

MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

CALIFORNIA STATE LANDS COMMISSION
100 HOWE AVENUE, SUITE 100
SACRAMENTO, CALIFORNIA

THURSDAY, NOVEMBER 13, 2003
11:00 A.M.

Michael Mac Iver
Shorthand Reporter

ORIGINAL

APPEARANCES

Cruz Bustamante, Chairperson (via telephone)

Steve Wesley, State Controller, represented by Cindy Aronberg (via telephone)

STAFF

Paul Thayer, Executive Officer (via telephone)

Jack Rump, Chief Counsel

ALSO PRESENT

Alan Hagar, Deputy Attorney General (via telephone)

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PROCEEDINGS

1
2 CHAIRPERSON BUSTAMANTE: Let's call the meeting to
3 order. We have myself and also the Controller's office
4 that's represented. Is Controller Wesley on the line?

5 ACTING COMMISSIONER ARONBERG: I'm here for
6 Controller Wesley.

7 CHAIRPERSON BUSTAMANTE: Okay. And so we are not
8 going to have a representative of the Finance office; is
9 that correct?

10 CHIEF COUNSEL RUMP: That's correct. We're not
11 joined here by Finance today.

12 CHAIRPERSON BUSTAMANTE: Okay. So this is going
13 to be a telephone conference meeting. And do we need to do
14 the role call, Madam Secretary?

15 EXECUTIVE OFFICER THAYER: I think we just did.

16 ACTING COMMISSIONER ARONBERG: Oh, I'm sorry, then
17 I'll be more formal. Cindy Aronberg for State Controller
18 Steve Wesley. Apologies.

19 CHAIRPERSON BUSTAMANTE: And so we need to adopt
20 minutes?

21 EXECUTIVE OFFICER THAYER: Just for the last
22 meeting, yes.

23 CHAIRPERSON BUSTAMANTE: Okay. So have you had a
24 chance to look at the minutes of the last meeting?

25 ACTING COMMISSIONER ARONBERG: Yes. I move adoption.

1 CHAIRPERSON BUSTAMANTE: All right. Let's go
2 ahead and make that unanimous. Unanimous of two votes.

3 CHIEF COUNSEL RUMP: That's correct.

4 CHAIRPERSON BUSTAMANTE: This is probably one of
5 the only committees and commissions that we could probably
6 find in the state of California where two people constitute
7 not only a quorum, but a unanimous vote. I think that's
8 wonderful. Maybe we should reduce a lot more of the
9 commissions like that.

10 (Laughter.)

11 CHAIRPERSON BUSTAMANTE: We'd move business a lot
12 faster this way, except for the editorials of the Chair.

13 Okay. Why don't we go right into the order of
14 business. We have two calendar items.

15 Paul, do you have any kind of a report of any kind
16 in general, or do we go right into the first item?

17 EXECUTIVE OFFICER THAYER: I don't have an
18 Executive Officer's report.

19 CHAIRPERSON BUSTAMANTE: All right.

20 EXECUTIVE OFFICER THAYER: Let me just by way of
21 background just set the stage for these two items. The
22 Commission last met I think in San Diego on October 20th,
23 and at that meeting we had before it one of these two items,
24 the one that deals with the Santa Fe/Kinder Morgan pipeline
25 which runs from Concord to West Sacramento. The Commission

1 conducted a hearing on that item and heard some opposition
2 and directed the staff and the Applicant and the opponents
3 to try and work together to work through some of those
4 issues.

5 CHAIRPERSON BUSTAMANTE: Right.

6 EXECUTIVE OFFICER THAYER: We spent some time on
7 that. The Applicant has a time crunch in that if they don't
8 start work fairly expeditiously in the spring, they won't be
9 able to complete it within the environmental construction
10 window, which would require them to remobilize all the
11 equipment again the following year, which may require them
12 to put off the entire operation, the entire construction
13 project for an additional year. So the Applicant asked and
14 the Commission agreed to hear this item before the December
15 9th hearing, which is our next regularly scheduled one.

16 In the interim, we also had presented to us a
17 problem, a timing problem, for a dredging project, otherwise
18 routine, that's been proposed in Benicia. And so we've put
19 that on the calendar as well. If the Commission can't
20 approve it at this meeting, then it would have to be put
21 over, the project put over, until sometime later this
22 spring. So that was placed on the items as well. That's
23 part of the Commission's policy, of course, of dealing
24 expeditiously with projects that might have environmental or
25 economic impact.

1 CHAIRPERSON BUSTAMANTE: Do we have any opposition
2 of any kind on Item Number 2?

3 CHIEF COUNSEL RUMP: We have no slips at this
4 location regarding Number 2.

5 ACTING BOARD MEMBER ARONBERG: I have no slips at
6 the Controller's location for that item.

7 CHAIRPERSON BUSTAMANTE: All right. So would it
8 be appropriate to just accept this as a matter on a
9 consensus?

10 EXECUTIVE OFFICER THAYER: We could consider this
11 on the consent calendar?

12 CHIEF COUNSEL RUMP: Yes, we could.

13 ACTING COMMISSIONER ARONBERG: Okay, great.

14 CHAIRPERSON BUSTAMANTE: So if you make a motion,
15 I'll second it, and we'll move unanimously to put that on
16 the consent and move it out.

17 ACTING COMMISSIONER ARONBERG: I move that item to
18 consent.

19 CHAIRPERSON BUSTAMANTE: Second. The motion is
20 made, second, unanimous approval. So Item Number 2 has been
21 moved off as a consent item.

22 And we'll go now to Item Number 1, the calendar
23 item. This is an item, in which as Paul indicated earlier,
24 that we all talked about trying to resolve this, and given
25 the concern about notice, we wanted to make sure that those

1 who were in opposition had enough time to be able to get
2 back with folks. And although we have had records on file
3 showing that notices went out, still the concern that was
4 raised by, I believe it was Mr. Cunha, with respect to
5 notice was of concern to the Commission. And what we did
6 was that we postponed action until such time that staff, Mr.
7 Cunha, and all the other folks would be able to get together
8 and speak in order to see if we could resolve it.

9 Apparently there has been some progress in the
10 sense that the folks from the Contra Costa Sanitary
11 District, they did remove their opposition to this matter.
12 I don't believe that Mr. Cunha has removed his opposition.
13 I'm assuming that the speaker slips that you have are from
14 Mr. Cunha and other members who would like to speak; is that
15 correct?

16 ACTING COMMISSIONER ARONBERG: Yes. Mr. Chair,
17 I've got Robert Clark, as well as Richard Cunha.

18 CHAIRPERSON BUSTAMANTE: Is there a staff
19 presentation on this?

20 CHIEF COUNSEL RUMP: There is. But before we do
21 that, let me give you the speaker slips which we have at
22 Howe Avenue. In support, we have David Cornman from Kinder
23 Morgan; Bill O'Brien from Kinder Morgan; Lou Franchimon from
24 Napa Solano Building Trades; John Andres, Operating
25 Engineers Local 3. We also have two slips, if there are

1 questions, Susan Lee, who is the environmental project
2 manager for Aspen Group; Matt Fagundes, environmental
3 scientist with Aspen. We have a request for clarification
4 from Dan Hall of Wickland Pipelines.

5 And was there anyone else who wanted a speaker
6 slip here?

7 MR. KELLY: You can put me down. My name is Matt
8 Kelly, I represent the Sacramento Building and Construction
9 Trades Council.

10 CHIEF COUNSEL RUMP: Great. Matt Kelly then. And
11 if you'd fill out a slip, please.

12 MR. KELLY: I will.

13 CHIEF COUNSEL RUMP: Thank you.

14 CHAIRPERSON BUSTAMANTE: Are all these folks
15 interested in speaking in favor or opposition, or are they
16 there just for Q and A or --

17 CHIEF COUNSEL RUMP: Well, we have, let's see,
18 one, two, three, four, five in support. We have two, if
19 there are questions, but they are with the proponent. And
20 we have one which is for clarification from Dan Hall.

21 CHAIRPERSON BUSTAMANTE: All right. Why don't we
22 go with the staff report, then we'll go to opposition, and
23 then we'll go to support.

24 ACTING COMMISSIONER ARONBERG: Okay. Just for a
25 quick clarification, the two at the Controller's office both

1 checked the opposition box. So two additional oppositions.

2 CHAIRPERSON BUSTAMANTE: All right. We'll go with
3 the opposition right after the staff report. Is there a
4 staff report?

5 EXECUTIVE OFFICER THAYER: Yes, sir. Mr. Chair,
6 Lorna Burks from our Land Management Division will present
7 the first part of the staff report, and she'll be followed
8 by Dwight Sanders, the Chief of our Environmental Division,
9 who will explain some of the measures that have been adopted
10 to address the issues.

11 CHAIRPERSON BUSTAMANTE: Okay. And everybody has
12 received the Contra Costa Sanitary District letter
13 indicating that they have pulled their opposition; is that
14 correct?

15 ACTING COMMISSIONER ARONBERG: Yes, sir.

16 CHAIRPERSON BUSTAMANTE: Okay. Go ahead.

17 MS. BURKS: Good morning, Commissioners. My name
18 is Lorna Burks, and I'm a Public Land Management Specialist
19 with the Land Management Division.

20 Before the Commission for consideration on October
21 20th, 2003, was certification of the Final EIR and an
22 application from SFPP for the proposed construction and
23 operation of a new 20-inch petroleum products pipeline
24 extending from the existing SFPP Concord station in Contra
25 Costa county to the existing SFPP Sacramento station in the

1 city of West Sacramento in Yolo county, and maintenance on
2 an existing 14-inch petroleum products pipeline known as
3 Line Section 25, which is under the Commission's Master
4 Lease Number PRC-5439.

5 The proposed new 20-inch pipeline will cross
6 state-owned lands at Walnut, Grayson, and Pacheco Creeks,
7 and Cordelia Slough in Contra Costa and Solano counties.
8 Approximately 5,500 feet of existing 14-inch pipeline would
9 continue to be used for the crossing of the Carquinez
10 Straight until such time that replacement with a new 20-inch
11 pipe using a single horizontal directional drill is
12 technically feasible.

13 The new pipeline will carry gasoline, diesel fuel,
14 and jet fuel. The total length of the new 20-inch pipeline
15 is approximately 70 miles.

16 During consideration of this item at the
17 Commission's October 20th meeting, representatives from
18 Central Contra Costa Sanitary District and Clark Trucking
19 Service, Incorporated, objected to the proposed routing of
20 SFPP's new 20-inch pipeline in the vicinity of their
21 properties.

22 Clark Trucking Service's concerns is the proposed
23 route along South River Road in the city of West Sacramento.
24 Since that meeting, staff has received a letter from the
25 Central Contra Costa Sanitary District, dated October 27th,

1 2003, removing its objection to certification of the EIR for
2 this project, or to the Commission action on staff's
3 recommendation to award a lease to SFPP.

4 Subsequent to the October 20th meeting, SFPP has
5 been in discussions with Mr. Cunha of Clark Trucking Service
6 to develop additional approaches to the issues originally
7 raised and to coordinate and facilitate additional
8 discussions between the parties.

9 On October 28th, 2003, SFPP met with various
10 property business owners along South River Road, including
11 Clark Trucking Service and representatives of the City of
12 West Sacramento. During this meeting, an additional
13 business, Clark Pacific, another trucking company, revealed
14 its concern that its operations too would be constrained by
15 construction activities. The outstanding issues, as are
16 addressed in the revised calendar item, are, one, safety of
17 businesses along South River Road; two, consistency of the
18 proposed project with the recently adopted Sacramento
19 riverfront masterplan, and; three, closure or impairment of
20 South River Road during project construction.

21 Mr. Dwight Sanders, Chief of the Environmental
22 Planning and Management Division, will briefly address the
23 status of these issues since the Commission's meeting of
24 October 20th. Thank you.

25 MR. SANDERS: Good morning, Commissioners. As

1 Lorna indicated, I am Dwight Sanders -- yes, hello

2 CHAIRPERSON BUSTAMANTE: Dwight is going to be
3 doing what?

4 EXECUTIVE OFFICER THAYER: He will be talking
5 about the responses that have been developed to the issues
6 that were raised by the opponent.

7 CHAIRPERSON BUSTAMANTE: Okay. Then I'll wait for
8 my questions until after you're done. Go ahead.

9 MR. SANDERS: Thank you, Mr. Chairman.

10 For each of these issues, I would like to give a
11 very brief overview of the content of the Final EIR and then
12 subsequent offers from the Applicant to address these
13 particular issues.

14 First of all, safety of businesses. The Final EIR
15 involves or recommends a thorough design review of the
16 project by both the State Fire Marshal's office and the
17 engineering staff of this Commission. Secondly, it also
18 includes the development and requirement of a supplemental
19 spill response plan, which developed in conjunction with the
20 local police and fire departments, would address such items
21 as emergency response and ingress and egress from the area
22 in the event of an emergency. The pipeline itself will be
23 built to what are termed urban standards. That means, in
24 specifics, that it will be 12.5 percent thicker walled than
25 are required by the U.S. Department of Transportation

1 standards.

2 Secondly, 100 percent of the welds in this area on
3 the pipeline will be X rayed, in contrast to the usual 10
4 percent of such welds. And finally, SFPP has offered in the
5 meeting of October 28th to bury the pipeline deeper in South
6 River Road.

7 The second issue as to the consistency with the
8 adopted Sacramento riverfront masterplan. Staff has
9 consulted with the staff of the City of West Sacramento who
10 has indicated as a replacement pipeline, the project is
11 allowable under and consistent with the adopted riverfront
12 masterplan.

13 Lastly, the closure or impairment of South River
14 Road during the project construction. The Final EIR
15 addresses several impacts, among them, roadway blockage and
16 traffic congestion and construction restricting property
17 access. For the former, the EIR requires a traffic control
18 plan be prepared with local jurisdiction and affected
19 business involvement. In the second impact, the document
20 requires the development of a construction schedule also
21 with local jurisdiction involved and the affected
22 businesses.

23 And in this particular issue, as a result of the
24 October 28th meeting, SFPP has offered to construct the
25 pipeline at night, which in consultation with the City of

1 West Sacramento, is compatible with their views. Secondly,
2 the construction would also occur on weekends. And lastly,
3 the key construction period, which is estimated to be two to
4 three weeks would be conducted during less active periods
5 for the businesses.

6 And we have in attendance today Matt Fagundes from
7 Aspen Group, who can address, if desired, the success of
8 such measures in comparable projects throughout the state.

9 As to resolution of the issues, at this juncture
10 we have none formally between Clark Pacific or Clark
11 Trucking Services, Incorporated. We are aware of several
12 offers and counteroffers that have been made between Clark
13 Pacific and the Applicant. And as late as a letter dated
14 November 10th, which we received this morning, the Applicant
15 has offered to meet with Clark Pacific in conjunction with
16 an anticipated construction start date of April to explore
17 additional measures that might alleviate that trucking
18 operation's concerns.

19 There is no known resolution or compatible
20 resolution or offer, counteroffer, at least to staff,
21 between the Applicant and Clark Trucking Services,
22 Incorporated.

23 That, Mr. Chairman, concludes my presentation.
24 And, of course, we're available to answer questions.

25 CHAIRPERSON BUSTAMANTE: Yes, a couple of

1 questions.

2 First, from the Controller's office, do you have
3 any questions?

4 ACTING COMMISSIONER ARONBERG: No, not at this
5 time.

6 CHAIRPERSON BUSTAMANTE: Okay. My understanding
7 is that there was going to be a relocation of Valve Number
8 12. We had talked about that at the October 20th Commission
9 meeting. You didn't mention that as you were -- or at least
10 I didn't hear it.

11 MR. SANDERS: No, I didn't mention it, Mr.
12 Chairman. Mr. Dave Cornman is present to address that
13 particular issue.

14 Dave.

15 MR. CORNMAN Thank you, Dwight.

16 Mr. Chairman, the valve site that was proposed
17 initially along South River Road has been moved, in our
18 final design process that is still ongoing, down to our old
19 facility that is on South River Road, just at the fence line
20 of our facility, at that location.

21 CHAIRPERSON BUSTAMANTE: So it has been moved,
22 okay.

23 MR. CORNMAN: Yes, sir. The final design is still
24 ongoing and will be reviewed by Commission engineering staff
25 as we proceed forward. And that we have already moved.

1 CHAIRPERSON BUSTAMANTE: All right. Dwight --

2 MR. SANDERS: Yes, sir.

3 CHAIRPERSON BUSTAMANTE: I don't know who else I
4 would -- there was also in addition to the two- to three-
5 week construction period, that you would try to move around
6 the major trucking operations. And in addition to
7 constructing at night and on weekends, in order to avoid any
8 conflict with daytime operations, there was also another
9 item, a third item, that talked about the compensation of
10 firms for actual damages that would be incurred as a
11 consequence of the construction of the pipeline. Whatever
12 happened with that?

13 MR. SANDERS: You're correct, Mr. Chairman, and
14 that is the interchange of offer/counteroffer that I
15 indicated. And, again, I would ask Mr. Cornman to address
16 the status of those negotiations.

17 MR. CORNMAN: Mr. Chairman, we have entered
18 discussions with Clark Pacific regarding their claim to
19 potential liquidated damages associated with a specific
20 large project outgoing shipments of structural components
21 that are on very tight timeframes. And what they have been
22 asking for is upfront commitment to a specific payment,
23 dollar payments, for damages that we think we can avoid and
24 are willing to make every effort to avoid by either weekend
25 construction, when they tell us they do no trucking of any

1 substance, or on evenings. Currently they're doing no
2 trucking in the evenings. So we are very hopeful that we
3 can avoid their damages completely and are not very -- our
4 lawyers essentially told us not to sign off on a dollar
5 limit up front, that's really a projection.

6 CHAIRPERSON BUSTAMANTE: I understand that, and
7 that's probably good counsel. But how do we know and what's
8 the protocol for determining actual damages?

9 MR. CORNMAN: Well, just compensation. Obviously,
10 as a partner of the EIR, if any damages are incurred by any
11 business that we cannot avoid, the mitigation requirements
12 in the EIR require us to compensate those property owners,
13 whether they be businesses or private.

14 CHAIRPERSON BUSTAMANTE: Let me just ask an
15 example, so I can have it clear in my own mind what that
16 could mean. Let's say that in these tight timeframes, and
17 you have a street that you've tore up and you are blocking
18 either the receipt or the delivery operation of one of the
19 trucking companies, and a load is delayed, and there is
20 either a penalty or nonacceptance of the load because of the
21 delay. Are you saying that actual damages includes the
22 compensation of that load?

23 MR. CORNMAN: As I understand it, and Mr. Clark
24 will have to speak specifically to this for you when he
25 speaks, but my understanding from their letters and our

1 discussions is that they have contractual obligations that
2 subject them to liquidated damages of upwards of I think
3 it's \$50,000 a day if they are late. And I don't have a
4 clear understanding of exactly what that means.

5 So their desire, Mr. Chairman, is to have us
6 obligate to moving their project from their site on South
7 River Road to a secondary site off of that road for an
8 indeterminate amount of time and pay for the actual each
9 load of the materials that have to go to that site at a
10 certain price per load. So there are --

11 CHAIRPERSON BUSTAMANTE: I'm not sure I know what
12 all that meant, but let me ask you this question. What I
13 believe that they are talking about is something that I'm
14 sure you are very familiar with and everyone else is as
15 well, a performance contract. If you're required to deliver
16 something on time, at a specific place, and you don't do it,
17 then you are penalized. And in some cases it's too late for
18 a particular activity, so a load is rejected. So there we
19 are sitting at a dock with a load that's been rejected
20 because it didn't meet the specific timeframe because the
21 road in front of their facility was impassible. So all I'm
22 asking is does that fit under actual damages?

23 MR. CORNMAN: Yes, sir, it does. That's correct.

24 CHAIRPERSON BUSTAMANTE: So penalties and those
25 kinds of activities that are actual damages, not things that

1 are made up, not some kind of a pre-amount that they
2 anticipate may be somehow, somewhere divvied out in some
3 accountant's mind that would be the approximate amount of
4 damages, but the actual damages. And there is a process and
5 a protocol somewhere in this process for determining that,
6 or is that going to have all be done in some court case in
7 which, you know, there's an additional 40 percent cost to
8 the companies in order to be able to pay for legal fees.

9 MR. CORNMAN: What we have committed to -- I don't
10 know of a process other than the court process that you
11 referenced, other than what we have said in writing to them
12 that we will negotiate in good faith and sit down with them
13 to avoid their damages, and to the extent that we cannot do
14 that, we will develop a process by which we track any delays
15 to their loads going out and have a formula for compensating
16 them for not only liquidated damages, but any other damages
17 that might be incurred.

18 CHAIRPERSON BUSTAMANTE: Okay.

19 MR. CORNMAN: We are committed to that.

20 CHAIRPERSON BUSTAMANTE: All right.

21 EXECUTIVE OFFICER THAYER: I think I might just
22 add to that that this is like any other condition, that if
23 it's not followed, then the ultimate recourse is, in fact,
24 you do have to go to court. But the obligation is
25 established by the EIR to pay that, and the commitment of

1 the Applicant affirms that. And so if something can't be
2 worked out, then the trucking company has that recourse to
3 court, which it otherwise would not have, except for the EIR
4 process.

5 CHAIRPERSON BUSTAMANTE: Okay. So let me just
6 make sure that I run these down. There is the relocation of
7 Valve Number 12, it's going to be moved to the South River
8 Road site. There is scheduling the two-to-three week
9 construction period around major trucking operations and you
10 work with the businesses there to try to deal with that.
11 You're going to construct at night and on weekends to avoid
12 any conflict with daytime operations. And you will
13 compensate the firms for actual damages incurred as a
14 consequence of the construction of the pipeline.

15 In addition, according to Dwight and others,
16 there's going to be a design review by the Fire Marshal.
17 There's going to be a supplemental spill response. The
18 specifications of the pipeline, which are going to be
19 thicker, a thicker-walled pipe, a hundred percent welds
20 reviewed, and a deeper trench in certain sensitive areas for
21 the pipeline. And you've already checked with West
22 Sacramento with respect to comportsing with their plans?

23 MR. SANDERS: That's correct, Mr. Chairman.

24 CHAIRPERSON BUSTAMANTE: All right. And you're
25 going to be required to do a traffic control plan as well?

1 MR. SANDERS: Yes, they will, Mr. Chairman.

2 CHAIRPERSON BUSTAMANTE: All right. Is there
3 anything else that we need to know just in terms to bring us
4 all up to speed up to this time? Anything else? And then
5 we'll go to opposition.

6 MR. SANDERS: I think, Mr. Chairman, that Mr.
7 Cornman would probably like to verify also all of the points
8 that you've listed.

9 CHAIRPERSON BUSTAMANTE: Okay.

10 MR. CORNMAN: Mr. Chairman, I guess what I would
11 like to just say very briefly is that we appreciate all the
12 hard work that staff has done to work with us over the last
13 couple weeks here. They have been doing an awful lot of
14 effort and we appreciate it.

15 I would just say that we as a company took the
16 opposition very seriously and we worked in good faith with
17 all the parties to try to resolve their concerns,
18 understanding all their concerns. And as is evidenced by
19 the settlement with the Contra Costa County Sanitation
20 District, we came to the table and paid a premium there to
21 resolve their concerns. But in that particular case, the
22 pipeline was crossing their property.

23 With respect to South River Road, we had numerous
24 phone calls and one meeting with the parties up there, and
25 ultimately I thought we were pretty close with Clark Pacific

1 in basically agreeing to avoid them, because they told us
2 that they don't truck much on the weekends. And with Mr.
3 Cunha, we really never got the specific damages or issues
4 clarified for us satisfactorily. We have done what we can,
5 we feel, to resolve the concerns and move forward with this
6 project. We think the staff has selected and proposed an
7 environmentally superior route and we support that.

8 CHAIRPERSON BUSTAMANTE: All right. Let me just,
9 beyond this activity, I have just one more question of you,
10 Mr. Cornman. Just for clarification, my understanding is
11 that there was going to -- I believe you were in the process
12 of building the connector with Wickland?

13 MR. CORNMAN: Yes, sir.

14 CHAIRPERSON BUSTAMANTE: In order to build a
15 pipeline to assist jet fuel to the airport?

16 MR. CORNMAN: Yes, sir.

17 CHAIRPERSON BUSTAMANTE: Is that still in the
18 process? Is that going to be a part of your activity, or is
19 that --

20 MR. CORNMAN: Okay. Mr. Chairman, may I have a
21 gentleman who has got his name on the speaker's list to
22 respond to that question who is sitting next to me, Mr. Bill
23 O'Brien?

24 CHAIRPERSON BUSTAMANTE: Sure.

25 MR. CORNMAN: Okay, Bill.

1 MR. O'BRIEN: Right. Well, are you asking the
2 question on the existing 14-inch line, whether that one is
3 going? So the 20-inch?

4 CHAIRPERSON BUSTAMANTE: I believe it was a new
5 line.

6 MR. O'BRIEN: The new line, okay. Well, Wickland,
7 they're in the process right now of connecting up to our 14-
8 inch line. We signed a deal with them back in May of 2003.
9 And in the EIR process here, we submitted a lateral from the
10 20-inch line to that connection that is currently being
11 built. And it's our intention, yes, to go ahead with that,
12 both timingwise, you know, we submitted the EIR or included
13 it in the EIR, I'm sorry, so that it would go smoothly and
14 concurrently with the construction.

15 CHAIRPERSON BUSTAMANTE: Okay. Well, let me ask
16 you in a way that I can understand it and see if I can get a
17 yes or a no answer?

18 MR. O'BRIEN: Oh, you can get that.

19 CHAIRPERSON BUSTAMANTE: Is there going to be a
20 new connector to bring jet fuel to the airport?

21 MR. O'BRIEN: Yes. There will be a connection to
22 the airport, pending a commercial agreement with Wickland.

23 CHAIRPERSON BUSTAMANTE: Pending a commercial
24 agreement.

25 MR. O'BRIEN: Similar to what we've done on the

1 14-inch line.

2 CHAIRPERSON BUSTAMANTE: And so is there a
3 representative of Wickland there?

4 MR. O'BRIEN: Yes.

5 CHIEF COUNSEL RUMP: Yes. We have a request from
6 Dan Hall on this subject. We'll ask him to speak to you, as
7 soon as he gets to the microphone here.

8 CHAIRPERSON BUSTAMANTE: Okay. Is Dan Hall coming
9 up to a microphone?

10 CHIEF COUNSEL RUMP: Yes, he's there now.

11 CHAIRPERSON BUSTAMANTE: Okay.

12 MR. HALL: The only thing I would say -- speak to
13 that?

14 CHIEF COUNSEL RUMP: Yes, right there.

15 MR. HALL: I'm Dan Hall. I'm with Wickland
16 Pipelines. The issue that we have is an issue that really
17 bears on the last clause of what Bill just said, pending a
18 commercial resolution. There is some dispute as to who will
19 pick up the cost of this connection. We realize that. What
20 we want to make sure is that the connection is made and that
21 it is part of the project as it was advertised in the
22 project description of the EIR. Ultimately who has to pay
23 will be decided, if not by a negotiation, but by the PUC, I
24 would imagine.

25 But the real issue here is whether or not the

1 project, including the connection, goes forward on a timely
2 basis. And I frankly don't want to be put in a position
3 where Wickland is faced with a situation of either agreeing
4 under duress to pay for the thing or be faced with the
5 prospect of not having that connection built.

6 If you look at the project description, it's very
7 clear that it was considered to be a part of the project and
8 that it was going to be built by Kinder, or by SFPP. So
9 that's the situation here. If SFPP is willing to say that
10 they are going to build it and move forward and it will
11 resolve one way or another the funding issue, we don't have
12 a problem. If they are saying that the funding issue has to
13 be resolved or it won't get built, then we do have a
14 problem. That's it in a nutshell.

15 CHAIRPERSON BUSTAMANTE: Could either Dave or Bill
16 talk to that issue.

17 MR. O'BRIEN: Well, again, I think we're hung up
18 on some semantics here, but the bottomline here is we don't
19 know the exact right of way this line is going to take until
20 this EIR is established. So we don't know the final cost of
21 what we're agreeing to. Similar to the conversation
22 earlier, we can't agree to anything until we know what the
23 final cost is.

24 CHAIRPERSON BUSTAMANTE: Okay.

25 MR. O'BRIEN: We don't make the deliveries --

1 CHAIRPERSON BUSTAMANTE: It was pretty much
2 advertised. I mean it was pretty much said that this was
3 going to be a part of this program, part of this build out.

4 MR. CORNMAN: Mr. Chairman, what we did for this
5 EIR is to the benefit of all parties, we included the
6 lateral for the 4,100 foot lateral between the new 20-inch
7 and up to the 14-inch, so that we could help to facilitate
8 the eventual land acquisition, permitting, and construction
9 of that lateral. But it was in no way intended to be an
10 indication of the commercial terms and agreement, what is
11 yet to be negotiated between the two parties.

12 CHAIRPERSON BUSTAMANTE: Now was that an attorney
13 speaking?

14 MR. CORNMAN: No, sir.

15 (Laughter.)

16 CHAIRPERSON BUSTAMANTE: That was pretty slick.

17 (Laughter.)

18 MR. O'BRIEN: Well, there are other --

19 CHAIRPERSON BUSTAMANTE: Bill, you earned your
20 money today.

21 MR. O'BRIEN: Mr. Chairman, Bill O'Brien here.
22 There are other terms other than the financing. There is
23 ownership of the line. You know, the 14-inch connection
24 right now is a Wickland item, they own that line. That is
25 up for grabs, the ownership, the operation, the maintenance,

1 as well as the financing. These are all items that when
2 Wickland came to us on the 14-inch line, we sat down, we
3 negotiated a deal with them, and they are under
4 construction. It's our intention to do the same thing here
5 once we get some finalized numbers and locations, plus the
6 EIR.

7 CHAIRPERSON BUSTAMANTE: Well, I think it's
8 something that the Commission would like to see. I don't
9 know if we have -- do we have any authority over this, Paul?

10 EXECUTIVE OFFICER THAYER: We don't.

11 CHAIRPERSON BUSTAMANTE: All right. Although we
12 don't have any authority, it clearly was a part of the
13 reasoning that we were very interested in moving this thing
14 forward the way we have, and I think that part of the
15 cooperation that was extended by the Commission to all
16 parties was because we felt that this was an important part
17 of the overall project. I wish we had authorization, but
18 since we don't, I guess I should move on than just say that
19 we are going to ask staff to pursue monitoring of this piece
20 of it, as well as the other areas that we do in fact have
21 authorization over, and to see if there isn't a way to
22 continue to increase and to move, nurture, this part of the
23 plan, because we feel it is a very important part of the
24 overall plan. So that being said, is there any other
25 questions at the Controller's office?

1 ACTING COMMISSIONER ARONBERG: No. I wish to
2 concur with your directions to staff in that regard.

3 CHAIRPERSON BUSTAMANTE: Okay.

4 CHIEF COUNSEL RUMP: Excuse me, Mr. Chairman, Dan
5 Hall has a comment he'd like to make.

6 MR. HALL: This is Dan Hall speaking. There is
7 one area that this is very relevant that I do believe the
8 Commission has to consider. The plain wording of the
9 Environmental Impact Report in its project description says
10 the Applicant, and I'm quoting one of several provisions,
11 "The Applicant proposes to construct a 12-inch pipeline
12 connection from the 20-inch pipeline over to the Wickland
13 metering station as part of the Concord/Sacramento project."
14 If in fact it's predicated on prior commercial resolution of
15 issues, then that is not a correct statement and the EIR is
16 not a correct EIR or a correct project description. And
17 also the impacts associated with not putting that in have
18 not been addressed.

19 So my issue here is one merely, somebody is going
20 to have to pay for it, I understand that, and the forum to
21 decide that is either negotiations between us and SFPP or
22 Kinder Morgan, or if we can't determine the resolution of
23 that outcome, the PUC. What I'm saying is the project as
24 described was a project that includes that connection and it
25 should go forward as one project. And if it doesn't, the

1 EIR is incorrect.

2 CHAIRPERSON BUSTAMANTE: I personally as a
3 layperson would agree with you, but, again, this commission
4 doesn't appear to have any kind of authority on that
5 particular point. All I can do is at this point suggest,
6 encourage, and have staff follow up with any way that we can
7 encourage that particular part of the project to be built
8 out. I would agree with you, Mr. Hall. I hope that you
9 guys can come to an agreement on this so that it can be a
10 complete project and we won't have to go back through any
11 additional amendments or another type of EIR or any other
12 kinds of process.

13 I think we'll go now to opposition.

14 ACTING COMMISSIONER ARONBERG: Great. Would you
15 like to start over here at the Controller's office?

16 CHAIRPERSON BUSTAMANTE: Sure. We'll start with
17 your office.

18 ACTING COMMISSIONER ARONBERG: Okay. So we go to
19 Mr. Cunha.

20 CHAIRPERSON BUSTAMANTE: Very good.

21 MR. CUNHA: Thank you, Mr. Chairman, and other
22 people in the audience.

23 This is Richard Cunha. And, Mr. Chairman, you
24 were in attendance and heard my presentation in San Diego,
25 and not to be redundant, I will try and simplify the

1 position which we have not agreed to resolve. My threshold
2 position is not in opposition to the project, the only issue
3 that I have initially is the one half mile line that is
4 presently under the railway right of way that parallels but
5 is not under Jefferson Boulevard in West Sacramento, which
6 by all accounts can be and is being used at this time.

7 The request is to abandon that half of mile right
8 of way and pipeline, 14-inch pipeline, which is mentioned in
9 today's document on page 8, which the staff agrees the 14-
10 inch pipeline is being used elsewhere in this project. All
11 we're asking is that be continued to do that. The request
12 is to trench another 20-inch pipeline, which is a new
13 additional mile of pipeline that is not in the ground at the
14 present time.

15 From our conversations, myself and other property
16 owners, with Mr. Cornman and Mr. Smart, the head engineer, I
17 believe, of the project, Mr. Smart indicated that in fact
18 that 14-inch pipeline can be used. And that is done with a
19 launcher, et cetera, that was referred to in a document I
20 received after 5:00 o'clock last night from the Commission,
21 and none of the other property owners have received. So I'm
22 the only one that has any ability to comment on it.

23 The unfortunate part is, from my understanding of
24 this conversation, is that it would cost Kinder Morgan an
25 additional sum of money to put in a launcher station to

1 allow this 14-inch pipeline to be used in its present
2 location.

3 As you are aware, as the Commission is aware,
4 there is ongoing apparently litigation between Kinder Morgan
5 and Santa Fe Pipeline or the railroad and Sante Fe Pipeline
6 as to their ability to use that right of way, which is not
7 our problem and not the Commission's problem, but their own
8 problem. So my understanding is an additional fact that Mr.
9 Smart indicated that the 14-inch pipeline would be
10 sufficient at the present time and up to when it's built out
11 or that the increased capacity is necessary, because the
12 input at the station on South River Road is geared down to
13 approximately 500 barrels per hour, which is completely
14 under the maximum capacity that's trying to be achieved.

15 Consequently, I think that the discussions you've
16 been having are all subsequent to what the threshold issue
17 is, is this half mile of pipeline which is presently in
18 place usable. Yes, it is. There are statistics by the
19 Commission that the older plan has more frequent, may have
20 more frequent releases, but the volume or the larger
21 pipeline will have larger releases. And from what I read
22 and what it seems to say is pretty much it's a wash, except
23 that the residual impact of the new project is significant
24 and there are some items that cannot be mitigated. So our
25 concern is at the outset, can this right of way be used up

1 to the time of capacity, and I believe the answer to that is
2 yes.

3 Now there's a lot of verbiage that says, well, we
4 can increase it if we go through South River Road and along
5 the deep water channel, but is it necessary at this time. I
6 think that the bottomline answer is no. We can move with
7 the pipeline being used as is stated by the CEQA. The
8 project's basic objectives can be attained, it would not
9 avoid or substantially lessen any of the results tried to be
10 achieved, and I think you have access to that pipeline.
11 Because as it is now, if they have a leak in it, they
12 obviously have an easement to repair it. If they can repair
13 it, I suppose if a section of 14-inch pipeline needs to be
14 repaired or replaced, they can do that as well. So I'm not
15 sure why it's such a big opposition at this point that it
16 cannot be done.

17 Secondly, staff indicates that it has to be
18 coordinated with the low interceptor system, which is the
19 decommissioning of the wastewater treatment plant on South
20 River Road. If that is to be the case, then at the same
21 time the wastewater treatment plant is decommissioned and
22 Jefferson Boulevard or thereabouts is being excavated for
23 wastewater and, et cetera, going into the low interceptor
24 system, then they can remove and replace this pipeline at
25 that time, which is approximately 2005, which is before the

1 demand capacity is necessary with regard to Kinder Morgan's
2 request.

3 As you've already seen from Wickland, and I hear
4 with regard to Clark Pacific, who will discuss their
5 possible damages, I think you already have built in two
6 potential lawsuits, when I don't think it's necessary. I
7 think that by utilizing what is in existence, what has been
8 in existence, and by even staff's analysis, can be utilized,
9 and by the comments from Kinder Morgan at the meetings, they
10 can in fact utilize with additional planning -- this
11 additional one mile of new pipeline to the south of our
12 property and north along South River Road is not necessary
13 and will not thwart nor diminish the objectives of this
14 project.

15 I can respond to Mr. Sander's letter that I
16 received last night, if necessary, if you would like. I
17 think some of the statements made, typographical errors, et
18 cetera, are not exactly what we're looking at close to the
19 river, which indicates it has been taken into consideration.
20 But I will wait for any questions so as to no go on. Thank
21 you.

22 ACTING COMMISSIONER ARONBERG: Mr. Chair, would
23 you like the next speaker to go ahead, or would you like the
24 staff to address Mr. Cunha?

25 CHAIRPERSON BUSTAMANTE: No. Thank you. Let's go

1 ahead and go to the next person for opposition.

2 ACTING COMMISSIONER ARONBERG: Go ahead.

3 MR. CLARK: Hi, my name is Robert Clark. I'm the
4 President of Operations for Clark Pacific. On page 9,
5 you've referenced us as a trucking company, we're actually a
6 construction company. I just happen to have a similar name
7 as Dick Cunha's company.

8 Just to clarify, we manufacture, design, and
9 install large building products throughout the state of
10 California, and we're a union contractor, and we have
11 approximately two to three hundred union employees at any
12 one time. We built our company up over the years because of
13 our ability to do a lot of key scheduling requirements on
14 getting the construction timing.

15 We subsequently have a lot of liquidated damage
16 clauses on our contracts to make sure that we hit these key
17 dates. The damages that can happen to us not only relate to
18 the liquidated damages, but also the consequential damages
19 that occur towards other subcontractors in the working on a
20 project, and then ultimately to our future reputation and
21 picking up future work.

22 A few years back, South River Road was repaved and
23 it did have a significant impact on our company. We have
24 been able to secure some very key contracts and the volume
25 of our work is going to increase during this time period,

1 which we brought to Kinder Morgan's attention.

2 So we had met with Kinder Morgan and understand
3 some of the mitigations that they're willing to do. In
4 talking with them, we talked about a timeframe that would
5 cut when they would work on South River Road, should that go
6 forward, that would help mitigate some of our potential
7 costs.

8 Our concern is we've been trying in good faith to
9 negotiate with Kinder Morgan and appreciate their ability to
10 work with us, but ultimately, we have not been able to come
11 up with an agreement that in my estimation we would have a
12 significant amount of costs to try to achieve compensation
13 for extra costs that we may have.

14 As a company, we will have to make a decision
15 early January on whether we'll have to use an off-site
16 location, and in our conversations with Kinder Morgan,
17 they're having a hard time understanding why we would have
18 to make that decision. Again, we're thinking of the five-
19 and ten-year plan of the problem. It's not the costs
20 necessarily, the actual costs on this particular job only,
21 but it is the consequential costs and any damage, a
22 significant effect on our company in regards to not just
23 money, but to losing jobs for a lot of our union employees.
24 So we've put a lot effort in the last 30 years to build our
25 company up, and some of these contracts lately have been

1 very onerous on the timing issues. We do a lot of repeat
2 business because of our ability to hit these schedules.

3 CHAIRPERSON BUSTAMANTE: Well, what is it, if you
4 don't mind, what is it that you have asked for?

5 MR. CLARK: Well, what we've said is if by
6 January, if in our opinion, we're not satisfied with the
7 mitigation measures that Kinder Morgan can achieve at our
8 sole opinion, we have to go out and actually rent a piece of
9 property to do our storage and ship our product to that
10 property. If we have to physically do that extra thing that
11 we normally wouldn't, we just want to be compensated for it.
12 We don't want to be paid up front for it, we don't want to
13 do anything other than be reimbursed without a lot of
14 onerous -- without a big argument with Kinder Morgan,
15 whether they think we should of had to or not, basically.

16 So what we were trying to do, if we have to lease
17 the property, we can give them a copy of the lease so they
18 know we actually paid the money or our trucking bills to
19 bring our product to this off-site storage. You know, we'll
20 do it at our cost with no mark up, and they can audit all
21 our records. We just want to get compensated for that
22 decision that we'll probably have to make if this project
23 goes forward on South River Road.

24 CHAIRPERSON BUSTAMANTE: Is that your only issue?

25 MR. CLARK: Yes. And so from being a contractor,

1 we were from a practical standpoint, we just laid it out,
2 here's what our concerns were, here's what our actual costs
3 probably will be that you can audit later on.

4 CHAIRPERSON BUSTAMANTE: Right.

5 MR. CLARK: And in our discussions with Kinder
6 Morgan, we got that cut in half by the timing of their
7 operations, which was in both of our benefit. But we just
8 want to be compensated and have you know our issue to try to
9 argue, you know, we really have a hundred thousand dollar
10 problem here, and so if it's done early on, like they're
11 talking about. That's our concern.

12 CHAIRPERSON BUSTAMANTE: So if I could summarize
13 this, you're talking about outstationing or finding a
14 location where you can put materials off site for storage,
15 and you're talking about a two- to three-week period during
16 this construction phase?

17 MR. CLARK: Well, actually, our product, our jobs
18 that we run -- this is where it get's complicated. Our jobs
19 that we run, we produce these products over a four- to six-
20 month period, and when we go to the installation phase where
21 the trucking company brings our product to the site for the
22 iron workers and carpenters and operators to install, we
23 don't know the exact -- we won't know the exact sequence on
24 that. So you end up having to have a whole job have to be
25 stored at one location. And so if there's any project

1 that's going during this three- or four-week period, that's
2 a job that we'll have to store the whole project off site.
3 So it will be a decision that we make that will affect for
4 six months what our production and costs are.

5 CHAIRPERSON BUSTAMANTE: And can you tell me
6 approximately what you think that that amount is going to
7 be?

8 MR. CLARK: Well, if indeed they have to do South
9 River Road, it was somewhere in the eighty to a hundred
10 thousand dollar cost. And what that was made up of was the
11 lease cost of the alternate land, and then the cost to
12 actually drive our product to the different site there.

13 CHAIRPERSON BUSTAMANTE: All right.

14 MR. CLARK: And if they decide to do it in
15 October, it probably will double in amount.

16 CHAIRPERSON BUSTAMANTE: All right, sir. Thank
17 you. Thank you for your testimony.

18 Could I get Dave or Bill back for a moment?

19 MR. CORNMAN: I'm here, Mr. Chairman. Dave
20 Cornman.

21 CHAIRPERSON BUSTAMANTE: Yes. Is this the kind of
22 thing that we were talking about? Are we talking about
23 trying to figure out what the amount really is, but this is
24 one of those things that you would consider an actual
25 damage?

1 MR. CORNMAN: Yes, sir. We would actually --

2 CHAIRPERSON BUSTAMANTE: In negotiating the amount
3 and trying to figure out what really is the real amount.
4 And are you saying eighty to a hundred, but we don't know
5 what it's really going to be?

6 MR. CORNMAN: That's correct. And more
7 importantly, it might be nothing, because our intent is to
8 avoid it completely. And so to give them the sole
9 discretion, which is what they have been asking for, to make
10 the decision to move off site, I think is an unfair request.
11 And that we will work together with them --

12 CHAIRPERSON BUSTAMANTE: I see.

13 MR. CORNMAN: -- in determining that if they are
14 going to be damaged, if we can't avoid them either by time
15 of the year, but night construction and weekend
16 construction, when they do no trucking, then there's really
17 no -- our lawyers aren't just going to let us sign an
18 indemnification clause saying we'll pay you whatever you
19 want.

20 CHAIRPERSON BUSTAMANTE: Okay.

21 ACTING COMMISSIONER ARONBERG: Okay. So we have
22 a --

23 CHAIRPERSON BUSTAMANTE: Although that wasn't
24 artfully put, I understood what it meant, and was not meant
25 to impugn the reputation of Pacific Clark or their legal

1 counsel.

2 MR. CORNMAN: I certainly don't want to do that.

3 ACTING COMMISSIONER ARONBERG: Mr. Chair, there's
4 a response over here from the previous speaker, Mr. Clark.
5 He just wanted to respond to the last comment.

6 CHAIRPERSON BUSTAMANTE: Surely. Mr. Clark.

7 MR. CLARK: Well, again, our concern is we can't
8 be in a spot where Kinder Morgan, who has very good
9 intentions of mitigating this, us not being able to -- you
10 know, agreeing -- going along those lines and having it not
11 happen according to plan, and the effect, the downstream
12 effect, isn't just our actual damage, but the lack of future
13 work which will affect our company and our union employees.
14 And that's very -- we may be trying to be a little too over
15 conservative, but, you know, the downside of the thing is so
16 great for our company.

17 CHAIRPERSON BUSTAMANTE: There's no way, Mr.
18 Clark, that an owner of a company who's trying to build his
19 business up and to take care of the employees that work for
20 him can be too conservative when dealing with something like
21 this. And so your fighting for them and yourself is
22 appreciated and it is understood. So you don't have to
23 apologize for that in any way, shape or form.

24 MR. CLARK: Our concern is Kinder Morgan, you
25 know, in not agreeing that we need to make that move. And,

1 again, we don't want to make any money on this thing other
2 than get reimbursed for actual costs, which can be
3 documented.

4 CHAIRPERSON BUSTAMANTE: And which is what I'm
5 hearing Kinder Morgan as saying they're willing to do,
6 except that you're looking at the timing and if they're
7 going to move quickly enough to be able to resolve these
8 things so that you don't have to worry about trying to deal
9 with this then down the road in some legal fashion is what
10 you're suggesting.

11 MR. CLARK: My suggestion after our negotiations
12 and the way I read this is I think they will agree if we
13 have to go off site, and that's an easy answer to figure out
14 how much that actually costs, but the question is should we
15 go off site or not, and I'm really -- all over our
16 conversations is they think not, and from our point of view,
17 we think we're going to have to, no matter, you know, almost
18 regardless, because we can't stand the risk, we can't stand
19 two percent of that risk --

20 CHAIRPERSON BUSTAMANTE: No.

21 MR. CLARK: -- for the downside. And that's the
22 argument I don't want to have six months from now with them.
23 And that's our real concern. You know, just cutting to the
24 chase, that's the crux of what we wanted to get resolved
25 with them, and that's why being in construction, if you

1 don't have something signed and agreed to up front, a lot of
2 times things get wiggled out of. Not that Kinder Morgan
3 would do that.

4 CHAIRPERSON BUSTAMANTE: Yes, I would be very
5 disappointed if Kinder Morgan was unable to figure out how
6 to make sure that what clearly both have identified as a
7 mitigation that would be necessary to make you whole as an
8 actual damage, and they wouldn't come through with dealing
9 with that.

10 Is there anything we can do, staff, Paul, Jack,
11 with respect to -- which I think is fairly clear? I mean
12 I'm not going to get in the middle of negotiating this thing
13 between these guys, they're going to have to do that
14 themselves, but is there anything we can do to try to help
15 with something that we see real clearly that could be an
16 issue that falls well within the actual damages? Is there
17 anything we can do at this point?

18 EXECUTIVE OFFICER THAYER: I think the problem
19 that I see is that Kinder Morgan can agree to do everything
20 to avoid this problem, only you can't switch to Plan B if a
21 problem develops, other than to perhaps give some authority
22 to Clark when the Kinder Morgan construction actually starts
23 that basically allows them to say, no, we're moving, you
24 cannot dig that trench this evening because we're moving the
25 stuff through.

1 In other words, give Clark some construction
2 authority over the construction process to ensure that these
3 delays won't occur. Because otherwise, what, in essence,
4 Clark is asking for is basically we can't trust the
5 mitigation measures. They may have worked other places, but
6 if something doesn't go right, then it's too late for us to
7 move back to Plan B and move all of our stuff off site, we
8 had to have done that for the six months leading up to the
9 construction.

10 So either Kinder Morgan is going to have to come
11 up with the money, the eighty to a hundred thousand, and go
12 ahead and let's just plan on the new site for storage, or
13 Kinder Morgan would have to surrender some kind of
14 construction oversight to Clark to ensure there won't be any
15 slip up when the actual construction occurs. Those seem
16 like the only two choices to me.

17 CHAIRPERSON BUSTAMANTE: Well, why don't we let
18 that sit for a minute and continue with our opposition, and
19 we'll come back to that issue. Unless anybody at Kinder
20 Morgan wants to make comment?

21 MR. CORNMAN: Mr. Chairman, I'll just make one
22 brief one, and that is we feel very strongly that we can
23 avoid impact by weekend construction. They have
24 specifically told us they don't do trucking on weekends,
25 except maybe a couple of loads on late Sundays. That's a

1 quote. And so we feel that we can do this in three or four
2 weekends and avoid impact. I don't know why they won't
3 agree.

4 CHAIRPERSON BUSTAMANTE: I understand. And,
5 again, for us to get into a negotiating is a very difficult
6 part of this. We clearly have gone through just about all
7 the major activities here with respect to the EIR with
8 respect to all of the mitigation. I think that the issue is
9 of actual damages and whether or not this person, this
10 company, Pacific Clark is going to be damaged. In your view
11 they're not likely to be. And so then if that's the case,
12 it seems like it would be easy to say that since they're
13 not, then we'll go ahead and take care of whatever those
14 costs are going to be. But I know that you don't want to
15 leave some like open checkbook out there as well. And so
16 why don't we just go and continue, and if the Controller's
17 office has any comment at any time, please jump in,
18 otherwise, we'll go ahead and move on to additional
19 opposition.

20 ACTING COMMISSIONER ARONBERG: Okay. I'm okay
21 with going on to additional opposition and hearing everyone
22 else.

23 CHAIRPERSON BUSTAMANTE: Okay. Is everyone in
24 opposition at your office done?

25 ACTING COMMISSIONER ARONBERG: Yes. We are done,

1 except I'm sure they may want to jump in with responses.

2 CHAIRPERSON BUSTAMANTE: I understand. And, Jack,
3 do you have opposition there?

4 CHIEF COUNSEL RUMP: We have no speakers
5 indicating opposition at this time.

6 CHAIRPERSON BUSTAMANTE: Is there anyplace else
7 where there is opposition? No other people who are
8 expressing opposition?

9 ACTING COMMISSIONER ARONBERG: Except now we have
10 a responsive comment.

11 Identify yourself.

12 MR. CLARK: Robert Clark here again. You
13 mentioned whether their mitigations may -- what other
14 options did we have available to us to short circuit the
15 problem I have, and I guess that falls back to Mr. Cunha's
16 comment about staying using that 14-inch line along the
17 railroad line and not going near South River Road.

18 CHAIRPERSON BUSTAMANTE: I understand that, sir.

19 MR. CLARK: That's another option to help mitigate
20 my problem.

21 CHAIRPERSON BUSTAMANTE: I understand.

22 Okay, then, let's go to support. Do we have any
23 supporters at the Controller's office?

24 ACTING COMMISSIONER ARONBERG: None here.

25 CHAIRPERSON BUSTAMANTE: Okay. Then why don't we

1 go to the support that you have over there.

2 CHIEF COUNSEL RUMP: All right. We have heard
3 from Mr. Cornman and Mr. O'Brien. We have as support Lou
4 Franchimon from the Napa Solano Building Trades.

5 CHAIRPERSON BUSTAMANTE: Okay.

6 CHIEF COUNSEL RUMP: He's approaching the
7 microphone right now.

8 MR. FRANCHIMON: Good afternoon, Mr. Chairman.
9 Can you hear me okay?

10 CHAIRPERSON BUSTAMANTE: We can hear you fine,
11 sir.

12 MR. FRANCHIMON: Okay, that's great. Lou
13 Franchimon. I represent the Napa Solano Building Trades
14 Council. I'm also here representing the Contra Costa
15 Building Trades Council. Greg Speery couldn't make it, so
16 I'm speaking on behalf of both councils, representing
17 approximately 40,000 union construction workers, which many
18 of those construction workers will be working on this
19 pipeline. Also it's going to include the Sacramento
20 Building Trades Council. Matt Kelly is here to represent
21 them. So we're talking about a large segment of the area
22 that's going to be affected by this.

23 We are totally in support of the project. We have
24 a commitment from Kinder Morgan that this will be under a
25 project labor agreement. Also, if any delays happen, this

1 thing could be delayed for up to a year. Right now, with
2 the work situation in the area, we desperately need to look
3 forward to something starting next year like this pipeline.
4 The economic effect of this for our workers will be
5 tremendous. There will be a large amount of construction
6 work, we will be working on this pipeline. And I urge the
7 approval of the EIR, and hopefully that will move forward
8 and all the mitigation being handled between the parties
9 that we just listened to will be taken care of. We're just
10 interested in the construction jobs.

11 The other issue that I'd like to bring up that I
12 haven't heard anything about is that any delay or possibly
13 Kinder Morgan pulling out of this project could have a major
14 effect on the 680/80 corridor with additional trucks hitting
15 that freeway. It's already a total mess, we don't need
16 additional gasoline trucks on the road, potential bombs. So
17 we're really looking forward to having this pipeline put in
18 place. And I appreciate it. Thank you.

19 CHAIRPERSON BUSTAMANTE: Thank you, Lou.

20 Who else do we have, Jack?

21 CHIEF COUNSEL RUMP: All right. We have John
22 Andres from the Engineers Local 3.

23 CHAIRPERSON BUSTAMANTE: Move forward, please.

24 MR. ANDRES: Hello, Mr. Chairman, my name is John
25 Andres. I'm a business agent with the Operating Engineers

1 in Fairfield. I'm in favor of the EIR as it stands. I
2 think that the negotiations with Kinder and Clark could
3 probably be brought to a conclusion if they could -- the
4 points that Clark brings up as far as having to stage his
5 material for six months in advance seems a little too far
6 out, but I think if he simply withdraws some of that on a
7 three-week to a four-week worst case scenario for the
8 construction of this project, even if they hit a water line
9 or anything that's in the ground, I would think that would
10 even seem a little far out for six months. So outside of
11 that, the project itself, the jobs and the mitigation as far
12 as the amount of truck traffic on the highway, the project
13 stands on its own. And I urge you to accept the EIR as it
14 stands. Thank you.

15 CHAIRPERSON BUSTAMANTE: Thank you, John.

16 Jack, anyone else?

17 CHIEF COUNSEL RUMP: Yes. The next speaker is
18 Matt Kelly of the Sacramento Building Trades.

19 CHAIRPERSON BUSTAMANTE: Come forward, Matt.

20 MR. KELLY: Yes, thank you for giving me the
21 opportunity to speak in support of this project. As both
22 gentlemen prior to me said, the dollars that are involved
23 with this project and the boost to the economy and the local
24 area that will result from this project going forward will
25 be tremendous for the people that are in the construction

1 industry.

2 The project labor agreement on this project is
3 tremendous, it will ensure that many individuals that are
4 involved with the construction industry are given good jobs.
5 Apprenticeship is part of that, the education of new people
6 being brought into the construction industry, and we would
7 like to put our support behind this. The velocity of the
8 dollar is not as great anywhere as it is in the construction
9 industry, and we think this will be a tremendous project for
10 the area that it crosses.

11 I would encourage the individuals who have the
12 issue with the project specifically in their areas to work
13 diligently with Kinder Morgan and resolve these problems.
14 We know of Clark Pacific very well, they are a fine union
15 contractor that is a member, and many of their members are
16 members of our affiliated unions in the building and
17 construction trades in Sacramento. And we would encourage
18 them to find some resolve on this. And we look forward to
19 future meetings.

20 CHAIRPERSON BUSTAMANTE: Well, Matt?

21 MR. KELLY: Yes.

22 CHAIRPERSON BUSTAMANTE: Maybe you, John and Lou
23 can talk to Kinder Morgan and prevail upon them to work out
24 the matter with Pacific Clark.

25 MR. KELLY: I think the gentleman from Clark

1 Pacific has done a fine job himself.

2 CHAIRPERSON BUSTAMANTE: Well, he could always use
3 a little help, you know what I mean?

4 MR. KELLY: Yes.

5 CHAIRPERSON BUSTAMANTE: You want to help the
6 family, don't you, Matt?

7 MR. KELLY: Yes, I do.

8 CHAIRPERSON BUSTAMANTE: All right. Anyone else,
9 Jack?

10 CHIEF COUNSEL RUMP: No. The only other slips we
11 have were in support, if there were questions, from Aspen.
12 So we're finished.

13 CHAIRPERSON BUSTAMANTE: Okay. There is no other
14 persons in opposition or in support of this matter at this
15 time, is that correct, at the Controller's office?

16 ACTING COMMISSIONER ARONBERG: No. No other
17 persons here.

18 CHAIRPERSON BUSTAMANTE: I'm here at the
19 Lieutenant Governor's office, nor, Jack, anyone else over
20 there?

21 CHIEF COUNSEL RUMP: No one else here.

22 CHAIRPERSON BUSTAMANTE: All right. All testimony
23 having been done, if the Controller's office is interested
24 in either making any comment at this time or asking any
25 questions?

1 ACTING COMMISSIONER ARONBERG: Actually, I would
2 like to ask the staff a question, and that is, we are not
3 the final arbiter of this project; is that correct? Can you
4 tell me about is there local approval or what's next on line
5 for this project, and where is that going to fall in the
6 approval process for this project?

7 EXECUTIVE OFFICER THAYER: Let me give a crack at
8 this, and then if Dwight thinks that I have left something
9 out, he can fill in. We're the first agency to act because
10 we're the lead agency under CEQA, and we're approving the
11 environmental documents that will be used by the other
12 agencies that have to give approval to this project. And
13 there will be a number of them that will be required,
14 everything from the Regional Water Quality Control Board for
15 impacts having to do with water. I think ultimately the PUC
16 is involved. But with particular respect to the pipeline
17 alignment in West Sacramento, the City of West Sacramento
18 will ultimately approve that part of the project and would
19 implement any of the mitigation that's required in the EIR.

20 Dwight, is there anything else?

21 MR. SANDERS: No, Paul, you've covered it rather
22 thoroughly.

23 CHAIRPERSON BUSTAMANTE: And the items would be
24 just again for items that came up in the discussion and the
25 staff reports, be to relocate Valve 12, schedule the two- to

1 three-week construction period around operations, construct
2 at night and on weekends, compensate firms for actual
3 damages, design review by fire marshal, supplement the spill
4 response with ingress and egress, create a larger wall for
5 the pipe, a hundred percent of all welds being reviewed, at
6 some point I believe near residential areas the pipeline is
7 buried deeper than was required, and a traffic control plan.
8 Is there any other items for mitigation that would be a part
9 of this EIR that would be in the final either approval or
10 nonapproval by the Commission.

11 MR. SANDERS: Mr. Chairman, this is Dwight
12 Sanders. There are many other mitigation measures in the
13 final Environmental Impact Report.

14 CHAIRPERSON BUSTAMANTE: That would be found
15 where?

16 MR. SANDERS: They are in the document that we are
17 asking you to certify, Mr. Chairman.

18 CHAIRPERSON BUSTAMANTE: This is the --

19 MR. SANDERS: The Final Environmental Impact
20 Report for the project before you.

21 CHAIRPERSON BUSTAMANTE: Yes, I have it here.
22 Okay.

23 MR. SANDERS: Yes, sir. We've highlighted the
24 issues and the mitigations that we have discussed today
25 primarily because of the issues that were brought before the

1 Commission at its October 20th meeting.

2 CHAIRPERSON BUSTAMANTE: So that's a good
3 clarification. I appreciate that. That's accepted.

4 MR. SANDERS: Thank you, Mr. Chairman.

5 CHAIRPERSON BUSTAMANTE: Is there any other
6 questions from the Controller's office.

7 ACTING COMMISSIONER ARONBERG: I just want to note
8 that it sounds like from Mr. Cunha's perspective, the City
9 of West Sacramento would have some further say about the
10 alignment of the pipe from what I understand Paul was
11 saying. Is that right, Paul?

12 EXECUTIVE OFFICER THAYER: Yes. It's our view
13 that the Environmental Impact Report looked at a couple
14 different options in this area, and one of them was the use
15 of the railroad right of way and the difficulties associated
16 with that. But, nonetheless, if the City as the responsible
17 agency with really the lead status for approving the use
18 permit, the required permit for the pipeline there, could
19 use this environmental document to choose either alignment.
20 There are various reasons, barriers, to choosing an
21 alternative alignment, but nonetheless the City can make
22 that choice.

23 ACTING COMMISSIONER ARONBERG: Okay. And the
24 Controller appreciates Kinder Morgan working with all the
25 parties and agreeing to all these additional mitigation

1 measures that were not set forth in the FEIR. So that's
2 very much appreciated and I guess from my perspective we
3 have just got this one open issue, and that would be the
4 staging area, moving the staging area for Clark Pacific.
5 And maybe a Kinder Morgan representative has some ideas on
6 what to do, maybe preferring that the Clark Pacific people
7 have some sort of voice in the construction schedule?

8 MR. CORNMAN: This is Dave Cornman, and
9 absolutely. As we say in our most current letter to them,
10 we would like to sit down with them in January to review
11 both our schedule as it's moving forward, as well as their
12 schedule moving forward. And I see that as a fair
13 negotiation about trying to avoid impacts first, and if we
14 can't do that, then clearly if what's needed to happen is
15 for them to move off site, as we have said in writing, we
16 will pay damages that are required.

17 ACTING COMMISSIONER ARONBERG: Mr. Clark is saying
18 that the problem is if you agree, and that's the sticking
19 point.

20 MR. CORNMAN: It just can't be unilateral.

21 CHAIRPERSON BUSTAMANTE: Is there any
22 recommendation or any motion that would come from the
23 Controller's office?

24 ACTING COMMISSIONER ARONBERG: I would ask the
25 staff, do you have a suggestion for how to get everyone

1 feeling like they have enough say in this matter here?

2 EXECUTIVE OFFICER THAYER: I think that the avenue
3 that's been worked out in the EIR is a reasonable approach.
4 The juggling of the construction schedule and moving to
5 night and weekend hours is the sort of thing that has met
6 with success in other places, and it's commonly done in the
7 CEQA process, so I think that that approach is the
8 reasonable one.

9 I would ask Kinder Morgan about what sort of
10 flexibility it has in terms of actually scheduling the
11 construction?

12 MR. CORNMAN: We have maximum flexibility. We
13 have offered in writing again that although we plan to do
14 West Sacramento in September/October, the latter part of the
15 year, from our discussions with Clark Pacific, we agreed to
16 consider April, which did help them some. And we've also
17 agreed if there is a window, a three or two- to three- to
18 four-week window anytime between April and October/November,
19 we will try to target that, although at some additional
20 cost.

21 CHAIRPERSON BUSTAMANTE: Well, let me ask you
22 this. Have we run into this particular situation before in
23 which a company is attempting to build some kind of line and
24 then adjusts their construction around the operations of the
25 various businesses that it could possibly interrupt? Have

1 we had experience in that before?

2 EXECUTIVE OFFICER THAYER: I don't recall anything
3 directly analogous to this. It seems like what's being
4 offered by Kinder Morgan is more flexibility than generally
5 pipeline constructors evidence. Most of the time they want
6 to move down the right of way mile by mile with the
7 construction, and there is some expense to starting
8 construction at one location, then relocating it and
9 starting again in a different area in order to accommodate
10 Clark as they're proposing to do here. I'd ask Dwight,
11 because he has a longer history with the Commission as to
12 whether there are any other analogies.

13 MR. SANDERS: Not totally, Paul and Mr. Chairman,
14 however, the consulting firm that we retained to prepare
15 this document, Aspen Group, has had extensive experience
16 with comparable pipeline projects throughout the state, and
17 as such, the mitigation measures that are incorporated in
18 the Final Environmental Impact Report mirror that
19 experience, and I believe they are as contemporary as can be
20 at this point.

21 ACTING COMMISSIONER ARONBERG: Mr. Chair, I would
22 then make a motion, and ask for Jack or Alan's help on this
23 part of it, but to approve staff's recommendation, and with
24 the added caveat that Kinder Morgan make every good-faith
25 effort, I'm asking for a lawyer's advice here, but something

1 like that.

2 DEPUTY ATTORNEY GENERAL HAGAR: I would say to
3 make a good-faith effort to resolve their problems over
4 compensation.

5 ACTING COMMISSIONER ARONBERG: To resolve the
6 problems over compensation and construction schedules, and
7 which it sounds like it's going to happen in that way, to
8 make it so that Clark Pacific doesn't have any disruption in
9 its construction schedules, and further down-the-line
10 problems in its business.

11 CHAIRPERSON BUSTAMANTE: Can you make that into a
12 formal motion?

13 ACTING COMMISSIONER ARONBERG: That was the
14 motion.

15 CHAIRPERSON BUSTAMANTE: Did the person who is
16 taking down the minutes get that motion?

17 CHIEF COUNSEL RUMP: Yes.

18 CHAIRPERSON BUSTAMANTE: Did the reporter get that
19 motion?

20 CHIEF COUNSEL RUMP: We have a court reporter
21 here, as well as Kim has been taking notes as well.

22 CHAIRPERSON BUSTAMANTE: Did the court reporter
23 get the motion?

24 CHIEF COUNSEL RUMP: He says yes, Mr. Chairman.
25 He's nodding in the affirmative.

1 CHAIRPERSON BUSTAMANTE: Okay. Can he repeat that
2 motion?

3 CHIEF COUNSEL RUMP: Okay, hold on.

4 ACTING COMMISSIONER ARONBERG: I'd be happy to redo
5 it, if that would be easier.

6 CHIEF COUNSEL RUMP: All right. I think it would
7 be quicker.

8 CHAIRPERSON BUSTAMANTE: Okay. Do it one more
9 time for us.

10 ACTING COMMISSIONER ARONBERG: Okay. I move to
11 adopt staff's recommendation with one caveat, which is that
12 Clark Pacific and Kinder Morgan work together, and that
13 Kinder Morgan make every good-faith effort to accommodate
14 Clark Pacific's construction schedule and to accommodate
15 them on compensation issues, as well as construction timing
16 issues.

17 CHAIRPERSON BUSTAMANTE: I'll second that motion.
18 We're ready for a vote. Are you ready to vote on this
19 motion?

20 ACTING COMMISSIONER ARONBERG: I am ready.

21 CHAIRPERSON BUSTAMANTE: Okay. How do you vote?

22 ACTING COMMISSIONER ARONBERG: Aye.

23 CHAIRPERSON BUSTAMANTE: And I vote aye. Let the
24 record show it was an unanimous vote. And we will move
25 forward.

1 Is there any other business before the Commission
2 at this time?

3 CHIEF COUNSEL RUMP: There is no other work here
4 to come before the Commission.

5 DEPUTY ATTORNEY GENERAL HAGAR: Did you adopt a
6 consent calendar? I think you transferred an item to the
7 consent, but I'm not sure that you actually made a vote to
8 adopt it.

9 CHAIRPERSON BUSTAMANTE: We only approved Item
10 Number C-02 as a consent. We approved that as a consent.
11 We did not approve a consent calendar. I don't see a
12 consent calendar.

13 DEPUTY ATTORNEY GENERAL HAGAR: No, I meant -- I
14 thought the motion was to transfer Item 2 to the consent
15 calendar, but there was no motion to adopt it.

16 CHAIRPERSON BUSTAMANTE: My understanding was that
17 it was to transfer it to consent and to approve the consent
18 calendar. Is that the way you heard it, Cindy?

19 ACTING COMMISSIONER ARONBERG: Yes. I am
20 satisfied with that, provided that Counsel is.

21 CHIEF COUNSEL RUMP: All right. I think that is
22 clear in the record.

23 ACTING COMMISSIONER ARONBERG: Do you want one
24 more motion?

25 DEPUTY ATTORNEY GENERAL HAGAR: I would prefer you

1 do one more motion.

2 CHIEF COUNSEL RUMP: All right.

3 ACTING COMMISSIONER ARONBERG: Okay. So do you
4 want me to move to adopt the consent calendar?

5 DEPUTY ATTORNEY GENERAL HAGAR: Yes.

6 ACTING COMMISSIONER ARONBERG: Okay, so moved.

7 CHAIRPERSON BUSTAMANTE: Second. Let the record
8 show that it was passed unanimously.

9 Is there anything else that the attorneys want at
10 this time?

11 (Laughter.)

12 CHAIRPERSON BUSTAMANTE: Okay. Is there anyone
13 who was at any of the locations who wished to address the
14 Commission during this public comment period on any matter?

15 CHIEF COUNSEL RUMP: There is no one present here.

16 CHAIRPERSON BUSTAMANTE: At the Controller's
17 office?

18 ACTING COMMISSIONER ARONBERG: No one is here.

19 CHAIRPERSON BUSTAMANTE: All right. If there are
20 no other matters before the Commission, then we'll assume
21 that this meeting is now adjourned.

22 Thank you all.

23 (Thereupon the meeting of the State

24 Lands Commission was concluded at 12:35

25 p.m. on November 13, 2003.)

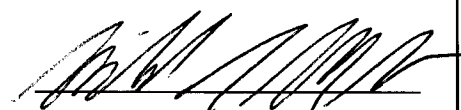
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CERTIFICATE OF SHORTHAND REPORTER

I, MICHAEL J. MAC IVER, a Shorthand Reporter, do hereby certify that I am a disinterested person herein; that I reported the foregoing State Lands Commission proceedings in shorthand writing; that I thereafter caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said State Lands Commission proceedings, or in any way interested in the outcome of said State Lands Commission proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of November 2003.



Michael J. Mac Iver

Shorthand Reporter