

MEETING  
STATE OF CALIFORNIA  
STATE LANDS COMMISSION

STATE CAPITOL  
ROOM 447  
SACRAMENTO, CALIFORNIA

WEDNESDAY, JANUARY 30, 2002  
10:00 A.M.

JAMES F. PETERS, CSR, RPR  
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APPEARANCES

COMMISSIONERS

Kathleen Connell, Chairperson

Cruz Bustamante, Lieutenant Governor

B. Timothy Gage, Director of Finance, represented by  
Annette Porini

STAFF

Paul Thayer, Executive Officer

Jack Rump, Chief Counsel

Paul Mount

Alan Scott

Jim Trout

Kirk Walker

ALSO PRESENT

Alan Hager, representing the Attorney General

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1    PROCEEDINGS

2                    CHAIRPERSON CONNELL: Good morning. I call the  
3 State Lands Commission meeting to order, and two of the  
4 three representatives of the Commission are present. I'm  
5 Kathleen Connell, the State Controller and Chair of the  
6 Commission. And I am joined today by Annette Porini from  
7 the Department of Finance. We hope to be joined shortly  
8 by the Lieutenant Governor, Cruz Bustamante.

9                    For the benefit of those who are in the audience  
10 who have not attended past meetings of the State Lands  
11 Commission, it is the purview of this Commission to deal  
12 with the property and mineral rights of the State of  
13 California.

14                   And if you wish to speak on an item at this  
15 Commission meeting, we'd ask that you fill out a speaker  
16 card and turn it in to us, so that you can be  
17 acknowledged. If you do not have a speaker card, you will  
18 not have an opportunity to address the Commission.

19                   The first item of business today is going to be  
20 the adoption of the minutes from the Commission's last  
21 meeting. May I have a motion to approve the minutes?

22                   ACTING COMMISSIONER PORINI: Move approval.

23                   CHAIRPERSON CONNELL: Thank you. That is  
24 unanimous.

25                   The next order of business is the Executive

1 Officer's report. May I have that report.

2 EXECUTIVE OFFICER THAYER: Madam Chair, I just  
3 have several brief items. I wanted to report on our  
4 progress of putting more items for each Commission meeting  
5 on the web site, so they're available more generally to  
6 the public. I know that's an item of concern both to the  
7 Chair and other members of the Commission, that we, as  
8 broadly as possible, involve the public in our function.  
9 And we're taking advantage of our web site to do that.

10 At our last meeting, all of the regular calendar  
11 items were placed on the web site so that members of the  
12 public could read the staff report itself without having  
13 to receive it in the mail. We've done that, again, for  
14 this meeting, and had hoped to put all of the Consent  
15 Calendar items on as well, but we're running into both  
16 legal and potential security problems in the wake of 9/11  
17 that we want to consider fully before we take that  
18 additional step.

19 Nonetheless, some of the selected items that we  
20 thought there was more public interest in from the Consent  
21 Calendar have had the staff reports made available through  
22 the web site for this meeting. And I'll continue to  
23 report on that as we progress on that.

24 CHAIRPERSON CONNELL: I appreciate that. Now,  
25 the next order of business I think -- did you have

1 anything else?

2 EXECUTIVE OFFICER THAYER: Just two other quick  
3 things. I just wanted to note there were two, sort of,  
4 ongoing environmental problems that the Lands Commission  
5 staff has been involved in. It might not necessarily ever  
6 involve the Commission itself, but I thought the  
7 Commission should be aware of.

8 The first is a mystery oil spill off of the coast  
9 of northern California. It's gotten a lot of press, oiled  
10 birds have shown up on the coast, and there doesn't seem  
11 to be any specific ship involved. There's some thought  
12 that it might be a sunken vessel, a vessel that had gone  
13 down before, and the recent storms had stirred up the  
14 wreck and brought oil out.

15 Our staff is working closely with the Department  
16 of Fish and Game to help identify the source of that oil  
17 and determine what can be done about that.

18 And the other one that I wanted to highlight is  
19 that the recent invasion of the so-called killer algae,  
20 that caulerpa taxifolia. This is an algae that people use  
21 in their aquariums. Unfortunately, some people evidently  
22 dumped it out into the waters in southern California. And  
23 examples of that species have shown up in Huntington Beach  
24 and Agua Hedionda.

25 Biologists are very concerned that the effect of

1 that, it doesn't kill other species per se, but it takes  
2 over the entire area. So all of the plants, the native  
3 plants, that fish and other animals depend upon get  
4 crowded out. In the Mediterranean, thousands of square  
5 miles have been destroyed through this algae.

6 CHAIRPERSON CONNELL: How do you clean it up?

7 EXECUTIVE OFFICER THAYER: It's very difficult,  
8 because it's like, is it Methuselah, that if you cut off  
9 one little piece and it shows up somewhere else, it can  
10 start again.

11 What they're trying to do is make tents over each  
12 plant and then they introduce chlorine in that tent, and  
13 the tent concentrates the chlorine around the algae and  
14 can kill it, and keep it from moving out and killing other  
15 plants around it. They've had some success in doing that,  
16 but they still haven't cleared it up.

17 Our involvement has to do with the legalities of  
18 boat traffic. There are some sport boat users of the same  
19 waters who are concerned that if they're closed from using  
20 those waters that they may never be able to go back.  
21 We're working with the locals to try and work out legal  
22 arrangements so that this algae can be dealt with and then  
23 everything can go back to normal.

24 CHAIRPERSON CONNELL: Going back to the oil, the  
25 mystery oil spill, wouldn't we have a map of all of the

1 sunken vessels? I'm surprised. I thought we had that  
2 discussion many years ago, that we had a map of sunken  
3 vessels for obvious reasons. Why would we not have had  
4 that ship identified if there is such a ship?

5 EXECUTIVE OFFICER THAYER: I think it's known  
6 where some of these wrecks are, but it's not clear whether  
7 or not that oil is coming off the wrecks. And so they  
8 need to take samples of that oil and compare it with  
9 samples that they've already gotten off those wrecks and  
10 that kind of thing.

11 So you're absolutely right, some of the  
12 information we have on locating these wrecks is going to  
13 be useful in pursuing this issue, but it's -- the other  
14 problem is identifying whether or not that oil came from  
15 that wreck.

16 CHAIRPERSON CONNELL: How deep is the ocean at  
17 that point?

18 EXECUTIVE OFFICER THAYER: I'm not sure. I don't  
19 know. I'll find out, but, again we're devoting --

20 CHAIRPERSON CONNELL: Annette, you had a  
21 question?

22 ACTING COMMISSIONER PORINI: Yes. One of the  
23 articles that I read indicated that there was also the  
24 possibility that there might be some kind of natural  
25 fissure that was emitting oil. Do we have geological maps



1 where they know where these are, or it's just guesswork,  
2 at this point, in terms of being able to locate?

3 EXECUTIVE OFFICER THAYER: Those fissures, of  
4 course, are very common off of Santa Barbara. And those  
5 of you that have gone out to oil platforms probably flew  
6 over places where the gas and oil were coming up. But  
7 there isn't as much of that in the San Francisco area.

8 And to some extent because that hasn't been --  
9 oil hasn't been produced there, there isn't as much  
10 knowledge about it, but I'm sure that's something that we  
11 can check out as well. And if necessary, we would involve  
12 our engineers like Paul Mount and the others from the Long  
13 Beach office who may have expertise and others in state  
14 government.

15 CHAIRPERSON CONNELL: I really would like to play  
16 a leadership role here, and I'm sure that Annette would  
17 join me in that, because this is disturbing. I mean, we  
18 certainly do want to have this incident. We've tried so  
19 hard along the coastline, particularly with the way we've  
20 taken, I think, a very strong stand on the off-shore oil  
21 wells and maintenance of those off the southern California  
22 shore, I'd hate to have this incident be a precursor of  
23 other things that might come.

24 EXECUTIVE OFFICER THAYER: Exactly. As you know,  
25 we have, as a whole division, devoted time to preventing

1 oil spills at oil terminals. And they take a lot of pride  
2 in their work. We made a significant difference in  
3 reducing the number of spills and the quantity of oil  
4 that's spilled.

5 And so we think some of that expertise, as well  
6 as, the expertise in our Mineral Resources Management  
7 Division that manages oil production could be useful to  
8 the State in trying to get to the bottom of this. And  
9 we'll continue to work with the other agencies and offer  
10 that expertise.

11 CHAIRPERSON CONNELL: Anything else?

12 EXECUTIVE OFFICER THAYER: That concludes my  
13 report.

14 CHAIRPERSON CONNELL: Thank you, Mr. Thayer.

15 Now, the next order of business will be the  
16 adoption of the Consent Calendar. I would like you to  
17 indicate which items have been removed from the Consent  
18 Calendar, if you will, please.

19 EXECUTIVE OFFICER THAYER: There are no items to  
20 remove from the Consent Calendar.

21 CHAIRPERSON CONNELL: Is there anyone who wishes  
22 to speak on an item on the Consent Calendar?

23 ACTING COMMISSIONER PORINI: Move approval of the  
24 Consent Calendar.

25 CHAIRPERSON CONNELL: Thank you. It's been moved

1 and seconded.

2 Now, Items 46 and 47 are off calendar. They will  
3 be heard at a future hearing; is that correct, Mr. Thayer?

4 EXECUTIVE OFFICER THAYER: Yes, Madam Chair.

5 CHAIRPERSON CONNELL: We then have three items  
6 left. We have Item 48. We have Item 49, and we have Item  
7 50.

8 Now, I notice from my speaker notes here that we  
9 only have one person on Item 49, and I would like very  
10 much to handle, if it's all right with you, Ms. Porini, to  
11 move Item 49 forward so we can complete that, so that one  
12 speaker can leave, because we have numerous people who  
13 wish to speak on the earlier item.

14 ACTING COMMISSIONER PORINI: That's fine.

15 CHAIRPERSON CONNELL: So if we can move the  
16 agenda. Let's handle Item 49 and 50 first, and then we'll  
17 move back to 48.

18 Item 49 is consideration of Bolsa Chica  
19 restoration project. And let's hear the details from the  
20 staff on the Final EIR, and consider adoption of the  
21 proposed project. Can you begin that presentation, Mr.  
22 Thayer, and introduce your staff people and joining us is  
23 the Lieutenant Governor.

24 Good morning.

25 COMMISSIONER BUSTAMANTE: Good morning.

1           CHAIRPERSON CONNELL: We had just moved the  
2 agenda, so we are considering Item 49 and 50 first,  
3 because there is limited interest in that and then we'll  
4 go back to 48 where there are a number of speakers.

5           All right, Item 49.

6           EXECUTIVE OFFICER THAYER: Thank you, Madam  
7 Chair. Presenting this matter for the Commission from our  
8 staff will be Jim Trout. Jim Trout is the former  
9 Assistant Executive Officer and is continuing to work with  
10 us as a retired annuitant. He's worked on this project  
11 for a long time and he couldn't stand to leave until we  
12 finished it.

13           (Laughter.)

14           EXECUTIVE OFFICER THAYER: We're very glad to  
15 have him working on it. And, I believe, Jack Fancher from  
16 the U.S. Fish and Wildlife Service will also be speaking  
17 on this matter. He's the one who put in the speaker's  
18 slip.

19           CHAIRPERSON CONNELL: Okay, fine.

20           MR. TROUT: Thank you. I don't know whether that  
21 indicates either dedication or an inability to complete  
22 work.

23           (Laughter.)

24           MR. TROUT: Five years ago the Commission  
25 approved a historic series of agreements involving the

1 ports of Los Angeles, eight State and federal agencies,  
2 which set the stage for the restoration of some  
3 significant and rare wetlands in southern California, in  
4 Orange County in the city of Huntington Beach.

5           The agreements provided that the project would be  
6 directed by an inter-agency agreement, four federal and  
7 four State agencies. In the past five years this group  
8 has conducted a number of public workshops in the area,  
9 completed engineering studies, briefed local government,  
10 completed an ecological inventory or survey, and a  
11 significant joint federal State environmental document.

12           The project that is before you is the result of  
13 all of that work. It was presented to the Coastal  
14 Commission at a workshop to be followed later in November  
15 of 2001 with a Coastal Commission hearing.

16           The Coastal Commission basically agreed that the  
17 project was consistent with the California Coastal  
18 Management Program. The project that was recommended by  
19 the Steering Committee was modified slightly by the  
20 Coastal Commission to require some final sediment dredging  
21 and a disposal plan to be submitted to them, a beach  
22 monitoring plan modification, some additional biological  
23 monitoring and the reduction of Pacific Coast Highway over  
24 the inlet from six to four lanes.

25           We have responded to all of those. And the

1 project we're asking you to approve today would be amended  
2 by these requests of the Coastal Commission.

3 We have letters of support from the Bolsa  
4 Conservancy, the Amigos de Bolsa Chica and the  
5 Environmental Protection Agency. And we have previous  
6 support from the City of Huntington Beach. I'm going to  
7 ask Jack Fancher with the Fish and Wildlife Service to  
8 just take a minute to summarize the project that we're  
9 asking you to approve, since he has done so with the  
10 Coastal Commission previously and would provide a very  
11 consistent and brief presentation.

12 CHAIRPERSON CONNELL: Thank you. And, Jack,  
13 would you identify yourself for the record.

14 MR. FANCHER: Good morning, Madam Chair and  
15 Commissioners. I'm Jack Fancher. I'm the Bolsa Chica  
16 project manager for the Fish and Wildlife Service,  
17 Carlsbad field office.

18 As Jim said, we worked together for quite awhile.  
19 And when is the last time you've heard of eight agencies  
20 working so closely together and so well? One of the roles  
21 that the Fish and Wildlife Service has is the NEPA lead.  
22 We're NEPA co-lead with the Corps of Engineers. And since  
23 it's a joint document, partnered with the State Lands  
24 Commission.

25 I expect there's a strange bedfellow story in

1 there somewhere. But nevertheless, I think we're all very  
2 proud at our success at reaching this day.

3 This is your day. This is the conclusion of  
4 final approvals and the beginning of construction.  
5 Construction, of course, begins with final design, so  
6 we're a year or more away from construction in throwing  
7 dirt.

8 But this is the day, this is the time to step  
9 forward, declare our progress with the project. It took  
10 longer than planned because of the very detailed and  
11 careful work we've done that's in the EIR/EIS. As Jim  
12 mentioned, the reanalysis of all of the engineering issues  
13 was using state-of-the-art and best-available technology  
14 and data.

15 We examined a range of alternatives for  
16 restoration. As you know, Bolsa is a very damaged place,  
17 100 years of mistreatment of the wetlands has greatly  
18 diminished its biological diversity and its biological  
19 values.

20 It once was a tidal salt marsh with an ocean  
21 connection all its own. It's been cutoff from the ocean.  
22 The ocean life, the moderating and regular influence of  
23 the tides dilutes, reinvigorates, enlivens, it brings  
24 biological life in a way that the isolated water regime of  
25 today's Bolsa Chica does not do.

1           There are some aspects of Bolsa Chica that are  
2 worth keeping, some biological aspects. Those  
3 complications, if you will, and the complications of the  
4 man-made features, such as the road, the State beach and  
5 the oil field, greatly complicated our analysis of  
6 alternatives.

7           Preventing, putting it back to its historic  
8 condition exactly, it's not practical. It's not possible  
9 to put it back the way it was historically because of the  
10 these modern day complications.

11           We analyzed the -- many alternative ways to  
12 reinvigorate the biological condition, to make it better  
13 for fish and wildlife and found that the best way to  
14 restore the biological conditions for fish and wildlife  
15 was through reintroducing tidal influence.

16           Our engineering tells us the only way to achieve  
17 tidal influence is with an inlet. An inlet, new inlet,  
18 across the state beach and the coast highway creates  
19 engineering problems and complications that are essential  
20 parts of the EIR/EIS, which we spent a great deal of time  
21 reanalyzing and documenting.

22           Once you restore tidal influence, Bolsa Chica  
23 will come back to life. That is, the tidal waters will  
24 recreate inter-tidal mudflats or shore birds; fish, the  
25 fish community, which is virtually nonexistent in Bolsa



1 now, will come back. It becomes a nursery for marine  
2 fishes.

3           They actually enter the coastal wetlands to grow  
4 large and go back out into the ocean. California Halibut  
5 is of particular interest to recreational fishermen. Of  
6 course, there are the birds with the tidal mudflats and  
7 salt marsh, shore birds, and large numbers of water fowl,  
8 fish eating birds in great profusion.

9           We also propose to do things that are very good  
10 for threatened or endangered species, the bird grass shelf  
11 will directly benefit the Light-footed Clapper Rail, the  
12 most endangered Pacific Coast mainland bird, an extremely  
13 rare and very endangered species, the Light-Footed Clapper  
14 Rail, as well as California Lease Turn, the Western Snowy  
15 Plover, which is a federally listed threaten species, and  
16 Belding's savannah sparrows, is date listed an endangered  
17 species.

18           The biological benefits of this tidal restoration  
19 are very large. The environmental impacts are minimal and  
20 fully mitigated.

21           This document is thorough and complete and we're  
22 preparing the Record Of Decision and the Corps permit now  
23 at this time.

24           The proposed alternative has the largest  
25 biological payoff and the least impact of all. We hope

1 you agree and that certify the EIR/EIS as complete and  
2 adopt the proposed alternative.

3 Thank you.

4 CHAIRPERSON CONNELL: And thank you, Jack, for  
5 being here today. I thank both of you for your  
6 presentation. Thank you, Jim, for your commitment and  
7 your continuation, despite your retirement status on this  
8 issue.

9 Both Annette, and in the capacity of Gray's role  
10 as Lieutenant Governor and now as Governor, has played a  
11 role in Bolsa Chica. Those of you who are in the audience  
12 may well remember this was one of the really precedent  
13 setting agreements between the federal government and the  
14 State. I certainly was proud to be a party to that early  
15 on in the Commission's history. I think it was '97, was it  
16 '97 that we did that --

17 MR. TROUT: Yes.

18 CHAIRPERSON CONNELL: -- signature down in  
19 Huntington Beach? I remember that meeting well. The  
20 Department of Interior was on the phone trying to get  
21 permission to -- Cruz, this was an interesting thing, we  
22 had the Department of Interior people flew in to sign the  
23 agreement, but Gray and I didn't agree. So we were last  
24 minute negotiators and inked some amendments in green and  
25 signed our signature. But that meant the Department of

1 Interior had to get approval from Babbit back in D.C., got  
2 him on the phone and he agreed at the final moment to sign  
3 that agreement. And so his representative signed it.

4 And it was a very, very important day for Bolsa  
5 Chica. I want to thank all the people who are not here  
6 today on behalf of the Commission for the work that they  
7 did, and, again, congratulate our own staff for the fine  
8 work that they've done, for the cooperation which has been  
9 reflected not only in the Department that you represent,  
10 Jack, but in all of the federal agencies and the other  
11 State agencies who played a role here.

12 It was really a remarkable point in time to get  
13 us to move forward. The community has been just  
14 extraordinary in their support and their persistence and  
15 their unwillingness to allow this to collapse at any  
16 point. I think there were negotiations that were preceded  
17 by ten years my own involvement on the Commission in 1997.

18 So I am simply here at the moment in time in  
19 which this has been completed. So I thank all of those  
20 people for the many decades of work that they have done  
21 that has brought this to today's action.

22 Mr. Bustamante, do you have any comments or  
23 questions you'd like to address?

24 COMMISSIONER BUSTAMANTE: I'd like to find out  
25 what is the total cost of the restoration projected to be?

1 MR. TROUT: We have an engineering estimate that  
2 shows that the construction costs would be about \$63  
3 million. The overall costs would run about \$78 million,  
4 but we won't know until we have the final engineering  
5 design done whether these preliminary estimates are  
6 correct or not.

7 COMMISSIONER BUSTAMANTE: How much has been  
8 currently allocated for this project?

9 MR. TROUT: There's about \$56 million available  
10 right now.

11 COMMISSIONER BUSTAMANTE: So we're about \$22  
12 million short.

13 MR. TROUT: We are short -- if the engineering  
14 estimate we have is correct, we're short as much as \$22  
15 million dollars, that's correct.

16 COMMISSIONER BUSTAMANTE: It could be more?

17 MR. TROUT: I doubt it. It could be, of course.

18 COMMISSIONER BUSTAMANTE: And where are we  
19 anticipating receiving that \$22 million from?

20 MR. TROUT: Well, the steering committee agencies  
21 have been working at both the federal and State level to  
22 find some additional money. We've been looking at  
23 potential bond sources. The staff of the Commission has  
24 submitted a budget change proposal to the Department of  
25 Finance for consideration. The federal agencies are

1 reviewing their budgets. We're looking at various  
2 environmental and ecological support groups that might  
3 provide grants.

4 But until we have the engineering design  
5 completed and the final estimate, it's very difficult to  
6 go to someone and say we need exactly this much money.  
7 We're working on the shortfall right now.

8 COMMISSIONER BUSTAMANTE: On page 6 of the  
9 calendar item it indicates "...the proposed project will  
10 require an additional \$30 million to \$50 million. Is  
11 that --

12 MR. TROUT: That would be absolutely worst case.  
13 We don't expect that, but we've tried to indicate the  
14 potential magnitude of it.

15 COMMISSIONER BUSTAMANTE: There's a huge  
16 difference between 22 and 50. What does that mean by  
17 worst case?

18 MR. TROUT: I think when we put some of this  
19 together, we were sort of reaching and expecting it to be  
20 considerably less. Right now, based on the funds that we  
21 have, we're short \$22 million.

22 COMMISSIONER BUSTAMANTE: Okay. Is there any  
23 other clarification of the writing of the 30 to 50  
24 million?

25 EXECUTIVE OFFICER THAYER: I'm not sure why

1 that's in there, because we've been --

2 COMMISSIONER BUSTAMANTE: I'm not sure either.

3 EXECUTIVE OFFICER THAYER: It's much lower than  
4 that. We'll correct that for the record.

5 COMMISSIONER BUSTAMANTE: Okay. Then I'll assume  
6 that the staff is on record saying it's about 22 million.

7 EXECUTIVE OFFICER THAYER: That's correct.

8 COMMISSIONER BUSTAMANTE: Okay. Now, there were  
9 some concerns that not every environmental group had  
10 supported the project. There was a group of, oh, surf  
11 riders that were concerned about beach erosion and other  
12 kinds of things. Was that resolved?

13 MR. TROUT: As far as we know, it is resolved.  
14 They were concerned primarily about water quality, to some  
15 extent regarding beach erosion. They did not appear in  
16 the final Coastal Commission action to oppose it. And we  
17 continued to work with them.

18 So as far as I know, we have done studies that  
19 indicate that water quality will not degrade the existing  
20 condition or cause more beach closures, and the  
21 engineering studies indicate that there will be no  
22 significant change in the search.

23 COMMISSIONER BUSTAMANTE: Okay. I know that a  
24 lot of the environmental groups did work with you and try  
25 to get off of that closed position and into either a

1 support or neutral position. And I hadn't quite heard yet  
2 if this particular group had finally reduced -- we hadn't  
3 heard from them since the new work has been done. And  
4 that was passed by the Coastal Commission?

5 MR. TROUT: That's correct.

6 COMMISSIONER BUSTAMANTE: Okay. Otherwise, with  
7 everything else Madam Chair, I agree this is a great  
8 program. It's a great project. Everybody is to be  
9 commended. I just like to see a little clearer how we're  
10 going to get the \$22 million to make sure that we don't  
11 have something that's going to be half finished.

12 EXECUTIVE OFFICER THAYER: I think your concerns  
13 are well expressed, and they're ones that the steering  
14 committee has been working on for the last several years.

15 I think to some extent the view is that Bolsa  
16 Chica is the last greatest wetland in Southern California.  
17 And the fort money that's largely going to restore this is  
18 going to get the bulk of the work done, but I don't think  
19 any of the State or federal agencies believe that they  
20 will let this thing become half finished. Too many people  
21 are interested in seeing this fixed.

22 COMMISSIONER BUSTAMANTE: Okay.

23 CHAIRPERSON CONNELL: Annette.

24 ACTING COMMISSIONER PORINI: Well, yes, I thank  
25 the Lieutenant Governor for his questions with regard to

1 the continuation of the financing. And so I'll take my  
2 Department of Finance hat off and put on my State Lands'  
3 hat, and just say that I think this is a fabulous project  
4 and it's wonderful that it is finally coming to fruition,  
5 and personally thank Mr. Trout who gave up the better part  
6 of the day to take me through the wetlands and to really  
7 understand it.

8 I spent a little time watching birds, although,  
9 you know, I can't claim that I know all of the different  
10 birds that are there, but it's a fabulous project, and I'm  
11 pleased that we're moving ahead.

12 COMMISSIONER BUSTAMANTE: Move approval.

13 ACTING COMMISSIONER PORINI: Second.

14 CHAIRPERSON CONNELL: Okay. It's been moved and  
15 seconded. That's a unanimous vote. I thank both of you  
16 gentlemen.

17 And can we move now to Item 50, which is the  
18 staff report on the status of the statewide safety audit  
19 program. And, Paul, who's going to begin that  
20 presentation?

21 EXECUTIVE OFFICER THAYER: Thank you, Madam  
22 Chair. This presentation is a status report on our fairly  
23 new safety audit program that we have had in place the  
24 last couple of years. We've gotten an augmentation of our  
25 budget to fund this.



1           And, basically, it was a recognition at the  
2 direction of the Commission, out of the Commissioners'  
3 concerns about potential oil and gas leaks and accidents  
4 from off-shore oil development. We wanted to try and stop  
5 that from happening. And that simply moved from an  
6 inspector based program to an engineer based program to  
7 better review our progress there.

8           I believe this presentation is going to be made  
9 by Paul Mount.

10           MINERAL RESOURCES MANAGEMENT DIVISION CHIEF

11 MOUNT: James Hemphill.

12           EXECUTIVE DIRECTOR THAYER: James Hemphill.

13           CHAIRPERSON CONNELL: It's going to be made by  
14 who?

15           EXECUTIVE OFFICER THAYER: James Hemphill, who's  
16 an engineer with our Mineral Resources Management  
17 Division.

18           CHAIRPERSON CONNELL: Thank you. May I just add  
19 something broadly in the context in which we explore this  
20 issue today. Commissioners, as you recall, we have had  
21 some unfortunate leakage in the off-shore oil wells in  
22 southern California. And upon visiting one of these whole  
23 oil platforms, I believe, it was Platform Holly, was it  
24 not, Paul?

25           EXECUTIVE OFFICER THAYER: Yes.

1           CHAIRPERSON CONNELL: The very day that I was on  
2 Platform Holly there had been an oil emission, which I was  
3 concerned about. And we brought it to the attention of  
4 the federal department that was there with us. And they  
5 happened to have tighter audit standards than the State  
6 did.

7           So I inquired why we could not increase our audit  
8 standards to a level of maintenance and management  
9 controls that the federal government had. And as a  
10 result, the staff was very responsive and has created, and  
11 I must thank the Governor, for funding the new audit  
12 management program that we have in place today.

13           And so this is, I believe, the first program  
14 update. I've asked that it be put on the agenda to find  
15 out how our direction as a Commission has materialized and  
16 what progress we're making.

17           COMMISSIONER BUSTAMANTE: Will this also  
18 harmonize the reporting requirements, so that there's not  
19 two sets of reporting requirements?

20           CHAIRPERSON CONNELL: Can you comment on that? I  
21 think the standards are still different.

22           EXECUTIVE OFFICER THAYER: I think that we  
23 believe that this program is showcasing and increasing our  
24 watch-dog review of these facilities. It was based more  
25 on that, and making sure we got resources that are going

1 out there on a dedicated basis looking at facilities one  
2 by one, and sort of stepping back and ensuring, for  
3 example, that changes that have been made to facilities,  
4 physical changes, operational changes have been  
5 incorporated in the hull of the facility in a way that  
6 they're all going to work.

7 And in the past we've had inspectors that  
8 basically checked to make sure well, do you have this  
9 safety gauge here and that safety gauge. But we didn't  
10 have engineers out there ensuring that new pipelines were  
11 properly connected or that the systems all harmonized  
12 together.

13 So this has less to do with reporting by the  
14 individual companies and more to do with our own review of  
15 those company operations to make sure we understood that  
16 they were operating correctly.

17 COMMISSIONER BUSTAMANTE: Does that mean no?

18 EXECUTIVE OFFICER THAYER: It means no.

19 COMMISSIONER BUSTAMANTE: And, let's see, the  
20 report. I'd love to be able to see the report. I know  
21 that you guys have done a lot of work on it, and let's go  
22 ahead and do your report.

23 EXECUTIVE OFFICER THAYER: Sure.

24 MR. HEMPHILL: Madam Chair and Honorable  
25 Commissions, I'm James Hemphill, Senior Process Safety

1 Engineer for the Mineral Resources Management Division.

2 (Thereupon an overhead presentation was  
3 presented as follows.)

4 MR. HEMPHILL: We've prepared a brief  
5 presentation on the status of the Oil and Gas Safety Audit  
6 Program.

7 At the June 14th, 1999 meeting, the Commission  
8 adopted a zero tolerance policy for environmental  
9 pollution.

10 --o0o--

11 MR. HEMPHILL: As shown, we implemented this  
12 policy by conducting safety audits. MRMD established a  
13 safety audit program to perform these engineering and  
14 technical audits.

15 Three audits have been completed and a fourth  
16 audit, the Comprehensive Long Beach Unit Audit, is nearing  
17 completion.

18 --o0o--

19 MR. HEMPHILL: The Safety Audit Group verified  
20 that the comprehensive safety and environmental programs  
21 are in place, and validates the engineering design of the  
22 facilities and compliance with regulations and standards  
23 to best achievable protection.

24 --o0o--

25 MR. HEMPHILL: This demonstrates a number of

1 action items generated through the three completed audits.

2 CHAIRPERSON CONNELL: I'd like to hold on to this  
3 one for a minute, continue on, but don't flash as you --  
4 whoever is flashing the slide, because I have a comment  
5 about this one.

6 MR. HEMPHILL: The preliminary Long Beach unit  
7 audit preceded the assignment to Occidental Petroleum.  
8 Each of the items, the action items, are ranked from one  
9 through three, with the Priority 1 items being the most  
10 serious.

11 All of the Priority 1 items must be fixed  
12 immediately. The Priority 2 and 3s are addressed within  
13 two to six months, and then completed within a timely  
14 fashion based on engineering analysis and fabrication time  
15 for equipment. Operating procedures are also modified to  
16 reflect a higher state of alert.

17 CHAIRPERSON CONNELL: Do we have a legal  
18 authority to shut down the operation of these platforms if  
19 there is a Priority 1 problem? Are we shutting them down?  
20 Are we slowing them down? What are we doing until -- I  
21 mean, what is the leverage we have to get 1 one  
22 immediately corrected?

23 EXECUTIVE OFFICER THAYER: We could call on Rick  
24 Ludlow, our attorney, to answer that question more  
25 directly, but I think preliminarily the answer to that is

1 that we would -- our leases generally provide that the  
2 operations have to occur in a manner that won't cause  
3 pollution.

4 And so if we believe that there is a problem that  
5 we've uncovered that runs the risk of creating pollution,  
6 we could shut them down.

7 So far I think we believe even the Priority 1s,  
8 though, do not justify shutting down the operation,  
9 instead they require immediate remediation.

10 CHAIRPERSON CONNELL: What is immediate defined  
11 as? I mean, are we talking two weeks, a month? You know,  
12 I mean how far out? Is it statutorily defined in the  
13 contract?

14 EXECUTIVE OFFICER THAYER: It's not statutorily  
15 defined. And usually it's something that depends upon the  
16 engineering involved. So, for example, if something can  
17 be done that day, then it could be done that day, but  
18 often it involves ordering equipment that has to be  
19 brought in.

20 CHAIRPERSON CONNELL: I don't want to be  
21 obsessive about this, but we are talking about, from the  
22 way you defined it, I mean, Priority 1 items are items  
23 that endanger both the safety of operations on the  
24 platform as well as the environmental conditions of the  
25 surrounding area?

1 EXECUTIVE OFFICER THAYER: And that's why we have  
2 to take those very seriously. I think it's our judgment  
3 that to date we haven't found any that justify shutting  
4 down the operation.

5 However, uncovering those problems often makes it  
6 possible to address them in terms of change of operations  
7 or additional inspections, that kind of thing, so that if  
8 you're paying more attention to a problem that's been  
9 uncovered, you can prevent it from causing the kind of  
10 pollution that we're concerned about until the new  
11 equipment is brought in.

12 CHAIRPERSON CONNELL: Who operates the Long Beach  
13 Platform?

14 EXECUTIVE OFFICER THAYER: Occidental is now in  
15 charge of that unit.

16 CHAIRPERSON CONNELL: And the numbers that you're  
17 showing were prior to Occidental's management of this  
18 facility or after?

19 EXECUTIVE OFFICER THAYER: Concurrent.

20 MR. HEMPHILL: Prior to them taking over, this  
21 was between the ARCO and --

22 CHAIRPERSON CONNELL: So this dates back to what?  
23 What time period are we looking at in this?

24 MR. HEMPHILL: This was completed in early 2000.

25 CHAIRPERSON CONNELL: So this is dated

1 information?

2 MR. HEMPHILL: For these, and we've got another  
3 audit that's almost completed for the Long Beach unit,  
4 that's correct.

5 CHAIRPERSON CONNELL: And so this would have been  
6 the 2000 that we're looking at?

7 MR. HEMPHILL: Correct.

8 CHAIRPERSON CONNELL: And Occidental assumed  
9 responsibility in 2000?

10 MR. HEMPHILL: Correct.

11 CHAIRPERSON CONNELL: At the end of 2000?

12 MR. HEMPHILL: Correct.

13 CHAIRPERSON CONNELL: And you will bring us the  
14 2001 audit when?

15 MR. HEMPHILL: That should be completed within  
16 the next month. And the items that existed -- the  
17 preliminary audit went through and found the high priority  
18 items. It was done by a consulting firm. We've now  
19 conducted an extensive investigation, comprehensive  
20 investigation, of the facilities, and it has items that --  
21 problems that had been in existence for the last 20 years.

22 It's not something that's occurred since  
23 Occidental has taken over. These items existed prior to  
24 Occidental taking over. Occidental is very aggressive in  
25 taking care of these and correcting these actions when we



1 have wanted them out.

2 CHAIRPERSON CONNELL: Do you have, perhaps your  
3 next chart will reflect this, when we do our analysis of  
4 action items coming out of an audit, we not only have a  
5 chart like this, we have a chart that indicates the amount  
6 of time that each of these actions items is outstanding,  
7 and what percentage of the overall action items are  
8 resolved within 30 days, 60 days, 90 days, 120, so on  
9 through the year, so that we know how quickly our audit  
10 findings are being corrected. Do we have that kind of  
11 chart?

12 MR. HEMPHILL: We're tracking them, yes.

13 CHAIRPERSON CONNELL: Could you include that in  
14 your 2001 audit? And if you're unclear about what I'm  
15 saying, if you will, call our office and our Director of  
16 Finance can assist you. I think that would be very  
17 helpful for the Commissioners to see how quickly we're  
18 correcting these action items or getting them corrected as  
19 the case may be.

20 MR. HEMPHILL: Each time an action item is  
21 cleared, we post the date it's cleared. Now, a company  
22 such as currently at the Long Beach unit, Occidental is,  
23 when we're noticing a problem, Occidental is repairing  
24 them on the spot. We do not clear that item until we've  
25 actually finished the audit and then we will go out and

1 verify, actually physically verify, that the correction  
2 has been made.

3           So when this report comes out next month, we will  
4 then within a month go out and verify that most all the  
5 Priority 1 action items are already completed. They've  
6 already taken care of them.

7           CHAIRPERSON CONNELL: Then you would not have a  
8 problem doing the chart that I've indicated?

9           MR. HEMPHILL: No, we will not have a problem.

10          CHAIRPERSON CONNELL: I think that would give  
11 graphic representation to the speed at which we were  
12 completing our improvements.

13          EXECUTIVE OFFICER THAYER: We had an item  
14 actually on the last Commission's agenda, which was an  
15 update of that audit in Long Beach, and indicated that  
16 we'd be done with it later this year, and we'll bring that  
17 back to the Commission when it's complete and include the  
18 kind of chart that you're talking about.

19          CHAIRPERSON CONNELL: Thank you.

20                Let's move on.

21                               --o0o--

22          MR. HEMPHILL: Platform Holly is located in Santa  
23 Barbara County off shore from the new city of Galita. The  
24 Associated Elwood On-Shore Processing Facility, which we  
25 have jointly audited with the County, is located in

1 Galita.

2 --o0o--

3 MR. HEMPHILL: These are some of the major  
4 improvements of Platform Holly. Venoco has made these and  
5 other significant upgrades to the safety and pollution  
6 control systems as well as improving its operating  
7 procedures and safety culture.

8 --o0o--

9 MR. HEMPHILL: The Long Beach unit consists of  
10 four oil islands and two on-shore facilities located in  
11 and around the Long Beach harbor. It is equivalent to  
12 more than six of the other State facilities that we're  
13 auditing.

14 --o0o--

15 MR. HEMPHILL: This is a list of four major  
16 improvements resulting from the preliminary audit. Thums  
17 and Occidental Petroleum addressed the problems that were  
18 discovered in that audit. And as I just mentioned, they  
19 are aggressively correcting action items that are being  
20 developed from the comprehensive audit.

21 --o0o--

22 CHAIRPERSON CONNELL: How old is the Long Beach  
23 Platform?

24 MR. HEMPHILL: The Long Beach unit was started in  
25 1964.

1 CHAIRPERSON CONNELL: And Holly is about the same  
2 age?

3 MR. HEMPHILL: It's approximately the same age,  
4 '68.

5 CHAIRPERSON CONNELL: Okay. And Rincon is what?

6 MR. HEMPHILL: About late fifties, early sixties.

7 CHAIRPERSON CONNELL: It's earlier, isn't it?

8 MR. HEMPHILL: Yes.

9 CHAIRPERSON CONNELL: Now, I've raised this issue  
10 before. I realize that you are an engineer, correct?

11 MR. HEMPHILL: That's correct.

12 CHAIRPERSON CONNELL: What was the life  
13 expectancy of these facilities when they were designed?

14 MR. HEMPHILL: Typically, when people are doing  
15 the economics of oil fields, they start out at about 20 to  
16 25 years, fields last from 50 years, plus.

17 CHAIRPERSON CONNELL: So how long was this  
18 facility expected to be in operation, because it seems to  
19 me the kind of repairs that we're beginning to see now, as  
20 we move, you know, in some cases well into the 45th year  
21 of life, we may have exhausted the original assumption as  
22 to how long these facilities should be operated, and so we  
23 continue to patch them up.

24 And I'm wondering how long this can continue  
25 before we have more serious problems? Is our maintenance

1 at such a level that we can, like rehabbing a house, just  
2 keep on changing elements and it eventually is, you know,  
3 better than the original structure or what is our intent  
4 here?

5 MR. HEMPHILL: That's exactly what the Safety  
6 Audit Program does. It comes in and reviews the  
7 engineering assumptions that were made and provides a new  
8 look to see if facilities are outdated, if they need to  
9 have new safety systems implemented, if patch work,  
10 repairs have been put in in the past, if they're not fully  
11 integrated with the current system, we bring them in and  
12 make the entire facility integrated and bring it up to a  
13 current technology, current standards.

14 And that's really what we are, it's like  
15 rehabbing an older house, bringing it up to code.

16 COMMISSIONER BUSTAMANTE: Does that include all  
17 the pipes behind the walls?

18 MR. HEMPHILL: Yes.

19 CHAIRPERSON CONNELL: I hope you have a good  
20 contractor, licensed.

21 MR. HEMPHILL: They are spending some money on  
22 this.

23 CHAIRPERSON CONNELL: Go ahead.

24 MR. HEMPHILL: Rincon Island is located in  
25 Ventura County about three miles southeast of the Santa

1 Barbara County line.

2 --o0o--

3 MR. HEMPHILL: Here are four of the major  
4 improvements at Rincon Island. Rincon Island Limited  
5 Partnership embraced our audit and worked closely with us  
6 in undertaking significant upgrades to the infrastructure  
7 and its operating procedures.

8 --o0o--

9 MR. HEMPHILL: We've scheduled safety audits --

10 CHAIRPERSON CONNELL: Who runs Rincon?

11 MR. HEMPHILL: Rincon Island Limited Partnership.

12 CHAIRPERSON CONNELL: And who owns that?

13 MR. HEMPHILL: I think that used to be by Windsor  
14 Energy, but Windsor Energy went bankrupt and I think it's  
15 now owned by a bank.

16 CHAIRPERSON CONNELL: Which bank?

17 MR. HEMPHILL: The Bank of Texas -- Compass Bank.

18 CHAIRPERSON CONNELL: What did you say? Texas  
19 Bank of Commerce?

20 MR. HEMPHILL: Compass Bank.

21 CHAIRPERSON CONNELL: Compass Bank. When was it  
22 transferred in ownership and what does your lease say  
23 about transfer of ownerships?

24 MR. DUNLAP: The lease requires approval of the  
25 Commission. What happened here was that Compass Bank took

1 over the stock position in the bankruptcy proceeding, and  
2 they're presently looking for an oil company to actively  
3 take over the lease and manage it that way. They've  
4 talked to several people. And then when that happens, it  
5 will be brought to the Commission for approval, final  
6 approval.

7 CHAIRPERSON CONNELL: I think we should urge them  
8 to do that. I'm extraordinarily anxious when I think of a  
9 commercial bank running an oil platform in California when  
10 they're not even residents here. This does not give me a  
11 great deal of comfort.

12 I mean, these are highly sophisticated operations  
13 as we well know, and we had a situation early on in my  
14 tenure on this commission in the late -- or the middle  
15 nineties when, in deed, we had that transfer, as you  
16 remember, of ownership on a couple of these platforms and  
17 we ran into problems in the transition period, and that's  
18 when we had some of these oil spills. It got the  
19 attention of the public, again, in Santa Barbara and Duke  
20 came and attended a few of our meetings. They do not wish  
21 to have that repeat occurrence here.

22 So I think we ought to really tighten up our  
23 monitoring of this. I think we have to be respectful that  
24 it's difficult given the share prices of energy companies  
25 now, particularly after yesterday, that they may find

1 somebody who wishes to purchase this facility.

2 But at the very least, they've got to get some  
3 kind of professional management in the facility. And I'm  
4 not comfortable that a banker, you know, understands the  
5 exposure that these facilities represent to California.

6 STAFF COUNSEL LUDLOW: They have professional  
7 management at present on site. The main concern that  
8 staff has is that the quality of the respective assignees,  
9 the purchasers of this facility, meet high standards to be  
10 able to operate off shore of California. We can't have  
11 anybody going out just because --

12 CHAIRPERSON CONNELL: Why are we not bringing  
13 that matter before the Commission then? I would like to  
14 entertain, I don't know how my fellow Commissioners feel,  
15 at our next meeting, a discussion of the ongoing nature of  
16 this lease.

17 I mean, I do not think that it is responsible on  
18 the part of the State to sit here with some -- I'm not so  
19 concerned that they're out of State as is if they are  
20 unfamiliar.

21 And, again, I don't fault the bank. I mean the  
22 bank did what it needed to do in a financial proceeding.  
23 But the bank needs to motivate itself to get the sale  
24 completed so that we have assurance that we're going to  
25 have this operated. In the interim, I think we ought to



1 insist that they do a subcontract with one of the other  
2 companies that we do have confidence, I don't know whether  
3 it's Venoco or it's Occidental or any of the others that  
4 are operating these platforms in an approved status.

5 But I don't want to see this linger out there in  
6 limbo for, you know, a period of months or maybe a year  
7 before we see a transition effected.

8 STAFF COUNSEL LUDLOW: The staff of the oil  
9 company that was in bankruptcy is still operating there.  
10 The bank doesn't do a hands-on day-to-day management  
11 there, but it is a very difficult situation, as you point  
12 out, Madam Chair.

13 CHAIRPERSON CONNELL: Well, I'm sure the bank is  
14 not interested in putting in any additional resources,  
15 financial resources, into the operation of the facility  
16 that they're trying to sell, having worked in a bank  
17 before.

18 So the reality is that there will be no  
19 heightened management or heightened maintenance of the  
20 facility. I don't fault the staff that's on the platform,  
21 but I can't imagine how eager the bank would be to sink  
22 money into an asset that has already been declared in  
23 bankruptcy. It just doesn't happen.

24 MINERAL RESOURCES MANAGEMENT DIVISION CHIEF  
25 MOUNT: We're working monthly with the bank. We are in

1 constant communications with them. They are very anxious  
2 to have the property transferred to a substantial owner.  
3 And we have been actively pursuing a marriage between the  
4 bank and respective owners. And we have some that have  
5 shown an interest, and they have been out there and  
6 they're looking at it as we speak.

7 CHAIRPERSON CONNELL: Well, that's reassuring.  
8 I'm going to schedule this on the agenda as an  
9 informational item and maybe we can get an update at that  
10 point.

11 EXECUTIVE OFFICER THAYER: We'll do that. Let me  
12 just add one other item. It was out of concern for the  
13 situation that this audit of this facility was scheduled  
14 at the time it was. As Mr. Hemphill is about to note, we  
15 can't do all these audits at the same time, but we  
16 deliberately did Rincon when we did to try to keep a  
17 handle on this.

18 CHAIRPERSON CONNELL: The question might be are  
19 there any other facilities that are going through this  
20 kind of ownership transition? And if so, I'd like them to  
21 be weaved into our updated agenda item at the next  
22 commission meeting, because I want to focus a very strong  
23 light on each of those that are in a transitional world.

24 This simply cannot be tolerated long term. I  
25 mean, we're going to have a repeat, Paul, of exactly the

1 same situation we had in Santa Barbara. And I'm very  
2 clear on how horrible that experience was in '96 or '97,  
3 whenever that oil spill occurred. We do not want to have  
4 another incident like that, so we need to stay on top of  
5 it.

6 MR. HEMPHILL: I will say from Rincon Island  
7 Limited Partnership, when they have asked for money  
8 previously from the bankruptcy court and now from this  
9 bank for environmental projection or safety protection,  
10 they have not been turned down, even though the bank --

11 CHAIRPERSON CONNELL: Well, that's good. But if  
12 there's an incident, I know exactly who we're going to  
13 have next to us.

14 (Laughter.)

15 MR. HEMPHILL: They're well aware -- the banks  
16 are still all aware as are the operators down here and  
17 they're not going to let something happen, because they  
18 know they're a liability.

19 CHAIRPERSON CONNELL: You might update the bank  
20 on the discussion that the Commission has had today on the  
21 fact that we are going to have an agenda item. That might  
22 encourage them to move forthwith on whatever they need to  
23 do to preserve this in a safe manner.

24 MR. HEMPHILL: We scheduled a safety audit for  
25 the remaining State facilities in southern California

1 through the year 2004. During this period, we'll also  
2 clear action items from completed audits and coordinate  
3 activities with our ongoing safety inspection program.

4           Following the recommended industry practice, we  
5 intend to repeat the audit cycle beginning in 2005 with  
6 Platform Holly. Industry standards say that these should  
7 be conducted every five years to see that as standards  
8 change the facilities change.

9   --o0o--

10           MR. HEMPHILL: As shown, the safety audit program  
11 has benefited the State and the industry. We believe this  
12 program is fulfilling the Commission's expectations. It  
13 has created physically safer facilities. It has provided  
14 the operator with input to upgrade its safety culture.  
15 It's established insight into the root causes of safety  
16 and environmental concerns, and it's allowed us to refocus  
17 our safety inspection program incorporating the audit  
18 findings.

19   --o0o--

20           MR. HEMPHILL: We're committed to continuing this  
21 program. As part of the coordinated approach with monthly  
22 safety inspection programs, it provides us with the best  
23 assurance of compliance with the regulation and industry  
24 standards. We recommend that all facilities be subject to  
25 a comprehensive audit prior to reassignment.

1                   --o0o--

2           MR. HEMPHILL: This program ensures improved  
3 environmental compliance, application of the best  
4 achievable protection, and continued revenues for the  
5 State of California.

6           That concludes my presentation.

7           CHAIRPERSON CONNELL: Thank you. Are there any  
8 questions of members of the Commission?

9           All right, thank you. That was an informational  
10 item.

11          COMMISSIONER BUSTAMANTE: I do have a -- is there  
12 any reporting requirements should there be a Priority 1  
13 situation occur, and it's been recognized by a facility as  
14 a Priority 1 issue, and they're required to do a certain  
15 number of days or moments or minutes to contact us about  
16 what took place?

17          MR. HEMPHILL: I think one of the things that  
18 we're finding from these safety audits is we're trying to  
19 instill or help the operators instill a change safety  
20 culture. They're looking for things. In the past, things  
21 had escaped them and they're now looking for things --

22          COMMISSIONER BUSTAMANTE: If something goes  
23 wrong, is there a requirement that they report to us  
24 immediately?

25          MR. HEMPHILL: Not -- I mean, if they discover

1 something, they repair it, and then our inspectors are  
2 notified.

3 COMMISSIONER BUSTAMANTE: A Priority 1 does not  
4 include a spill.

5 MR. HEMPHILL: No. I mean, the Priority 1s are  
6 to prevent spills.

7 CHAIRPERSON CONNELL: Actually, that's important  
8 to clarify for purposes of this discussion and the  
9 audience as well. This doesn't infer that a spill has  
10 occurred. That is a maintenance program. They are  
11 required immediately to inform us if there is an emission  
12 of gas or oil at a facility, Cruz, so that's separate from  
13 this.

14 That would be an automatic immediate and I think  
15 it's within an hour of the time the emission occurs. We  
16 went through this before, so it's -- no, we're immediately  
17 notified if there's an emission.

18 MR. HEMPHILL: Correct.

19 CHAIRPERSON CONNELL: We are now moving back  
20 actually to Item 48. And this is a matter of the North  
21 Baja Pipeline. And we have a number of speakers on this,  
22 so I'm going to ask, first, if I may, for the staff report  
23 and then we will move to the many speakers.

24 EXECUTIVE OFFICER THAYER: Thank you, Madam  
25 Chair. The first presentation will be made by Alan Scott

1 from the Land Management Division followed by Kirk Walker  
2 from our Environmental Division.

3 CHAIRPERSON CONNELL: Begin gentlemen when you  
4 are ready. Please identify yourself for the record.

5 Is there a way you can present that chart so  
6 Members of the Commission as well as members of the  
7 audience could see it or do you have handouts for the  
8 audience. Or maybe after you've briefed the Commission,  
9 you can turn it so the audience can see it as well.

10 MR. WALKER: Hand out of map.

11 CHAIRPERSON CONNELL: All right, fine, then we  
12 won't worry about the audience being able to see the  
13 chart.

14 MR. SCOTT: Good morning, Madam Chair and Members  
15 of the Commission. My name is Alan Scott. I'm a public  
16 land manager for the Commission's Land Management  
17 Division. I'll be presenting background information on  
18 the proposed project that you're considering today in  
19 calendar item number 48.

20 The applicant, North Baja Pipeline LLC --

21 CHAIRPERSON CONNELL: Actually, you could turn  
22 that map completely around because I believe all the  
23 members of the Commission have been handed a handout, so I  
24 think we're all comfortable up there, that way members of  
25 the audience can see it.

1 Thank you.

2 MR. SCOTT: The applicant proposes to construct  
3 and operate a new natural gas pipeline system that will  
4 transport 500 million cubic feet per day of natural gas.  
5 The pipeline system will begin in Ehrenberg in Arizona,  
6 cross the Colorado River current channel and proceed  
7 through Riverside and Imperial counties with an  
8 interconnection at the international border between  
9 California and Mexico.

10 The system once constructed, will consist of a  
11 buried pipeline approximately 80 miles in length, 12 miles  
12 of 36-inch diameter pipe at the beginning, where it  
13 crosses the Colorado River and the remaining 68 miles of  
14 30-inch diameter pipe.

15 One natural gas compression station is being  
16 constructed in Ehrenberg which will be in Arizona; two  
17 metering stations along the pipeline, one at the  
18 compressor station in Ehrenberg and one at Ogilby and  
19 other related facilities.

20 The pipeline route will cross approximately 1,092  
21 feet of a parcel of State school land located in Imperial  
22 County. The only improvements that will be placed on that  
23 parcel is the buried 30-inch pipeline and some  
24 above-ground right-of-way alignment markers.

25 In addition to the pipeline right-of-way, there



1 will be a temporary 30-foot wide work area construction  
2 area that will be adjacent to that pipeline route, but  
3 it's needed only during the construction phase.

4           The proposed pipeline route is adjacent to State  
5 Highway 78 on the school land parcel. Highway 78 is also  
6 located on the school land parcel. It will cross under an  
7 existing 161 KV powerline that the Commission previously  
8 issued a lease to the Bureau of Reclamation Board.

9           The applicant has entered into an agreement with  
10 the Bureau and will maintain the written consent from the  
11 Bureau for the entire length of the State Lands lease for  
12 the pipeline.

13           The pipeline will be constructed and tested to  
14 meet and/or exceed U.S. Department of Transportation  
15 construction safety standards. These regulations are  
16 intended to protect the public and to prevent natural gas  
17 facility accidents and failures. And they also include  
18 specifications for material selection, minimum design  
19 requirements, protection of the pipeline, et cetera.

20           Once constructed, the pipeline will be operated  
21 and maintained in accordance with all applicable federal  
22 and State regulations. The applicant will also monitor  
23 and control the pipeline system 24 hours a day from a  
24 remote location in Portland, Oregon.

25           We'll also have four locally based full-time

1 staff that will be assigned for operation and maintenance  
2 duties on the pipeline system. And the applicant proposes  
3 to retain a locally based contractor to assist those four  
4 workers with routine maintenance services and to respond  
5 in case there is an emergency.

6 There are two actions that the staff is asking  
7 for the Commission to consider today under this item.

8 The first is the certification of the  
9 Environmental Impact Report that has been prepared as part  
10 of a joint EIS/EIR for the pipeline project.

11 The second action involves the issuance of a  
12 general lease for right-of-way use for the North Baja  
13 Pipeline LLC with a portion of the pipeline that crosses  
14 the State school land parcel, and also includes the  
15 temporary used construction area.

16 I'd like now to introduce Kirk Walker with the  
17 Environmental Planning Division who will provide  
18 information relative to the environmental process and the  
19 impact report that was done for this project.

20 Thank you very much.

21 MR. WALKER: Thank you, Alan. My name is Kirk  
22 Walker. I'm an environmental scientist with the  
23 Commission's Environmental Division. The environmental  
24 document before you and this item was prepared in  
25 conjunction with the Federal Energy Regulatory Commission

1 and the Bureau of Land Management both of which have to  
2 prepare certificates for operation.

3           Public scoping meetings were held in El Centro  
4 and Blythe, California in January of 2001, and a draft  
5 EIR/EIS prepared. This was distributed to the public,  
6 approximately 850 copies, and was circulated from July  
7 26th until October 25th of 2001.

8           During that period public meetings were again  
9 held to collect comments on the draft at the end of  
10 August. We received comments from five federal agencies,  
11 five State agencies, three local governments and 26  
12 individuals. Responses to these comments were  
13 incorporated into the final EIR/EIS, and this document was  
14 released earlier this month.

15           There are still some areas of disagreement as  
16 discussed in the calendar item before you. The location  
17 of the pipeline along 18th Avenue, and potential air  
18 quality impacts from customers of the pipeline in Mexico  
19 are still controversial.

20           Commission staff in consultation with staff of  
21 the Attorney General's office believe that these items  
22 have been properly analyzed and discussed in the Final  
23 EIR/EIS, and that appropriate mitigation has been applied  
24 to the project.

25           Staff believes that the document under

1 consideration before you is now ready for certification.

2 Ms. Sandra McDonough representing North Baja  
3 Pipeline is here to make a very short presentation on the  
4 importance of the project to California.

5 Staff and Ms. McDonough are also ready to respond  
6 to questions from the Commission either now or after the  
7 public speaks.

8 Thank you.

9 CHAIRPERSON CONNELL: Let us begin with the many  
10 people who wish to address us today. I'm going to start  
11 with Terry Martin.

12 ACTING COMMISSIONER PORINI: Did you want to hear  
13 from the representatives of the pipeline?

14 CHAIRPERSON CONNELL: Oh, is the pipeline  
15 representative here, first?

16 MR. WALKER: Yes.

17 CHAIRPERSON CONNELL: Why don't you come forward.

18 MS. McDONOUGH: Madam Chair and members of the  
19 Commission, I'm Sandra McDonough. I'm a vice president  
20 for the North Baja Pipeline LLC.

21 Thank you very much for having us here today. My  
22 colleague Henry Morse has passed out a description of our  
23 project, which I will briefly summarize for you.

24 First, I want to thank you for considering our  
25 project and recognize your staff who have spent 15 months

1 working with us on this project now. I particularly want  
2 to recognize Kirk Walker, Barbara Dugal, Dwight Sanders  
3 and Paul Thayer, who have spent many, many hours working  
4 on this. And the result of their efforts is a better  
5 project than what we started out with.

6 As Kirk described, the project is an 80-mile  
7 pipeline from Arizona to Mexico where we will interconnect  
8 with a pipeline being built by Sempra Energy  
9 International. That pipeline is already in construction.  
10 We are fully contracted and we will deliver 500 million  
11 cubic feet of natural gas a day.

12 In the course of the siting of this project, we  
13 have had three primary issues that have come up. The  
14 first was issues relating to Native American sites. We  
15 work closely with recognized sovereign nations and with  
16 local residents of the community to identify potential  
17 areas of concerns, and in many cases rerouted the pipeline  
18 to avoid those areas and mitigate the potential impact.

19 The second area of concern has been safety. And  
20 Mr. Walker mentioned the residents along 18th Avenue who  
21 have raised concerns about the safety of the pipeline. In  
22 response to those concerns we worked with both of those  
23 residents and with the City of Blythe and have agreed to  
24 build this pipeline to standards that greatly exceed the  
25 federal standards. And that includes in some areas

1 thicker walled pipe and automatic valves that can shut if  
2 there is an emergency.

3           We've also worked closely with the City police  
4 and fire officials to ensure that in the event that there  
5 is an emergency, we are fully prepared to respond  
6 adequately.

7           The last issue, of course, is air quality. We  
8 understand and sympathize with the concerns that have been  
9 raised by Imperial County concerning air quality in their  
10 area. But the issues that they have raised primary relate  
11 to powerplants that are being built in Mexico. Those  
12 plants were sited under Mexican regulations, and, in fact,  
13 are in construction and are 40 to 50 percent complete  
14 today.

15           Our pipeline, we believe, will actually improve  
16 air quality in both Imperial and San Diego county by  
17 delivering clean burning natural gas to sources that might  
18 otherwise burn oil.

19           These include powerplants in Rosarito that are  
20 already operating and can burn oil, and the powerplants in  
21 Mexicali, which, in fact, could burn oil, if natural gas  
22 is not available to them. The pipeline will also reduce  
23 the potential for gas curtailments in the San Diego  
24 region. And when those curtailments happen, there is the  
25 potential that existing plants will also burn oil and have

1 an adverse air impact.

2 And finally, there are industrial users both in  
3 Mexico, in Mexicali and in the Tijuana area, and  
4 potentially in southern San Diego county, that could  
5 switch from oil to natural gas if gas is available through  
6 this pipeline.

7 So we believe that this pipeline will actually  
8 have a positive impact on air in both Imperial and San  
9 Diego county, and, in fact, our calculations are that we  
10 could reduce pollutants in San Diego county by as much as  
11 12,000 tons a year net, in San Diego County and 8,000 tons  
12 a year net in Imperial county by delivering a cleaner  
13 burning fuel to the area.

14 I want to mention schedule as well. As Mr.  
15 Walker mentioned, we hope to start construction next  
16 month. One objective we have is to avoid the nesting  
17 period, spring nesting period, for some species, I believe  
18 you mentioned this, that could be impacted. If the  
19 construction is delayed, there could be an adverse impact,  
20 and we're hoping to avoid that by starting construction  
21 soon by the end of February.

22 We also, if we can stay on this schedule, will  
23 begin delivering natural gas this summer including to the  
24 powerplants in Mexicali. One of those plants has a  
25 contract to deliver power into California as soon as this

1 summer. So if we can complete this pipeline and start  
2 delivering natural gas, it will mean more electric  
3 supplies to California as early as this summer.

4 And finally, the sooner we can be delivering  
5 natural gas to these areas, we will have a positive impact  
6 on air emissions in the region.

7 Thank you.

8 CHAIRPERSON CONNELL: Thank you. Now, I'm going  
9 to go immediately from that discussion, if you would, just  
10 stay and be available because we may have questions later,  
11 to the speakers. And I'm going to ask each speaker to  
12 keep their comments to two, two and a half minutes. We'll  
13 begin with Terry Martin. We will go from Terry Martin to  
14 Sandra McDonough, I hope I'm saying that correctly.

15 MS. McDONOUGH: That was me.

16 CHAIRPERSON CONNELL: You already spoke. Why  
17 aren't you going to speak again?

18 Thank you. Okay, how about Ryan O'Neal. I  
19 thought maybe you wanted to be an activist as well as a  
20 pipeline representative.

21 Henry Morse.

22 MR. MORSE: I'm available for questions as part  
23 of the project.

24 CHAIRPERSON CONNELL: Okay. So we will take you  
25 out. This is getting better as we go. Let's begin then



1 with Terry Martin and Ryan O'Neal.

2 CHAIRPERSON CONNELL: Identify yourself for the  
3 record, please.

4 MR. MARTIN: Thank you, Madam Chair and  
5 Commissioners. My name is Terry Martin. I'm a business  
6 representative for the United Association of Refrigeration  
7 Pipefitters Local 250, Los Angeles.

8 I'm speaking in support of the North Baja  
9 Pipeline. Under the national pipeline agreement in which  
10 this jurisdiction falls, one of the first provisions we  
11 have, "If any provision of this agreement is in conflict  
12 with the laws or regulations of the United States or of  
13 the states in which the work is to be performed, such  
14 provisions to proceed shall not be superceded by such law  
15 or regulation, but all other provisions of this agreement  
16 shall continue in full force and effect provided no case  
17 shall wage rates be paid which are lower than those set  
18 out in this agreement."

19 Any signatory contracted to our union has to  
20 abide by State and federal laws.

21 Our members are trained and highly skilled. This  
22 pipeline, before they're even allowed to get on the  
23 right-of-way our members are trained in environmental and  
24 pathological requirements in order to protect not only  
25 wildlife, not only plant life, but human life.

1           You may be familiar with the CURE program. We  
2 would have liked to have gotten those four powerhouses  
3 built up here in the states. But since we did not, we can  
4 only say that fuel to these power houses with natural gas  
5 would be the way to go.

6           The pipeline itself, the 80 miles that runs  
7 through the State of California, is contained. Each well  
8 will be xrayed. When xrayed, if there's any repairs, it  
9 will be repaired and re-xrayed. A welder indoor helper  
10 who has three rejections is terminated.

11           I know you only gave me two and a half minutes, I  
12 wasn't planning on speaking first.

13           (Laughter.)

14           MR. MARTIN: Currently, we have a union  
15 contractor, and it doesn't matter who the union contractor  
16 is as long as they're union with me, currently running a  
17 32-mile pipeline in the high desert. That's fuel gas to  
18 the High Desert Powerhouse in Adalanto. I flew in and  
19 they only allowed me one suit case, so I didn't make any  
20 copies of what I brought.

21           Any animal wildlife, any plant our members are  
22 taught the status and legal protection, the description  
23 and biological behavior, habitat requirements. They're  
24 also given a map of where they may be able to locate these  
25 animals or bones and to leave them untouched.

1           This pipeline is to be maintained and operated by  
2 all union craftsmen. We take great pride in the  
3 communities we work in, the work we do.

4           I wish I could have spoke earlier on your  
5 off-shore, those are -- well, I won't get into that.

6           CHAIRPERSON CONNELL: Well, thank you.

7           (Laughter.)

8           MR. MARTIN: I'm used to having union contractors  
9 out there. I'd like to see some out there again.

10          CHAIRPERSON CONNELL: We're not going to go there  
11 on this one.

12          Thank you.

13          Before we have Ryan speak, I'm going to call on,  
14 I just noticed we have two elected officials here today,  
15 and I do want to call upon them first, if I can. So,  
16 Ryan, if we could ask that you just step aside for a  
17 moment. We want Gary Wyatt who's the County Supervisor  
18 and I would like to have Larry Grogan, the Mayor.

19          COMMISSIONER BUSTAMANTE: Madam Chair, could I  
20 just ask the representative, will they be building the  
21 pipeline only on the U.S. side or will they be building  
22 the pipeline all the way through?

23          MR. MARTIN: Only on the United States side.

24          COMMISSIONER BUSTAMANTE: Do they have similar  
25 kinds of quality assurances on the other side?

1           MR. MARTIN: I cannot answer that. I have no  
2 jurisdiction. I would have liked to have seen it built on  
3 the American side, but I can say this much Sempra Energy  
4 has been a very good customer. They've always, to my  
5 knowledge, have upheld the State law and requirements  
6 environmentally. And I would say that their quality  
7 assurance on the other side is good.

8           CHAIRPERSON CONNELL: We will address that when  
9 we get to the Sempra representative, who is here with us  
10 today.

11           Thank you.

12           IMPERIAL COUNTY SUPERVISOR WYATT: Thank you,  
13 Madam Chair and distinguished Commission members. I name  
14 is Gary Wyatt. I sit as an elected official on the  
15 Imperial County Board of Supervisors. I take this  
16 opportunity today and thank you for it to address the  
17 Commission on this, what we feel, is an extremely critical  
18 issue to the future of our valley.

19           In reality, we feel it's a struggle for the very  
20 future of the valley. As Mr. Bustamante knows very well,  
21 the Imperial Valley is quite an incredible place. In his  
22 numerous visits there, he's been able to see firsthand the  
23 beauty and the abundance that the valley provides. We're  
24 blessed with many great resources which provide benefits  
25 and opportunities for people both near and far.

1           We're an area that's ripe with possibilities and  
2 potential, and yet we are now engaged in a struggle for  
3 our right to achieve and realize our potential. Our area  
4 has been plagued with the highest unemployment in  
5 California, averaging 26 to 30 percent. We have the  
6 lowest per capita income. Our population is the fifth  
7 fastest growing operation in California and has a very  
8 high minority makeup.

9           It's not our desire as a county to stifle  
10 business or the delivery of power throughout California,  
11 but it is also not our intention to stand idly by while  
12 business stifles our future, our possibilities and our  
13 potential.

14           If this EIS/EIR is certified in its present form,  
15 our ability to achieve economic growth will be grossly  
16 impacted. As we are already home to a hazardous waste  
17 facility, a future 100-year landfill, two State prisons,  
18 and now we will share our air basin with several new  
19 powerplants with a promise of more to come, it would seem  
20 that we could be the poster child for environmental  
21 justice.

22           Now, we've done more than our share of providing  
23 services that others didn't want in their backyards. And  
24 now, as we're on the cusp of significant developments, we  
25 need to have our air quality safeguarded.

1           Perhaps, the only way for us to achieve this  
2 justice and to protect the health and the future of our  
3 citizens is through the help of this Commission and the  
4 CEQA process.

5           As the final EIS/EIR report does not adequately  
6 address the air emission impacts of the powerplants that  
7 the North Baja Pipeline will service, what I'm asking of  
8 the Commission today is two things.

9           The first is perhaps the ultimate solution for  
10 the current issue and the many similar issues that will  
11 follow.

12           The solution that is needed is to adjust NAFTA to  
13 facilitate resolution of international environmental  
14 issues. And I would ask the Commission to encourage the  
15 Governor to work with the federal government to create  
16 border corridors, which would address the environmental  
17 requirements for projects within those corridors.

18           Since we must share resources, such as air and  
19 water, we must find a way to establish shared  
20 environmental requirements. I urge the Commission to take  
21 the lead and make California the national model for the  
22 resolution of this critical issue.

23           The second thing is for the Commission to delay  
24 its certification of the EIS/EIR report until a  
25 comprehensive evaluation of the emissions from the project

1 plant is completed. What I'm really asking for you to do  
2 today is to help us to secure the opportunity to realize  
3 our potential and to achieve the justice that we need.

4 Thank you.

5 CHAIRPERSON CONNELL: Yes. Now, we have Larry  
6 Grogan.

7 EL CENTRO MAYOR GROGAN: Madam Chair, I have some  
8 copies of items that we've put together. I see the City  
9 Manager hasn't made it in. He gets nervous when I talk.

10 CHAIRPERSON CONNELL: Consider yourself released  
11 from that fear.

12 (Laughter.)

13 IMPERIAL COUNTY SUPERVISOR WYATT: So do I.

14 EL CENTRO MAYOR GROGAN: Good morning, Madam  
15 Chair and the members of the Commission. My name is Larry  
16 Grogan. I am the Mayor of El Centro. I am here to  
17 testify in opposition to the North Baja Pipeline project  
18 and construction of the powerplants adjacent to the  
19 border.

20 The City of El Centro has carefully monitored the  
21 bidding process of the Northern Baja Pipeline Project, and  
22 only became involved in the one power after one of the  
23 powerplant owners, InterGen, stated to local and  
24 congressional officials that they would not install air  
25 pollution controls on 500 megawatts. To do so would not

1 be profitable.

2           The decision by InterGen not to install air  
3 pollution control shocked many in this community into  
4 action.

5           We have just one copy of the resolution and a  
6 letter from the Board of Chamber, which represents 825  
7 members in opposition for the same reasons.

8           Many presentations were made by the Air Pollution  
9 Control Officer to the City Council, City Chamber and  
10 Coalition of County Mayors and now a number of cities have  
11 already received that presentation. The conclusion of  
12 this coalition was not only to oppose the powerplants, but  
13 also the pipeline. Our rationale is the pipeline is the  
14 one by which the powerplants will be able to pollute our  
15 common air basin with Mexico.

16           CHAIRPERSON CONNELL: You're talking about the  
17 powerplants in Mexicali?

18           EL CENTRO MAYOR GROGAN: Yes two miles, three  
19 miles below the border.

20           We, in the valley, of course, are not opposed to  
21 growth or to industrialization or to development. Our  
22 valley's unemployment averages 23 percent and needs to  
23 build an economic base for jobs. However, we are opposed  
24 to the destruction of the environment and the very air we  
25 breathe by irresponsible power generators exasperated by



1 the fact that it will be done at the expense of people who  
2 can least afford it.

3           You'll be approving a project that will result in  
4 serious degradation of air quality and cause subsequent  
5 damage to the health of all valley residents, but mostly  
6 children.

7           You will also be responsible for approving a  
8 project that is known to cause birth defects in children,  
9 and this is particularly unjust because it impacts people  
10 who have the least medical assistance to maintain their  
11 health.

12           Tons of air pollution from the uncontrolled  
13 InterGen emissions will be generated by this plant as well  
14 as the two units, two additional units of InterGen and  
15 Sempra Energy powerplants, none of which will be mitigated  
16 by offsets.

17           We are also aware through filings through the  
18 Public Utilities Commission that 3,800 megawatts are being  
19 planned by the border generation groups. These plants  
20 before you today are just the beginning of the destruction  
21 of air quality in the valley. Since the pipeline goes all  
22 the way to the ocean, the power from these plants is not  
23 for our area or even for San Diego. We ask why build  
24 here?

25           The answer was provided to us by a study by a

1 Latino Issues Forum, which shows that powerplants are  
2 being located in poor and minority areas. These are the  
3 people with the least ability to fight such horrendous  
4 destruction of their quality of life.

5 It is sacrificing society for the profit and  
6 expediency. It is why Imperial County and the Mexicali  
7 Valley were chosen because we do not have the political or  
8 economic clout to deter such a project. We have to ask  
9 ourselves who in Mexico or Washington D.C. really gives a  
10 damn about once these permits are issued.

11 Thus, in the tradition of the old robber barons,  
12 the only need established is the need for greed. I would  
13 like to thank you for the opportunity to present this  
14 information on this critical issue and hope that you will  
15 conclude that the project does irreparable damage to the  
16 quality of life for thousands of valley residents.

17 I also may add that a number of cities have  
18 already passed resolutions opposing, and we will probably  
19 be collecting funds from each city, if we aren't  
20 successful here today to proceed with a lawsuit. And  
21 these funds will be coming from cities that damn well  
22 can't afford it.

23 We will have a choice to make. We'll either be  
24 cold decking swimming pools this summer or fighting for  
25 our air quality. And that's the choice that we end up

1 having.

2           And this concludes my testimony. Can I answer  
3 any questions?

4           CHAIRPERSON CONNELL: I have a questions Larry,  
5 and I appreciate --

6           EL CENTRO MAYOR GROGAN: Oh, by the way, I just  
7 received from Beatrice Reece, 23 additional studies on air  
8 quality and health.

9           CHAIRPERSON CONNELL: These are the ones that you  
10 attached to your letter?

11           EL CENTRO MAYOR GROGAN: That's one of them.  
12 This was the recent study that was just issued in January  
13 that relates air pollution to birth defects. It's the  
14 first study to actually do so. And it relates it to heart  
15 valve damage. And the rest of these are mostly with low  
16 birth rate and premature births.

17           Basically, what you're looking at is a situation  
18 where people that are down wind from these powerplants --  
19 as she explained to me, I certainly don't want to put  
20 words into her mouth, but it's like smoking two packs of  
21 cigarettes a day when you're pregnant.

22           CHAIRPERSON CONNELL: Larry, I don't want to  
23 focus on the results of the pollution. I think all of us  
24 are in agreement that pollution creates horrifying direct  
25 and secondary effects.

1           I think the issue here before the Commission is  
2 whether or not the pipeline is the cause of that air  
3 pollution.

4           Now, I need to clarify, there is no doubt that  
5 the plants in Mexicali are causing a deteriorating air  
6 quality in the San Diego, Imperial County area. My  
7 question to you is, are you saying for us to not approve  
8 the pipeline, because although it doesn't cause any of the  
9 pollution, it abets the creation of a powerplant facility  
10 in Mexico that does pollute, is that the argument here?

11           EL CENTRO MAYOR GROGAN: The argument is with  
12 this pipeline InterGen will come in with 1,000 megawatts,  
13 I think it's 1,000, and Sempra Energy is going to have  
14 600. The InterGen plant consists of four units, two of  
15 which will have no pollution controls whatsoever.

16           Now, they say that they can't do this, because  
17 their contract is so closely monitored to profits that it  
18 would affect -- it would be unprofitable. Well, the  
19 people in Mexicali, that I have met with, are, while  
20 they're in opposition, they cannot speak, because I'm not  
21 sure your familiar with, this but in Mexico mayors do not  
22 go against the federal government. No one says anything  
23 in opposition even at the State level.

24           So while they'll tell you privately they are  
25 really concerned about the air pollution, which is 12

1 miles east -- or excuse me, 12 miles west of Mexicali and  
2 about two to three miles below the border, they are unable  
3 to take any action themselves.

4 COMMISSIONER BUSTAMANTE: Madam Chair, can I ask  
5 a question?

6 CHAIRPERSON CONNELL: Certainly, Mr. Bustamante,  
7 I recognize you.

8 COMMISSIONER BUSTAMANTE: On staff, who would be  
9 the technical person who would have been reviewing this  
10 project?

11 EXECUTIVE DIRECTOR THAYER: Kirk Walker has done  
12 most of it.

13 COMMISSIONER BUSTAMANTE: My understanding is  
14 that air pollution goes north to south, that the flow of  
15 air goes from north to south and there is -- that unlike  
16 the water, which flows south to north, the air issue  
17 really is a north to south issue.

18 Now, if these plants are south of California, is  
19 there an issue here of basin or additional contamination  
20 or pollutants north of the sites of which we're building,  
21 that are being built in Mexico?

22 MR. WALKER: There is no question that emissions  
23 from the plants will cross the border into the Imperial  
24 valley. That has never been an issue.

25 The staff's issue is that these plants, because

1 they are so far along in construction, will operate  
2 regardless of whether or not North Baja is built. We have  
3 had discussions with both Sempra and InterGen, they are  
4 both currently examining getting natural gas from southern  
5 California through the San Diego intertie there.

6 They're also both exploring running with  
7 alternate fuels. There is available, within five  
8 kilometers of InterGen's plant, a source of diesel fuel.  
9 They're proposing getting a repermit to operate with  
10 diesel if North Baja is not able.

11 Therefore, we believe that the mitigations on the  
12 North Baja should focus on the construction of that  
13 pipeline, not the operation of the Mexican plants. The  
14 plants will operate regardless of whether or not this  
15 pipeline is built.

16 CHAIRPERSON CONNELL: They may operate, but they  
17 are a more pollutant source of energy if diesel fuel is  
18 used.

19 MR. WALKER: They could operate with much more  
20 pollution. We did not base our argument on that, but it  
21 is certainly a possibility.

22 CHAIRPERSON CONNELL: Annette, did you have a  
23 question on this as well?

24 EL CENTRO MAYOR GROGAN: The tradeoff on that is  
25 the cost to connect that to diesel. And, of course, now

1 they are going to have to go back to Mexico City to get  
2 that permit, because this plant is only permitted for  
3 natural gas. So they're going to have to go through the  
4 same permitting processing, I'm sure, at that time, since  
5 Mexicali is becoming more and more aware of the Imperial  
6 Valley has become very cohesive in their operation.

7 I'm not sure that they're going to find that  
8 getting that permit is going to be so easy. And all we're  
9 asking, really, the bottom line is to get these plants  
10 brought into compliance. There's nothing more than -- and  
11 they knew that. You know, they made a deliberate and  
12 conscientious decision, to hell with the people, we're  
13 going to produce power as cheap as possible.

14 CHAIRPERSON CONNELL: Larry, I'm a little  
15 confused about how you feel the State Lands Commission has  
16 the authority to the Mexican government to bring these  
17 plants into line.

18 EL CENTRO MAYOR GROGAN: Because I think if we  
19 delay this pipeline, I think that InterGen will find it  
20 cheaper to put the powerplant emission controls on the two  
21 units.

22 IMPERIAL COUNTY SUPERVISOR WYATT: Madam Chair,  
23 if I may, there are others that are on the speaking list  
24 that are from our county to deal with the technical issues  
25 and to address some of those questions that you've raised

1 there, that we feel some methods that the State Lands  
2 Commission can utilize to assist with resolving this  
3 particular environmental issue, and that they will speak  
4 to some of those issues as they come up here.

5 EL CENTRO MAYOR GROGAN: Our Air Pollution  
6 Control Officer is here.

7 CHAIRPERSON CONNELL: Good. I appreciate that  
8 and I want to thank both of you for coming.

9 CHAIRPERSON CONNELL: Ryan, you are next.  
10 Following Ryan is Andrea, and I don't even dare try your  
11 last name. Let me try it, Matarazzo.

12 MS. MATARAZZO: Close.

13 CHAIRPERSON CONNELL: Okay. You will be with  
14 Ryan. And then we have two more individuals, I believe,  
15 from, well, one from the energy company and one from  
16 Imperial County.

17 Go ahead, Ryan, identify yourself for the record.

18 MR. O'NEAL: Hi. Good afternoon. Ryan O'Neal  
19 director of projects for Sempra Energy International. And  
20 I'm here speaking on behalf of the gas transportation  
21 businesses at Sempra Energy International in Mexico. I'm  
22 not here to discuss the Mexicali powerplant or the gas  
23 distribution businesses we have throughout Mexico as well.

24 In this capacity, I will be speaking on behalf of  
25 Gasoducto Rosarito, which is the holder of the ten-year



1 bundled gas supply and gas transportation contract with  
2 the federal electric commission, or CFE, in Mexico at the  
3 Rosarito powerplant, which currently has about 1,100  
4 megawatts in operation.

5 Gasoducto Rosarito is also the owner of  
6 Transportadora de Gas Natural de Baja California or TGN,  
7 which is the owner and operator of a 23-mile pipeline that  
8 connects the San Diego transportation systems with the CFE  
9 powerplant in Rosarito. That pipeline has been in  
10 operation since June of 2000.

11 I'm also here to talk about Gasoducto Bajanorte,  
12 which is a 137-mile pipeline, which is under construction.  
13 That will cross from east to west across all of Baja  
14 California. The interconnection on the eastside will be  
15 with North Baja Pipeline at the international border and  
16 the interconnection on the westside will be with the TGN  
17 pipeline that's currently in operation.

18 Construction of Gasoducto Bajanorte has been in  
19 progress for approximately five months, and it's  
20 approximately 50 percent complete. The project completion  
21 date is July 2002 and we have several customers committed  
22 to consuming natural gas, as soon as the pipeline is put  
23 into service.

24 The North Baja Pipeline project is critical to  
25 the Tijuana/San Diego area in providing reliable supplies

1 to that area, which currently don't exist today. Once  
2 North Baja Pipeline is complete, it will enable CFE to  
3 displace any burning of fuel oil that they currently do by  
4 using --

5 CHAIRPERSON CONNELL: Who is CFE?

6 MR. O'NEAL: It's the federal electric  
7 commission, that operates the powerplant in Rosarito, that  
8 they do in that Rosarito powerplant.

9 Gas currently flowing to CFE today will be  
10 allowed to be utilized by plants either existing or under  
11 construction in San Diego, thereby freeing up additional  
12 supplies to allow burning of gas in San Diego, clean  
13 burning gas I might add, that would otherwise, in  
14 curtailment situations, require these plants to burn  
15 alternative fuels, which they have the capability of  
16 doing.

17 GR and CFE have both committed to 100 percent of  
18 their capacity needs on the North Baja Gasoducto Bajanorte  
19 Pipeline projects.

20 Also, the Tijuana industrial customers would have  
21 the ability to begin consuming natural gas. We've been  
22 approached by customers in Tijuana and Tecate and they're  
23 ready to commit to a reliable supply of gas just as soon  
24 as it becomes available.

25 That concludes my brief comments.

1           CHAIRPERSON CONNELL: Thank you. Annette, did  
2 you want to ask a question?

3           ACTING COMMISSIONER PORINI: Yes, one quick  
4 question. The Lieutenant Governor had asked a question  
5 about the pipe construction and safety, of Terry Martin,  
6 and I think that that's probably more important to you.  
7 Could you describe, are there similar safety features to  
8 the pipeline that's actually being constructed through  
9 California?

10           MR. O'NEAL: Yes, the construction that's  
11 currently going on or under way in Mexico meets the exact  
12 same standards that Sempra Energy uses for its  
13 transportation projects in California and elsewhere in the  
14 U.S. So we're meeting the same standards. We're  
15 examining 100 percent of our welds. So we're exceeding  
16 what is code and we're following the same international  
17 code that is used in the United States.

18           CHAIRPERSON CONNELL: And how do you handle the  
19 labor issue in Mexico?

20           MR. O'NEAL: We have a contract with a labor, I'm  
21 not sure of the union name, but there's a labor contract  
22 in place for all employees of the construction firm, and  
23 it's union.

24           CHAIRPERSON CONNELL: And more important than the  
25 issue of whether it's a Mexican union is the question of

1 its quality of workmanship. How do you feel about the  
2 quality of the workmanship south of the border?

3 MR. O'NEAL: The quality of the workmanship is  
4 dictated on the inspections that we do. We followed the  
5 exact same inspection techniques, the same standards if  
6 they don't meet, you know, the quality, then they're  
7 kicked off the crew, et cetera. So we've had no problems  
8 in prior businesses. This is not our first pipeline we've  
9 constructed in Mexico, and we're confident that we're  
10 constructing a quality and safe asset.

11 CHAIRPERSON CONNELL: All right, fine.

12 Andrea.

13 MS. MATARAZZO: Good morning. I'm Andrea  
14 Matarazzo. I'm an attorney with Remy, Thomas and Moose.  
15 We specialize in land use and issues arising under the  
16 California Environmental Quality Act, and the National  
17 Environmental Policy Act, and we represent the County of  
18 Imperial.

19 We submitted a letter dated January 28th  
20 regarding the EIS/EIR prepared for this project. It  
21 follows up on previous comments submitted by the county  
22 regarding the environmental review, which includes  
23 comments on the draft EIS/EIR, which were submitted during  
24 the public comment period.

25 I have copies of that letter if you need them,

1 and I won't duplicate the comments that are contained in  
2 that letter. I'll just highlight some of the key points.  
3 First, I want to emphasize that the County does not oppose  
4 the project, only the proposed manner of its  
5 implementation.

6 The County continues to be concerned about the  
7 project's adverse environmental effects, particularly its  
8 adverse impacts on regional air quality. The fundamental  
9 problems is that the document defines the project as an  
10 80-mile pipeline to transport up to 500 million cubic feet  
11 of natural gas per day to powerplants in Mexico.

12 It avoids and ignores the impacts of those  
13 plants, which are controversial because they're not  
14 planning to use standard emission controls and do not  
15 comply with state and federal air quality standards.

16 The EIS/EIR indicates that the pipeline is  
17 environmentally acceptable, looking only at the direct  
18 impacts of the pipeline and ignoring the impacts of the  
19 substandard powerplants it will supply with natural gas.

20 There's no dispute that these plants are expected  
21 to pollute the air both in Mexico and in the Imperial  
22 valley. And with all due respect, the notion that  
23 pollution travels north/south is, at best, technically  
24 unsupportable.

25 The State Lands Commission has not only the

1 authority to analyze the air quality impacts of the  
2 powerplants in Mexico, to which the pipeline would be  
3 connected, it has the statutory obligation to do so.

4 This obligation has been emphasized to the  
5 Commission by many commenters on the EIR, including EPA  
6 and the California Air Resources Board. The pipeline is  
7 obviously and literally connected to the powerplants in  
8 Mexico. And the operation of the plants is a foreseeable  
9 consequence of approval of the pipeline.

10 The EIR must consider the entire project as a  
11 whole, acknowledge its impacts, and most important  
12 formulate measures to mitigate those impacts.

13 To do so, the environmental document was required  
14 to properly identify the baseline conditions which it has  
15 failed to do. It fails to adequately evaluate the  
16 project's regional air quality impacts in light of current  
17 air quality conditions in the Imperial Valley.

18 For example, EPA recently found that the County  
19 of Imperial would have attained national ambient air  
20 quality standards for PM 10 if not for emissions emanating  
21 from Mexico. The EIR fails to disclose that 257 tons per  
22 day of particulate matter generated in Mexicali  
23 significantly degrades the air quality in the Imperial air  
24 basin.

25 In evaluating impacts, the EIR ignores the CEQA

1 guidelines regarding determination of significance and  
2 fails to quantify pollution by the powerplants despite  
3 their obvious and literal connectedness to the proposed  
4 pipeline.

5 This leads to a failure to mitigate the impacts  
6 of the project. This ignores CEQA's substantive mandate  
7 to the Commission to mitigate the impacts of the project  
8 to the extent feasible. Mitigation is not infeasible  
9 merely because it reduces the profitability of the  
10 project.

11 CHAIRPERSON CONNELL: Andrea, your time is over,  
12 so if you could wrap up.

13 MS. MATARAZZO: I would just emphasize that the  
14 Commission does have the authority to require mitigation  
15 by developing a performance standard and requiring a  
16 commitment to the achievement of that performance  
17 standard, which would involve the applicant contracting  
18 with the power producers to employ best available control  
19 technology, including SCRs.

20 And I also have one question about the  
21 appropriation of the document, which doesn't include most  
22 of the relevant technical data, and it seems to indicate  
23 that it was prepared by a consultant, but it doesn't  
24 appear to identify that consultant or provide any  
25 qualifications. And I wanted to get some information

1 about that.

2 CHAIRPERSON CONNELL: Can you respond to that?

3 MR. WALKER: The consulting firm was hired by the  
4 Federal Energy Regulatory Commission and the State Lands  
5 Commission. It is Natural Resources Group out of  
6 Minneapolis, Minnesota.

7 MS. MATARAZZO: Thank you.

8 CHAIRPERSON CONNELL: Thank you. We have one  
9 final speaker, Steve Birdsall, representing, I believe,  
10 Imperial County.

11 MR. BIRDSALL: Thank you, Madam Chair, I'm Steve  
12 Birdsall -- and Honorable Commission Members. I'm Steve  
13 Birdsall. I'm the Air Pollution Control Officer from  
14 Imperial County, California.

15 Madam Chair, I had a whole prepared statement  
16 here to provide to this staff. However, I think it would  
17 be important, in light of some of the comments that were  
18 made by the proponents and other people here, to try to  
19 answer some of those questions. So I will hand out my  
20 prepared statement so you can peruse that later.

21 Obviously, as was pointed out by Mr. Grogan and  
22 Mr. Wyatt, this powerplant pipeline issue is a significant  
23 concern to Imperial County. I want to go through and kind  
24 of address some of the things that the NBP, the North Baja  
25 Pipeline, folks made.



1           While they have proposed that this will improve  
2 air quality, we don't believe that it will. There's  
3 already an existing natural gas pipeline that does go into  
4 Mexicali. And, in fact, when that pipeline was put in,  
5 there was some sources in Mexico that did convert to  
6 natural gas.

7           However, when the price of natural gas went above  
8 what the cost of diesel was, they all went back to burning  
9 diesel. So the only way we're going to see a true  
10 improvement of air quality from Mexico because of the gas  
11 pipeline, is to eliminate their ability to use diesel  
12 fuel. That has not happened.

13           As far as the 8,000 tons improvement at the  
14 county, we're not sure what those 8,000 tons are. There's  
15 different kinds of pollutants. There's ozone. There's  
16 nitrous oxides. There's carbon monoxide. There's sulfur  
17 dioxide, and things like that.

18           We don't know what they mean by 8,000 tons, and  
19 if, in fact, how do they quantify that, what assumptions  
20 do they use, what inputs do they use in their models to  
21 gain that.

22           I think it's important to understand that we're  
23 talking about two different air basins here. We're  
24 talking about the Imperial County and Mexicali basin,  
25 which includes the Salton trough down to the Gulf all the

1 way up to Palm Springs. And you're talking about the San  
2 Diego, Tijuana air basin, which includes the Rosarito  
3 powerplants in that basin. They're two different air  
4 basins.

5 We would like to see the data and the assumptions  
6 that they used to come up with that 8,000 tons. We have,  
7 in fact, asked InterGen for the last several months to  
8 provide us with the data and the assumptions that they  
9 used to develop their air models for their particular  
10 powerplant. They have promised that to us, to the federal  
11 EPA and the California Air Resources Board. To this date,  
12 we have not received those assumptions nor have we  
13 received those input datas. And we would like to see that  
14 to make sure they're not using Ouija Board science on  
15 this.

16 We also want to explain that keeping in mind that  
17 we are in an air basin similar to what this -- for  
18 instance, you may be familiar with San Joaquin Valley  
19 where it's a bowl, if you would, is that no matter what  
20 way the wind is blowing, even on still days, which we have  
21 a majority of, that basin will eventually fill up  
22 underneath an inversion and we will have impact from the  
23 pollutants that are going to be produced by those two  
24 powerplants.

25 And, in fact, our figures, and we're using the

1 figures that come from the Mexican permit, is that there  
2 will be a little over 12,000 tons a year nitrous oxides,  
3 which is a precursor to ozone, which we are not in  
4 attainment for in the valley, over 2,200 tons a year of  
5 carbon monoxide, which the City of Calexico adjacent to  
6 Mexicali is not in attainment for, and over 1,000 tons a  
7 year of PM 10. We are also nonattainment for PM 10.

8           Those we feel could cause a significant impact to  
9 our air quality. In fact, in the nitrous oxides, again,  
10 like I said, as a precursor to ozone, we feel that this  
11 could result in a ten percent increase in our valleywide  
12 NOx emissions, which we, again, think would have a  
13 tremendous impact on our ozone concentrations.

14           CHAIRPERSON CONNELL: Can you begin to wrap up,  
15 please.

16           MR. BIRDSALL: I can do that for you right now,  
17 Madam Chair.

18           CHAIRPERSON CONNELL: Thank you. If we can have  
19 all the Commission available for discussion here, Cruz.  
20 I'd like to address a question to the Commission here.  
21 And that question would be given the matter before us  
22 today, is there anyway Sempra Energy can assist in trying  
23 to make certain that the emissions coming out of your  
24 plant and south of the border or the plant south of the  
25 border would have less pollutants, and what can we do to

1 try to address that issue? I mean, that's really the  
2 operative issue here, not the pipeline. It's the plants  
3 and the polluting effect that the plants have.

4 MS. McDONOUGH: Well, I don't represent Sempra,  
5 but I can state that their project in Mexicali both units  
6 do have selective catalytic reduction on them already.  
7 It's the InterGen plant which has four units, two of them  
8 are scheduled to have selective catalytic reduction on  
9 them, two are not.

10 I also want to point out, and again, I don't  
11 speak for InterGen, I don't represent them here, but it is  
12 my understanding that that plant has a power sale  
13 agreement to the Mexican government for the output of that  
14 plant. And their bid for that was based on the specs that  
15 the Mexican government gave them.

16 And their plant will begin power sales, I  
17 believe, in the next year?

18 MR. MORSE: April of next year.

19 COMMISSIONER BUSTAMANTE: Those two plants are  
20 providing energy to Mexico and those other two plants that  
21 are up to U.S. standards are providing it to the U.S.?

22 MS. McDONOUGH: Right, as early as this summer  
23 the project stays on schedule.

24 CHAIRPERSON CONNELL: So they bifurcated their  
25 standards, basically?

1 MS. McDONOUGH: Yes.

2 CHAIRPERSON CONNELL: And you say that the -- go  
3 through, again, the relationship between InterGen and the  
4 government of Mexico. The Government of Mexico has the  
5 right to purchase InterGen or has a right to purchase the  
6 plants?

7 MS. McDONOUGH: The output from the plants. They  
8 have a contract to purchase the power from the plants.

9 CHAIRPERSON CONNELL: A long-term contract?

10 MS. McDONOUGH: A long-term contract.

11 CHAIRPERSON CONNELL: But they have no ownership  
12 relationship to InterGen?

13 MS. McDONOUGH: No.

14 CHAIRPERSON CONNELL: And is anyone in the  
15 audience here today versed on how InterGen was able to  
16 have two plants with the converters and two that were not?

17 MR. MORSE: My understanding is that the first  
18 two plants, the ones that don't have SCRs on them, were  
19 the two plants that InterGen used to bid. There was a  
20 competitive bid process to get this contract with CFE to  
21 provide 500 megawatts of power to Mexican citizens in the  
22 Mexicali area.

23 InterGen bid that project on the basis of the  
24 specifications put out by CFE, which did not include a  
25 requirement for SCR, only to meet the standards that

1 existed in Mexico, which those plants do.

2 InterGen on the other two plants, which are there  
3 for the purpose of selling power to California into the  
4 United States, voluntarily agreed to put SCR on those two  
5 plants, because that power was not part of this  
6 competitive bid process, and that power was to be sold in  
7 the U.S.

8 CHAIRPERSON CONNELL: So they could get a higher  
9 revenue base and therefore could offset the cost, or at  
10 least that would be the thinking?

11 MR. MORSE: Well, my guess on their thinking is  
12 that power coming from Mexico into the U.S. was going to  
13 be competing with other powerplants that would have SCR on  
14 them. And they felt they could compete on that basis.

15 The two plants serving just Mexico, they  
16 apparently cut their bid as fine as they could, meeting  
17 the minimal requirements set forth by the contract.

18 COMMISSIONER BUSTAMANTE: Are they eligible to  
19 burn any other kind of fuel in those two plants?

20 MR. MORSE: Their current permit is only for  
21 natural gas. They have told us and I think they have said  
22 publicly that if for some reason the North Baja Pipeline  
23 does not get built, and they therefore do not have natural  
24 gas available, they will pursue the opportunity to build  
25 or get a permit to use diesel fuel, and the plants are all

1 convertible to diesel fuel.

2 CHAIRPERSON CONNELL: Annette, did you have any  
3 questions?

4 ACTING COMMISSIONER PORINI: My questions were  
5 primarily related to the safety features of the pipeline  
6 and those have all been answered.

7 I think that the Commission does a great job of  
8 trying to look at and mitigate all of the environmental  
9 impacts that it can. From the testimony, I'm just not  
10 clear that there's anything more that we can do. I don't  
11 know if you're at a point where you're ready to wrap up  
12 the testimony or if the Lieutenant Governor has additional  
13 questions.

14 CHAIRPERSON CONNELL: Do you have anymore  
15 questions?

16 COMMISSIONER BUSTAMANTE: I have a few more. Is  
17 there anything that we can do in the building of the  
18 pipeline that will provide offsets to Imperial County?  
19 For example, in building the pipeline, you can have either  
20 dirt roads or you can have some roads that won't stir up  
21 as much dust and add to the PM 10 problems that take place  
22 just in the building. Is there offsets that either the  
23 developers or the contractors can provide in working with  
24 the county, so that at least we're trying to mitigate, as  
25 much as possible on our side in order to ensure that the

1 building or the facility doesn't exacerbate a local  
2 problem?

3 MR. WALKER: One of the things that we have  
4 required of the company in terms of mitigation is that  
5 they keep the construction of new roads to an absolute  
6 minimum, which means that they are using dirt roads.

7 But a big issue in this area is increasing access  
8 to areas that are, at the moment, closed, because there  
9 are no roads. And it is a big concern both to the Bureau  
10 of Land Management and the Department of Parks and Rec.  
11 that we not provide new access into some of these desert  
12 areas where people can get out there and trash them. So  
13 we have required the company to use existing roads in  
14 almost every case. I suppose it would be possible --

15 COMMISSIONER BUSTAMANTE: But along the building  
16 of the pipeline itself, you're going to have a huge dust  
17 problem is my guess.

18 MR. MORSE: And we have, as part of our  
19 mitigation requirement, a very significant dust mitigation  
20 plan to keep that dust down.

21 MS. McDONOUGH: We have extensive experience in  
22 that area, too.

23 COMMISSIONER BUSTAMANTE: You're going to have to  
24 go before the County.

25 MS. McDONOUGH: Right.



1           CHAIRPERSON CONNELL: Let me just ask a question.

2           COMMISSIONER BUSTAMANTE: I guess the County  
3 should look at that very carefully in terms of how that's  
4 going to be done. I don't know. I'm just going to  
5 recommend that something be done in that area.

6           I really feel torn on this issue. I mean, I feel  
7 like I'm -- if we build this thing, we're going to be  
8 aiding and abetting this facility to go ahead and use  
9 standards that we know are going to impact citizens in  
10 Imperial county. And it feels like you've got a gun to my  
11 head that if we don't allow it, then they're going to use  
12 some other type of fuel that will make it even worse.

13           And, I mean, I just feel torn on this issue to  
14 the point where, you know, I'm looking for someday here  
15 today from the representatives to give me some type of  
16 assurance that what we're going to have here is that we're  
17 going to, in fact, better the situation than it currently  
18 is.

19           And I'm not hearing that. I'm not hearing that  
20 you have extensive experience in the mitigation of dust.  
21 I'm not hearing that you're going to resolve it. I'm  
22 hearing that there's major problems with the air pollution  
23 that's going to come across. We can't do anything about  
24 it, because those are Mexican plants, et cetera, et  
25 cetera, and I'm not hearing any changes about it.

1           I feel like if I support this thing, it's kind of  
2 like I'm having to support the lesser of two evils, even  
3 though I know that there's benefit to the U.S. side in  
4 terms of energy and other kinds of activity. There just  
5 seems like there is nothing being done to try -- for  
6 anybody to try to mitigate the problems on those two  
7 plants on the Mexico side that are affecting the residents  
8 of California.

9           CHAIRPERSON CONNELL: Well, the question would be  
10 where is the leverage? I mean, that's --

11           COMMISSIONER BUSTAMANTE: I don't see any, that's  
12 the problem. I'm not seeing it and I'm not hearing  
13 anybody, you know, offering anything, and, you know, it's  
14 starting to piss me off.

15           MR. WALKER: One thing in response to Mr.  
16 Birdsall's request, the information he requested on the  
17 air quality impacts is available, and I will see that he  
18 gets those calculations by the end of the week.

19           CHAIRPERSON CONNELL: Let me understand, InterGen  
20 was -- their license to build these plants comes from the  
21 Mexican government, correct?

22           MS. McDONOUGH: Yes.

23           CHAIRPERSON CONNELL: And the only reason we hit  
24 the higher standards with the converters is that they're  
25 selling to California and obviously the PUC or whoever

1 buys that energy here would not -- who is buying the  
2 energy?

3 MR. MORSE: My understanding is they have some  
4 contracts with DWR, whether or not they --

5 CHAIRPERSON CONNELL: We would require California  
6 standards to be observed before we would pay on those  
7 contracts. You know, that's one of the things we review  
8 in the Controller's office.

9 The question is do we have any leverage at all?  
10 I have not been engaged and certainly the Governor and  
11 Lieutenant Governor have, in conversations with the  
12 Mexican government on environmental issues.

13 Now, the question is, Cruz, whether you think  
14 there's any leverage to be brought in those conversations?

15 COMMISSIONER BUSTAMANTE: Well, I think these  
16 facilities are being built. They're going to be done.  
17 They're going to be burning something. And if we don't  
18 give them natural gas, they're going to burn something  
19 else. But it just really galls me to see that this is  
20 taking place.

21 MS. McDONOUGH: Regarding the dust issue --

22 COMMISSIONER BUSTAMANTE: And, in fact, maybe  
23 what we should end up doing, is we should, in fact,  
24 establish, and if it's not going to be established  
25 elsewhere, establish it within our own parameters as a

1 part of an environmental justice policy, which I'm going  
2 to ask the Commission today to have staff begin including  
3 as a part of everything that we do, is that we maybe  
4 establish some kind of a regional air basin quality that  
5 we don't aid and abet this kind of activity in the future.  
6 I mean, I'm just -- where I'm --

7 CHAIRPERSON CONNELL: My concern is that even if,  
8 as you point out, even if we refuse to approve this today,  
9 that plant is already there. And it's just a matter of  
10 burning even worse fuel than would be burnt if we, you  
11 know, we approve this and were able to go with a less  
12 pollutant fuel.

13 My concern is, you know, in these forthcoming  
14 discussions, and I know these discussions are agendized,  
15 and we'll move forward between the State of California and  
16 Mexico, is to put this on the agenda. I think this is one  
17 of the items that, you know, when we talk in opening up  
18 our borders and free trade and we talk about joint  
19 economic development that this needs to be upfront. There  
20 has to be a growing awareness and support in Mexico and  
21 the Government for a higher level of standards, because it  
22 does impact California.

23 COMMISSIONER BUSTAMANTE: There is no InterGen  
24 representative here?

25 Is there?

1 EXECUTIVE OFFICER THAYER: I do not believe so.

2 COMMISSIONER BUSTAMANTE: Yes, there is.

3 Could you come up, please.

4 MR. BIRDSALL: Madam Chair, could I make just two  
5 more statements before you close?

6 CHAIRPERSON CONNELL: Very, very quickly. We're  
7 running out of time here.

8 MR. BIRDSALL: First of all, there's only two  
9 units under construction at the InterGen plant, one of  
10 which is almost -- is about 30 or 40 complete, the other  
11 one is not.

12 They need a permit to burn fuel oil in Mexico,  
13 which they do not have at this point in time.

14 COMMISSIONER BUSTAMANTE: But there are other  
15 facilities in Mexico that do burn fuel.

16 MR. BIRDSALL: Yeah, but they're not in this air  
17 basin. Those are all over in the San Diego and Rosarito  
18 air basin, and not this -- we're talking about a  
19 difference --

20 COMMISSIONER BUSTAMANTE: We're replacing those  
21 with the natural gas, is that correct?

22 MR. BIRDSALL: At Rosaritos, San Diego, that's  
23 correct. But these are two brand new --

24 COMMISSIONER BUSTAMANTE: We have a net benefit  
25 over there, even though we're creating a net loss here.

1           MR. BIRDSALL: That's correct. We're the smaller  
2 county and the smaller population. It's a David and  
3 Goliath issue.

4           COMMISSIONER BUSTAMANTE: And so the facilities  
5 are being built in the InterGen project, the ones that are  
6 being built right now for Mexico use are being built, not  
7 the U.S. one --

8           MR. BIRDSALL: No. The one that's being built  
9 now, the one that's most completed is the one they wanted  
10 to bring on line this summer, which is going to export  
11 power.

12           COMMISSIONER BUSTAMANTE: We'll bring the  
13 InterGen person on.

14           MR. BIRDSALL: What we wanted is that InterGen  
15 make a \$7 million investment to put SCR on those other two  
16 units and would solve a vast majority of our pollution  
17 problems.

18           COMMISSIONER BUSTAMANTE: Yeah.  
19           Could I have the InterGen representative please  
20 come up.

21           CHAIRPERSON CONNELL: Okay, InterGen.

22           MR. MARTINEZ: How much time do I have to speak?

23           CHAIRPERSON CONNELL: You have a couple of  
24 minutes, just like everyone else.

25           MR. MARTINEZ: First of all, thank you. I guess,

1 just to start from the beginning, our powerplant is being  
2 built as a result of an international tender that was held  
3 to the Mexican government.

4 The Mexican government has been trying to improve  
5 its portfolio at the plants by having clean burning  
6 natural gas plants being built.

7 COMMISSIONER BUSTAMANTE: Cleaner.

8 MR. MARTINEZ: Cleaner. We won this bid in May  
9 of 2000. And the way that we sized this powerplant was to  
10 supply power to Mexico, but we also had some surplus that  
11 we could either sell to industrials in Mexico or also sell  
12 to California.

13 Later, when the energy crisis started in  
14 California, we decided to expand that to an additional  
15 unit to be able to supply power to California this coming  
16 summer of 2002 when there is going to be a need, according  
17 to the studies that have been prepared by the State  
18 Auditor.

19 So basically the powerplant is composed of four  
20 turbines. The ones that we have control over, which are  
21 two merchant units that we'll be selling power into  
22 California, have been equipped with the selective  
23 catalytic reduction.

24 CHAIRPERSON CONNELL: We've heard that.

25 MR. MARTINEZ: The other two units, part of our

1 winning the bid, we have a contractual obligation with the  
2 Mexican government to supply them power for 25 years.

3 COMMISSIONER BUSTAMANTE: We're not hearing  
4 anything new here. Can you get past all this.

5 MR. MARTINEZ: To address your issue about what  
6 we have offered, when we started meeting with Imperial  
7 County about a year ago, they brought up the fact that we  
8 didn't have any selective catalytic reduction.

9 As our response to them, we added the two. And  
10 then because our contractual obligation to CFE was such  
11 that we were tied to this tariff, we said we can't add  
12 selective catalytic reduction to the two turbines, but we  
13 did conduct an air study that showed under EPA  
14 methodologies and guidelines that we had no significant  
15 impact at the U.S. border as well as points north.

16 This information was provided to the Department  
17 of Energy and to the Bureau of Land Management under the  
18 environmental assessment document that was prepared for  
19 them that complied with NEPA as well as CEQA.

20 We showed that there was no significant impact,  
21 but we wanted to do something more. We have offered  
22 Imperial County and as well as Mexicali to create a  
23 cross-border ozone reduction program. Imperial County is  
24 nonattainment for two pollutants, one is PM 10, the other  
25 one is ozone.



1           PM 10 is mostly related to their agricultural  
2 business, and I think that should be dealt with in kind or  
3 we think so.

4           The ozone problem we have basically offered to  
5 create is to fund this committee to address specific  
6 sectors in the entire air basin, not just Imperial County,  
7 not just Mexicali valley, but the whole together and  
8 address specific sectors that are known producers of  
9 ozone.

10           We have had very good reception in Mexicali of  
11 this. We have talked to the Environmental Secretary about  
12 this as well in Mexico City. And we also want the support  
13 of both the community of Imperial County as well as  
14 industry for this program to work, and really effectively  
15 reduce ozone in the whole area.

16           CHAIRPERSON CONNELL: Let me interject here. I  
17 think a crucial point is has InterGen attempted to go back  
18 to the Mexican government and ask for a change in their  
19 rental agreement with the Mexican government, so that you  
20 can afford to put the converters on these other two  
21 plants?

22           Now, has that conversation been entertained?

23           MR. MARTINEZ: Yes.

24           CHAIRPERSON CONNELL: What has been the response  
25 of the Mexican government?

1           MR. MARTINEZ: Basically, there are no provisions  
2 in the contract for that.

3           CHAIRPERSON CONNELL: Well, there's no provisions  
4 in the contract. My question is will they entertain an  
5 expansion of the contract, a good neighbor policy with  
6 their friendly neighbor north, you know, California, so  
7 that we are not having any kind of pollutants whether you  
8 believe they exist or not?

9           If you obviously felt strongly enough to do it in  
10 relationship to the two plants that are there that you're  
11 selling energy to California is, my point is can this  
12 issue not be joined again, and is InterGen, you know,  
13 comfortable and willing to do so?

14           I mean, you know, I feel that we must move  
15 forward today on this, but I am very unhappy, as you are,  
16 Cruz, on this entire dilemma that we're in. It's like  
17 being forced to, you know, disable a child in order to  
18 save the child here. And that just is not a pleasant  
19 thought.

20           So I would like to have some assurance from the  
21 InterGen representative here today that there is going to  
22 be a good faith effort at the highest levels of InterGen  
23 to go back and try to renegotiate this contract. And I  
24 certainly, you know, behoove the Governor and Lieutenant  
25 Governor in their trips to Mexico, to make this a point

1 with the Mexican government.

2           It seems to me that's where the leverage needs to  
3 occur is at the Mexican government level not at some  
4 bureaucratic level within, you know, the Baja area of  
5 Mexico, but with the federal government at the most senior  
6 levels of the cabinet.

7           Now, the Environmental Secretary joined us here  
8 in California at the President's trip last year, Cruz. It  
9 would seem to me that we ought to be able to entertain  
10 this issue at the highest levels of the Vincente Fox  
11 administration.

12           COMMISSIONER BUSTAMANTE: I will be contacting  
13 the Secretary to find out if there is something we can do  
14 about this.

15           MR. MARTINEZ: I would like to let you know that  
16 we have been in discussions and there still are  
17 discussions being held in Mexico City pertaining to this  
18 matter. But I'd like to make sure that the -- I guess,  
19 from our results of the air quality impact assessment that  
20 we did, again using EPA methodologies and guidelines, that  
21 we showed no significant impact taking into account  
22 meteorology and topography and our emissions.

23           We, by far, exceed Mexican regulations. We are  
24 about 93 percent lower than all Mexican standards.

25           COMMISSIONER BUSTAMANTE: You understand, though,

1 however, your results are suspect?

2 MR. MARTINEZ: I see the Commission's position on  
3 that.

4 CHAIRPERSON CONNELL: Do I have a motion by the  
5 Commission on this matter?

6 ACTING COMMISSIONER PORINI: Yes. After  
7 listening to the testimony, I would move that we accept  
8 the staff's report.

9 CHAIRPERSON CONNELL: Is there a second for that?  
10 I'll second that.

11 It's been moved and seconded to accept the staff  
12 report.

13 All in favor say aye?

14 (Ayes.)

15 CHAIRPERSON CONNELL: That's a unanimous vote.  
16 There are no other matters, I believe, Mr. Thayer, before  
17 this Commission?

18 EXECUTIVE OFFICER THAYER: The only other  
19 question would be whether anyone wanted to address the  
20 Commission in the public comment period, which, of course,  
21 is now.

22 CHAIRPERSON CONNELL: Are there any other  
23 matters?

24 No. No other comments, then this meeting is  
25 adjourned.

1           COMMISSIONER BUSTAMANTE: Madam Chair, just one  
2 more thought. I did raise earlier that I'd like to have  
3 the State Lands Commission begin the process of preparing  
4 policy for environmental justice. It is a bill that was  
5 established by Senator Solis, which requires all of the  
6 State agencies, and although it is not clear as to the  
7 effects that it has on independent agencies, such as the  
8 State Lands Commission, I'd still like to move forward on  
9 it so that all environmental justice issues are integrated  
10 with all the policy decisions of the State Lands and staff  
11 and the Commission.

12           EXECUTIVE OFFICER THAYER: We'll come back --

13           ACTING COMMISSIONER PORINI: I was just going to  
14 add on for the Lieutenant Governor that there is a working  
15 group within the administration that is working on  
16 environmental justice issues, and it cuts across all  
17 different agencies. So I know that they would be willing  
18 to participate.

19           EXECUTIVE OFFICER THAYER: And, in fact, our  
20 staff has attended some of those meetings. I attended one  
21 of those meetings and we'll carry forward with that.

22           CHAIRPERSON CONNELL: Thank you. We appreciate  
23 that, Mr. Thayer.

24           (Thereupon the California State Lands  
25 Commission meeting was adjourned at

12:00 p.m.)

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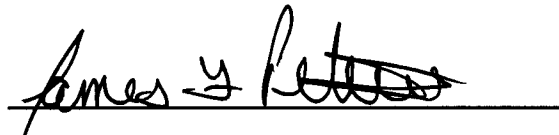
CERTIFICATE OF REPORTER

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of February, 2001.



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