16 constructed next year, we would try to get those dollars  
17 rolled into the main line. But that's a FERC decision, not  
18 ours. That's not our decision.

19 Now, when FERC gave us our certificate May 31st,  
20 they gave us one year to construct, and we have to go back  
21 to them. Now, we wouldn't want to construct this thing in  
22 the spring or even during the summer. We would go back to  
23 FERC and try and get those rates rolled in, but they may say  
24 no. I can't predict with any certainty what those folks  
25 will do. If they get a complaint by one of the other

1 customers that says, hey there's a million dollar project  
2 you've got out there and we're paying for it? No way.  
3 Right now, it's something we can do. It's acceptable and  
4 it's all part of the big picture of the main line project.

5 So, I guess your question is, it's not real  
6 certain. There's a possibility. It's something -- and if I  
7 could just add to that just a bit, the City Counsel of  
8 Alturas are very concerned about the cost as well. It could  
9 still have an impact on their decision as well.

10 COMMISSIONER PARKER: You're saying that, at a  
11 minimum, if I heard you correctly, to do the delay, because  
12 of the additional work of looking at that -- extending the  
13 purple line up to the green line. you're saying that there  
14 aren't mitigation issues; that it would be approximately  
15 75,000. It would add about a 10 percent cost to the cost of  
16 the line. And if I heard an upper end, it was somewhere in  
17 the 250,000, 250,000 range, which would be almost a 25, 30  
18 percent increase in the cost of the line?

19 MR. GALBRAITH: That's the worst case scenario.  
20 But that just depends on many times you fail in the  
21 crossings. There's a possibility of failing once there and  
22 there's a possibility of failing twice there.

23 COMMISSIONER PARKER: And so, all of those costs  
24 could be added -- the best case scenario -- to all the  
25 consumers on the line; worst case scenario, those costs

1 would be all to the consumers in the Alturas area.

2 MR. GALBRAITH: That's right. Assuming that we  
3 proceeded with the line at that point.

4 COMMISSIONER CONNELL: Mr. Chair, I don't know  
5 that I'm going to get a second for this, but I might as well  
6 throw it out in the interest of moving on.

7 I would like to suggest that we approve today the  
8 route indicated by the gas company south of 54, and that we  
9 ask that there be the additional study for the alternative  
10 route north of 54, given the information presented regarding  
11 the wildlife and the disturbance of that habitat.

12 CHAIRMAN DAVIS: How long would such a study take,  
13 Mr. Hight?

14 EXECUTIVE OFFICER HIGHT: Range of two months to  
15 four months, depending upon what they find in the initial  
16 field search as to whether or not there is any kind of  
17 Indian resources there.

18 CHAIRMAN DAVIS: Who would conduct it?

19 Would it be Fish & Game?

20 EXECUTIVE OFFICER HIGHT: No, it would be the  
21 consultant for the applicant would do it, and they would  
22 have to report to the appropriate agencies -- the State of  
23 California Native Heritage Commission, Fish & Game.

24 If they find nothing, then probably three months,  
25 two to three months, probably three months to be the short

1 of it, and that would be the end of it. If they find  
2 something, then -- depending on what they find -- those  
3 issues become larger.

4 COMMISSIONER PARKER: A couple of questions, Bob.  
5 We would need an environmental impact report before we could  
6 come back. Would we still be in a situation to decide  
7 between the purple line and green line north Road 54? Would  
8 we still have the option of either of those two --

9 EXECUTIVE OFFICER HIGHT: Yes.

10 COMMISSIONER PARKER: -- based on what we found?

11 EXECUTIVE OFFICER HIGHT: Yes.

12 COMMISSIONER CONNELL: Yes.

13 COMMISSIONER PARKER: How much it cost the gas  
14 company, how much of a time delay it would have, those kinds  
15 of concerns.

16 EXECUTIVE OFFICER HIGHT: Correct.

17 COMMISSIONER CONNELL: That's why I'm requesting  
18 the study.

19 COMMISSIONER PARKER: I personally am not prepared  
20 to vote for doing the green line today. I have some  
21 concerns about the property owner because of the concerns  
22 that he brought up. They're very important ones. I'm  
23 concerned about the cost. And I guess I would be more  
24 willing tot make a decision if I knew what the impact would  
25 be from the report on the cost.

1           COMMISSIONER CONNELL: That's why I'm requesting  
2 the study, because I feel that there have been some very  
3 compelling issues raised today. And I don't feel we have  
4 adequate information. So, I was hoping that we would not  
5 delay the gas company in moving forward south of 54, because  
6 there doesn't seem to be, as I understand it -- and correct  
7 me if I'm wrong, staff -- there does not seem to be an  
8 outstanding issue now south of 54.

9           We seemed to have Mr. Talbott agree; is that  
10 correct, Mr. Talbott?

11          MR. TALBOTT: Absolutely correct.

12          COMMISSIONER CONNELL: That south of 54, we might  
13 go with the proposed route by the gas company. And north of  
14 54, though, I thought there were some issues that I remain  
15 unconvinced as to the completeness of the information.  
16 That's why I made the motion to have the study, and delay  
17 the decision north of 54.

18          COMMISSIONER PARKER: Mr. Galbraith, could you  
19 respond to that -- I guess you'd come back one more time,  
20 but it would give us the opportunity, in essence, to be in a  
21 better position of understanding the cost implications to  
22 you.

23          MR. GALBRAITH: I guess what I'd have to say is  
24 that we've come to a point here --

25          (Thereupon, the reporter requested

1 the speaker to approach the microphone.)

2 MR. GALBRAITH: We've come to a point where we  
3 know what the cost of this lateral is going to be if we  
4 construct it today. We have the contract, our bids in.  
5 This thing is running a couple hundred thousand dollars, as  
6 it sits, higher than we initially projected. It's a low  
7 revenue operation. Tuscarora Gas Transmission Company is a  
8 partnership. We have two partners. I know our partner is  
9 very nervous about spending the dollars to date on this  
10 thing.

11 We're very leery about spending another nickel.  
12 While I understand what you're saying, I suppose what we'd  
13 do is, you know, we have to go back and take a look at the  
14 economics.

15 We would hate to have to spend more money. The  
16 cultural resources is a schedule problem. That scares me  
17 even more, because that looks -- has the potential to push  
18 us out into 1996. But, I guess, beyond that, it's your  
19 decision. I just ask you to consider all the facts and  
20 leave it with your decision. I guess that's not much of a  
21 response. That's just a comeback I suppose.

22 CHAIRMAN DAVIS: Well, you know, I think there has  
23 to be some finality to the process. Staff has basically  
24 recommended that we approve the proposed route.

25 EXECUTIVE OFFICER HIGHT: Yes, Mr. Chairman.

1           CHAIRMAN DAVIS: And the proposal is that we  
2 approve that portion of the proposed route south of 54.

3           And the question is whether the interim activity  
4 she's proposing will increase the cost to the ultimate  
5 consumers or whether the study will be complete in a timely  
6 fashion that would allow the project to be completed without  
7 additional cost.

8           I guess nobody knows the answer to that.

9           EXECUTIVE OFFICER HIGHT: If the applicant was  
10 amenable to doing the cultural study around the intersection  
11 of the green line and 54, and report back to the Commission  
12 within, you know, as quickly as possible -- if there's a  
13 major a problem there, I'm assuming then that that is a  
14 major determining factor. If there is no problem there,  
15 then the issue is how much more would it cost to do the  
16 other two crossings.

17           And if the applicant perhaps would be willing to  
18 do the cultural study -- which I don't know how much it  
19 would cost -- but it probably would be 50,000 -- and then  
20 have the bids on the other two sites, which would give the  
21 Commission some sort of ball park parameter as to how much  
22 more this will cost, is it doable, then we can look at this  
23 one more time.

24           CHAIRMAN DAVIS: Mr. Talbott, if I call on you,  
25 would you promise not to exceed one minute?

1           MR. TALBOTT: I can do it in about 20 seconds. I  
2 would just like to remind the Commission of my  
3 recommendation to take a look at open trench versus  
4 directional drilling. All these added costs are the result  
5 of if that high risk directional drilling is a failure, you  
6 have to do it twice.

7           And I really think that we've shot ourselves in  
8 the foot here by insisting on doing directional drilling and  
9 not taking open trench.

10          The Fish & Game said that they would be happy with  
11 either one. They'd be monitoring both.

12          CHAIRMAN DAVIS: Didn't we just speak to that  
13 earlier, that several agencies got together and assumed that  
14 that was the best approach.

15          EXECUTIVE OFFICER HIGHT: Right.

16          CHAIRMAN DAVIS: And we're litigating these issues  
17 forever, and I'd say the Supreme Court has said it's final  
18 because it's right. Right, it's final.

19          I'm sympathetic to Mr. Talbott's concerns, but I  
20 also don't want to be the reason that the customers get  
21 socked with a huge bill.

22          Let me suggest an amendment to your proposal.  
23 What if we did the cultural study near the intersection of  
24 the river crossing near Road 54, and then -- and see if that  
25 changes -- the results of that change the Commission's



1 recommendation. If it didn't, maybe we'd just vote up or  
2 down on the project then.

3 If the applicant is agreeable to that, then it's  
4 not quite as ambitious as the Controller has suggested, but  
5 it's a shorter study that will give us more information on  
6 the cultural impacts.

7 MR. GALBRAITH: Well, we'd be willing to go back  
8 and take a -- you know, do a pedestrian survey and try and  
9 get a -- what we don't want to do is get into a expensive  
10 testing program.

11 We'd certainly be willing to take a look at that,  
12 sure.

13 CHAIRMAN DAVIS: I guess I take it that Mr.  
14 Talbott is aware that we're getting close to a yes vote on  
15 this project. So, if you want to negotiate something with  
16 these folks, I respect your tenacity and respect your  
17 integrity, but I suggest that it would be done between now  
18 and the next meeting, assuming there would be a compromise  
19 on this.

20 MR. TALBOTT: I just want to understand, we're  
21 going to proceed with a cultural study. And if they don't  
22 find anything on the site, then what are we going to do?

23 CHAIRMAN DAVIS: We're going to vote the project  
24 out.

25 MR. TALBOTT: Vote in favor of my --

1           CHAIRMAN DAVIS: Vote in favor of -- well, we'll  
2 have to see how we vote.

3           COMMISSIONER CONNELL: We'll vote as the evidence  
4 would suggest at that point. What we're trying to do, Mr.  
5 Talbott, is get the information regarding the cost factor  
6 here and whether there are any reasons why we could not move  
7 the route into the alternative.

8           COMMISSIONER PARKER: Mr. Chairman, one question.  
9 It gets back to what Bob had suggested. It seems to me that  
10 the company has raised two considerations for cost. One of  
11 them is the cultural area, but also there may be additional  
12 costs because of the crossings being on the green route as  
13 opposed to the purple route.

14           EXECUTIVE OFFICER HIGHT: Right.

15           COMMISSIONER PARKER: So, I guess they're going to  
16 be looking into the costs, which I'm concerned about, too.  
17 Shouldn't we also have some sense about whether or not that  
18 is -- those, in fact, create greater costs?

19           EXECUTIVE OFFICER HIGHT: Yeah, if the applicant  
20 could get a bid on what those costs would be, that would  
21 certainly provide the Commission with adequate information  
22 to go either direction.

23           COMMISSIONER CONNELL: Is that information readily  
24 available? Could you bring that back before us?

25           EXECUTIVE OFFICER HIGHT: It would be up to the

1 applicant to --

2 MR. GALBRAITH: Sure, if you're just looking for  
3 an estimate to go do a pedestrian survey across that north  
4 of 54?

5 COMMISSIONER CONNELL: Right.

6 EXECUTIVE OFFICER HIGHT: And the cost for the  
7 crossing the Pit River on the green, what additional cost  
8 that will create.

9 MR. GALBRAITH: So, you'd want us to go do a  
10 drilling, do a core drilling.

11 EXECUTIVE OFFICER HIGHT: You've got to do a core  
12 drilling to get that answer?

13 MR. GALBRAITH: Yes.

14 EXECUTIVE OFFICER HIGHT: How much does a core  
15 drilling cost?

16 MR. GALBRAITH: That's going to be between five  
17 and ten thousand, a minimum of five. Geotech has said as  
18 much as 10.

19 MS. SEKELSKY: That's per core?

20 MR. GALBRAITH: No, that's total. The expense is  
21 mobilizing and getting out there, and then you can -- and  
22 then, once you're out there, you can drill more.

23 Now, the reason we didn't core this time was there  
24 was an access problem. However, what we did do is we did do  
25 enough ground -- we used seismic refraction, but we tested

1 it against the corings that had already taken place on the  
2 Talbott property to kind of get a baseline so that we could  
3 get a reality check on the ones that we did most recently.

4 So, we did "truth" those, and we're confident that  
5 bedrock is where we think it is. And we're not, you know,  
6 to spend \$5,000-plus to go find out something we already  
7 know is a little bit unpalatable, especially in light of the  
8 economics of the project already.

9 Although we want this resolved, too. And --

10 CHAIRMAN DAVIS: Do I understand you to say you  
11 could do the surveys in the neighborhood of \$10,000?

12 MR. GALBRAITH: Yes.

13 CHAIRMAN DAVIS: To gather the information we're  
14 looking for?

15 MR. GALBRAITH: Well, that would give us the  
16 corings on the downstream or the green route. The  
17 pedestrian survey for cultural is probably going to be  
18 another 5,000 assuming we do no testing.

19 Now, if testing is required, that's -- my cultural  
20 coordinator says -- he estimated that at 15,000. You may  
21 have to do testing to find out if you have to do data  
22 recovery. Data recovery, he estimated to be anywhere from  
23 50 to \$100,000.

24 Now, what he said was, it's unpredictable and you  
25 don't know till you go out and start digging around.

1           COMMISSIONER PARKER: We know that in order to do  
2 the EIR -- if you had to do the green route, at a minimum,  
3 it would cost you in the neighborhood of \$75,000?

4           MR. GALBRAITH: Yes. Construction -- just  
5 construction costs. Now to go out and permit all this, you  
6 have additional costs here. There's a few dollars in there  
7 for some cultural testing -- excuse me, cultural pedestrian  
8 survey.

9           I didn't realize when we pulled those numbers  
10 together, that it was a hot bed of cultural resources out  
11 there. This is new information for me today.

12          COMMISSIONER PARKER: So, at a minimum, to meet  
13 the requirements of the green line, you probably would have  
14 to spend somewhere in the neighborhood of \$75,000 in order  
15 to do appropriate reports to get approval by us.

16          MR. GALBRAITH: I would say, if we went out and  
17 did the pedestrian survey, the testing, and the coring, and  
18 nothing else, just those field tests, no embarking on an  
19 environmental assessment or whatever, we're probably talking  
20 closer to 50,000.

21          CHAIRMAN DAVIS: But then, if we did suggest that  
22 the green route north of 54, that would be another 75,000,  
23 right?

24          MR. GALBRAITH: Yes. Yes, in construction costs.  
25 So, let me see if I can put this -- pull this

1 together.

2 Just to give you folks the ability to make the  
3 decision, we will probably go spend, let's say, \$7,000 on  
4 the coring of the downstream location. We would probably  
5 spend another 5,000, let's say 7,000 there, too, for the  
6 pedestrian survey north of 54. So, we're up to 15.

7 If you -- what I'm anticipating is that we'll have  
8 to go out and test that, actually do some drilling and  
9 testing; our estimate on that was 15,000. So, you're up to  
10 30.

11 So, maybe we're really looking at -- and then  
12 engineer's time to go out and just make sure everything's  
13 right there where he wants it.

14 I can see this easily going to, you know, 35,  
15 40,000, maybe as much as 50. Let's just say 40,000 for the  
16 sake of argument.

17 Now, if that sways your decision to go for the  
18 green route all the way, it would cost us a minimum of  
19 another 75,000 to construct that. Okay. And then depending  
20 how much risk -- how many failures we had, that cost could  
21 go up. And I can't predict that. I don't want to say  
22 that's going to happen. The potential's there.

23 EXECUTIVE OFFICER HIGHT: In addition, Mr.  
24 Chairman, there's the issue of -- depending on what they  
25 find in the cultural study, and what they find in the core

1 drillings, supplemental environmental documentation may be  
2 required -- staff is indicating probably -- which would kind  
3 of put the thing off track, depending on how long that would  
4 take.

5 That would probably put them in the neighborhood  
6 of another -- if they ran simultaneously, that's another  
7 four to six months.

8 COMMISSIONER PARKER: Mr. Chairman, I'm just  
9 concerned about -- and I appreciate the Controller's  
10 proposal; it certainly would provide more information. I  
11 just need to think about having to go out and spend some  
12 more money for us to find out that it is more -- you know,  
13 substantially more expensive to use the green route than the  
14 purple route. So, they will have spent that money on top of  
15 what it would cost to construct the purple route.

16 We need to really think about requiring the gas  
17 company to spend more money. I would suggest that if we do  
18 make that motion, we may be coming back approving the purple  
19 route, because we're requiring them to spend 50, \$75,000.

20 It sounds like, based on the staff's  
21 recommendation, they know that it's going to cost us more  
22 money today.

23 COMMISSIONER CONNELL: Let me ask the gas company  
24 a question, and perhaps you can't answer this in public.

25 What are you going to have to pay Mr. Talbott for

1 access through his land?

2 MR. GALBRAITH: I believe it's --

3 COMMISSIONER CONNELL: Because we're talking about  
4 how much the green route is going to cost you additional. I  
5 want to know how much the purple route is going to cost you  
6 taking into account the money you're going to be paying Mr.  
7 Talbott. Because there is a factor that we have not  
8 discussed today. You're not going to get access to this  
9 land for free.

10 MR. GALBRAITH: I don't mind telling you what that  
11 is if Mr. Talbott doesn't mind.

12 MR. TALBOTT: I have no objection.

13 MR. GALBRAITH: I believe it's ten-thousand three.

14 COMMISSIONER CONNELL: So, that's all you're going  
15 to be paying?

16 MR. GALBRAITH: And 6,000 of that is damages.

17 COMMISSIONER CONNELL: Pardon me?

18 MR. GALBRAITH: And 6,000 of that is what we call  
19 damages.

20 COMMISSIONER CONNELL: So, that's 10,000 that you  
21 would have as a charge on the purple route.

22 MR. GALBRAITH: That's correct. Unless he can  
23 convince some judge in some court later down the road that  
24 he does, in fact, have greater damages through the  
25 combination process.



1           Now, what I was going to suggest as a compromise,  
2 and maybe you were going to beat me to it here -- and maybe  
3 Mr. Talbott would like to contribute -- if we fail, maybe  
4 that 10,000 could support the cost of the expense we have in  
5 trying to make a determination up front. It wouldn't pay it  
6 all; it wouldn't pay half. But it would be better than  
7 nothing.

8           MR. TALBOTT: I didn't hear all that.

9           (Laughter.)

10          CHAIRMAN DAVIS: The gas company's inviting you to  
11 share the cost.

12          MR. TALBOTT: I should help the gas company -- the  
13 oil and gas companies with money?

14          MR. GALBRAITH: Maybe I shouldn't have even raised  
15 that, but I --

16          CHAIRMAN DAVIS: We don't have a second for the  
17 Controller's Motion. That's where we are. And I appreciate  
18 what she's trying to do.

19          MR. GALBRAITH: I would -- if I could just take  
20 one minute, something I did forget about. It's something I  
21 did forget about a little bit earlier. In addressing the  
22 wildlife issue, our four-inch gas pipeline is not  
23 incompatible with wildlife. That thing, once it's in the  
24 ground, is gone. And so, we'll have some reclamation, but  
25 we should never be out on that property ever again unless

1 there's an emergency. And, frankly, I just -- there's more  
2 chance for damage to that pipeline on the green route than  
3 there is on the purple -- excuse me, on our route, because  
4 it's near a road, and that's where work happens is near  
5 roads.

6 CHAIRMAN DAVIS: Would you say that again?  
7 There's more chance of damage to the pipeline on your  
8 proposed route than on --

9 MR. GALBRAITH: No, on the green route.

10 CHAIRMAN DAVIS: Okay.

11 MR. GALBRAITH: Anytime you put a pipeline, one of  
12 the routing criteria is not to lay these things in road  
13 ditches, and the reason being that you never know when some  
14 county, or telephone company, power company is going to get  
15 out there and dig a hole and be into it.

16 We purposely try to avoid following roads for just  
17 that very reason, at least stay out of their immediate  
18 right-of-way.

19 But the point I was going to make was relative to  
20 antelope kidding and all the other wildlife concerns that  
21 Mr. Talbott has raised. You know, we can put this thing in  
22 the ground in six weeks, you know, we come through and  
23 reclaim it, and then we're out of there.

24 We may come back and spot check, but all the  
25 aerial patrols -- all the patrols or subsequent patrols are

1 done by helicopter or from the road. And the only reason  
2 for those patrols is to make sure no one's digging into our  
3 pipeline.

4 So, I don't see that this facility is incompatible  
5 with antelope kidding or anything else. I think the  
6 environmental impact report has beared (sic) that out.

7 CHAIRMAN DAVIS: Well, all right. If there's no  
8 further discussion, we have a motion before us. Do we have  
9 a second on the Controller's motion? Hearing none, the  
10 Chair would entertain a motion either to approve the staff  
11 recommendation or to approve the staff recommendation up to  
12 the crossing at Road 54.

13 COMMISSIONER PARKER: What about a motion that we  
14 would -- to the extent that this is our purview, which I  
15 would ask the staff, a motion to approve the conditioning of  
16 our approval up to -- on the purple route up to Road 54 to  
17 see whether or not there would be any further -- to give  
18 some further opportunity for -- based on your conversation  
19 to see if anything can happen between the gas company and  
20 the landowner between now and our next meeting to make a  
21 decision on the route.

22 My problem is, I guess I would be willing to make  
23 a recommendation to -- a motion to adopt staff  
24 recommendation. I just would be willing to entertain some  
25 additional time if I thought it would be useful between the

1 two parties to come to any sort of more reconciliation. But  
2 I don't know how that would happen.

3 I'm still concerned about the cost. I think, if  
4 we don't adopt the route proposed, it's going to cost the  
5 ratepayers more money. And so, I guess I'll try. I'll make  
6 a motion to move the staff recommendation.

7 MR. TALBOTT: Do I get to comment on this?

8 CHAIRMAN DAVIS: Well --

9 MR. TALBOTT: I only got six months.

10 CHAIRMAN DAVIS: Six minutes? I wish you only had  
11 six minutes. We have a motion. All right. Go ahead.

12 MR. TALBOTT: It would be beneficial to stay off  
13 this item on the last section of the route and give  
14 Tuscarora and myself an opportunity to negotiate this.  
15 Obviously, if this goes on the way it has today, I'm not  
16 going to have much a chance to negotiate anything.

17 And I agree with putting everything on the table  
18 here, hoping that I would win. It looks like things are not  
19 going my way. So, I would definitely like to have more time  
20 to discuss it with Tuscarora.

21 COMMISSIONER CONNELL: Well, that's my motion  
22 without the study.

23 Our next meeting is next month, right? That  
24 gives them potentially a month.

25 COMMISSIONER PARKER: I would make a motion that

1 we take an action today to approve the route up to -- along  
2 the purple route to Road 54, and that we consider the  
3 balance of the route at our next meeting.

4 COMMISSIONER CONNELL: I'll second that. We won't  
5 have any more information, but I'll second it.

6 CHAIRMAN DAVIS: And I will make it unanimous,  
7 although I think you can tell that I'm hoping Mr. Talbott  
8 negotiates successfully in the next 30 days, because there  
9 are some other items that this Commission has to deal with.

10 So, that's unanimous.

11 EXECUTIVE OFFICER HIGHT: Thank you, Mr. Chairman.  
12 We have two more items, and we will do them very quickly.

13 We have Item No. 87, which is the certification of  
14 an environmental impact report for a Unocal marine terminal.  
15 We have a picture, just got it from Hercules just to show  
16 you. This is the Unocal refinery, and Mark will point out  
17 the marine terminal. And this is an ongoing lease  
18 negotiation with Unocal. And staff believes the EIR is  
19 adequate and recommend certification of the EIR.

20 CHAIRMAN DAVIS: Is there anyone here who opposes  
21 this project?

22 I don't have any letters in opposition.

23 COMMISSIONER CONNELL: I move the staff  
24 recommendation.

25 COMMISSIONER PARKER: Concur.

1           CHAIRMAN DAVIS: I agree. I concur. It's not  
2 reflected as being part of the motion, but it's suggested  
3 that Unocal make another phone call to the citizens of  
4 Crockett. There's one person --

5           EXECUTIVE OFFICER HIGHT: Ruth Blakey (phonetic).

6           CHAIRMAN DAVIS: That they please call her and be  
7 nice to her.

8           EXECUTIVE OFFICER HIGHT: Unocal is going to meet  
9 tomorrow with the -- an organization to try to resolve those  
10 problems.

11          CHAIRMAN DAVIS: All right. Next?

12          EXECUTIVE OFFICER HIGHT: Then we'll go to Item  
13 No. 63.

14          CHAIRMAN DAVIS: That's approved unanimously.

15          EXECUTIVE OFFICER HIGHT: 63, Mr. Chairman, which  
16 is the lease of land for a dam across the Russian River in  
17 Sonoma County. And we received one letter of comment, which  
18 Jane Sekelsky promised to read into the record; however, in  
19 the interest of time, you could direct us to submit that  
20 into the record.

21                 And her major concerns relate to the Commission's  
22 public trust responsibilities, and she's also concerned that  
23 this creates some problems for shad.

24                 This is an ongoing project that is CEQA exempt,  
25 and staff recommends it.

1           COMMISSIONER CONNELL: I move the staff  
2 recommendation.

3           CHAIRMAN DAVIS: Is there anyone here who's  
4 opposed to the project?

5           MS. SEKELSKY: First of all, a technical  
6 correction. I think this is Item C62.

7           CHAIRMAN DAVIS: Yes.

8           MS. SEKELSKY: And the letter is in opposition to  
9 the project on the basis that Bob has stated. She is  
10 concerned with the public trust implications relative to  
11 fisheries and navigation in the waterway. And she is  
12 generally frustrated with the approach that's been taken.

13           But this is a structure that has been in place  
14 every year since 1962. It precedes CEQA and, as such, is  
15 exempt from CEQA. So, we don't get into a CEQA analysis of  
16 it.

17           CHAIRMAN DAVIS: Any further comment?

18           We have a motion.

19           COMMISSIONER PARKER: I concur with the staff  
20 recommendation.

21           CHAIRMAN DAVIS: It's unanimous.

22           That's all the business?

23           EXECUTIVE OFFICER HIGHT: Yes, sir.

24           CHAIRMAN DAVIS: The meeting stands adjourned.  
25 Thank you for coming.

(Thereupon, the meeting was adjourned  
at 4:10 p.m.)

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## CERTIFICATE OF SHORTHAND REPORTER

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 meeting was 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 29th day of July, 1995.

  
\_\_\_\_\_  
Nadine J. Parks  
Shorthand Reporter