

CALIFORNIA STATE LANDS COMMISSION

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CITY OF SANTA MONICA

CITY HALL COUNCIL CHAMBERS

SANTA MONICA, CALIFORNIA

MONDAY, JUNE 1, 2009

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Committee Members Present

John Garamendi, Lieutenant Governor, Chair
Michael Genest, Department of Finance, represented by
Tom Sheehy, Commissioner
John Chiang, State Controller, Commissioner

Staff Present

Paul Thayer, Executive Officer
Curtis Fossum, Chief Counsel
Mary Hays, Land Management Division
Judy Brown, Land Management Division
Eric Gillies, Staff Environmental Scientist, Division
Of Environmental Planning and Management
Barbara Dugal, Chief, Land Management Division
Greg Scott, Chief, Mineral Resources and Management
Division

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CHAIRMAN GARAMENDI: Good morning, all. I'm Lieutenant Governor John Garamendi, current Chair of the State Lands Commission. We have an interesting schedule for the day. We just had a discussion about how to modify that schedule, and so let me start with some instructions about how we're going to proceed.

We're going to take up the consent file first after hearing from Mr. Thayer, as is our normal practice, and then around 11:00 o'clock, no earlier than 11:00, possibly 11:15, we'll take up the PXP issue. And, so, for those of you that are interested in that issue, and judging from the number of cards I've received in sign-in, there are significant numbers of you that would like to discuss that PXP proposal. So, we will start, as is our normal practice.

I call this meeting to order. All the representatives of the Commission are present. I'm Lieutenant Governor John Garamendi. Controller John Chiang is here and also Tom Sheehy, Chief Deputy Director of the Department of Finance.

For those of you in the audience that are not aware, the State Lands Commission administers properties owned by the state, the people of California as well as its mineral interest. Today we will hear proposals

1 concerning the leasing and management of those public
2 properties.

3 **ITEM II CONFIRMATION OF MINUTES OF THE APRIL 9,**
4 **2009 MEETING**

5 The first item of business will be the adoption
6 of minutes from the Commission's last meeting. I assume
7 we've all read those, and if there's a motion, we will
8 adopt those minutes.

9 MR. SHEEHY: Move approval.

10 MR. CHIANG: Second.

11 CHAIRMAN GARAMENDI: Without objection, those
12 are approved. The next order of business is, as normal,
13 our executive officer, Mr. Thayer, could you please give
14 us your report.

15 **ITEM III EXECUTIVE OFFICER'S REPORT**

16 MR. THAYER: Thank you and good morning, Mr.
17 Chair and members of the Commission. I only have two
18 items to report on.

19 First, as we discussed both at our last meeting
20 and I think between our offices and staff over the
21 intervening time, we've been concerned about obtaining a
22 signature and the proper amount of revenue or rental from
23 Chevron to the Richmond Long Wharf. I'm happy to report
24 on Friday that the lease was signed and the money was
25

1 wired, so the state has another \$8 million now that we've
2 settled that transaction.

3 CHAIRMAN GARAMENDI: Excuse me. They actually
4 sent the money?

5 MR. THAYER: Yes, sir.

6 CHAIRMAN GARAMENDI: Any idea why they delayed
7 so long?

8 MR. THAYER: But I would almost want them to
9 answer that question. I think it's a case of the real
10 estate department (inaudible) and they wanted their
11 attorneys to look at it or whatever.

12 CHAIRMAN GARAMENDI: Nothing to do with the fact
13 that at least two or three members of this Commission
14 decided they were going to pull the lease if we didn't get
15 the money?

16 MR. THAYER: That point had been made very
17 strongly to them in the last month, and it was clear that
18 that had an impact.

19 CHAIRMAN GARAMENDI: Thank you. Continue on,
20 please.

21 MR. THAYER: The second item I'll point out is
22 that this is being webcast, this Commission meeting. It's
23 not our 100 percent practice to do so. It costs a fair
24 amount of money to do it but -- thank you -- but in light
25 of the interest in the Venoco matter on the calendar, as

1 well as the resolution in regard to the May revision to
2 the budget that would deal with the Commission's decision
3 in January regarding the PXP proposal for a lease at
4 Tranquillon Ridge. We decided to go ahead and do this and
5 so AGP is here in the room and is webcasting. Copies of
6 this will always be available at the State Lands
7 Commission as well as at the AGP website, and it's being
8 live cast, as well, through all three Commissioners'
9 websites as well as the State Lands Commission.

10 MR. SHEEHY: Question of staff?

11 MR. THAYER: Yes.

12 MR. SHEEHY: Are we going to broadcast all of
13 our meetings in the future?

14 MR. THAYER: I would like to do that, but we're
15 still not sure that we've got the funds to do that, so at
16 this point we're mostly -- this is only the second one
17 we've done, and we've looked to the ones where it would
18 appear there would be the broadest public interest.

19 MR. SHEEHY: Well, I think it's an excellent
20 opportunity for us to be transparent in our dealings and
21 I'm not sure I know how this thing works.

22 UNIDENTIFIED SPEAKER: Button on the left,
23 bottom of the microphone.

24 MR. SHEEHY: Can you hear me now?

25 UNIDENTIFIED SPEAKER: Yeah.

1 MR. SHEEHY: It's this one, right? Am I on?
2 Testing.

3 All right. Is it on? Red light means it's on,
4 but it's not on.

5 UNIDENTIFIED SPEAKER: I'm not hearing you. All
6 right. Try the next -- it's this button right here.

7 MR. SHEEHY: Okay. So this one works. I'll
8 just have to use this one.

9 Any ways, I think it's great that we're doing
10 it. It shows a lot of transparency. My only request
11 would be since it's going to be hit and miss, some are
12 going to be televised and some aren't, I think the
13 Commissioners and their offices should have a heads up on
14 what the plans are going forward. I think it's great,
15 just took me by surprise today, but I think it's good that
16 we're doing it.

17 MR. THAYER: Good point, and we'll make sure
18 that we consult with the commissioners' offices before the
19 meeting.

20 CHAIRMAN GARAMENDI: Very good. Continue on,
21 Paul.

22 MR. THAYER: And that -- those are the two items
23 that I wanted to bring up during the executive officer's
24 report.

25

1 CHAIRMAN GARAMENDI: Okay. I notice there are
2 other items from previous meetings that will be taken up a
3 little later as we get into the agenda.

4 MR. CHIANG: But, I'd like to add --

5 CHAIRMAN GARAMENDI: Yes.

6 MR. CHIANG: Paul, I'm just very interested in
7 the issue of the rise in sea levels and the -- I'm very
8 interested in having a survey conducted to see the state
9 of preparedness for the State of California, so if you can
10 engage and go forward with some type of survey, and I'd
11 appreciate it if you'd work with my office and certainly
12 any other members' offices who are interested, I think it
13 has tremendous implications for California's economic and
14 social future. Clearly it has implications globally, and
15 I just think we need to be better prepared.

16 MR. THAYER: Your staff, Ms. Aronberg had raised
17 this issue with me as well a couple days ago, and we'll
18 look towards doing a survey. I think -- I see a couple of
19 good purposes for that. The first would be to see what
20 the state of readiness is amongst the grantees, with your
21 own Commission staff and also to see if there's some
22 innovative ideas of the different reports we're taking
23 deal with the sea level rise, what sort of engineering
24 accommodation are they doing, that kind of thing, and if
25 we can put it together in a staff report, which we would

1 bring back to the Commission as a public hearing, it would
2 provide an opportunity to publicize those and of course
3 we'd send a copy of that report around to the different
4 grantees.

5 MR. CHIANG: Thank you, Paul.

6 MR. THAYER: I would anticipate probably in
7 December. This isn't going to be a small matter. We want
8 to do this one right.

9 CHAIRMAN GARAMENDI: Controller Chiang, thank
10 you. That's a very, very good point. The Ocean
11 Protection Council has done a lot of work on this, and a
12 good starting point. I know, Paul, you were there at the
13 hearing when that came up. Good.

14 **ITEM IV CONSENT CALENDAR C01-C64**

15 CHAIRMAN GARAMENDI: Okay. We now have before
16 us the consent calendar. Does any member want to remove
17 or talk about any item on the consent calendar?

18 Tom?

19 MR. SHEEHY: Mr. Chairman, I would move approval
20 of the consent calendar if there's no public comment.

21 MR. CHIANG: I will second.

22 CHAIRMAN GARAMENDI: We have a motion with a
23 second. Without objection, it will be a unanimous vote.
24 And so be it, unanimous vote on the consent calendar.

25

1 Now on to the regular agenda items. The first
2 one up is Venoco, and so let's deal with that. There are
3 several things we want to talk about here, first the staff
4 presentation and then speakers. I'd like to hear from
5 Venoco on this one and then we will see in the meantime if
6 we have anybody from the audience that wants to take it
7 up. So, let's go on to the staff presentation. Paul?

8 MR. THAYER: Thank you, Mr. Chair. Judy Brown
9 will lead off with a presentation from the Land Management
10 Division and Eric Gillies will review the environmental
11 impact report that was done for that.

12 MS. BROWN: Good morning, Mr. Chairman and
13 Commissioners.

14 Let's see. I'm not sure if I'm on.

15 CHAIRMAN GARAMENDI: We're all going to learn
16 how to use these microphones by the end of the day.

17 MS. BROWN: Is it the top one here? These are
18 different.

19 MR. THAYER: While they're working on that, Mr.
20 Chair, I wanted to acknowledge the City of Santa Monica
21 for making their City Hall Chambers available to us.
22 We've only met here once before, and it's a great location
23 for us in that it's not far from the airport and also
24 gives folks an opportunity from Santa Barbara who are
25 interested in the Venoco matter to come down.

1 MS. BROWN: Okay. We'll try it again. Good
2 morning, Mr. Chairman and Commissioners. My name is Judy
3 Brown, and I'm a member of the Commissions Land Management
4 Division.

5 Alicia, the first slide, please.

6 Calendar Item 65 is the consideration of a lease
7 renewal to Venoco, Inc. for operation, use and maintenance
8 of the existing Venoco Ellwood Marine terminal, located
9 off-shore Goleta in Santa Barbara County.

10 Staff understands that there has been some
11 uncertainty with regard to the complex legal status of the
12 lease. The final EIR correctly reflects that Venoco has
13 exercised its last ten-year renewal option to extend the
14 lease term for the period of March 1, 2003, through
15 February 28th, 2013.

16 What is before the Commission is the
17 consideration of new terms and conditions to be added to
18 the lease as provided under the renewal provisions of the
19 lease. The Ellwood Marine Terminal consists of the 2,530
20 foot long submarine loading pipeline, petroleum product
21 pipeline and a six-point industrial mooring system that
22 has been previously approved by the Commission and in
23 operation since the 1930's.

24 The Ellwood Marine Terminal handles all of the
25 oil produced by Venoco from wells on Platform Holly, which

1 is transported through the existing sub-sea pipeline with
2 an oil and gas lease PRC3242 to the Ellwood on shore
3 facility for processing. Once the oil is processed, it is
4 sent to the Ellwood Marine Terminal through a pipeline,
5 line 96, that is owned and operated by Ellwood Pipeline
6 Inc.

7 At the Ellwood Marine Terminal on-shore facility
8 oil is stored in two tanks and then is pumped into a
9 pipeline known as the Ellwood Marine Loading Line to the
10 off-shore marine loading connection where it is loaded on
11 to the barge Jovalan. The barge Jovalan was built in 1979
12 and has been operating at the Ellwood Marine Terminal
13 since the 1980's. Under the existing permits issued by
14 the County of Santa Barbara Air Pollution Control
15 District, the barge Jovalan is the only barge with
16 approved vapor recovery technology and is consequently the
17 only barge permitted to transport oil from the Ellwood
18 Marine Terminal.

19 Approximately two times monthly, the barge
20 Jovalan is loaded with approximately 52,777 barrels of
21 crude oil for transport to either Long Beach or San
22 Francisco. The loading process takes 13 to 17 hours to
23 complete. The barge Jovalan is an aging single-hull barge
24 with a maximum capacity of 56,000 barrels of petroleum
25 product.

1 Public Service Marine, a subsidiary of Harley
2 Marine Services, is the owner and a co-operator of the
3 barge Jovalan. Venoco is the other operator, using the
4 barge under charter from Harley Marine. Harley Marine
5 Services has indicated that the charter for Venoco's use
6 of the barge Jovalan will end in March 2010 and that it
7 intends to take the barge Jovalan out of service for the
8 transport of oil in US waters at that time.

9 Staff further understands that Venoco has signed
10 a contract with Harley Marine Services to replace the
11 barge Jovalan with a modern double-hulled barge with a
12 vapor recovery unit. It should become available for use
13 sometime in late spring, early summer 2010.

14 Commission staff understands that Venoco has
15 submitted an application to Santa Barbara County to
16 construct a pipeline from the Ellwood on-shore facility to
17 the All American Pipeline at Las Flores Canyon. Based on
18 Commission staff's preliminary discussions with staff of
19 Santa Barbara County about Venoco's application for the
20 construction of a pipeline, the county intends to complete
21 a CEQA document by the end of 2009 or early 2010.

22 If the county approves Venoco's application to
23 construct the pipeline, the Commission would not have to
24 take another action on that project. However, the
25 commission would need to consider a future CEQA analysis

1 for the decommissioning and removal of the Ellwood Marine
2 Terminal.

3 Highlights of the staff recommendation for the
4 renewal agreement before you today include the following:
5 One, an increase in annual rent from \$47,043 to \$70,650
6 beginning March 1, 2007. Venoco's early cessation of the
7 use of the marine terminal if a pipeline is constructed
8 from the Ellwood on-shore facility to the All American
9 Pipeline located at Las Flores Canyon, which would then
10 allow the delivery of petroleum products other than
11 through the use of the Ellwood Marine Terminal and barge.
12 Three, Venoco's replacement or conversion of the barge
13 Jovalan with a double-hulled barge or construction of a
14 pipeline by the end of 2010. Four, Venoco's submittal of
15 an application to decommission the marine terminal within
16 90 days of construction and use of an on-shore pipeline
17 but not later than six months prior to expiration of the
18 lease term, which happens to be February 28th, 2013.
19 Venoco's compliance with any and all applicable
20 regulations and requirements governing marine oil terminal
21 operations, engineering and maintenance, Venoco's
22 compliance with the mitigation monitoring program that is
23 included within the staff report in front of you and
24 labeled Exhibit C. And seven, Venoco's indemnification of
25 the commission from liability for any matter related to

1 the lease or its issuance. This concludes my
2 presentation.

3 CHAIRMAN GARAMENDI: Paul? Further thoughts?

4 MR. THAYER: Next up, the other half of the
5 presentation will come from Eric Gillies who worked on the
6 environmental impact report.

7 MR. GILLIES: Thanks, Judy. Good morning, Mr.
8 Chair and members of the Commission. I am Eric Gillies --
9 Can you hear me okay? I'm Eric Gillies the staff
10 environmental scientist with the division -- the
11 commission's division of environmental planning and
12 management. At the time that Venoco's application for the
13 lease renewal was submitted in 2003, a determination was
14 made to prepare an environmental impact report in order to
15 comply with California Environmental Quality Act or CEQA.
16 The first process was initiated on July 14th, 2004, for
17 circulation of the Notice of Preparation thus establishing
18 the CEQA baseline.

19 In support of this notice, a public scoping
20 meeting was held in the city of Goleta on August 3rd,
21 2004. Federal, state and local agency representatives, as
22 well as public interest groups and other interested
23 parties were invited to participate in this portion of the
24 CEQA process. A draft EIR was prepared and circulated for
25 review on August 1st, 2006 for a 45-day review period. On

1 August 30th, 2006, a public meeting was held to discuss
2 the contents of the draft EIR, answer questions and
3 receive comments from agencies and interested members of
4 the public.

5 On August 12th, 2007, a final EIR was released.
6 It was after the release of the final EIR in 2007 that
7 Venoco asserted that mitigation measure HM9A was
8 economically infeasible. That measure would require
9 Venoco to replace the current single-hulled barge The
10 Jovalan with a double-hulled barge within 18 months of
11 lease renewal. This measure was designed to mitigate the
12 impact risk of spills due to potential hull penetration.
13 Venoco provided information indicating that this could be
14 too costly as recovery of the replacement barge cost would
15 not be realized due to the short-term left on the lease.

16 In addition, Venoco asserted that construction
17 and permitting a new barge could require more than two
18 years, which would further lessen the mitigation
19 effectiveness. Public Service Marine, the owner of the
20 barge Jovalan essentially substantiated the cost
21 associated with this construction of a new double-hulled
22 barge as well as a two-year lag time. Based on this
23 information, commission staff determined that mitigation
24 measure HM9A was not feasible and revised the mitigation
25 measure.

1 As a result of determining this infeasibility
2 the impact of spills due to hull penetration could no
3 longer be considered a significant impact that could be
4 mitigated to a less significant level, Class II impact.
5 Instead, the impact had to be considered a Class 1
6 significant impact. Because the severity of this impact
7 would increase to a Class I impact, Commission staff
8 determined that the changed constituted significant new
9 information and warranted recirculation of the hazards,
10 hazardous materials section of the draft EIR.

11 In addition, since completion of the draft EIR
12 in 2006, additional requirements for the analysis of
13 greenhouse gas emissions under CEQA have been implemented
14 in California. Therefore, changes to the air quality
15 section were included in the recirculated draft EIR to
16 provide interested parties with an up-to-date and detailed
17 analysis on greenhouse gas emissions from the Marine
18 Terminal operations.

19 The analysis also included incorporating into
20 the project mitigation measure AQ4A, to offset any
21 additional greenhouse gas emissions that could occur over
22 baseline conditions. The baseline at the time of the
23 notice of preparation was prepared in 2004 was two barge
24 loadings, among or about 4400 metric tons of carbon
25 equivalent emissions. Venoco's current operation is still

1 two barges a month. However, should Venoco increase
2 barging operations, measures were identified in the EIR
3 that would require offsetting any associated increases in
4 greenhouse gas emissions. This would be verified as part
5 of the annual audit within the mitigation monitoring
6 program.

7 With this information, a recirculated draft EIR
8 was released on December 10th, 2008, for a 60-day public
9 review period. Public meetings were held on the
10 recirculated draft and the City of Goleta approved it on
11 January 28th, 2009.

12 As a result of the public review process for the
13 recirculated draft EIR, Harley Marine Services, the parent
14 barge company of Public Service Marine, contacted
15 commission staff and provided that a double-hulled barge
16 is feasible and it is Harley Marine's intention to replace
17 the barge Jovalan with a double-hulled barge in 2010.

18 This subsequent information was confirmed in a
19 meeting on March 11th, 2009, among Venoco, Harley Marine
20 Services and Commission staff as well as the letter dated
21 March 24th, 2009. More recently, Venoco signed a contract
22 with Harley Marine for a modern double-hulled vessel,
23 which we are told should be available late spring, early
24 summer 2010. So while a double-hulled barge does not

25

1 eliminate the possibility of an oil spill due to hull
2 penetration, it significantly reduces the potential.

3 In addition, Venoco recently submitted an
4 application to the County of Santa Barbara to modify the
5 existing Line 96 to transport oil to the All American
6 Pipeline at Las Flores Canyon, which would result in the
7 elimination of the marine terminal. The completion of
8 this pipeline project is anticipated to be mid to late
9 2010. As a result, the commission staff now finds that
10 mitigation measure HM9A is feasible and the final EIR
11 reflects this clarification.

12 The current final EIR before you was prepared
13 and released on April 30th of 2009 and addresses all the
14 comments and issues that were raised during the public
15 review period of both the 2006 draft EIR and the recent
16 2008 recirculated draft EIR. Specifically, the final EIR
17 finds that accidental -- if we were to get to Slide 2,
18 please -- accidental spills from EMT loading line or barge
19 would cause significant adverse environmental effects.
20 Impacts from possible accidental oil spills are identified
21 in analysis for safety, biological resources, fisheries,
22 water quality, land use recreation and visual resources.
23 About 30 percent of the total impacts were considered
24 Class I significant impacts and are attributed to the
25 potential oil spill risk in the barging operations.

1 I guess Slide 3. The safety features inspection
2 and maintenance and emergency response practices proposed
3 in the final EIR would reduce impacts related to
4 accidental oil spills below baseline levels. However, due
5 to the inherent possibility of an oil spill, they still
6 remain significant.

7 Some of the proposed features and procedures
8 include enhanced monitoring and inspection of all terminal
9 operations, enhanced maintenance program of the crude oil
10 storage tanks, modifications to the loading line
11 operations to better detect and prevent any oil spills,
12 and replacing the Jovalan with a double-hulled barge or
13 constructing a pipeline within 18 months of lease renewal.
14 A comprehensive set of mitigation measures was included as
15 Exhibit C to the calendar item. These mitigation measures
16 would reduce the severity or frequency of an accidental
17 oil spill. These measures also include developing skilled
18 response for notification procedures, for the protection
19 of biological resources, waterways, fisheries, ground
20 water and ensuring proper leak detection.

21 Although accidental spills are a significant
22 concern of the marine terminal, another issue pertaining
23 to the marine terminal is odor complaints. The Santa
24 Barbara County Air Pollution Control District conducts
25 regular investigations to determine if odor complaints are

1 associated with Venoco's facilities. Due to historic odor
2 complaints, the county APCD issued an abatement order in
3 1999, targeted at reducing, eliminating nuisance odors
4 from Venoco's facilities, including the marine terminal.
5 The main measure pertaining to the EMT as part of the
6 abatement order are documented in the final EIR and have
7 been implemented to lessen odors from the terminal
8 operations. The EIR analyzed odor complaint
9 investigations and due to the presence of natural oil
10 seeps in the location of the barge mooring area found that
11 it was not conclusive that the odors originated from the
12 barge operation. Also, the specialized vapor recovery
13 unit on the barge has been employed to mitigate any odor
14 problems from the operations. However, the EIR found that
15 any increase in barging operations can have a potential
16 increase in nuisance odor events. Therefore, the final
17 EIR identifies additional measures, AQ2A and AQ2B that
18 will provide for additional odor monitoring and emission
19 control devices on the storage tanks and barge to further
20 reduce the impact of odor to less than significant levels.

21 As previously mentioned in Judy's presentation,
22 the commission staff was advised by the Attorney General's
23 office that Venoco's lease had not expired since Venoco
24 had exercised their right to renew their lease for an
25 additional ten-year term. The current action before the

1 Commission is approval of an amendment to the existing
2 lease that is up for renewal and will end in February
3 2013.

4 The purpose of the EIR is to determine what the
5 reasonable terms and conditions of the lease renewal
6 should be. This limited the scope of, alternatives that
7 could be evaluated in the EIR. The alternatives
8 identified in the EIR was there was no project,
9 alternatives as required by CEQA, meaning a halt to
10 operations at the terminal. Venoco then had two options,
11 transport the oil by truck or transport of oil by
12 pipeline, both of which were analyzed in the EIR.

13 Can I get that last -- Alicia, the last slide?

14 Okay. Now, several actions are before you today
15 that involve the EIR. First, we are requesting that the
16 commission certify the EIR and adopt the associated
17 mitigation monitoring program. Since the EIR identified a
18 number of significant environmental effects, we are also
19 asking that you adopt the findings that have been prepared
20 as required by the CEQA. And finally, there are a number
21 of significant Class I impacts identified in the EIR,
22 primarily associated with the risk of an oil spill that
23 cannot be mitigated to a less than significant level. So
24 as CEQA requires approving the lease renewal for the
25 continued operation of the main terminal, the Commission

1 must adopt the statement of overriding considerations, and
2 this is provided as Exhibit E to the calendar item, and
3 that concludes my presentation. Thank you.

4 MR. THAYER: That concludes staff's
5 presentation.

6 CHAIRMAN GARAMENDI: Paul, as we go through
7 this, we'll hear from the public here in a moment, but I
8 find that there are several things that the Commission
9 needs to do with regard to the Venoco proposal, and I'm
10 trying to go through the documents here and to get some
11 sense of all of those actions that we need to take, so if
12 you could get to us the specifics.

13 Let's now go to the --

14 MR. SHEEHY: I'm sorry. Can we ask questions of
15 staff before we go to public comment?

16 CHAIRMAN GARAMENDI: Of course, Tom.

17 MR. SHEEHY: Thank you, Mr. Chairman.

18 Thank you, both Mr. Gillies and Ms. Brown for
19 your presentation. The recommendation on the lease is
20 if that -- I'm sorry. I'm sorry.

21 The recommendation -- staff recommendation on
22 the lease includes some additional requirements, some
23 safety requirements for the infrastructure and has a
24 requirement to have a double-hulled barge within 18
25 months; is that right?

1 MR. GILLIES: That's correct.

2 MR. SHEEHY: What is the reason for the 18-month
3 delay?

4 MR. GILLIES: Initially, it was the delay was to
5 get a barge constructed. It was the estimate -- estimated
6 to be 18 months to construct a new barge.

7 MR. SHEEHY: Okay. So --

8 MR. GILLIES: And that was the original
9 mitigation measures.

10 MR. SHEEHY: Is it still going to take 18 months
11 to build that barge?

12 MR. GILLIES: Correct. That's why it won't be
13 ready until next summer as we understand it.

14 MR. SHEEHY: okay. So, Harley Marine that
15 currently operates the Jovalan, they cannot put a double-
16 hulled barge in service any time sooner than 18 months?

17 MR. GILLIES: Venoco has submitted that
18 application to use the Olympic Spirit, which is a another
19 Harley Marine Service vessel, to use that as a backup if
20 Jovalan goes out for repairs, and that's a double-hulled
21 barge.

22 MR. SHEEHY: So, that's a double-hulled barge
23 that's available immediately?

24 MR. GILLIES: No, that is under -- 100 percent
25 contract under Tesoro as I understand it.

1 MR. SHEEHY: Okay.

2 MR. GILLIES: But Tesoro would have an agreement
3 with Venoco to use that if the Jovalan was not available.

4 MR. SHEEHY: I see. All right. All right.
5 Well, I -- I just think that, you know, if there's
6 anything that we could do to encourage them to go to the
7 double-hulled barge sooner, that would certainly be in our
8 best interest to protect the environment.

9 MR. GILLIES: Yes, and we actually modified
10 their mitigation record to include or construct a
11 pipeline, which Venoco is, as I mentioned, has an
12 application to the county, and it's their intention to get
13 the pipeline in before the 18 months, therefore
14 eliminating barging altogether.

15 MR. SHEEHY: Okay. Thank you. I had another
16 question, another topic was just on the nitrogen oxide
17 emissions. Now, I understand from the EIR and looking at
18 AQ1 now that the increase in nitrous oxides associated
19 with this project would be 25 tons per year; is that
20 accurate?

21 MR. GILLIES: This is AQ-1?

22 MR. SHEEHY: Um-hmm.

23 MR. GILLIES: I'm sorry. What was the question?

24 MR. SHEEHY: I understand from the EIR that the
25 estimate on increased annual nitrogen oxides or NOX

1 emissions due to this project is a 25-ton increase over
2 baseline annually.

3 MR. GILLIES: Um-hmm.

4 MR. SHEEHY: How -- how is Venoco planning to
5 mitigate that increase over the baseline?

6 MR. GILLIES: May I direct this to our
7 consultant, Paul?

8 MR. RADIS: Certainly.

9 MR. GILLIES: Steve, can you provide a -- Steve
10 Radis is with MRS and he's the consultant that helped us
11 prepare the EIR.

12 MR. RADIS: The potential increase in nitrogen
13 oxide emissions is based on full utilization of the
14 terminal under their permit conditions. There's nothing
15 about this project before you today that would cause any
16 increase at all. They would continue to operate. If they
17 were to produce more oil from their existing facilities,
18 there is that potential increase, but it's likely that the
19 increase will be probably close to zero, but in either
20 event, it was less than thresholds of the local Air
21 Pollution Control District, so therefore it was not
22 mitigated.

23 MR. SHEEHY: Okay. I just want to make sure I
24 understand though, because I'm looking at page 20 on A Q-1
25 and it says: "The increase in annual nitrogen oxide

1 emissions due to the proposed project would be above the
2 significance threshold of 25 tons per year." So it's just
3 a de minimus increase, is that the --

4 MR. RADIS: Right, and the threshold that the
5 district uses is actually a peak daily threshold, which
6 obviously wouldn't change with the project. What we did
7 was added a second threshold, looking at annual emissions,
8 and then we did add mitigation, which limited some
9 equipment usage to get below the threshold.

10 MR. SHEEHY: Now, I understand that one of those
11 mitigations is to reduce from the potential of 88 trips
12 per year to San Francisco down to 14?

13 MR. RADIS: Correct.

14 MR. SHEEHY: Who's going to enforce that?

15 MR. RADIS: Um --

16 MR. SHEEHY: How do we know that they would
17 actually reduce their number of trips and thereby get the
18 reductions in the NOX emissions that you've cited here in
19 your report?

20 MR. RADIS: They actually submit all of their
21 fuel use and traffic data to the State Lands Commission
22 and the Air Pollution Control District.

23 MR. SHEEHY: So the State Lands Commission staff
24 will be in a position to enforce this; is that right?

25

1 MR. THAYER: Yes, but I think the primary
2 enforcement is from the Air Pollution Control District;
3 isn't that right?

4 MR. RADIS: Correct.

5 MR. THAYER: And that they are operating
6 pursuant to approvals from them and that that would
7 have -- they would have to mitigate for any -- any
8 emissions that are above the thresholds that the Air
9 Pollution Control District has.

10 MR. RADIS: That's correct.

11 MR. SHEEHY: Okay. So it's going to be Air
12 Pollution Control District that's going to make sure that
13 they don't do the extra trips; is that right?

14 MR. RADIS: Right.

15 MR. SHEEHY: They're going to have something out
16 there checking their logs on a monthly basis?

17 MR. RADIS: The logs are actually submitted to
18 the Air Pollution Control --

19 MR. SHEEHY: And so it's public records?

20 MR. RADIS: Yes.

21 MR. SHEEHY: Okay. And then also that was my
22 same question with regard to one the mitigations measures
23 involved, let's see here, it says retrofitting engines on
24 the tugs and getting more efficient tug engines.

25 MR. RADIS: Correct.

1 MR. SHEEHY: Now, is that under Venoco's control
2 or is that one of their vendors?

3 MR. RADIS: It's their vendors, and they would
4 have to require if their vendors want to be a vendor to
5 provide cleaner burning engines.

6 MR. SHEEHY: And it would be the same
7 enforcement agent that would make sure that that took
8 place?

9 MR. RADIS: Correct.

10 MR. SHEEHY: Okay. Then I had a question about
11 the greenhouse gas emissions and how Venoco was planning
12 to mitigate those. Could you describe that please?

13 MR. RADIS: Again, under the maximum utilization
14 of the terminal, they would have a substantial increase in
15 greenhouse gas emissions. The way they would reduce that
16 would to be either purchase emission reduction credits
17 from somebody or implement programs that would result in
18 an equivalent savings. The way the requirement is written
19 is they will submit annual emission inventories to the Air
20 Pollution Control District, and then provide their
21 proposed mitigation to the district to be verified by both
22 the district and the climate registry.

23 MR. SHEEHY: So, their -- their ability to --
24 or their -- the measurement of their mitigation of the

25

1 greenhouse gas or gases will also be enforced by the local
2 air quality district; is that right?

3 MR. RADIS: Correct.

4 MR. SHEEHY: Okay. That's all I have at this
5 time, Mr. Chairman, thank you.

6 CHAIRMAN GARAMENDI: Thank you very much.
7 Further questions?

8 Let's move on then to the witnesses that wanted
9 to speak to this issue. I have Chris Henson from the
10 Santa Barbara County area and Steve Dyer of Venoco. And
11 also Linda Krop.

12 I think what I'd like to do here is hear from
13 the county first and then from Venoco. Well, let's take
14 Linda Krop, then we'll wrap with Venoco. We'll have all
15 the issues on the table at that time. Very good.

16 MR. HENSON: Lieutenant Governor, Commissioners,
17 good morning, my name is Chris Henson, and I'm chief of
18 staff to Santa Barbara County supervisor Doreen Farr. The
19 Ellwood Marine Terminal actually is situated within the
20 Third District, which is my boss's district. I'd like to
21 read to the public a letter submitted to the State Lands
22 Commission. I believe you have this from the Santa
23 Barbara County Board of Supervisors: "Dear Chairman
24 Garamendi: The Ellwood Marine Terminal operation carries
25 a high and unnecessary risk of damage to the marine

1 environment from an oil spill. This terminal loads up to
2 55,000 barrels of crude oil onto the single-hulled barge
3 Jovalan, approximately 25 times per year even though an
4 over-land pipeline, alternative can feasibly accomplish
5 this task with substantially less risk to the environment.
6 Accordingly Santa Barbara County requests your Commission
7 to take two critical actions: One, to terminate the
8 operation of the Ellwood Marine Terminal as soon as
9 legally allowable, and, two, direct removal of the off-
10 shore mooring immediately thereafter. Santa Barbara
11 County has long understood that overland pipeline is the
12 environmentally superior mode of transporting off-shore
13 crude oil to refineries. In 1985, the county adopted
14 policy and regulations to require over-land pipeline
15 transportation for new off-shore production.

16 Subsequent installation of major over land
17 pipeline now provides six times the needed capacity to
18 transport all off-shore oil production. Venoco's
19 operation is the last remaining marine crude oil terminal
20 on the Central Coast. All other producers off shore of
21 Santa Barbara County have long switched to overland
22 pipeline to remove crude oil to refineries and all other
23 marine terminals have been decommissioned. In 1990, the
24 county changed the land use and zoning designations of the
25 Ellwood Marine Terminal's on-shore site, converting it to

1 illegal, non-conforming use. This action prohibits the
2 expanded use of the terminal beyond that vested under pre-
3 existing permits and seeks its eventual elimination.

4 The EIR for this lease renewal clearly indicates
5 that overland pipeline is environmentally superior, as
6 noted on page 4.2-76 of the public draft. "Risk from oil
7 transportation by pipeline are the lowest of any form of
8 transportation." Additionally, Table 3-3 and supporting
9 text in the final EIR show that pipeline alternative to be
10 substantially superior to continued marine barging. We
11 urge your commission to renew the lease only for the
12 period of time necessary for Venoco to install suitable
13 pipeline, alternative to barging. If, however, your
14 commission determines that it is legally bound to renew
15 the lease, your action should restrict continued barging
16 to a double-hulled barge such as the Olympic Spirit and
17 further direct Venoco to replace barging with a pipeline
18 option as soon as it can be permitted and installed.
19 Thank you for your consideration, respectfully submitted
20 Santa Barbara County Board of Supervisors."

21 Thank you.

22 CHAIRMAN GARAMENDI: If you'll stay there a
23 second, previous testimony indicated that the pipeline
24 option is now before the Santa Barbara County. Could you
25

1 give us a status report from the county's perspective of
2 where that permit is?

3 MR. HENSON: You know, I'd have to find out for
4 you, Lieutenant Governor, I do not know offhand.

5 CHAIRMAN GARAMENDI: Could you please do so in
6 the next 20 minutes?

7 MR. HENSON: Sure. Yeah.

8 CHAIRMAN GARAMENDI: I think somebody may know
9 behind you.

10 MR. HENSON: Yeah, I think that's probably true.

11 CHAIRMAN GARAMENDI: Okay. Do you have an
12 answer to the question?

13 MR. GILLIES: Yes, I do. Venoco submitted an
14 application on May 13th, 2009, and right now they're in
15 the 30-day application review phase, and so we will review
16 the application for thoroughness and so that's where it
17 is, and then once it's deemed complete, then the next step
18 for the county would be the lead agency, as we understand
19 it under CEQA to prepare an environmental document.

20 CHAIRMAN GARAMENDI: Very good. Now I'm going
21 to ask Venoco the same question. Thank you.

22 Ms. Krop?

23 MS. KROP: Thank you and good morning. My name
24 is Linda Krop, chief counsel of the Environmental Defense
25 Center. Here today on behalf of four groups from Santa

1 Barbara County, Sierra Club Los Padres Chapter, Get Oil
2 Out, Citizens Planning Association and Citizens of Goleta
3 Valley. On behalf of our clients, we urge the Commission
4 to require Venoco to transport its oil by pipeline.
5 Venoco is the only producer in the state that does not
6 transport its oil strictly by pipeline. You do have the
7 authority to require this condition. As noted in the
8 final EIR, the original lease for the marine terminal
9 expired in 1993, and as the staff report points out, the
10 terminal has been operated in a hold-over status.

11 Therefore, Venoco's application in 2003 imposes
12 upon you the discretion to analyze impacts under CEQA as
13 well as to adopt any feasible mitigation measures or
14 alternatives. Under CEQA, an EIR was prepared that
15 identified 11 Class I or unavoidable impacts.

16 The EIR also identified the pipeline,
17 alternative as the environmentally superior alternative.
18 We know it's a feasible alternative because Venoco has
19 applied for an application, plus it's the same application
20 that Venoco submitted as part of the full field project
21 and there's already been a draft environmental impact
22 report on that pipeline project, so we know that's
23 feasible. It's already, you know, received some
24 environmental review and can be reviewed by the agencies
25 in a timely manner. Under CEQA and your commission has a

1 substantive mandate to adopt any feasible alternatives
2 that will avoid or reduce significant impacts, and the
3 pipeline in this case will avoid or reduce all of the 11
4 Class 1 impacts. Therefore, you must impose that
5 condition. You cannot approve the project with a
6 statement of overriding considerations if it's feasible to
7 avoid the impacts in the first instance.

8 We therefore request that the lease be granted
9 for a limited term so that a pipeline can be constructed.
10 We do acknowledge that a double-hulled barge has been
11 identified as a mitigation measure, but a double-hulled
12 barge does not avoid or reduce the risks of an oil spill
13 like a pipeline. You can still have spills during
14 loading. You can still have spills if there is a
15 collision. You can still have air quality and odor
16 impacts as well. So, the pipeline is really the only,
17 alternative that will reduce impacts and get us moving in
18 the right direction literally. Thank you very much.

19 CHAIRMAN GARAMENDI: Question?

20 Question counsel on this one. Ms. Krop said
21 that we can demand or that we must demand that a pipeline
22 be constructed, can we have a discussion about whether
23 she's right or not?

24 MR. FOSSUM: Based on not only internal legal
25 advice from your staff but also the Attorney General's

1 office, the conclusion was reached at somewhat of a late
2 date, I'm afraid, and that's why there's some confusion
3 that Venoco did exercise their options to renew, their
4 right to renew for a ten-year period. If the Commission
5 required them to abandon the off-shore oil terminal prior
6 to that ten-year period, that would be a violation on the
7 Commission's part of that right to renew. So, the
8 interpretation that's been given by the attorneys on this
9 is that they have a ten-year period and the Commission can
10 only exercise its authority to adopt reasonable terms and
11 conditions relating to that renewal, and that's what we're
12 doing as part of this.

13 CHAIRMAN GARAMENDI: Ms. Krop, could you
14 comment on that?

15 MS. KROP: Thank you. We actually -- we were
16 confused on this issue because the draft environmental
17 impact report clearly stated that the lease had expired.
18 This was an application for a new lease, and then it
19 seemed like the opinion of the staff was changing, so we
20 submitted a public records act request and attached to our
21 letter that we submitted last week we have reference and
22 we've attached a lot of the documents that we recovered in
23 the public records act request and clearly Venoco's
24 predecessors, Arco and Mobile and Venoco itself in 1997
25 were all informed that the lease had expired and they had

1 to apply for a new lease, and that was consistently the
2 State Lands Commission's opinion until very, very
3 recently, very late in the process when Venoco apparently
4 convinced a change in position, but they knew when they
5 brought this project in 1997 that they had to come to and
6 apply for a new lease. They waited six years to do that
7 because they focused on the full field project, but
8 nevertheless, they were on notice that they had to come in
9 and apply for a new lease. The fact that any CEQA was
10 done at all means that you have discretion. CEQA only
11 applies to discretionary projects. So, once your
12 commission decided to prepare an EIR, you're under CEQA,
13 and you have an obligation to try to avoid any
14 environmental impacts. That's the whole point of CEQA, so
15 our belief is the fact that an EIR was prepared. Now you
16 have to follow the mandates of CEQA.

17 CHAIRMAN GARAMENDI: Now, so your point about
18 the necessity or that we should or must mandate a pipeline
19 for mitigation purposes is not based upon the issue that
20 was raised about whether or not they had a renewal
21 opportunity but rather CEQA's -- is that --

22 MS. KROP: We based our opinion on both. We do
23 believe in the documents that we submitted, we do believe
24 that Venoco knew it had to apply for a new lease, that it
25 did not have a right to a renewal. On top of that, CEQA

1 requires that you invoke your discretion and avoid impacts
2 where possible.

3 CHAIRMAN GARAMENDI: Let's -- let's focus on the
4 CEQA portion of this.

5 Curtis, could you comment on whether we have the
6 obligation of forcing mitigation here?

7 MR. FOSSUM: The Commission, in doing -- in
8 requiring an EIR was looking at a limited aspect of the
9 operations there since it is an existing facility and
10 typically existing facilities would be exempt from CEQA
11 and doing an EIR. However, under the circumstances of the
12 potential for an oil spill, commission staff required that
13 an EIR be done and that was undertaken for those purposes
14 to require adequate mitigation measures be adopted for
15 that.

16 MR. THAYER: And there's a strong argument to be
17 made that when you renew a lease for an existing operating
18 facility that there are no new environmental impacts.
19 It's just operating as it has before, but the Commission
20 staff and the Commission itself through a series of
21 decisions, really, over the last ten years, has held on to
22 the concept that the ongoing threat of an oil spill is in
23 a different category and it's because of that that we have
24 the authority to conduct an environmental impact report.

25

1 Linda's correct that CEQA applies when the
2 decision-making body has some discretion as to what it's
3 going to do, and the discretion that we have is not
4 limitless. It's pursuant to the -- the lease. It's what
5 reasonable terms and conditions the Commission can apply,
6 and that's a different framework than if the lease had
7 expired and a new lease was required. We could look at it
8 all over again, but the fact that we're limited to
9 reasonable terms and conditions means that the focus of
10 the EIR is on that, what limited -- reasonable terms and
11 conditions.

12 CHAIRMAN GARAMENDI: Now, the EIR also takes up
13 a new issue, that of greenhouse gas emissions.

14 MR. THAYER: That's correct.

15 CHAIRMAN GARAMENDI: And the continued operation
16 of this barging program does emit greenhouse gases, and so
17 if we are of the opinion there ought to be full mitigation
18 or no release of greenhouse gases, the pipeline would,
19 therefore, be an appropriate mitigation.

20 MR. THAYER: Potentially --

21 CHAIRMAN GARAMENDI: Among those other
22 mitigations that might be available such as purchasing
23 offsets.

24 MR. THAYER: Again, the EIR is -- again,
25 affected by this unique position here, and the EIR looked

1 at greenhouse gas emissions with respect to which ones
2 could be larger than under the baseline operations. In
3 other words, right now, the terminal is permitted to
4 operate at a certain level, but it is, in fact, operating
5 at a lower level, so what the EIR looked at is well, what
6 if they raised the operations, the level of operations,
7 can we require mitigation to deal with that increment, and
8 that's what's analyzed in there. But, once again, it's
9 not the way I heard Ms. Krop describe it, which is once we
10 get into CEQA, then the full panoply of options are opened
11 up beyond which the lease already permits. It's just
12 focused on that and the requirement of a pipeline, in
13 essence, denies the continuation of the lease for the
14 terminal, and so that wasn't a reasonable term and
15 condition.

16 CHAIRMAN GARAMENDI: Let me continue here for a
17 moment. The full field option, what is the status of
18 that?

19 MR. THAYER: For now, the -- Venoco has put that
20 application on the back burner, has asked us not to pursue
21 that. Originally, the pipeline, a pipeline was part of
22 that development, but they're not seeking to proceed with
23 that at the moment. They have not withdrawn their
24 application.

25

1 CHAIRMAN GARAMENDI: So before the Commission is
2 a proposal to expand the Platform Holly's range of drill,
3 that is the full-field operation?

4 MR. THAYER: That's right. That's not -- we
5 have an application that's being processed.

6 CHAIRMAN GARAMENDI: If that were to be
7 processed completely and we were to expand the field, we
8 now have a change in the lease, do we not?

9 MR. THAYER: That's correct.

10 CHAIRMAN GARAMENDI: And at that point, a
11 pipeline could be required?

12 MR. THAYER: That's right. Although these are
13 different leases. There's oil leases, the full-field
14 development leases and then this marine terminal lease.
15 But, yes, absolutely.

16 CHAIRMAN GARAMENDI: They're intricately tied
17 together, are they not?

18 MR. THAYER: Absolutely. And I think, you know,
19 Curtis can confirm that in that context, we could demand
20 that fuel oil being developed through the full-field
21 development be shipped by pipeline rather than through the
22 terminal.

23 CHAIRMAN GARAMENDI: Now, if that -- well,
24 Venoco's going to be up here in a few moments, and I'm
25 going to pursue this issue of the full field and its

1 relationship to this particular lease -- this particular
2 issue before us, and the question of the pipeline.

3 MR. THAYER: If I may, one other comment, this
4 lease is up 2013. We've put a provision in that lease
5 which provides that will be no hold-over operations past
6 2013, that the Commission has to make a decision prior to
7 that date if it wants the terminal and the barge to
8 continue operating instead of having a new pipeline going
9 in and the Commission has full discretion over that, so
10 they would be contractually bound to that, and so the
11 Commission would have the opportunity at that point to
12 decide whether it wants go forward or not.

13 CHAIRMAN GARAMENDI: We may have the opportunity
14 sooner than that. Okay. Thank you very much, Ms. Krop.

15 MR. SHEEHY: I've got some questions.

16 CHAIRMAN GARAMENDI: Oh. Excuse me. Tom, you
17 had a question?

18 MR. SHEEHY: Yup. Thank you, Mr. Chairman. Ms.
19 Krop, you sent the State Lands Commission Chair and
20 members a letter on May 26th, and you cited in there on
21 page 3, a number -- you made a number of statements that I
22 found rather alarming. You said that you, first of all
23 said that the EIR understates the risk of an oil spill,
24 and it overstates the ability to adequately respond to and

25

1 clean up such spill. Could you please elaborate on that
2 and explain why you're making that statement?

3 MS. KROP: Yes, thank you. A lot of our focus,
4 the 32 years of our existence has been on off-shore oil
5 issues, and so we're very aware of the risk of oil spills
6 and been monitoring what's been happening with technology
7 and clean up and response capabilities and unfortunately,
8 even 40 years after the 1969 oil spill, the industry still
9 does not have a foolproof way of producing oil to avoid
10 all spills or to respond to them. And, in fact, in the
11 EIR, in the responses to comments in the EIR, it actually
12 points out that 96 percent of the time, the sea conditions
13 will be such that effective clean up would not be
14 feasible, and so that's a tremendous risk of an oil spill.
15 And you have a risk of an oil spill even with a double-
16 hulled barge because a big part of the risk comes during
17 loading operations, and so that doesn't matter if you have
18 a single-hulled or a double-hulled barge.

19 Another issue that came up was that the barges
20 can go all the way to San Francisco or down to LA. The
21 county suggested a mitigation measure limiting the
22 transport option just to LA to reduce the distance and to
23 reduce the number of marine sanctuaries that would be
24 affected. It turns out that Venoco actually is not
25 sending its oil to LA at all. It's sending it all to San

1 Francisco, and so there is a huge risk of oil spill even
2 through several national marine sanctuaries.

3 So if you look at the EIR itself, it finds 11
4 Class I impacts related to the risk of an oil spill, and
5 that means that those are unavoidable and the EIR even
6 points that out.

7 I would like to clarify, in terms of what we're
8 asking for, we're not asking for denial of the lease. We
9 are asking for a lease of limited term. We agree with 18
10 months proposed by staff. We just want the lease to say
11 Venoco has to build a pipeline within those 18 months.
12 So, I wanted to clarify that we're not asking for denial
13 of the lease. I'd also like to clarify that the EIR
14 itself says that the lease expired in 1993, and that
15 Venoco has been operating the terminal in a hold-over
16 status, so, under an expiration, that renewal provision
17 doesn't even apply.

18 MR. SHEEHY: So, notwithstanding your comments
19 about the loading of the oil, do you think that a double-
20 hulled barge is safer than a single-hulled barge?

21 MS. KROP: A double hull is somewhat safer.
22 There still have been spills from double-hulled barges.
23 If you have, you know, significant collision or collision,
24 you can still have a spill from a double-hulled barge. In

25

1 fact, there was a spill a few years ago in the Gulf of
2 Mexico involving a double-hulled barge.

3 MR. SHEEHY: So, since Venoco's sending all
4 their oil to San Francisco right now, it's mostly the
5 northern coast that's bearing most of the risk there with
6 that transportation; is that right?

7 MS. KROP: Correct.

8 MR. SHEEHY: And with this proposal, with them
9 shifting it down to LA, then they're going to shift that
10 risk to Southern California; is that right?

11 MS. KROP: I don't know that they're shifting to
12 LA. I guess that would be a question for Venoco.

13 MR. SHEEHY: Well, one of their mitigation
14 measures said in order to reduce their NOX emissions, I
15 believe this consultant here that was just up a minute ago
16 said they were going to limit their number of trips to San
17 Francisco, and so I assumed the oil's got to go somewhere,
18 so it would be going to LA, right?

19 MR. HENSON: Right.

20 MR. SHEEHY: So we'd see a shift, then, of that
21 transportation from San Francisco to LA?

22 MR. HENSON: Historically, they've gone to both.

23 MR. SHEEHY: I see. Okay. Then, also you said
24 that the EIR fails to adequately address the noxious
25 odors. Why are you asserting that?

1 MS. KROP: Well, my own personal experience, I
2 spent a lot of time out by Ellwood. There's Ellwood Mesa,
3 Coal Oil Point, a lot of heavily publically used area and
4 when the barge is there, you can smell the odors and
5 sometimes it's enough to almost make you nauseous.

6 The community has complained about those odors
7 over the years, with lack of any type of response, and so
8 people have stopped registering complaints. They avoid
9 the area when the barge is there. So, when the draft EIR
10 came out and said we're not getting any complaints, there
11 must be no problems with the odors anymore, there were a
12 lot of people that attended the EIR hearings, both of them
13 in Santa Barbara, as your staff will confirm. A lot of
14 the concerns were raised about the odors, and so we
15 thought, you know, great, you know, that information will
16 make it into the EIR. In fact, at a the Coal Oil Point
17 Reserve, which is a university natural reserve, the
18 docents actually filled out 600 and some surveys on the
19 subject and identified odors as a major problem, because
20 they're out there every day, and the EIR, in the final
21 version said that those were biased and that there's been
22 only one recent complaint, I think, since like 2005 or
23 something, even though we had two hearings where a
24 substantial, you know, number of members much public got
25 up and said that they've been affected by the odors. So,

1 we were very surprised to see that conclusion in the final
2 EIR.

3 MR. SHEEHY: I see. And I have one more
4 question -- one last question of Ms. Krop, Mr. Chairman.

5 You also asserted in here that the EIR fails to
6 adequately analyze the greenhouse gas emissions, and I'm
7 wondering if you could explain why you think the EIR's
8 deficient in that area.

9 MS. KROP: The main concern here was with
10 respect to the proposed mitigation measures and the fact
11 that some of the measures appear to be infeasible. All of
12 them appear to be unenforceable, and so our concern was
13 that although the EIR does recognize that there's a
14 potential for emissions, especially if the number of trips
15 increases, that there's really no effective mitigation.

16 MR. SHEEHY: Why are you asserting that they're
17 unenforceable? I heard testimony from staff and their
18 consultant that the regional air quality management
19 district would have jurisdiction. Why do you think it
20 would be unenforceable?

21 MS. KROP: Our regional air pollution control
22 district does not have a program right now for mitigation
23 for greenhouse gas emissions, so there is no program.

24 MR. SHEEHY: Excuse me. I want to make sure I
25 understand. You're telling me that we have in this report

1 here that the greenhouse gas emissions are going to be
2 enforced by an agency that has no enforcement project in
3 place; is that right? There's no enforcement program in
4 place?

5 MS. KROP: I'll have to defer to your staff to
6 see whether or not they intend to have that particular --
7 some type of particular mitigation for this project to be
8 enforced by the APCD. What I'm telling you is there no
9 program administered by our APCD yet, unlike in the Bay
10 Area. We don't have a greenhouse gas emission program
11 yet. We'd like to.

12 MR. SHEEHY: I'm very distressed to hear that.
13 I think enforcement should be a major concern here,
14 particularly since the -- first mitigation required in the
15 environmental impact report.

16 Thank you, Mr. Chairman.

17 CHAIRMAN GARAMENDI: Thank you, Ms. Krop.

18 MS. KROP: I do have a brief statement from Get
19 Oil Out.

20 CHAIRMAN GARAMENDI: I have a witness from --
21 No, I have a witness from -- yeah, Get Oil Out.

22 MS. KROP: Unfortunately, he had an emergency
23 and couldn't be here.

24 CHAIRMAN GARAMENDI: I don't know. He just
25 handed me a piece of paper.

1 MS. KROP: Right. I did that.

2 CHAIRMAN GARAMENDI: And that's you. Very
3 good.

4 MS. KROP: I will be very brief. I will submit
5 a written letter, and I will just read one paragraph here
6 because they were going to send a spokesperson who had an
7 emergency. So, I will just summarize that GOO objects to
8 the lease provision that requires Venoco to use a double-
9 hulled barge. This condition relegates the use of a
10 pipeline which is, without a doubt, far superior
11 environmentally to barging to voluntary status. This
12 condition should be replaced by one that sets out a
13 requirement for the construction of a pipeline within 18-
14 month lease approval, with appropriate milestones. Given
15 that Venoco already has an application pending for such a
16 pipeline, this is a completely reasonable requirement,
17 which also meets the requirements of CEQA, approval of the
18 environmentally superior alternative.

19 Furthermore, it is only with such a condition
20 that the risks of an oil spill can be reduced to the
21 lowest possible level, that the noxious odors associated
22 with the barging operations will be eliminated and that
23 greenhouse gas emissions can be reduced to the greatest
24 possible extent. Thank you.

25 CHAIRMAN GARAMENDI: Thank you.

1 The next person would be Venoco, Steven Greig.

2 MR. GREIG: Good morning, Chairman Garamendi and
3 Commissioners. My name's Steve Greig. My penmanship is
4 poor. I'm the Government Relations and Regulatory Manager
5 for Venoco. We're the current owner of the Ellwood Marine
6 Terminal lease. Venoco and the State Lands staff have
7 been working together for several years, as the previous
8 speakers have mentioned, on the requirements for the lease
9 maintenance and renewal, and we very much appreciate the
10 cooperation we've received with staff and how this has
11 ended up in what's before you today. As stated in the
12 staff report, we're here today to consider the extension
13 of the long-standing lease terms on the marine terminal
14 through 2013. This agreement between Venoco and the State
15 Lands Commission extends to before Venoco owned the lease.
16 I'm before you today mainly to answer some questions if
17 you have them and to encourage you to approve the marine
18 terminal lease.

19 It is significant, and I wanted to reiterate
20 what has been said by others that two weeks ago Venoco did
21 submit an application to the County of Santa Barbara and
22 the city of Goleta to install a permanent pipeline from
23 our on-shore -- our Ellwood on-shore facility to the
24 Plains All American Pipeline near Las Flores Canyon. This
25 will eliminate the need for the marine terminal, and we

1 hope that this application is approved and that the
2 pipeline could be installed sometime by mid 2010. Based
3 on the discussions we've had with county staff and city
4 staff, we think that's a reasonable schedule.

5 As Ms. Krop indicated, the review has already
6 been done on this project as part of our full-field
7 project. We believe that the information that was put
8 together for that EIR can be quickly put into a separate
9 EIR, and so we would hope that through that available
10 information the CEQA process could be moved through and
11 this could be heard and we could be constructing a
12 pipeline in the early part of next year, and actually
13 eliminate the need for the barge by the middle of 2010.
14 Again, I'm available to answer questions, and we hope --
15 thank you for considering the extension to the lease.

16 CHAIRMAN GARAMENDI: Tom, you want to start the
17 questions?

18 MR. SHEEHY: Thank you, Mr. Chairman. Thanks,
19 Steve. Nice to see you here today in Santa Monica.

20 MR. GREIG: Thank you.

21 MR. SHEEHY: I understand that the process for
22 dealing with the double-hulled barge has already been
23 initiated; is that accurate?

24 MR. GREIG: That's correct.

25

1 MR. SHEEHY: Okay. And the staff recommendation
2 is to not require that for 18 months -- I'm sorry -- falls
3 at December of 2010.

4 MR. GREIG: It's 18 months. I don't recall
5 exactly the exact date.

6 MR. SHEEHY: All right. So, it seems pretty
7 clear that the double hull is safer than the single hull,
8 and you've already started this process. Is it possible
9 that you can move -- I understand that you've got this
10 other alternative, which is the preferred alternative,
11 which everybody seems to agree to, which is the pipeline.

12 MR. GREIG: Yes.

13 MR. SHEEHY: But since you don't have it built,
14 there's a lot of externalities -- there's a lot of
15 uncertainties there that you don't have control over. Is
16 there any way that you can, in fact, get the double-hulled
17 barge in service any sooner?

18 MR. GREIG: The difficulty that we have with the
19 double-hulled barge isn't just the availability of the
20 barge. It's the availability of the vapor recovery unit
21 that goes on the barge. So, while there might be double-
22 hulled barges along the Pacific Coast that would work for
23 service in our type of use, they would have to be retrofit
24 and in that a vapor recovery unit that meets the
25 requirements of Santa Barbara County Air Pollution Control

1 District be installed on that barge. The only vapor
2 recovery unit like that that's approved by the district is
3 owned and patented by Public Service Marine, that owns the
4 barge Jovalan, who actually owns the Olympic Spirit and
5 who we contracted with, the developer to build a second or
6 another double-hulled barge, again, with that vapor
7 recovery, so that the time delay is a combination of the
8 availability of the barge, the construction and
9 installation of vapor recovery units and then permitting
10 and getting that confirmed through the APCD that's going
11 to work in that service.

12 We're more comfortable, at this point, that we
13 can get the pipeline installed before we'll need to use
14 that technology.

15 MR. SHEEHY: I thought the Jovalan was operated
16 by Harley Marine. You mentioned some other company.

17 MR. GREIG: I'm sorry. Public Service Marine is
18 a wholly and subsidiary of Harley Marine. Harley Marine
19 is the parent company.

20 MR. SHEEHY: So they do have not a double-hulled
21 barge with the necessary vapor recovery system? They
22 don't have one that you can use?

23 MR. GREIG: Correct. There's one more barge 00

24 MR. SHEEHY: Other than the Jovalan.

25

1 MR. GREIG: The Olympic Spirit has that vapor
2 recovery unit, but it's contracted to Tesoro.

3 MR. SHEEHY: Okay. Well, I'm just going to ask
4 one for time for the record. So you can't do it any
5 sooner than 18 months? Is that your position?

6 MR. GREIG: We can -- we believe we can do it
7 within 18 months. If we can do it sooner, we will. But,
8 again, I hope that we're done with the pipeline prior to
9 that.

10 MR. SHEEHY: Thank you.

11 Chairman?

12 CHAIRMAN GARAMENDI: John?

13 MR. CHIANG: Mr. Greig, have you checked into
14 the possibility or potential for sublease?

15 MR. GREIG: We did, and the only other barge
16 that's available that we've at is the Olympic Spirit.
17 That's the one that's contacted with Tesoro. We are
18 working on an agreement with Tesoro that in the event the
19 Jovalan's not available, then that the Olympic Spirit
20 could come in, but it would be on a sporadic, once in a
21 while basis. We couldn't rely on that as a long-term
22 solution to the transport of our oil at this time.

23 MR. CHIANG: And then you indicated there are
24 some double-hulled vessels on the West Coast. Have you
25 explored, you know, which ones may be available and then

1 my subsequent question would be because you said, you
2 know, they don't have the -- all have the vapor recovery
3 unit as required, what is the timeframe for the permitting
4 process --

5 MR. GREIG: Sure.

6 MR. CHIANG: -- in the event it needed to be
7 retrofitted?

8 MR. GREIG: And, actually -- I'm sorry if I
9 misspoke. I don't know if there's other double-hulled
10 barges available. My comment was if there are, there are
11 none equipped with the vapor recovery unit that we would
12 need. So, I don't know if there's some out there that we
13 would -- that would be available to have it installed on.
14 The -- again, the patent for the vapor recovery unit is
15 owned by Harley Service Marine. They want to keep that
16 barge -- that technology on their vessels.

17 MR. CHIANG: Thank you.

18 CHAIRMAN GARAMENDI: Question of staff?

19 Paul, why was the year 2013 selected here?

20 MR. THAYER: I think the original lease was in
21 1983, and it had just these consecutive ten-year periods
22 that finally expired in 2013.

23 CHAIRMAN GARAMENDI: Could we select a different
24 date, like one that's two years from now?

25

1 MR. THAYER: The Commission approval, at least
2 this is the legal advice we're getting, the Commission
3 approval in 1983, in effect contracted for that date, so
4 without the consent of Venoco, we can't unilaterally
5 change that date.

6 CHAIRMAN GARAMENDI: A couple of questions with
7 regard to the pipeline. You've repeated several times
8 that you want to see the pipeline built soon?

9 MR. GREIG: Yes.

10 CHAIRMAN GARAMENDI: Explain the current process
11 that you have. You went into a little bit of detail with
12 regard to the EIR.

13 MR. GREIG: We -- we submitted the application
14 to the county and the City of Goleta, County of Santa
15 Barbara, City of Goleta, which are the two permitting
16 agencies for the pipeline. We prepared the application so
17 it looked essentially identical to the pipeline that was
18 reviewed under our full-field project back in -- starting
19 in 2000. With the application being essentially identical
20 to that, they will then, we hope, use the same EIR that
21 was prepared for that full-field project, incorporate it
22 into a separate stand-alone EIR for the pipeline. We're
23 hopeful that they can, you know, go through that process
24 rather quickly. I would hope that you can see an
25 administrative draft of the document in the next couple of

1 months, and then it goes through the typical CEQA process,
2 public hearing, public draft, etcetera, to where it would
3 ultimately be -- go before the city council in Goleta and
4 the Board of Supervisors, I would hope, by the end of this
5 year.

6 CHAIRMAN GARAMENDI: The Goleta City Council or
7 city is trying to eliminate the on-shore facility.

8 MR. GREIG: Yes.

9 CHAIRMAN GARAMENDI: How does that figure into
10 the pipeline?

11 MR. GREIG: It doesn't. The on-shore facility
12 does two things. It processes our natural gas and it
13 processes the oil. The -- regardless of the
14 transportation of our oil, the natural gas still comes in
15 from the platform and is processed at that plant. That --
16 it's processed there. It's a sales quality. It goes into
17 a pipeline, and it's sold then to the Southern California
18 gas system. So, regardless of what happens with oil,
19 natural gas is going to be processed at that location.

20 CHAIRMAN GARAMENDI: So you have a pipeline
21 already in place --

22 MR. GREIG: For the natural gas.

23 CHAIRMAN GARAMENDI: -- for the natural gas. Do
24 you anticipate that Goleta will have objections or
25 concerns about the pipeline?

1 MR. GREIG: In my discussions with the City of
2 Goleta, they've been supportive of the pipeline. I think
3 everyone understands that for every ten days of delay,
4 it's one more barge, so the sooner that we can the
5 pipeline in the, I think the happier everyone's going to
6 be.

7 CHAIRMAN GARAMENDI: And the County of Santa
8 Barbara?

9 MR. GREIG: Same. I've talked with a number of
10 people with in the county. All of them are supportive of
11 a pipeline. All of them want us to expedite that process,
12 and Venoco feels the same.

13 CHAIRMAN GARAMENDI: Okay.

14 MR. GREIG: Feels the same.

15 CHAIRMAN GARAMENDI: The full-field development
16 is not before us at the moment.

17 MR. GREIG: Correct.

18 CHAIRMAN GARAMENDI: But I would like to have
19 you discuss it in the context of the pipeline and this
20 lease.

21 MR. GREIG: Sure. We submitted an application
22 for that shortly after Venoco acquired the property from
23 Mobile. It was back in 19 -- we acquired it in '97. We
24 got the application in somewhere around '99 or 2000. As
25 part of that project, we always included a pipeline that

1 would eliminate the marine terminal. We have separated
2 those two parts of the project now. We've separated the
3 pipeline from the lease boundary expansion.

4 Mr. Thayer's correct in one level that's not at
5 the front right now, but that continues to be an important
6 project for us. Staff is in the process of looking at a
7 couple of different things that will be -- have an impact
8 on the environmental review, one of which is the
9 feasibility of processing gas. Like we talked about at
10 the onshore facility and Exxon's Las Flores Canyon
11 facility, so based on those -- that analysis, that may be
12 coming before your Commission when that's done and the
13 environmental review is completed. It is an important
14 project for us. It's not something that we would withdraw
15 the application. We think it's a viable project for the
16 state.

17 CHAIRMAN GARAMENDI: In that project, would you
18 continue to process the oil at the on-shore facility?

19 MR. GREIG: It will be looked -- that's part of
20 the EIR that's being conducted and part of the amendment
21 to the EIR is where we feasibly can process both oil and
22 gas.

23 CHAIRMAN GARAMENDI: That requires a new
24 pipeline, does it not? An on-shore pipeline?

25

1 MR. GREIG: Yes. It would be the same pipeline
2 that we're proposing and that would be used prior to the
3 lease extension, the lease extension.

4 CHAIRMAN GARAMENDI: That issue's not before us,
5 but I would assume the attitude of this commission would
6 be no pipeline, no lease.

7 MR. GREIG: We're comfortable with that, and I
8 hope the pipeline is in in plenty of time.

9 CHAIRMAN GARAMENDI: And I think you'd best
10 consider the on-shore facility at Goleta and the
11 continuation of that in conjunction with a full-field
12 development plan.

13 MR. GREIG: Yes.

14 CHAIRMAN GARAMENDI: Okay. Now. With regard
15 to, I'm recalling a marine facility at the Chevron pier in
16 Richmond, and we had a long discussion about the safety or
17 the risks associated with the transfer of oil from a
18 tanker to the shore or to the pier, and there was a
19 requirement for some very significant safety requirements
20 having to do with automatic closure of transferred oil.
21 Are any of those safety features built into the facility
22 at the marine terminal?

23 MR. GREIG: There are safety features built into
24 the operation of our marine terminal. The marine terminal
25 that we operate is much different than other marine

1 terminals at one of the larger harbors. Those are
2 typically marine terminals that are a solid pier and
3 there's vapor recovery on the pier. There's a difference
4 in type of transfer. Our particular off-loading
5 operations are from a mooring so that the things that we
6 have incorporated in terms of safety features into our
7 operations are the ones that we think meet and exceed the
8 requirements and are the reasonable mitigations to impose,
9 so it looks different than a pier would with a solid pier
10 structure, but we think it meets the requirements -- and
11 the requirements of the state.

12 CHAIRMAN GARAMENDI: Question of staff, has this
13 been analyzed? This question of the safety of the
14 transfer from the barge to the marine facility?

15 MR. THAYER: Yes, it has, and there are several
16 mitigation measures in the mitigation monitoring program,
17 which I can't remember -- is that Exhibit C to the staff
18 report?

19 The one that comes to mind immediately is a
20 requirement to keep a vacuum on the oil line during the
21 times between barge trips so that if there should be a
22 leak in that line, the oil doesn't go out, sea water comes
23 into the line, and there are other features like that to
24 try and avoid leaks.

25 Thank you, sorry.

1 CHAIRMAN GARAMENDI: I'll tell you what my
2 concern here is that we may be getting a proposal that
3 will not actually happen, that is the pipeline. I'm
4 trying to sort out some way to provide an assurance that
5 this pipeline project is going to move forward, and
6 everything I've heard thus far, it's possible for Venoco
7 to tell us today they're going to build a pipeline and
8 then not do it through the termination of this lease, and
9 so we're looking at four years with this barge operation
10 continuing, a double-hulled, though it be, but still
11 continuing, and I'm trying to find some way to provide the
12 assurance that the pipeline will be built. I understand
13 that we can't get ahead of the EIR, but I'm wondering if
14 there is some additional mitigation or cost factor that we
15 could build into this agreement, this extension that would
16 provide motivation, like, you know, \$10 million or some
17 such number.

18 MR. THAYER: Well, I think that still comes
19 down --

20 CHAIRMAN GARAMENDI: That the value of the
21 lease, the cost of lease increases 18 months from now to
22 \$10 million a month unless there's a pipeline.

23 MR. THAYER: Again, it just comes down to what's
24 the correct interpretation or the legalistic

25

1 interpretation of a reasonable term and condition and
2 whether that would apply.

3 CHAIRMAN GARAMENDI: We've increased the fee,
4 have we not? The lease fee is increased here?

5 MR. THAYER: Yes, based on the fair market value
6 of the property that they're crossing, so it's not really
7 a fee. It's a rental based on the value of the land.

8 CHAIRMAN GARAMENDI: Do we rent the ocean also?

9 MR. THAYER: Yes, we do. And that's, in fact,
10 the land that we're renting here.

11 MR. FOSSUM: There's a buoy field there that's a
12 permanent basically, so the public is excluded from that
13 from time to time, and that's we base our charges on.

14 CHAIRMAN GARAMENDI: Really?

15 MR. FOSSUM: I'd like to add something, though.
16 We believe that the likelihood of the pipeline going in is
17 good based on the fact that it's going to be very
18 expensive to have this double-hulled barge with a vapor
19 recovery system placed on it. While the commission can't
20 require that the pipeline be put in, they will have to
21 have a pipeline by -- we keep saying four years. It's
22 actually February of 2013, so it's a little more than
23 three and a half years from now, so if they're going to
24 have to have a pipeline in within three and a half years,
25 the motivation for them to put the pipeline is there, but

1 the Commission really isn't in a position to require it
2 because they still got that ten-year term that they're in,
3 in which they have a right to use the terminal.

4 CHAIRMAN GARAMENDI: I think I heard the basis
5 of a lawsuit on the EIR from one of the witnesses here, as
6 to the adequacy of the EIR. There are several questions
7 raised about the adequacy of the EIR by Ms. Krop and if
8 somebody wanted to sue and delay, they could do that, I
9 suppose.

10 MR. THAYER: They could do that, but in all
11 likelihood the barge would continue operating during that
12 period of time. I don't know what else --

13 CHAIRMAN GARAMENDI: So you're telling me that
14 that's no way we can provide a financial incentive for
15 Venoco to really do the pipeline soon?

16 MR. THAYER: The trouble, again, is this
17 reasonable terms and conditions. The Chair is very good
18 at devising these sometimes, but we've spent the last year
19 or so trying to figure out how to get out of that box,
20 and --

21 CHAIRMAN GARAMENDI: So it's your good will and
22 good intentions.

23 MR. GREIG: And if I may, at this point, as much
24 as its worth, Venoco is committed and willing to put in
25 that pipeline as soon as we get approval to do that. At

1 this point, the critical timing of when that goes on is
2 really in the hands of the city and the county and some
3 state agencies, so it would be a pleasure --

4 CHAIRMAN GARAMENDI: It will come back before us
5 before at least --

6 MR. GREIG: I'm sorry?

7 CHAIRMAN GARAMENDI: It will come back not
8 before us. They don't have to have a new lease for this
9 pipeline?

10 MR. THAYER: No. It's all on shore. It's all
11 on shore, so it's not subject to our jurisdiction. I
12 presume the Coastal Commission would be involved, do you
13 know?

14 MR. GREIG: Yes.

15 MR. THAYER: And Goleta?

16 MR. GREIG: The primary jurisdiction is the city
17 and county. They'll be some other agencies involved, Fish
18 and Game, Coastal Commission, which, again, if there is --
19 for us critical path of the approvals from those
20 commissions, it would be the Commission's pleasure to at
21 least let those agencies know of your desire to have that
22 approval, Venoco would appreciate that and we will respond
23 as soon as we have approval.

24 CHAIRMAN GARAMENDI: Nice move.

25 MR. GREIG: Thank you.

1 CHAIRMAN GARAMENDI: Toss that back to us.

2 MR. SHEEHY: Mr. Chairman?

3 CHAIRMAN GARAMENDI: Tom?

4 MR. THAYER: I'm sorry. I was just trying to
5 say that we did, generally complete the environmental
6 review for the full-field development which included this
7 pipeline, and although that's not coming before the
8 Commission yet, I think the county is utilizing the same
9 consultant to prepare that EIR and the intent is to use
10 the analysis that's already been prepared to try and
11 expedite this process.

12 But, again, we do not -- I want to be careful
13 that, in spite of what Curtis said or to add to what
14 Curtis said, we are not in a position as staff to be able
15 to say, 'Yeah, they're going to do it.' You know, there's
16 some incentives for them to do it at this point, but --

17 CHAIRMAN GARAMENDI: Thank you, Paul.

18 Tom? Questions?

19 MR. SHEEHY: It seems to me I've heard that
20 before recently, Paul.

21 MR. THAYER: Yeah.

22 MR. SHEEHY: I guess I continue to be concerned
23 about testimony we heard earlier, which is that the
24 greenhouse gas emissions and NOX emissions mitigations,
25 that the enforceability of that lies with an entity that

1 has no such enforcement program, and I just don't know how
2 we can be expected to accept this environmental impact
3 report and the proposed mitigations when they're -- when
4 I've heard testimony that there is no program in place to
5 do such investigations. How are we supposed to square
6 that today, Mr. Thayer?

7 MR. THAYER: I think that's a good question, and
8 between when this was last spoken of, I talked with Gail
9 Newton from our environmental unit about that, and I think
10 our expectation is that we might very well end up having
11 to be the agency that enforces it, but that we would not
12 be doing that from a technical perspective because it, as
13 I think Eric mentioned in his presentation, they have to
14 get certification according to the EIR requirements from
15 the California -- what's it's called -- Air Registry, and
16 then we would be reviewing that to make sure that that was
17 done.

18 CHAIRMAN GARAMENDI: And if not, we could
19 enforce under the lease.

20 MR. THAYER: Yes, we could.

21 MR. SHEEHY: So, who is it that did the EIR for
22 this project? Why was this loose end not caught and sort
23 of being tied up until today, the day we're hearing this
24 lease proposal in front of us?

25

1 MR. THAYER: I think that a better job was done
2 than what I was letting on. In other words, there is a
3 provision in the EIR that this -- that the mitigation be
4 certified or reviewed, and approved by the California
5 Registry, and I neglected to mention that.

6 MR. SHEEHY: I see. Okay.

7 CHAIRMAN GARAMENDI: Okay. The -- I think we've
8 completed the testimony on this. What I'd like, Paul, for
9 you to do is to present the issues to us. I think there
10 are several issues that we are dealing with. We can take
11 them as one issue or separate. We have an EIR that needs
12 to be certified and a few other things.

13 MR. THAYER: The -- the findings, the
14 recommended findings are in the staff report, and I think
15 that it's possible for the Commission to approve these as
16 one rather than taking a separate vote on each one if the
17 intent of the commission is to, in fact, both certify the
18 EIR and to approve the extension. Those findings start at
19 page 7, and you can see they consist of both a CEQA
20 finding, a significant lands, inventory finding and an
21 authorization. So, if someone wanted to move to -- to
22 approve all of that, it could be done in one blow.
23 However, of course, the Commission could divide the
24 question if they wanted to.

25

1 CHAIRMAN GARAMENDI: It seems to me that we may
2 as well move as a unit, but the question is to my
3 colleagues here as to how they would like to do this.

4 MR. CHIANG: That's fine.

5 CHAIRMAN GARAMENDI: Tom, you've had questions
6 on the EIR?

7 MR. SHEEHY: I'm not comfortable with what I've
8 heard today. I just don't think this is fully cooked.

9 CHAIRMAN GARAMENDI: Would you like to divide
10 the question then or would you like to relay the whole
11 thing?

12 MR. SHEEHY: It's your pleasure, Mr. Chairman.

13 CHAIRMAN GARAMENDI: Well, then -- let's divide
14 the question, and we'll take the EIR separate. So the
15 question's on the EIR.

16 MR. SHEEHY: I'm sorry. May I ask one question?

17 CHAIRMAN GARAMENDI: Certainly, Tom.

18 MR. SHEEHY: In dividing, Mr. Fossum or Mr.
19 Thayer, could you explain the significance of dividing the
20 question vis-à-vis this body's ability to approve it and
21 what each vote will mean?

22 MR. THAYER: Well, the first vote would be on
23 the CEQA document because you cannot approve a project
24 until you certify and approve the CEQA review, and so that
25 vote should occur first. If the Commission decides not to

1 certify the EIR, then it cannot take a vote on the project
2 except to deny it. It's possible to deny a project
3 without having a certified document, but we cannot approve
4 it if you're turned down the EIR.

5 MR. SHEEHY: So, you can turn down the EIR --
6 I'm sorry. So you can turn down the EIR but not -- I
7 mean, I don't want to make a double negative and make it
8 complicated.

9 MR. THAYER: You can turn the EIR down --

10 MR. SHEEHY: You can turn down the EIR and you
11 can take no action on the project.

12 MR. THAYER: Yes.

13 CHAIRMAN GARAMENDI: That's correct.

14 MR. SHEEHY: Which means you can come back?

15 MR. THAYER: Yes.

16 MR. FOSSUM: You can also approve the EIR and
17 not approve the project. That's another alternative. Let
18 me add one thing if I may, you're concerned about
19 enforceability like, for example the number of voyages and
20 whether they were violating that matter, each voyage is
21 reported to the Commission staff, so we now how many
22 voyages they're taking, and there's no enforceability by
23 the county, the commission does have the ability to
24 enforce the terms of its lease, and if are violating the
25 terms, the mitigation measures in the lease. The

1 Commission has the ability ultimately to terminate the
2 lease. They would get a period of time in which to cure.
3 We'd notice them and then as we've done in some of these
4 other items that have been before you. So, the Commission
5 does have some authority. It's just that we're not the
6 primary responsible agency for those air quality issues.
7 So, we could shut down a lease frankly. So you have some
8 authority in that regard.

9 CHAIRMAN GARAMENDI: So, if the mitigation
10 measures, which are not specified but required to fully
11 offset the additional emissions --

12 MR. FOSSUM: They're adopted as part of the
13 lease, yes.

14 CHAIRMAN GARAMENDI: And if they fail to provide
15 those mitigation measures, then they're in violation of
16 the lease.

17 MR. FOSSUM: That's correct.

18 CHAIRMAN GARAMENDI: And we've had several
19 different actions, in fact, a couple of them today to take
20 on this matter.

21 MR. SHEEHY: I have one more question, Mr.
22 Chairman.

23 CHAIRMAN GARAMENDI: Yes, from staff.

24 MR. SHEEHY: What happens if there's not enough
25 support today for one or the other or both?

1 MR. FOSSUM: They've been in hold-over status
2 for some period of time, as some of our other leases have
3 been, and what we believe is the benefit of -- well, not
4 in holdover. They're in a new term, excuse me. I'm going
5 to correct that. There has been some confusion over this
6 lease, obviously. Exactly --

7 CHAIRMAN GARAMENDI: Counsel is seeking counsel.

8 MR. FOSSUM: Yeah. He wants to make sure I
9 don't misspeak here again. I think the point is that we
10 believe the terms and conditions that they're working
11 under now are not nearly as adequate as the ones that are
12 being presented to you today, and so there would be a lot
13 of tightening up of those conditions by approval of the
14 staff's recommendation. Even if it's not ideal because we
15 don't have the ability to do everything we would like to
16 do, we think it's a major step forward in improvement over
17 the existing terms and conditions.

18 MR. THAYER: So, I think to answer Commissioner
19 Sheehy's question directly, they would continue operating
20 even if the commission did not approve today -- but under
21 the terms and conditions of the old lease. We couldn't
22 stop them from operating if we didn't approve it today.

23 CHAIRMAN GARAMENDI: Okay. I think we've gone
24 through the questions. We have the issues before us. The

25

1 first question then is on the certification of the EIR.

2 Do we have a motion?

3 The Chair moves for certification --

4 MR. FOSSUM: May I may a suggestion on that as
5 well?

6 CHAIRMAN GARAMENDI: Yes.

7 MR. FOSSUM: As part of the certification,
8 there's also the adoption of the mitigation monitoring
9 program and the findings associated with that.

10 CHAIRMAN GARAMENDI: Okay.

11 MR. FOSSUM: And the statement of over riding
12 consideration.

13 CHAIRMAN GARAMENDI: I'm handing the gavel to
14 Mr. -- to our Controller, John.

15 MR. SHEEHY: I would be happy to second that
16 motion, Mr. Chairman.

17 MR. CHIANG: We have a motion by the Chair,
18 second by Mr. Sheehy. Without objection, motion passes.
19 I'm sorry? Do you want a vote?

20 CHAIRMAN GARAMENDI: Yeah.

21 MR. CHIANG: We have a motion by the Chair. We
22 have second by Mr. Sheehy. Without objection the motion
23 passes.

24 CHAIRMAN GARAMENDI: Very good. The next --
25 want to clear it up?

1 MR. CHIANG: Sure. Is there a motion on the
2 next item?

3 CHAIRMAN GARAMENDI: The next item will be the
4 full -- the lease itself and the various mitigation
5 measures associated with it; is that correct?

6 MR. FOSSUM: The second element after CEQA is we
7 have what we call a significant lands inventory finding
8 that this land -- that this operation will be consistent
9 with the designation that the Commission has previously
10 given to the lands involved.

11 CHAIRMAN GARAMENDI: So moved.

12 MR. CHIANG: We have a motion by the Chair. Is
13 there a second?

14 MR. SHEEHY: I'll second Mr. Garamendi's motion.

15 MR. CHIANG: We have a second by Tom. Without
16 objection, the motion passes.

17 MR. FOSSUM: And the third is the authorization
18 to renew the lease and -- with the terms and conditions
19 that have been previously discussed.

20 MR. CHIANG: Is there a motion?

21 CHAIRMAN GARAMENDI: I so move.

22 MR. CHIANG: Motion by the chair.

23 MR. SHEEHY: Second.

24 MR. CHIANG: Second by Mr. Sheehy. Without
25 objection, the motion passes.

1 MR. SHEEHY: I'd like to say something.

2 MR. CHIANG: Sure.

3 MR. SHEEHY: I'm very concerned about the
4 enforceability, so I hope that staff takes to heart the
5 comments that were made today. I think that there's some
6 loose ends here, but it sounds like -- really sounds like
7 we sort of had a gun to our head because either we
8 approved what was before us, and if we didn't, the
9 situation would be far worse, so -- so I was willing to go
10 along with it, but I continue to have concerns, and I
11 continue to believe the 18-month period of time for the
12 bargaining is an unacceptable delay, and if there was any way
13 we could get around that, I would move to do that right
14 now, but nobody's come up with anything, Mr. Chairman, so,
15 it is what it is.

16 CHAIRMAN GARAMENDI: Tom, I echo your concerns
17 and agree with all of them. We're moving on to Item 66.
18 Well, wait a minute. We are going to take up Item 70. 66
19 Will wait a while.

20 Paul, would you like to bring us up to date on
21 Item 70.

22 MR. THAYER: Yes.

23 CHAIRMAN GARAMENDI: Which I believe is the PXP
24 program; is that correct?

25

1 MR. THAYER: That's correct. Item 70 is a
2 resolution before the Commission which reacts to the
3 proposal in the proposed May revision to the budget. This
4 proposal, which staff has seen, most comprehensively only
5 in the summary, which was issued by the governor a week
6 and a half ago, has an opportunity to look quickly at some
7 of the potential language would generally provide that
8 developments that meet certain criteria can be reviewed by
9 the Director of Finance who then could, after hearing --
10 having one or more public hearings, approve those
11 developments. My understanding is the intent of this
12 language, which, again, we don't have a copy of, is that
13 the criteria are focused enough that the proposed oil
14 lease proposed PXP at Tranquillon Ridge which the
15 Commission denied on January 29th is the only topic that
16 would qualify for this special treatment. The --

17 CHAIRMAN GARAMENDI: Have we seen any language?

18 MR. THAYER: We have not. Again, staff has seen
19 quickly some language but hasn't really had a chance to
20 review it, and I don't believe it's in -- at least as far
21 as we know. It's not publicly been released yet.

22 As the Commissioners know, the Commission held a
23 quite lengthy hearing about this in Santa Barbara, and
24 determined for a variety of reasons that this lease should
25 not be approved and on the second page, the longest

1 whereas section there about halfway down details the five
2 major reasons why the commission disapproved that project.

3 The rest of the resolution generally gives
4 background on the Commission, the state's position with
5 respect to off-shore oil and the resolve clause indicates
6 that the Commission opposes the proposal in the May
7 revision summary to set up this alternate means of
8 approving the project, and then direct staff to forward
9 copies of the resolution to the governor and two houses
10 the legislature.

11 CHAIRMAN GARAMENDI: I think the -- we'll come
12 back to the various language of the Commission of the
13 resolution. However, I think it's important for the
14 Commission to understand the nature of the proposal in the
15 May revision of the budget.

16 Tom, you represent the Department of Finance.
17 As near as I could tell, the proposal emanated from the
18 Department of Finance or the governor's office. Could you
19 explain to us what is proposed?

20 MR. SHEEHY: Certainly. Certainly. I'm glad
21 you asked.

22 CHAIRMAN GARAMENDI: You knew I would.

23 MR. SHEEHY: I did. And for anybody in the
24 audience who would like to now, I have a fact sheet up
25 here that would explain exactly how the legislation would

1 work. Feel free to after the hearing, come up and have a
2 copy of it. And I apologize, Mr. Chairman, the first
3 thing I should have done was pass out copies to my
4 colleagues.

5 CHAIRMAN GARAMENDI: Thank you.

6 MR. CHIANG: Thank you.

7 MR. SHEEHY: The staff of the State Lands
8 Commission had a brief look at this. As I understand it,
9 this language is now -- not this language here, but the
10 language for this is now in the hands of the legislature,
11 so it's in their purview.

12 But, what -- what the May revision proposal
13 would do is for a limited time period, during an
14 unprecedented fiscal crisis facing the state, authority
15 would be restored to the Director of Finance to reconsider
16 certain lease applications and determine whether such a
17 lease would be in the best interest of the state.

18 Up until 1938, the Director of Finance had
19 unilateral authority to review and approve or disprove all
20 lease applications. Under the May revision proposal, the
21 director could only reconsider leases that met the
22 following very specific criteria. The lease application
23 must have been filed on or after January 1st, 2004. The
24 state oil or gas deposits in question must be subject to
25 ongoing drainage by wells located in adjacent federal

1 fields. Only lease applications where the applicant would
2 access state reserves from existing platforms in federal
3 waters and would use existing infrastructure to transport
4 the oil or gas would be eligible. The lease term could be
5 no longer than 15 years in duration.

6 Even if all of the foregoing criteria are
7 satisfied, the director still could not approve any lease
8 without making an additional finding after one or more
9 public hearings that it was in the best interest of the
10 State of California. These criteria ensure that the
11 authority granted is limited in scope, that the state will
12 reap the benefits its own natural resources, as opposed to
13 having them drain off and utilized by the federal
14 government for their benefit.

15 It would also maintain the moratorium on
16 building additional drilling platforms in state waters,
17 while at the same time getting the resource. The bill
18 also requires the Director of Finance to hold public
19 hearings before entering into any such project lease that
20 meets those above criteria. It also contains a sunset
21 date of January 1st, 2011, at which point the current
22 fiscal crisis will have hopefully passed.

23 Now that you've heard what the bill will do, I
24 think it's important to say specifically what it would not
25 do. The bill does not approve or authorize any specific

1 project or lease anywhere in the State of California. The
2 bill does not alter, circumvent or interfere with the
3 state lands commission powers or duties. In fact, nothing
4 in the State Lands Commission process has been changed.

5 Going forward, all applications must still be
6 submitted to and reviewed by the State Lands Commission.
7 The bill does not alter, circumvent, or interfere with the
8 Coastal Commission's powers or duties in any way
9 whatsoever. The bill does not give the legislature the
10 power to approve the lease by its own action. The bill
11 does not expand the circumstances under which drilling may
12 occur in state waters. In fact, the bill contains more
13 restrictive criteria than existing law of the California
14 Public Resources Code 6244 and only contains two criteria,
15 federal drainage and best interest the state, that must be
16 met before a lease can be issued.

17 This bill requires that all six criteria
18 mentioned earlier have to be in place in order for a lease
19 to be reviewed by the director. That's what it does.

20 CHAIRMAN GARAMENDI: Tom, the -- what is the --
21 why are you doing this?

22 MR. SHEEHY: Excuse me?

23 CHAIRMAN GARAMENDI: Why is the Department --
24 why is the governor doing this? Why is the governor doing
25 this?

1 MR. SHEEHY: I guess I don't understand the
2 premise of your question.

3 CHAIRMAN GARAMENDI: Well, the premise of my
4 question, presumably there's some reason why the governor
5 is making this proposal.

6 MR. SHEEHY: Well, I guess -- I guess on the
7 surface of it, Mr. Chairman, the Department of Finance
8 believes that this body just made the wrong decision on
9 January 29th, 2009, in Santa Barbara, and the Department
10 of Finance does, in fact, believe that the project that
11 was rejected on a one to two vote is, in fact, in the best
12 interest of the state.

13 CHAIRMAN GARAMENDI: Okay.

14 MR. SHEEHY: And the finance continues to
15 believe that, and I don't have to tell the controller
16 sitting here, who just sent a letter to the legislature
17 about the dire fiscal circumstances we're in. We think
18 it's important to get the oil infrastructure out from the
19 coast of Santa Barbara, and as Ms. Krop, if she's still
20 here, will tell you, just like she did down in Santa
21 Barbara, one thing that is for sure is that if this
22 project doesn't go forward, then that oil infrastructure's
23 going to sit there for decades and decades and decades.
24 The only agreement that was on the table that would get
25 that oil infrastructure out is the agreement that was

1 taken up in Santa Barbara on January 29th, and that's why
2 there were a total of 46 individuals, including numerous
3 elected officials, numerous public service departments, a
4 list of environmental groups so long I can't even go
5 through, other environmental organizations that all
6 supported the project.

7 And while many of them have contacted us, Mr.
8 Chairman and said they don't support this new process, I
9 haven't heard any of them come forward and say they don't
10 support the project. And, in fact, it's amazing because
11 there were over 46 people that testified at that hearing
12 down in Santa Barbara.

13 In fact, I'd like to enter this, Mr. Fossum, I'd
14 like to enter this into our minutes. This is a list of
15 all of the people that entered in support, all of the
16 public officials, all of the environmental groups, all the
17 individuals, that list is 76 pages long, and then when we
18 got to the opposition, there was a list of 11 people, and
19 none of them were residents of the County of Santa
20 Barbara. Mr. Fossum, I also have that transcript of that
21 hearing down there. This is the opposition. There was no
22 organized opposition. So, we think that there are
23 tremendous environmental benefits involving the removal of
24 the oil infrastructure, pulling out the oil processing
25 plants in Gaviota and Lompoc. We think that 4,000 acres,

1 approximately 4,000 acres of extremely sensitive
2 environmental land being put in permanent trust, we think
3 the complete mitigation of all greenhouse gas emissions,
4 purchase of natural gas powered buses for Santa Barbara
5 for their mass transit and all the environmental benefits
6 that got the Environmental Defense Center and all of their
7 clients that have protected the coastline for so many
8 years that support this project, we think that those are
9 tremendous environmental benefits, and at a time when the
10 State of California has a \$23 billion budget deficit, the
11 Department of Finance believes it's not time for business
12 as usual. We think it's time to look outside the box and
13 look for win-win opportunities where the environmental
14 community and the oil community can come together in what
15 was a historic agreement and make a project go forward
16 that will give the state of California close to \$2 billion
17 over the next decade in terribly needed revenue. This
18 will help prevent the lay-off of public safety workers all
19 around the state. No, you're right, Mr. Chairman, it will
20 not solve our budget problem. No question about that.
21 Duly stipulated, but it's a very important source of
22 revenue. We have had a number of public employee labor
23 unions come to us in the last ten days saying they support
24 this. They're talking with the speaker and the pro tem
25 and minority leaders in the legislature. They think this

1 is a good project. We need the revenue, and that's why
2 the Department of Finance proposed this legislation so
3 that this project may, in fact, be reconsidered under the
4 process that I laid out.

5 CHAIRMAN GARAMENDI: The process that you laid
6 out, assuming the bill is written as you have described
7 it, does not provide for any of the benefits that you just
8 cited. You had six criteria here, and if that bill is
9 written -- well, five criteria, if that bill is written as
10 you have described it here, there is no criteria to
11 achieve any of the benefits that you've described,
12 including the financial benefit.

13 MR. SHEEHY: Well, with all due respect,
14 Lieutenant Governor, I disagree with you. I'm sorry.

15 CHAIRMAN GARAMENDI: Well, let's go through
16 them. The lease application, if you only consider the
17 lease --

18 MR. SHEEHY: I'm sorry. Excuse me. Just one
19 second. I want to understand what the ground rules here
20 is. Was the intent here to go over this resolution or did
21 you want to try to litigate proposed legislation?

22 CHAIRMAN GARAMENDI: Well, sir, you have taken
23 the position of destroying several decades of work that
24 this Commission has done. Never before has this
25 Commission's decision on an oil lease been overridden, or

1 proposed to be overridden by the governor, which is
2 precisely what's going on here. The governor did not like
3 the decision made in Santa Barbara a few months ago and
4 coming back now with a proposed piece of legislation that
5 would presumably be done in the -- in the haste at which
6 the legislature is trying to settle up the budget, with or
7 maybe not even with a legislative hearing on the matter,
8 and the criteria that you've laid out here do not provide
9 any indication that the argument that you just made in
10 support of this whole proposal would actually happen
11 because there is no discussion here among these five
12 criteria of benefits to the environment such as land
13 trades.

14 There is nothing in here to provide assurances
15 that there would be a termination of the platform, which
16 was part of the discussion that we had before in which we
17 determined just a few months ago there was no assurance
18 that the platforms would actually be removed. What we
19 have here is a naked end run around the authority of this
20 commission for the first time since the authority was
21 removed from the Director of the Department of finance
22 because of fraud and abuse by the Director of the
23 Department of Finance. That's why this Commission was
24 created. That's why this Commission was given the power
25 that it has today, and this is a naked attempt to overturn

1 the decision of this body based upon findings that this
2 proposal, as presented then, was not in the interest of
3 the state.

4 MR. SHEEHY: May I respond?

5 CHAIRMAN GARAMENDI: Of course.

6 MR. SHEEHY: Thank you.

7 CHAIRMAN GARAMENDI: Tell us why this is not a
8 naked attempt to overrule the authority of this Commission
9 and to remove the authority of this Commission.

10 MR. SHEEHY: Well, of course, Lieutenant
11 Governor, I'm very sorry that you feel that way, and --

12 CHAIRMAN GARAMENDI: You should be sorry.

13 MR. SHEEHY: And I just respectfully disagree
14 with you. We think having 120 elected officials look at
15 this will give it a far greater level of review than two
16 elected officials. So I just disagree with you,
17 Lieutenant Governor. I'm sorry. I respect your opinion.
18 I respect your views, but I just disagree with your
19 conclusions.

20 CHAIRMAN GARAMENDI: My conclusion was that this
21 is a naked attempt to remove the -- to abrogate the
22 authority of this commission, whether it's done by the
23 legislature, whether it's done by the Director of the
24 department of finance, it is nonetheless exactly that.

25

1 MR. SHEEHY: Well, I would only add that my
2 comments, Lieutenant Governor, and for members of the
3 audience, I mean, let's be clear. The power that this
4 body, the State Lands Commission has is power that is
5 granted to it by statute through the California
6 legislature and the governor of the State of California.
7 That power can be changed, altered, truncated or
8 terminated at any time by statute, so let's not forget
9 that.

10 CHAIRMAN GARAMENDI: And that's precisely what
11 you intend to do here with this legislation.

12 MR. SHEEHY: So I just think it's really
13 important to remember where the power of this body flows
14 from, and we think having 120 elected officials weigh in
15 on this is appropriate.

16 CHAIRMAN GARAMENDI: I think that's --

17 MR. SHEEHY: For all the reason's that I've
18 described -- I understand you disagree with me. I respect
19 your point of view. I just don't share it, sir.

20 CHAIRMAN GARAMENDI: I think you've misstated
21 the proposed legislation, sir. The proposed legislation
22 gives the power to the Director of the Department of
23 Finance, not to the legislature. It removes from this
24 commission the power to determine the appropriateness of a

25

1 lease and gives that power, not to the legislature, but
2 rather to the Director of the Department of Finance.

3 MR. SHEEHY: You're making a statement. I
4 didn't hear a question there to -- I understand how you
5 feel --

6 CHAIRMAN GARAMENDI: Is that not correct?

7 MR. SHEEHY: I'm sorry --

8 CHAIRMAN GARAMENDI: The power to -- the power
9 to have -- the power for this lease to go forward does not
10 reside with the legislature. The power resides with the
11 Director of the Department of Finance.

12 MR. SHEEHY: Um, but the --

13 CHAIRMAN GARAMENDI: Your boss.

14 MR. SHEEHY: -- what the bill would do is the
15 bill would give the Director of Finance the authority to
16 reconsider a lease application under six specific
17 criteria, all six of which would have to be met in order
18 for that lease to be reconsidered. That's what the bill
19 does.

20 The legislature's role in this will be to review
21 the legislation and decide whether they think it would be
22 in the best interest of the state to give the director
23 that authority.

24 CHAIRMAN GARAMENDI: That's my point. The point
25 is that the legislature does not make the decision about

1 the lease. The decision about a lease and the nature of
2 the lease and the --

3 MR. SHEEHY: No, but the legislature gets -- but
4 the legislature gets to weigh in on a number of factors
5 that are important.

6 So, look. I understand you don't like it. I
7 understand you don't like a state administrative agency
8 disagreeing with the action by this body, you know,
9 somebody was telling me the other day. They said, 'You
10 know, Tom, we think this is a bad thing because it sets a
11 bad precedent.' I said, 'What's the bad precedent?' They
12 said, 'Well, if a state Board or authority or commission
13 makes a decision, for somebody to go to the legislature
14 and try to take another look at it, that's a bad
15 precedent,' and I was kind of shocked and I chuckled and I
16 said, 'You know, half the bills going through the
17 California legislature do just that. Look at the Public
18 Utilities Commission.'

19 Let me finish. I'll bet you there is -- I'll
20 bet you there is at least 50 or -- well, they just had
21 their suspense hearing, so a lot of them probably got
22 killed, but I'll bet you that there are at least 50 or 60
23 bills that were introduced by mostly Democrats and also
24 some Republicans to over turn PUC rulings.

25

1 We can go down the list if you'd like. They're
2 over 120 different state Boards, Commissions and
3 authorities.

4 CHAIRMAN GARAMENDI: That has nothing to do with
5 where we're at. Let's get back to the point.

6 MR. SHEEHY: Well, I'm just -- it gets down to
7 the precedent that it's not precedent setting for, you
8 know, an administrative agency to be second guessed and
9 the Department of Finance believed that the decision on
10 January 29th, that this project was not in the best
11 interest the state. We just disagreed. We disagreed, and
12 I understand --

13 CHAIRMAN GARAMENDI: Does the governor hold the
14 same view?

15 MR. SHEEHY: I'm here today as the Chief Deputy
16 Director as the Department of Finance as part of our May
17 revision. I don't know how much more clear I can be with
18 you, Lieutenant Governor. You're trying to put me in some
19 sort of box --

20 CHAIRMAN GARAMENDI: What is the governor's
21 position with regard to this proposal?

22 MR. SHEEHY: -- I don't -- I don't appreciate
23 that. Well, this proposal was at his May revision.

24 CHAIRMAN GARAMENDI: So I assume he's in full
25 support? Is that a fair assumption?

1 MR. SHEEHY: Well, usually when a governor
2 proposes something, it's something that he's prepared to
3 sign. I think that's pretty straightforward.

4 CHAIRMAN GARAMENDI: Was Mike Chrisman
5 authorized to speak at the hearing in San Francisco that
6 the Secretary of Department of Interior had three weeks
7 ago?

8 MR. SHEEHY: I --

9 CHAIRMAN GARAMENDI: Was he authorized to speak
10 for the governor?

11 MR. SHEEHY: I don't know the answer to your
12 question. I'm sorry. I don't know.

13 CHAIRMAN GARAMENDI: At that hearing, he said
14 that the governor was opposed to off-shore drilling in the
15 state of California, off the shore of the state of
16 California. Is that the governor's position?

17 MR. SHEEHY: Well, I guess as much as you want
18 to try to turn this into an argument about the governor's
19 position on off-shore oil drilling, the reason why this
20 project was put into the May revise is because we think it
21 was in the best interest the state and we believe it was a
22 way to get the oil infrastructure out and have the
23 citizens of California benefit from billions of dollars of
24 oil royalties that are underneath the ground from the
25 existing platforms.

1 CHAIRMAN GARAMENDI: If that's --

2 MR. SHEEHY: And on balance with the State of
3 California in a fiscal crisis, we felt we couldn't turn a
4 blind eye to the fiscal benefits of this project. So I
5 know you'd like to try to turn this into a different type
6 of debate, but all due respect, sir, I respect your
7 opinion. I understand you disagree, but I'm not going to
8 try to debate with you and pretend that I'm the governor.
9 I'm not. I'm the Chief Deputy Director of the Department
10 of Finance, and I know what my mission is here. My
11 mission is --

12 CHAIRMAN GARAMENDI: (Inaudible).

13 MR. SHEEHY: My mission is to support the May
14 revision, and I understand you disagree with it, but, you
15 know, it is the way it is.

16 CHAIRMAN GARAMENDI: Indeed. Let's hear from
17 the public.

18 John, do you want to comment?

19 MR. CHIANG: Well, I'm concerned that we may be
20 one win short of a win-win as articulated by both the
21 legal staff of the State Lands Commission and the Attorney
22 General's Office. There is no guaranteed premise that we,
23 in fact, will terminate those terminals. That is an open
24 question, so the more honest discussion would be should we
25 have off-shore oil leasing for the revenues for the use in

1 our state general fund because the -- there is tremendous
2 uncertainty as to the environmental benefits, and so --
3 that's a legitimate public policy debate to be had, but to
4 state that we're going to have guaranteed environmental
5 benefits as to the elimination of those leases, I think,
6 is, in fact, a very open question and one our best lawyers
7 have indicated is not true.

8 MR. SHEEHY: I want to just respond to that real
9 briefly, Mr. Fossum, I have some additional documents I'd
10 like to have added into the minutes. These are the
11 support letters from all of the environmental groups
12 empathizing the benefits of this project.

13 And, you know, I think it's good for us to have
14 a debate about what we're going to do on oil because since
15 January 1st of 2006, this body has approved a total of 76
16 oil-related leases, so we're happy to have that debate any
17 time, Mr. Controller.

18 CHAIRMAN GARAMENDI: Let's hear from the public.
19 Because they were shuffled in this manner, we are going to
20 start with Susan Jordan, Director of California Coastal
21 Protection Network, followed by Kelly Brognan,
22 representing herself, and Joe -- I think it's CARONE --
23 representing the Surfrider Foundation, and if the three of
24 you could line up, we'll try to move through this in some
25 expeditious fashion.

1 MS. JORDAN: Thank you very much. I almost
2 don't know where to start in response to Mr. Sheehy's
3 statements, given how misleading they are, and first of
4 all I think I would like to enter into the record letters
5 from over 30 -- well, 35 environmental groups expressing
6 concern about this project and its enforceability and an
7 outright opposition to this power grab by the governor and
8 the Department of Finance.

9 So, let us back up because once this commission
10 denied this project, numerous environmental groups, who
11 had been in support of this in concept, expressed concern
12 and solidarity with this Commission. To not make that
13 point clear to people in this audience is a deliberate
14 misrepresentation of the facts. We cannot get away from
15 the fact that this is the first new off-shore oil lease in
16 40 years, and if I sound upset, it's because I am.

17 I have never seen such a blatant power grab by a
18 governor to override an independent Commission's
19 authority. It is absolutely uncalled for. If you really
20 want the money that bad, this project should go back to
21 the State Lands Commission. You don't have the right to
22 unilaterally take control. That's why we have an
23 independent Board and Commission.

24 This is Susan Jordan of the California Coastal
25 Protection Network, and 35 groups in this state object to

1 what you're doing including, I am sure, you will hear from
2 Linda Krop of the Environmental Defense Center, who you
3 know very clearly sent a letter to the governor and to you
4 objecting to this move. So, I think, in total, to be
5 honest with the public and the legislature, you need to
6 take your myth and fact sheet that you just distributed
7 via press release and correct it because it is false and
8 misleading. So, in closing, I'm going to calm down.

9 MR. SHEEHY: That's a good idea.

10 MS. JORDAN: Sorry. I guess it's very hard to
11 watch someone who's supposed to have the trust of the
12 people of this state so deliberately mislead them and
13 distort the facts, and I frankly think you owe the people
14 of this state an apology.

15 Going back to the Commission, I want to thank
16 you very much for your deliberations on this project which
17 are controversial. It was very hard for everybody to --
18 to look at this proposal and come to their own
19 conclusions, and we didn't all agree. That was very, very
20 hard, but your staff, and the Commission that voted on it,
21 I believe made the right decision. If this project is to
22 move forward, it needs to come back to this Commission.
23 The problems with enforceability need to be addressed and
24 resolved. That is the appropriate process, not an Enron
25 around the Commission's authority. Thank you very much.

1 CHAIRMAN GARAMENDI: Okay. The next one, I think
2 I mispronounced the name. It's Brognan. That's closer?

3 MS. BROSANAN: Brosnan.

4 CHAIRMAN GARAMENDI: Kelly -- okay. I got it.
5 Kelly Brognan.

6 MS. BROSANAN: Am I up?

7 CHAIRMAN GARAMENDI: Yes, you're up. Kelly, my
8 apologies.

9 MR. SHEEHY: Mr. Chairman?

10 CHAIRMAN GARAMENDI: Yes.

11 MR. SHEEHY: Mr. Chairman?

12 CHAIRMAN GARAMENDI: Yes.

13 MR. SHEEHY: I have a family emergency. I've
14 just been notified of. I'm going to step out, see what's
15 going on.

16 CHAIRMAN GARAMENDI: Fine. Very good.

17 MS. BROSANAN: Thank you very much.

18 MR. SHEEHY: I just want you to know. I
19 apologize. Excuse me, ma'am, but I have a family
20 emergency involving my father-in-law. I got to go find
21 out what's going on.

22 CHAIRMAN GARAMENDI: Very good.

23 Ms. Brosnan?

24 MS. BROSANAN: Thank you very much.

25

1 CHAIRMAN GARAMENDI: My apologies for
2 mispronouncing your name, my inability to read. Please.

3 MS. BROSANAN: Thank you. Good afternoon, ladies
4 and gentlemen. Just over 100 days ago President Obama
5 pledged that his legislation marked a new era of
6 responsibility when America would once and for all roll
7 back the specter of a warming planet and bring about new
8 age, a new age powered by clean energy and green jobs.
9 With that in mind, one has to wonder why Governor
10 Schwarzenegger would think it appropriate to initiate the
11 first off-shore oil drilling leases in California in over
12 40 years.

13 For those who do not recall, on January 29th,
14 1969, a massive oil spill from a Platform A off the coast
15 of Santa Barbara created an environmental nightmare, the
16 likes of which California has never experienced.
17 According to the Santa Barbara Wildlife Care Network, the
18 animals that depended upon the sea were hit the hardest.
19 In coming tides brought the corpses of dead seals and
20 dolphins. Oil clogged the blow holes of dolphins, causing
21 massive lung hemorrhages. Animals that had ingested the
22 oil were poisoned, and in the months that followed gray
23 whales migrating to their breeding ground in Baja avoided
24 the channel, their main route south.

25

1 Thousands of birds were estimated to have died
2 because of contact with the oil. Witnesses recall a
3 stench that wafted into their neighborhoods, drawing
4 concerned residences to the beaches when they were met
5 with shockingly silent black ocean thick with oil, an
6 apocalyptic landscape of ecological destruction.

7 Since that tragic day in 1969, California
8 strengthened its resolve to reduce and eliminate drilling
9 off of its coast. In 1994, the California legislature
10 passed the California Sanctuary Act that generally
11 prohibited new leasing off the coast and gave this
12 Commission the absolute discretion and authority to deny
13 any new lease application on the simple finding that it
14 was not in the best interest of the State of California.

15 Thus, on January 29th, 2009, this commission
16 rightfully denied the application of The Plains
17 Exploration and Production Company for the first new oil
18 lease in state waters since that infamous day. In the
19 face of mounting calls to drill, baby drill, it was a
20 courageous decision that you should be most proud of --

21 CHAIRMAN GARAMENDI: Kelly, could you wrap up
22 for a few moments or just hold for a few moments if you
23 would please.

24 Do you want to take a break?

25

1 MR. SHEEHY: No. Listen -- for the record, I'd
2 be happy to sit here and listen to everybody's statements.

3 CHAIRMAN GARAMENDI: No, no, no.

4 MR. SHEEHY: I've had a death in the family, and
5 I'm going to have to leave to go tend to personal matters,
6 but I would have been happy to have the debate with you
7 today. If you want to have it again sometime, it's fine
8 with me.

9 MR. THAYER: Hey, Tom, send that off.

10 CHAIRMAN GARAMENDI: We'll take care of it.

11 MR. THAYER: Tom, we'll take care of all that.

12 This is -- hey, Tom, do you need a ride?

13 MR. SHEEHY: No, I've got a car. Thanks.

14 UNIDENTIFIED SPEAKER: I'm so sorry.

15 CHAIRMAN GARAMENDI: We're going to take a ten-
16 minute break. We'll come back in ten minutes.

17 (Off the record.)

18 CHAIRMAN GARAMENDI: Okay. I'll explain what is
19 going on and where we are and what we intend to do from
20 this point forward.

21 I think it was apparent to all that when Tom
22 returned to the room after taking the call that he was
23 very upset, and he had every reason to be. His father-in-
24 law was killed in an auto accident recently, probably

25

1 within the last hour or so, and we don't know more details
2 than that.

3 He has asked that we go ahead with the hearing.
4 Obviously, we were deeply into a very heated debate about
5 the appropriateness of an action that is before the
6 legislature.

7 I'd like to take the remaining testimony, and
8 then we will have a vote on the resolution itself.

9 MR. FOSSUM: Mr. Chairman, we presently don't
10 quorum. If you'd like to have the testimony proceed,
11 that's fine. Otherwise, we'll have to wait for the
12 controller, or on alternate.

13 CHAIRMAN GARAMENDI: His alternate will be here
14 very shortly. Can somebody chase down Cindy? She's
15 around here. I think she's just outside.

16 While we're waiting for either Cindy or John to
17 return, we have a Louise Rishoff or Rishoff from
18 Assemblywomen Brownley's office will be the next to
19 testify, and I believe I had already called the name of
20 somebody from the Surfriders, and that would be Joe.

21 Okay. We have a quorum, and Kelly, would you
22 please continue?

23 MS. BROSANAN: Thank you. I wanted to say that I
24 thought that your decision was courageous and one that you
25 should be most proud of. And as soon as your Commission

1 had acted Governor Schwarzenegger, surprisingly retreated
2 to a back room and concocted a deal behind closed doors
3 that was designed to usurp your authority and unilaterally
4 authorize the Department of Finance to approve PXP's
5 lease.

6 One minute the governor loudly proclaims that
7 he's opposed to any new off-shore drilling in California,
8 and the next he uses fear tactics in the cloak of our
9 economic crisis to hold a fire sale on our coastal
10 resources.

11 Ladies and gentlemen, he can't have it both
12 ways. Ironically, the governor's plan comes at a time
13 when the Obama administration and congress are shaking
14 loose from the failed energy policies of the Bush
15 administration and are working to pass comprehensive,
16 clean energy legislation introduced by Waxman and
17 Congressman Markey, that will reduce or dependence on
18 fossil fuels and move us toward a clean energy future.

19 My husband, Pierce, and I wish to applaud this
20 commission for making the right decision in denying the
21 PXP lease. We agree with that you the supposed benefits
22 promised by this oil company and their partners do not
23 justify the benefits promised and the increased near and
24 long-term risks to our coastline, our marine life and our
25 coastal-dependent economy, we urge you to pass the

1 resolution that is before you and send a clear message to
2 the governor and the state legislature that our precious
3 coast is not for sale at any price. I thank you for your
4 time.

5 CHAIRMAN GARAMENDI: I thank you very much.
6 Joe?

7 MR. GEEVER: Thank you, Mr. Chairman. I guess
8 first before I start, I'd like to offer our condolences to
9 Mr. Sheehy, and it's unfortunate, but it makes it a little
10 awkward, a little cloud over the room. Nonetheless, my
11 name is Joe Geever, and I'm the California Policy
12 Coordinator for the Surfrider Foundation.

13 As you know, on January 29th, we stood before
14 you to support the Tranquillon oil and gas project. We
15 supported that proposal because we believed it was a
16 creative means of eliminating existing off-shore drilling
17 by a date certain. Of course, we were disappointed that
18 the issues related to enforceability couldn't be resolved
19 and the project was denied. Nonetheless, we now stand
20 before you to oppose the governor's plan to undermine the
21 authority of the State Lands Commission and threaten the
22 agency's independence. We don't always agree with the
23 decisions made by this body, but we recognize and support
24 the hard work of your staff and the public process

25

1 designed to enforce the protection of our precious state
2 lands.

3 As evidence of what we believe is the proper
4 appeals process, I see that during closed session, you
5 will be discussing a lawsuit we filed because of the
6 errors made by this commission in approving the Poseidon
7 Ocean Desalination lease in Carlsbad. So, we're, we're
8 obviously not here to defend all your decisions. We're
9 here to defend your authority and process.

10 A couple of points we want to be clear about.
11 First, we did not support the original PXP deal because of
12 the extremely limited benefits it might have on the
13 state's budget. We still don't.

14 Second, we'd prefer to the issues of
15 enforceability --

16 CHAIRMAN GARAMENDI: Excuse me, sir. I'm very
17 sorry.

18 MR. GEEVER: -- the issues of enforceability
19 revolved between the state and federal agencies as opposed
20 to this obvious effort to undermine your authority. The
21 governor's proposed -- budget proposal not only sets bad
22 precedent for appealing your decision, it does nothing to
23 resolve the issues surrounding enforceability. That
24 should be the state's goal in our opinion, resolving those
25 issues.

1 Thank you for providing this opportunity for
2 public comment, and we've conveyed our comments to the
3 governor as well.

4 CHAIRMAN GARAMENDI: Thank you. I think I have
5 a staff person here in the room. Could you come up?

6 Next witness.

7 MS. RISHOFF: Good afternoon, Chair Garamendi,
8 Commissioner Chiang, Louise Rishoff, the District Director
9 for State Assemblymember Julia Brownley.

10 First of all, welcome to Santa Monica, which is
11 Assemblymember Brownley's home, and I know that if she
12 were here in person, she would certainly want to extend
13 her condolences to Commissioner Sheehy and his family.

14 I appreciate this opportunity to read a brief
15 statement from the assembly member. She only found out
16 about it yesterday we understand it may be going to a
17 conference committee tomorrow, so apparently this is the
18 fast track on top of everything else. Dear Commissioners,
19 as a member of the Assembly Coastal Caucus and with the
20 41st AD bounded by 70 miles of some of the most beautiful
21 coast in our state, I wish to state my support for your
22 resolution to the legislature to reject the item in the
23 current May budget revision that would overturn your
24 January 29th, 2009 decision denying oil and gas leases
25 related to the Tranquillon Ridge Field, but most

1 importantly which would seriously usurp your independence
2 as a body.

3 I stand with you in your commitment to preserve
4 and protect the California coast and our coastal waters.
5 I signed the letter from the Coastal Caucus to the
6 commission in January, stating the Caucus's strong
7 opposition to the Tranquillon Ridge Lease, commission's
8 denial of that requested lease was the correct one then
9 for all the reasons set forth in the resolution before you
10 and should not be overwritten now through this artifice.

11 Although solving the state's serious budget
12 crisis this year will require many painful decisions, this
13 proposal to override the Commission for the first time in
14 its 70-year history is wrong headed. It would throw our
15 state into environmental reverse gear and would be a
16 terrible precedent. I will urge my assembly colleagues in
17 the strongest possible terms to oppose this proposal.
18 Thank you, Julia Brownley, Assembly Member, 41st District.

19 CHAIRMAN GARAMENDI: Thank you very much. I'm
20 going to call out three names, and if you could come over,
21 stand by the wall and we'll take you, and we'll do this in
22 sequences of three at a time. Linda Krop, Rudy Vietmeier?

23 MR. VIETMEIER: That's good enough.

24 CHAIRMAN GARAMENDI: Close enough, and Jack
25 Eidt.

1 Linda? Okay. Let's go with either Jack or
2 Rudy. Oh, there's Linda.

3 MS. KROP: Thank you, Mr. Chair, Members of the
4 Commission. I, too, would like to offer our condolences
5 to Commissioner Sheehy and his family at this time. I am
6 Linda Krop, Chief Counsel of the Environmental Defense
7 Center, and I'm speaking here today on behalf of our
8 clients in the negotiations with PXP, Get Oil Out and
9 Citizens Planning Association of Santa Barbara County,
10 both who have worked for over 40 years to protect our
11 coast from off-shore oil and gas development and the
12 impacts there from. I have a statement to read regarding
13 our position on this proposed May budget revision.

14 The Environmental Defense Center for itself and
15 on behalf of our clients, Get Oil Out and the Citizens
16 Planning Association, recognizes and applauds the State of
17 California's long-standing bipartisan support for a
18 healthy coastal economy and an ongoing commitment to
19 reduce or eliminate the environmental threats inherent in
20 off-shore oil drilling.

21 It is precisely for that reason that we entered
22 into a ground-breaking agreement with Plains Exploration
23 and Production. Our agreement for the first time provides
24 firm end dates for off-shore oil production facilities,
25 requiring cessation of all operations at Platform Irene in

1 13 years and the termination of all operations on three
2 other platforms off-shore Santa Barbara County known as
3 the Point Arguello Project in nine years. These platforms
4 would otherwise operate indefinitely.

5 The agreement also provides for the removal of
6 two on-shore oil processing facilities that serve those
7 four platforms, offsets all of the greenhouse gases
8 generated by the project, provides payment for additional
9 local air quality benefits, and provides for the
10 conveyance of almost 4,000 acres of ecologically important
11 land on the Burton Mesa on the Gaviota coast into public
12 trust and perpetuity. The agreement represents an
13 unprecedented opportunity to end oil development in not
14 just one but two locations off the Santa Barbara County
15 coast and to close two major off-shore processing
16 facilities and to prevent further off-shore leasing.

17 Nevertheless, we today join with many other
18 environmental groups expressing their grave concern about
19 the May budget revision for procedural proposal to
20 legislatively overturn the decision of the State Lands
21 Commission. We believe that the concerns raised by the
22 State Lands Commission in January can and should be
23 addressed.

24 Once these concerns have been addressed, we
25 believe that the commission should reconsider its position

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1 on the Tranquillon Ridge Project, but we believe that the
2 Commission as a whole is the proper body to do that.

3 California has a rich tradition of independent
4 Boards and Commissions which continue to put California at
5 the forefront of environmental innovation and protection.
6 Our organizations have consistently defended their right
7 to take action consistent with their duties to protect the
8 natural resources of the state. We are confident that
9 utilizing the established process will result in a project
10 that furthers our ultimate goal, eliminating existing oil
11 development off-shore Santa Barbara County, which can be
12 approved by the State Lands Commission. Thank you very
13 much.

14 CHAIRMAN GARAMENDI: Thank you. Jack or Rudy,
15 whichever one is first.

16 MR. VIETMEIER: Chairman Garamendi, Members of
17 the Commission, my name is Rudy Vietmeier. I'm speaking
18 for the Sierra Club, and the Sierra Club's supports the
19 resolution of the Commission, most of the reasons have
20 already been stated, so I won't bother to repeat them,
21 just to go on record that the Sierra Club is in support of
22 your resolution. Thank you.

23 CHAIRMAN GARAMENDI: Thank you.

24 Jack?

25

1 MR. EIDT: It's Jack Eidt, and I'm with Wild
2 Heritage Planners out of Los Angeles and I'm also on the
3 Board of Friends of Harbor, Beaches and Parks in Orange
4 County. Excuse me.

5 I want to support the State Lands resolution to
6 oppose the provisions of the governor's May budget
7 revisions. This State Lands Commission overthrow is
8 unconscionable. I was present at the hearing in January,
9 and I really appreciated the decision, and I concurred
10 with it. It was interesting that -- sorry -- interesting
11 that the governor's representatives spoke out against off-
12 shore drilling in the outer continental shelf during the
13 hearing at the Department of Interior in San Francisco,
14 but now they're supporting here a process that would
15 circumvent the state's decision-making body to allow the
16 first drilling into the state sanctuary in 40 years.

17 I would have -- also didn't appreciate the fact
18 that I don't reside in Santa Barbara County means that my
19 opinion doesn't count. I'm a graduate of US Santa Barbara
20 Environmental Studies Program, and I have a long history
21 of impacts from off-shore drilling in Santa Barbara and
22 actually the first environmental impact report I studied
23 was the Gaviota Processing Plant, so I have a very
24 personal relationship with that coast and a strong concern
25 about protecting it. None of the State Lands Commission's

1 concerns regarding unenforceability of the end dates
2 has been approached here and dealt with. We have
3 questions about the MMS meeting their governing statute
4 requiring all recoverable oils to be removed. We have
5 concern about the federal government's power to exercise
6 eminent domain should -- I mean, we don't know what's
7 going to happen in 2022. We don't know what kind of world
8 we'll live in, what sort of energy demands there will be.
9 Saying that just trust us, this has never happened before,
10 we couldn't imagine that they would overthrow this
11 decision is not good enough for the citizens of
12 California.

13 I know that you made a decision based on that,
14 but I want to reiterate that. Also PXP does not have the
15 ability to remove existing platforms and the removal of
16 on-shore facilities is also in question, so this is a
17 precedent that sets our coasts for sale, and it also sets
18 up a business model for new off-shore drilling in the
19 federal waters, and I think it's something that should be
20 avoided, so I wanted to see that the State Lands
21 Commission decision is upheld. Thank you.

22 CHAIRMAN GARAMENDI: Thank you. I'll read three
23 more names. There's another representative from the
24 Sierra Club. Penny, you'll be next. Scott Thompson -- or

25

1 Thomas rather, and Brandy Lengning -- I don't even think I
2 came close. Sorry, Brandy.

3 MS. ELIA: Good morning. I'm Penny Elia with
4 the Sierra Club and my condolences as well to Mr. Sheehy
5 and his family, and life is incredibly fragile. I am
6 reading a statement today from Sara Wan. It's her 50th
7 reunion in New York today, and I'm sure you can appreciate
8 that she's very, very sorry not to be here to deliver this
9 herself.

10 There are two critical reasons to support the
11 resolution. The precedent it would set relative to the
12 independence of the State Lands Commission and the
13 consequences of the PXP proposal. This Enron around the
14 Commission is a direct attack on the independence and
15 integrity of this Commission. It sets a precedent that
16 could be used to circumvent any decision, not just an oil
17 and gas lease.

18 Anytime the governor does not agree with the
19 decision of the State Lands Commission, he or she could go
20 to the legislature, point to this precedent and ask that
21 it be done again. This is not about the budget. This is
22 about the independence of this and other Boards and
23 Commissions. The governor has attempted to consolidate
24 and eliminate Boards and Commissions that are independent
25 of his office since the day he was elected. Now, he is

1 attempting to do that in the name of the budget deficit.
2 The people of California did not elect him emperor. There
3 is a system of checks and balances in place, and it must
4 remain. Having said how important this is to the
5 overarching issue of the future of the Commission, you
6 cannot look at this without also looking at the PXP
7 project. PXP and EDC continue to state that this project
8 has no environmental consequences. That is simply untrue,
9 and you made a wise and informed decision when you voted
10 to deny the project.

11 There are four main reasons why this project
12 should not be allowed to go forward. One, it will send
13 the wrong message to DC. Secretary Salazar has made it
14 clear he will approve some OCS. The question is where.
15 If PXP is approached, it says that this state believes
16 that the economic income derived from OCS outweighs the
17 potential environmental and economic consequences of
18 drilling in coastal waters.

19 If the state of California approves the first
20 new oil drilling in off-shore waters in 40 years, why
21 shouldn't the federal government. You can try to tightly
22 draw a distinction between this and other OCS, but that
23 simply won't matter. This is drilling in a new field from
24 an existing platform, and most of those 36 existing leases
25 off Santa Barbara can also be drilled from existing

1 platforms. If the state wants the funds, why shouldn't
2 the feds? And if the state believes there are no
3 environmental consequences, why shouldn't this be where
4 the feds allow oil drilling.

5 Two, the agreement is not enforceable and
6 therefore the benefits of the date are illusory. The
7 end date is only real if MMS agrees to it and given their
8 current enabling legislation, they cannot. The proof --
9 the smoking gun is that PXP has been in DC attempting to
10 get the law changed so MMS can agree. Until or unless
11 that happens, there is no end date that is enforceable.
12 Your agreements, all of them, are confidential. Would you
13 like me to finish?

14 CHAIRMAN GARAMENDI: Please.

15 MS. ELIA: The agreement between PXP and EDC has
16 been offered to be possibly open but not the one with TPL.
17 We know nothing of the terms or conditions that will run
18 with the land or if all of the titles are clean. Unless
19 the land is donated directly to the state, the land
20 donation may have limited or no benefit to the state in
21 the long run.

22 Four, we have seen nothing in writing that
23 guarantees that the other owners of the platforms will
24 also agree to the end date. Can the contractual

25

1 agreements with companies using the on-shore facilities be
2 terminated?

3 In short, there are lots of problems with the
4 project that has been proposed and too many risks to
5 approve. I urge you to stand firm on your decision,
6 protect our coasts and stand with the citizens of
7 California who elected you. We urge you to approve this
8 resolution. Thank you.

9 CHAIRMAN GARAMENDI: Thank you.

10 Brandy?

11 Sorry, Scott.

12 MR. THOMS: That's all right.

13 MS. LENGNING: Hello. My name is Brandy
14 Lengning. I don't have a snazzy title, and I represent
15 only myself as a concerned California resident. I've
16 traveled here today from Ventura County to testify in
17 support of the resolution to oppose our governor's attempt
18 to balance the budget at the expense of our coastal
19 ecosystems. To move forward with the first off-shore
20 lease in 40 years sends the wrong message to DC.

21 Secretary Salazar has made it clear he will
22 approve some outer continental shelf drilling. The
23 question is where. If the deal for Tranquillon Ridge is
24 approved, it says that Californians can be bought. It
25 dangerously asserts that the economic income derived from

1 off-shore drilling outweighs the potential environmental
2 and economic consequences of drilling in coastal waters.
3 If the State of California approves the new oil drilling
4 in off-shore waters, why shouldn't the federal government?

5 Approval of this deal would undermine efforts to
6 reinstate the moratorium in the OCS drilling in federal
7 waters and therefore result in additional spill risk and
8 damage. Any benefit from the funds would not be
9 sufficient to offset the costs of dealing with the impacts
10 to the state's resources and coastal economy if there were
11 a major spill.

12 My understanding of the staff report from
13 January clearly indicates that there are significant
14 problems with the ability to enforce the beneficial
15 environmental provisions of this agreement, problems that
16 do not sound to me like they can be swept under a rug or
17 ignored without exposing the state to risk and liability.
18 That PXP and the governor plan to end the SLC decision
19 rather than rectify the enforceability and land title
20 questions tells us they are more interested in \$100
21 million signing bonus rather than an airtight deal serving
22 the interests of all Californians for years to come. I
23 ask you to oppose this move to overthrow the State Lands
24 Commission and affirm your rejection of this deal at this
25 time. Thank you very much for your time.

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1 CHAIRMAN GARAMENDI: Thank you.

2 Scott?

3 MR. THOMAS: Good afternoon, thank you for
4 hearing from me. My name's Scott Thomas. I'm the
5 Conservation Director for the Sea and Sage Audubon Society
6 in Orange County.

7 I will make this as brief as I can. We're here
8 today to support the resolution. We supported the
9 commission in January with their decision about PXP lease.
10 Most importantly, we're here to support your independence.
11 Whether we agreed or disagreed with the PXP, the
12 independence of the Commission is very important to us,
13 and I have to give my condolences, too, to Mr. Sheehy and
14 apologize for what I am about to do, but he is not here,
15 and I really wanted to speak to him with this Commission.

16 But since we're on public record, I have to say
17 a few things. The behavior that I witnessed in the last
18 few hearings, both in January and today, is some of the
19 most inappropriate behavior I've ever seen in a public
20 hearing, and I've been doing this for 20 years, in city
21 councils, the state and in Washington DC, and I have to
22 agree with Jack Eidt. I am from Orange County. We're not
23 from Santa Barbara, and I'm not surprised that the other
24 environmental organizations were a little bit upset that
25 we came up the coast to discuss a project that is in Santa

1 Barbara off the coast but it's still state waters, and I
2 was very offended that we were told in January and again
3 today that we maybe didn't have a right to be there. This
4 is a state hearing, and I'm sure the rest of the
5 Commission agrees that we have a right as a citizen from
6 the state to talk about this topic.

7 And, again, thank you for your support in
8 January of the decision and we support the resolution.
9 Thank you.

10 CHAIRMAN GARAMENDI: Thank you very much. The
11 next three, Amber Jackson -- oh, this is interesting, Amy
12 Jackson. I don't know if you guys are related, but -- and
13 Joy Folmer (phonetic). Amber, you're first.

14 MS. AMBER JACKSON: All right.

15 CHAIRMAN GARAMENDI: Followed by Amy and then
16 Joy.

17 MS. AMBER JACKSON: Good afternoon. My name is
18 Amber Jackson and I am a UC Berkley student home for the
19 summer, and I came here to testify today to support the
20 resolution that opposes Governor Schwarzenegger's
21 overthrow of the January denial of the PXP and EDC deal.

22 This is a direct attack on the integrity of this
23 Commission. Despite words to the contrary, it sets a
24 precedent that could be used to circumvent any decision,
25 not just on oil and gas. Anytime a governor did not agree

1 with the decision of the SLC, he or she could go back to
2 the legislature using this as a precedent.

3 This is not about the budget. This is about the
4 independence of this and other Boards and Commissions.
5 This project was sold to the public, Santa Barbara County
6 and numerous environmental organizations on the basis that
7 it was enforceable and would definitely end off-shore
8 drilling in California and in Santa Barbara. Your own
9 staff and the Attorney General's office has made clear
10 that it is highly unlikely that the end dates of this
11 project can be enforced. One memo from a PXP attorney
12 goes as far as to say, and I quote: "Some of these lands
13 will not be conveyed for years after the SLC lease
14 terminates, i.e., once facilities have been abandoned and
15 contamination has been cleaned up, it may be that some of
16 the lands are accepted by the grantees, while others are
17 rejected due to some things such as insurmountable title
18 issues.

19 If I understand the basic elements of this
20 confidential agreement, the timely transfer of some of
21 these parcels is tied to the cessation of drilling and the
22 and the removal of infrastructure. But this kind of
23 language makes clear that there are loopholes in this deal
24 wide enough to drive a Mack truck through. I ask you to
25 oppose this move to overthrow the SLC and affirm your

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1 rejection of this deal at this time, and thank you so much
2 for listening.

3 CHAIRMAN GARAMENDI: Thank you very much.

4 Amy Jackson?

5 MS. AMY JACKSON: Thank you, Commissioners. My
6 name is Amy Jackson, and, yes, that is my daughter who
7 just spoke.

8 MR. CHIANG: Well done.

9 MS. AMY JACKSON: I'm very proud of her.

10 CHAIRMAN GARAMENDI: Well, congratulations on
11 your daughter.

12 MS. AMY JACKSON: I would also like to say I'm
13 very proud of this Commission and your standing up against
14 a lot of things in your decision to -- to deny the off-
15 shore drilling. It was a courageous stance against a lot
16 of lies and misrepresentations that are only now coming to
17 fore, and even though I live in Laguna Beach, I heard of
18 what went on, and I am so thankful. I am a mother and a
19 surfer, and I'm part of the Laguna Canyon Conservancy and
20 very active in the Orange County area, and I watched with
21 concern what was going on out in the ocean.

22 One thing I did with my kids this weekend was I
23 watched a Pixar movie about the little -- the little --

24 MS. AMBER JACKSON: WALL-E.

25 CHAIRMAN GARAMENDI: WALL-E.

1 MS. AMBER JACKSON: And WALL-E, I watched it and
2 I was excited because the kids said, 'Mom, you're going to
3 love it.' And it was so sad their image of what we would
4 have done to our environment, and California stands for a
5 beautiful environment. Our coastline and our natural
6 resources are far more important than a little bit of oil
7 out there in the ocean, and those images of all the
8 injured and dead animals from the oil spill that happened
9 in the '70's, that is why we have a ruling so that that
10 stopped our off-shore oil drilling, are still as
11 significant, as they are, against the oil challenges that
12 we face today, and I just want to thank you for your
13 courage. I'd like to support you in opposing this -- this
14 deal, and just offer you my -- my thanks. Thank you
15 again.

16 CHAIRMAN GARAMENDI: Thank you very much. Joy
17 Folmer? I believe that's the last person that wants to
18 speak. I have no others unless we're missing something
19 here and we've -- good.

20 The issue is now before the Commission, and
21 we're open for a motion.

22 MR. CHIANG: Motion in support.

23 CHAIRMAN GARAMENDI: That motion is seconded by
24 the Chair. Without objection, we'll record two aye votes

25

1 and we'll record Mr. Sheehy as being not voting. Okay.

2 Thank you very much. I appreciate the testimony on that.

3 We're now going to move to other items, and I
4 think that takes us back to Item 66. Do you have an item?
5 Do you want to take that up now, or do you want to take it
6 in sequence.

7 MR. THAYER: It doesn't matter.

8 CHAIRMAN GARAMENDI: We'll take Item 66 up next.

9 MR. THAYER: Thank you, Mr. Chair, the staff
10 report will be given by Greg Scott.

11 CHAIRMAN GARAMENDI: Mr. Scott, we heard this
12 in great detail at the last meeting. I think what I'd
13 like to hear, we had laid out some specific criteria on
14 this one. Otherwise we were going to bring the hammer
15 down on it. So let's -- what's changed between now and
16 the last meeting?

17 MR. SCOTT: Well, everything has changed. The
18 Carone Petroleum has, as you recall, they were asked to
19 meet three conditions that the commission had required
20 that by today they would have completed. Those three
21 conditions were met. I can go over them very quickly.

22 CHAIRMAN GARAMENDI: Were they satisfactorily
23 met?

24 MR. SCOTT: Yes, they were to our satisfaction,
25 they --

1 CHAIRMAN GARAMENDI: And so the first condition
2 was the platform verification?

3 MR. SCOTT: The platform verification report has
4 been completed. The verification agent, that they
5 nominated was satisfactory to the Commission and the MMS.
6 The second condition was that they submit a right of use
7 and easement application to the MMS. That was done also
8 last week. We have seen the application. It appears to
9 be adequate. The MMS will determine its adequacy within
10 the next 30 days, and the third condition was that --

11 CHAIRMAN GARAMENDI: Show me the money.

12 MR. SCOTT: They have shown us the money.

13 CHAIRMAN GARAMENDI: Good.

14 MR. SCOTT: And they have completed the --
15 executed the reimbursable agreement that was also
16 delivered. So, the three items were attended to
17 satisfactorily to the Commission staff, and in a -- to
18 make a long story short, our recommendation is that the
19 Commission allow Carone Petroleum to proceed with the
20 processing of the project. The first thing that will
21 start with the resumption of the environmental impact
22 report processing.

23 CHAIRMAN GARAMENDI: Very good. How can we make
24 sure that they continue to proceed and not sit on this?

25

1 MR. SCOTT: The -- presently two balls are in
2 the MMS's court, the RUE application that was submitted,
3 will need to be reviewed by the MMS. We have spoken to
4 the MMS regularly during the -- since the last meeting.
5 They have given us some assurance that the application
6 will be addressed and hopefully Carone will be notified --
7 notified of that that application is satisfactory, the
8 submittal for the platform structural requalification may
9 take a little longer. That would be somewhere between 30
10 and 90 days.

11 Staff will be monitoring that as well. We will
12 be in constant contact with the MMS staff to assure that
13 those are being attended to. Once they are done, we will
14 know that those two hurdles have been completed. Carone,
15 during the next course of time does have some of its own
16 work to do.

17 The MMS may require that a revised development
18 and production plan be submitted. If they do require
19 that, we will be monitoring Carone's attentiveness to that
20 as well. They do have some things they need to do on the
21 platform.

22 CHAIRMAN GARAMENDI: So when should this come
23 back for the -- to the Commission for a status report?
24 Three months? Six months?

25

1 MR. SCOTT: I would say the soonest we would
2 want to come back to the Commission would be after we hear
3 that the MMS has reviewed and concurred with the two items
4 that were delivered to them recently. That would be the
5 RUE and the structural integrity of the platform.

6 CHAIRMAN GARAMENDI: Three months from now?

7 MR. SCOTT: I would say at least three months.
8 Probably, sometime after three months.

9 CHAIRMAN GARAMENDI: Let's do this. I'd like
10 to -- Paul, if you could come back to us at the next
11 meeting, I think it's three months from now and give us a
12 status report that things are proceeding, and then when
13 that use -- re-use permit is completed, we'll come back
14 for another hearing on that. Okay.

15 In other words, I want to keep their feet to the
16 fire.

17 MR. THAYER: Right. And I think, you know,
18 frankly, we'll keep the same approach that we have with
19 the other violations where I'm routinely giving updates to
20 the Commissioner as part of the EO report.

21 CHAIRMAN GARAMENDI: Very good. Then we have
22 no action to take today: Okay. Carone, you can --

23 MR. SCOTT: Before I leave --

24 CHAIRMAN GARAMENDI: Breathe deeply and -- is
25 there public comment on this?

1 MR. SCOTT: I would just like to add my
2 condolences to Mr. Sheehy and his family for his loss.

3 CHAIRMAN GARAMENDI: I'm sorry -- thank you. I
4 appreciate that, and I'm sure Tom does too.

5 I'm sorry, Linda, I had you shuffled into 68.
6 Please, go ahead.

7 MS. KROP: Oh. Thank you once again. Good
8 afternoon, now. Once again, I'm Linda Krop, Chief Counsel
9 of the Environmental Defense Center, appearing on behalf
10 of the Environment Defense Center and Get Oil Out, and I
11 will combine our two testimonies and once again I have a
12 letter from GOO as their representative is not able to
13 attend the hearing.

14 I think our main point is that what you did at
15 your last meeting worked. This application has been
16 languishing for over eight years, and we've been working
17 closely with your staff to try to find out is Carone
18 serious or not, if not, let's, you know, have the leases
19 extinguished, and we have been working very closely with
20 your Commission's staff ever since 1994 to achieve the
21 goals of the California Coastal Sanctuary Act, which is to
22 basically place state waters in a preserved status, and so
23 many, many leases have been extinguished and quit claimed
24 since 1994, and we appreciate the work of your Commission
25 staff. We thought the Carone leases were going to be

1 next. We understand that the milestone set at your last
2 hearing were effective, and so I guess our point today is
3 do that more often. Do it earlier and do it more often.
4 You know, keep those milestones coming. They seem to be
5 the only thing that works, and so I understand you're
6 going to come back in three months, try to put some
7 specifics on what has to be done in those three months.
8 You know, that MMS has to approve the report, you know,
9 not just, well, go back and do some more studies, but the
10 more we can lock this in, the more we can either move it
11 forward or hopefully, eventually add these leases to the
12 sanctuary as well. So, thanks for your action, and let's
13 stick to it, and --

14 CHAIRMAN GARAMENDI: Thank you.

15 MS. KROP: -- and we look forward to seeing what
16 happens over the next few months. Thank you very much.

17 CHAIRMAN GARAMENDI: Thank you. Carone's
18 president is here. Do you need to, want to testify or are
19 you -- good. Then we're not taking any action. We'll
20 come back in three months, and I would expect in three
21 months to have a report that would say that the MMS is
22 diligently processing it and Carone is answering all of
23 MMS's questions. Thank you.

24 At the request of Controller Chiang, we are
25 going to take up Item 69 next.

1 Cindy, I think this is your resolution?

2 MS. ARONBERG: It is the controller's
3 resolution, and did staff have a quick --

4 MR. THAYER: Quick presentation, then. This
5 resolution was requested by the controller's office. It
6 would put the Commission on record as supporting more
7 action to be done, significant action to be done to
8 control and reduce litter and marine debris in particular
9 through the encouragement of the use of reusable shopping
10 bags and by placing a fee on single-life use shopping bags
11 as proposed by Assembly Bill 87 and Assembly Bill 68.

12 There are various good reasons that I know the
13 lieutenant governor's already aware of as to why we should
14 go forward with this. Single-use shopping bags have been
15 a significant source of plastic marine debris and other
16 places, other countries and other states that have imposed
17 a fee such as a has been proposed have had great success
18 in reducing marine debris. Staff would be happy to answer
19 your questions about this.

20 CHAIRMAN GARAMENDI: Very good. We have several
21 people that want to testify on this, and let's start with
22 Angela Howe, Surfrider Foundation. Joy Fullmer was called
23 earlier, but I don't think she testified, and Steward
24 Sikich.

25 UNIDENTIFIED SPEAKER: Sara.

1 CHAIRMAN GARAMENDI: Huh?

2 UNIDENTIFIED SPEAKER: Sara.

3 CHAIRMAN GARAMENDI: Oh.

4 UNIDENTIFIED SPEAKER: Handwriting.

5 CHAIRMAN GARAMENDI: Handwriting issues here.
6 Coastal Resources Directors, so let's take those three,
7 and then we'll move on, please.

8 MS. HOWE: Good morning, thank you, and again
9 deepest sympathies to Mr. Sheehy and his family. I'm
10 upset that he could not be here today because this is a
11 very important issue, and Lieutenant Governor Garamendi,
12 we thank you for your leadership on the issue of marine
13 debris and the encouragement of legislature to address the
14 problem. Just going to read a quick letter that I'd also
15 like to submit to the State Lands Commission.

16 On behalf of Surfrider Foundation and our over
17 30,000 members in the state of California, we would like
18 to convey our firm support for Agenda Item 69, the
19 resolution that would support legislation to reduce litter
20 and marine debris by imposing a fee on single-use carry-
21 out bags. For example, Assembly Bill 68, this type of fee
22 on single-use bags would effectively deter consumption of
23 single-use items by charging a fee on all single-use
24 plastic, paper, and compostable plastic bags at the point
25 of sale in supermarkets, pharmacies, and chain convenience

1 stores beginning in 2010. Revenue generated from the fee
2 will be used for trash abatement and litter prevention
3 related to single-use bags.

4 Additionally, this type of legislation on single
5 use plastic convenience items, which was recommended by
6 the California Ocean Protection Council's resolution on
7 marine debris as a priority in combating ocean litter will
8 help to alleviate the State of California's yearly
9 spending of approximately 25 million to landfill discarded
10 plastic bags. We do not support any legislation that
11 would regulate single-use bags in a way that would preempt
12 local and municipality's authority to place a ban on
13 plastic bags as many cities have already done in a
14 forward-thinking manner in an effort to prevent the
15 environmental harms associated with single-use bags.

16 Additionally, the California Ocean Protection
17 Council has approved funding for a master environmental
18 assessment on the environmental impacts of single-use bags
19 in order to assist municipalities that do want to regulate
20 the problem. As you may know, Surfriders is a grassroots
21 environmental organization dedicated to the protection and
22 the preservation of our coast. Our interest in the ban of
23 plastic bags stems from our mission to protect ocean
24 ecosystems and ensure water quality for the benefit of the
25 public and the marine environment.

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1 Surfrider is currently active in a campaign
2 entitled Rise Above Plastics and we are highly active in
3 this initiative for several of our chapters in California,
4 engaged in educating the public, holding seminars,
5 speaking at schools and working with businesses and
6 supermarkets and drug stores to source alternatives to
7 single-use bags.

8 Surfriders supports this resolution as an effort
9 for California to lead the nation with progressive
10 approach to the environmental hazards and the passage of
11 this legislation to reduce ocean litter by imposing a fee
12 on single-use bags is a necessary next step in our
13 movement to protect and preserve our beloved ocean
14 environment. Thank you for your leadership.

15 CHAIRMAN GARAMENDI: Thank you very much. Well,
16 let's see, Sara?

17 MS. SIKICH: Good afternoon, Chairman and
18 Commissioner Chiang. My name is Sara Abrahamson Sikich,
19 and I'm the Coastal Resources Director for Heal the Bay.

20 I think it was about a year and a half ago that
21 I was sitting here in this same hearing room with the City
22 of Santa Monica began to discuss the issue of plastic
23 bags, and I wish the bag monster could be here today, but
24 it's a very charismatic fixture of a costume of 600+
25 plastic bags that is the average annual use that a person

1 uses every year. And, so, as you can, we're choking on
2 plastic bags. They are throughout our water sheds, inland
3 waters, beaches and oceans. In California alone we use
4 over 19 billion plastic bags annually. And just driving
5 here today from my home just up the coast, I saw them
6 floating on the beach and flying down the freeway.

7 So, it's truly a big problem. The clean-up of
8 this trash, you know, it's an unsightly problem but it's
9 also very costly to the state, and the local governments.
10 Because of this issue, Heal the Bay has sponsored AB 68
11 which is a fee that would was put 25 cent fee on paper,
12 plastic and compostable bags because it's important that
13 all of these single-use bags, not just the plastic ones
14 which become ocean litter because there are other
15 environmental issues associated with those other bags, and
16 a fee-based approach is great because there are readily
17 available alternatives like this purse-sized fold-up bag
18 that you can carry in a purse or pocket, bring this to the
19 grocery store and use those instead. California and the
20 US are behind the curve. Countries like China, Denmark,
21 Rwanda, Mexico City -- other place have addressed
22 legislation and put in place laws to either ban or place
23 fees on these bags. In fact, the fee-based approach in
24 Ireland has shown a 90 percent reduction in the usage of
25 these bags. So, it really works in other places, and it's

1 a way to generate revenues to fight litter in our
2 communities, which, obviously in the state of times today
3 in our budgets, we need that money to be fighting this
4 litter. There are laws on the books to do litter
5 prevention and litter reduction; this would be great help.

6 So, because of all this, we need to see
7 California move forward with legislation that's critical,
8 the Ocean Protection Counsel, local governments, others
9 have weighed in supporting this type of legislation, and
10 we think that at this time the State Lands Commission
11 would be very helpful in helping support this legislation
12 and moving it forward. Thank you.

13 CHAIRMAN GARAMENDI: Thank you very much. We
14 have three more speakers, Susan Amrod (phonetic), perhaps,
15 Samrod, Surfrider Foundation and Linda Krop.

16 Linda, are you up? You're not up.

17 Okay. A comment and then John if you'd like to
18 close on this matter.

19 There are numerous bills before the legislature
20 that deal with ocean debris and trash. Those bills, I
21 think, are -- some are jeopardy. All of them are intended
22 to clean and to allow for a cleaner ocean and coast.
23 This one -- this particular resolution speaks to one of
24 them, certainly one of the important ones.

25 John?

1 MR. CHIANG: I'd just make a motion.

2 CHAIRMAN GARAMENDI: We have a motion on the
3 item, the resolution, it's seconded and without objection
4 it is adopted.

5 Okay. Moving on to Item 68, or moving back to
6 Item 68. Thank you very much for your testimony on that
7 one. Item 68, Paul?

8 MR. THAYER: Well, okay. Item 68 has to do with
9 the Richmond unpermitted or unleased pier in Lake Tahoe,
10 and making that presentation will be Barbara Dugal, chief
11 of our land management division.

12 MS. DUGAL: Good afternoon. As Paul mentioned,
13 my name is Barbara Dugal, and I'm the chief of the land
14 management division for the Commission. At the April 9th
15 commission meeting, I presented an item to the Commission
16 regarding a pier and boat house with a sun deck, stair and
17 railing that has been constructed in Lake Tahoe on
18 sovereign lands without a lease from the Commission.
19 Following my presentation of April 9th meeting and after
20 discussion and testimony by staff and the applicant's
21 attorney, the Commission offered the applicants the
22 opportunity to sign the lease that had been submitted by
23 staff, and that lease included a provision for removal of
24 the deck, rail and stairs, but the Commission also stated
25 that if the applicant can provide satisfactory

1 documentation that the sun deck stairs -- staircase and
2 railings were in fact, previously permitted, that the
3 Commission would take that information into consideration.

4 The Commission then adopted staff's
5 recommendation for the denial of the application for
6 recreational pier lease that again included the sun deck
7 and the Commission ratified staff's determination that the
8 applicants' structures won't trespass on state sovereign
9 lands and on behalf of the Commission and the Attorney
10 General's office to take all steps necessary, including
11 litigation to remove the structures from state lands by a
12 vote of three to zero.

13 On May 7th, 2009, we did receive additional
14 information that was submitted on behalf of the
15 applicants. This information is attached in Exhibit B of
16 your calendar item. Staff has reviewed this additional
17 information provided, and it remains staff's position that
18 no evidence can be found that permits were ever issued for
19 the construction of the pier, the sun deck, railing and
20 the stairs.

21 The information provided does indicate that in
22 1986, the Tahoe Regional Planning Agency issued an over-
23 the-counter qualified exempt activity for the replacement
24 of one piling. Excuse me.

25

1 Also in 1986, the Corps of Engineers sent a
2 letter to the applicant initiating the that applicant
3 would qualify for the nationwide permit for the repair,
4 rehabilitation or replacement of any previously-authorized
5 currently serviceable structure, provided that the work
6 would not deviate from the plans of the original
7 structure. Again, we can find no evidence that any prior
8 permits were issued for the pier that would qualify it for
9 the nationwide permit. Then in 1999, TRPA did approve the
10 replacement of a boat lift. And, again, that was a
11 qualified exempt activity.

12 Through staff's continuous review of the various
13 photographs and drawings in the file, along with materials
14 that we received from the Corps of Engineers and TRPA
15 through a freedom act of information request, staff has
16 been unable to locate any building permits or Corps
17 permits for the original pier structure. The applicants
18 have asserted that the pier was constructed between 1958
19 and 1961. We found a letter from 1970 that was sent from
20 Placer County that was a letter of permission to the
21 applicants that allowed them to maintain the pier on the
22 land that the county had claimed.

23 This letter permission is the sole county
24 authorization. There's also no TRPA permit for the
25 original structure as TRPA was non-existent at that time.

1 What is apparent, though that began in the 1969, staff of
2 the Commission has sought to have the upland owner apply
3 for and have the Commission consider authorizing the use
4 of the state's property for the pier.

5 In addition to not obtaining a permit for the
6 construction of the pier, it is apparent that the pier and
7 sun deck have been modified over the years and the size of
8 the structures has increased without benefit of any
9 permits.

10 A drawing that was attached to a 1970 Corps
11 notice and was also attached to the first application
12 submitted to the Commission also in 1970 shows unenclosed
13 boat house, a sun deck, a single-pipe railing and stairs.
14 If you go back to that first slide, I'll show you what
15 that the pier looked like then. Yeah. Yeah. So it
16 looked like -- it looked like unenclosed.

17 The drawing also indicates that the 1970 pier is
18 177 feet in length and was seven feet wide, while the boat
19 house at that time and the sun deck, which was on top of
20 the boat house was 30.3 feet in length and 17 feet wide.

21 Then we found a drawing that was submitted and
22 it was approved by TRPA in 1987 for repairs to the pier,
23 indicating that the pier is basically the same
24 configuration and size as the 1970 drawing. Both drawings

25

1 depict a catwalk on the right-hand side of the pier, which
2 you can see kind of on this photograph here.

3 We also found copies that were submitted on
4 behalf of the applicant to the Corps in 1986 that again
5 confirmed that the boat house is non-enclosed, the railing
6 on the sun deck was still the single-pipe style and that
7 the catwalk was not on the left-hand side of the boat
8 house.

9 However, a drawing that was submitted on behalf
10 of the applicants to the Commission with their 2002
11 application, indicates that the boat house sun deck is now
12 32 feet long and 22 feet wide and shows that a catwalk now
13 exists on the left-hand side of the boat house. If you
14 can flip through some of the other photographs and you can
15 see the change. Keep going. Keep going. It's on the
16 left-hand side there.

17 Photos taken by staff within the last several
18 months shown enclosed on three sides boat house with a
19 catwalk, again, on the left-hand side, a modified
20 staircase to the roof the of the boat house and wood posts
21 and railings, which replace the single-pipe railing. The
22 pier also now has a wave-deflecting skirt on the south
23 side.

24 In conclusion, based upon the additional
25 information that staff obtained, staff is not recommending

1 the Commission modify its action of April 9th by Agenda
2 Item Number 39. That concludes staff's presentation and
3 available for questions, and I think also representative
4 of the applicant is also here.

5 CHAIRMAN GARAMENDI: Thank you very much for
6 that. I may want you to stand by. Just don't get too
7 embedded in the seats because there may be some additional
8 questions that I'll have.

9 Richard Sipos, representing the Richmond family.

10 MR. SIPOS: Good afternoon, Mr. Chairman and
11 Commission. I had a procedural question, given that this
12 is a continuation of the last hearing. Commissioner
13 Sheehy at the last hearing on this point of the additional
14 improvements was essentially the prime mover of requesting
15 for additional information by the family, and he's not
16 here now, and I'm wondering if it would be in the best
17 interest to have him present, in other words to defer this
18 to the next hearing.

19 CHAIRMAN GARAMENDI: I have a note from Mr.
20 Sheehy that says he doesn't want to -- he wants these
21 items dealt with today.

22 MR. SIPOS: Okay. Then I will move forward. At
23 the last hearing, there were two items or two requests
24 that the Commission had of the families in connection with
25 the -- what I call the additional improvements that are

1 the subject of this hearing, which are a stairway with a
2 storage locker underneath it and the railings on top of
3 the roof or sun deck, and the request from the Commission
4 were that we provide evidence that this sun deck
5 previously -- or these improvements previously existed and
6 two evidence of a permit, and on both of those issues, we
7 were able to establish that.

8 CHAIRMAN GARAMENDI: I'm sorry. You are able to
9 establish that?

10 MR. SIPOS: That's correct. There was a
11 photograph up there previously from staff that depicted a
12 roof sun deck with a pipe railing around the perimeter, a
13 stairway with a storage locker underneath it, which were
14 are the three items that are at issue here, and that --
15 those conditions existed from 1959 to 1987. And then in
16 1987 the pier was reconstructed, and the reconstruction
17 includes a stairway with a boat storage locker underneath
18 it and railings. The difference being the railings are of
19 a wood nature with benches, and you can see it in the
20 picture up there. However, the stairway is the same type
21 and the storage locker is the same type, and the roof is
22 the same type as what previously existed. We have had the
23 pier and boat house measured and the current pier and boat
24 house is 45 square feet less than the prior boat house,
25 and so I want that clear when staff had said that it's

1 different. It is different. The footprint, however, is
2 identical, other than it is smaller than what previously
3 existed.

4 With respect to the permits, you had requested
5 that we provide evidence of a permit, and I wanted to go
6 through that because it requires a little bit of detail,
7 but in 1969, the Lands Commission requested the family, it
8 was then being handled by Burnell Richmond to obtain a
9 permit for Placer County and the Army Corps of Engineers.
10 Mr. Richmond retained the civil engineering firm of Murray
11 McCormick and a law firm of Robinson and Robinson to
12 process that, and on January 2, 1970, Murray McCormick
13 sent an application to the Army Corps of Engineers
14 applying for a permit for the existing pier in Lake Tahoe.
15 He sent a near identical letter to Placer County, also
16 dated January 2, 1970, stating we're applying for a permit
17 for an existing pier in Lake Tahoe. He sent a third
18 letter on January 2, 1970, to the State Lands Commission
19 requesting or submitting a concurrent application for a
20 pier permit to State Lands. All three of those letters
21 went out to State Lands and attached to those letters was
22 a drawing, which I have here, and by the way, all of this
23 is in State Lands' files. And that drawing depicts the
24 boat house, the pier, the sun deck and the railings and
25 it's entitled application for permit. In response to

1 that, on January 7th, 1970, Placer County Department of
2 Public Works responded that they received a pier permit
3 application from Burnell Richmond for the permit in
4 question, the parcel in question.

5 Simultaneous with that, the Army Corps of
6 Engineers sent out a public notice status report, seeking
7 public comment on the Richmond family pier. In response
8 to that, in February 1970, the Resources Agency of
9 California sent a letter to the Army Corps of Engineers
10 stating that the Lahontan Regional Water Quality Control
11 Board recommends that a permit be granted in recognition
12 of an existing structure.

13 In addition, the Resources Agency of California
14 stated that there were no adverse comments received from
15 the Department of Navigation and Ocean Development,
16 Department of Parks and Recreation, State Water Resources
17 Control Board, Department of Fish and Game, Department of
18 Public Health and the State Lands Commission. And the
19 State of California then recommended approval of the
20 permit.

21 Then, from January through July of 1970, the
22 Richmond's attorney worked with Placer County, and in July
23 1970, Placer County sent the approval for the Richmond
24 family existing pier, approving the pier application
25 permit. That is the permit that you had requested. It's

1 a permit issued by Placer County for the existing pier,
2 and it was sent out on July 10, 1970, and it was
3 transmitted by the attorneys to Burnell Richmond,
4 explaining -- or enclosing the pier approval.

5 So, that's the approval that was, in fact,
6 required. In my discussions with staff, they don't
7 recognize that as a permit even though the application was
8 for a pier permit, and the document from the county is a
9 pier permit approval.

10 Simultaneously with that, in July 1970, the Army
11 Corps of Engineers sent a letter to Burnell Richmond
12 stating that in light of the formation of the TRPA, the
13 Army Corps was directed to withhold issuance of further
14 approval of plans for existing facilities in Lake Tahoe.
15 The letter went on to state as soon as this coordination
16 issue can be effected and guidelines established for
17 processing approval of existing facilities, your
18 application will be given immediate consideration.

19 So the Army Corps took no action on the existing
20 permit based upon the upcoming formation of TRPA. And,
21 unfortunately, the Army Corps never did pick up that pier
22 permit.

23 Then in 1986, when the family went to
24 reconstruct the pier and boat house, they retained a
25 contractor and consultant, Gary Taylor, who initiated a

1 permit with TRPA and also with the Army Corps, and on
2 December 1, 1986, the Army Corps sent its letter
3 referencing the nationwide permit and the attached
4 conditions.

5 On December 23, 1986, Mr. Taylor, on behalf of
6 the Richmond family submitted an application with TRPA for
7 the new pier. On January 2, 1987, Mr. Taylor corresponded
8 with Mr. Richmond that the pier permit should be issued in
9 the second week of the month, and that TRPA was assessing
10 fees. Those fees were paid by the family, and on January
11 22, 1987, a permit was issued by TRPA, which is this
12 document here, and it's part of your attachments, which
13 are Exhibit B. So, this is now a second permit for this
14 pier and boat house, although having to do with the newer
15 construction.

16 We have requested files, as has staff, from
17 TRPA. Unfortunately, TRPA apparently doesn't have
18 virtually anything relating to this reconstruction other
19 than roughly 12 pages of documents, half of which deal
20 with the reconstruction -- or excuse me, the construction
21 of a residence. However, there are two relevant
22 documents, which I supplied and I believe the Commission
23 staff has, which is a TRPA document talking about the pier
24 application and stating that a permit was issued and
25

1 further on June 10, 1987, there appears to be an
2 inspection that occurred by TRPA of the pier.

3 However, those are the only records that we
4 could get relevant to this from TRPA. So, the request had
5 been did stairways exist before and after, yes. Did a
6 storage locker exist before and after, yes. Was there a
7 railing before and after, yes. The railing is different,
8 but it's a safer railing for children or adults up on top
9 of the boat house.

10 Essentially, we have demonstrated everything
11 that we can in the way of permits being obtained, both in
12 1970 and in 1987. And I would note that the permit that
13 was generated by Placer County was generated in 1970, and
14 no objection was raised by State Lands that it was in any
15 way deficient, other than now in connection with these
16 proceedings, in which they've informed me that they do not
17 regard that as a proper pier permit. Well, the problem is
18 it's 39 years later, and there's not much the family could
19 do this late in the game.

20 So, we've demonstrated the existence of the
21 permits, which is what I understood to be the charge
22 coming into this hearing. I would also note that as noted
23 on the record at the last hearing that there is no formal
24 policy that the Commission has adopted regarding requiring
25 this one family to remove its stairway and storage locker

1 and railings. The Commission is currently approving and
2 has been approving existing piers and boat houses with
3 these identical facilities throughout Lake Tahoe. This is
4 the only family that is being requested to tear apart its
5 structure, which we do not believe is fair and
6 appropriate.

7 And from a legal standpoint, since there's no
8 formal policy, there is no ordinance, there is no statute
9 governing this, we don't think it is appropriate to take
10 this action. Instead, this family's limited facilities
11 that we're talking about should be approved just like the
12 other piers and boat houses in Lake Tahoe.

13 Staff contacted the Attorney General's Office
14 inquiring about sun decks and was advised by the Attorney
15 General's Office that sun decks are not inconsistent with
16 the public trust doctrine. So, we don't believe that it
17 would be appropriate legally to require the family to
18 remove -- remove these limited improvements, none of which
19 are inconsistent with the public trust doctrine.

20 And, finally, the policy that staff is imposing
21 on this one family, the problem that I have with it is
22 that the effect of it is to punish the family for years
23 that have elapsed with no notice or nothing the family
24 could do in the way of going back in time and clarifying
25 permits or taking action. There was simply no activity on

1 this matter from 1970 -- excuse me, 1980, until 2002, 22
2 years later when it was actually the family who initiated
3 what is now the process we started today.

4 So, I would respectfully request that the
5 commission approve those limited facilities. The family
6 is agreeable to signing the entire lease as you directed
7 at the last hearing. This is the only issue outstanding,
8 the stairway, the storage locker under it, and those
9 railings. Thank you.

10 CHAIRMAN GARAMENDI: Thank you. A question
11 before you leave. There was some discussion that the
12 family was not willing to sign the standard permit lease,
13 and I think you said that's not the case?

14 MR. SIPOS: Yeah, the family is willing to sign
15 the lease that we've negotiated with the Commission, but
16 the only issue is the stairway, the storage locker under
17 it, and the railings. They want those torn out, and we
18 don't, which is why, and at the last hearing, Commissioner
19 Sheehy said he thought that was unfair and invited us to
20 bring evidence that we had permits, and I've brought in
21 evidence of two permits.

22 CHAIRMAN GARAMENDI: Okay. Now, thank you very
23 much. If you'll step aside but don't disappear.

24 MR. SIPOS: I'm not going anywhere.

25

1 CHAIRMAN GARAMENDI: I guess we're going to get
2 to play judge here for a while.

3 Paul?

4 MR. THAYER: I'd like to respond to some of that
5 information. I think Barbara probably has more of the
6 details with respect to the particular permitting actions,
7 but I think as the attorney rightly clarified towards the
8 end, the nature of our action last week or last Commission
9 meeting, was not to continue it, that the Commission, in
10 fact, voted to litigate for ejectment and trespass because
11 at that time the applicant wasn't willing to sign the
12 lease with all the provisions in it, but the Commission
13 told the applicant that if it was willing to do so that,
14 of course, this is generally the type of improvement that
15 is subject to the lease and qualifies for a lease.

16 The sole matter for which there was a discussion
17 about whether something had been authorized previously was
18 whether or not the Commission should approve a lease for a
19 deck, and as the Commission recalls, several years ago, we
20 had extensive hearings on this, and what we ended up
21 deciding generally, although we were going to deal with
22 this on a case-by-case basis was that the Commission would
23 not approve them in the future because -- in effect it was
24 a private residential use of public waters. The
25 Commission, in one instance, allowed an existing

1 application in the pipeline to be approved, and staff
2 indicated that there were several -- we didn't know how
3 many, but on the order of several dozen, perhaps,
4 statewide -- docks where decks had been previously
5 approved by the Commission, and our recommendation to the
6 Commission was that those be grandfathered in, where the
7 Commission itself had previously approved ones that it
8 seemed only fair to not yank that approval now. In some
9 cases, staff wasn't even aware it was part of the
10 application. It was only when we went back and looked
11 carefully at the drawings, oh, look there's some rails up
12 there. I guess that was a deck, and I guess we approved
13 it. We shouldn't take away that approval.

14 We generally have enclosed provisions for
15 renewals of those leases, which specify that if over 50
16 percent of that deck has to be replaced, then it shall be
17 removed, so we're going to move out the non-compliance or
18 the non-conforming use -- if this is the right way to put
19 it. So it was in that context that the Commission asked
20 for more background information. However, that request
21 from Mr. Sheehy didn't really represent the approach that
22 the Commission had decided to take earlier. It didn't
23 decide that it if ever anybody, any other agency that
24 approved the deck the Commission would, and the Commission
25 had to issue the lease that we would then issue a lease

1 for one. The approach was going to be that if the
2 Commission itself had approved one, we would go ahead and
3 go forward, and since the Commission is taking that
4 posture, we have brought several docks back for a lease
5 renewal in which we said this is not a public trust use,
6 however, the Commission had previously approved it and
7 therefore, staff is recommending approval. We've not done
8 that with any newer ones or ones, as is the case here,
9 where a lease had not been entered into. Some of it --
10 Barbara will have more detail about this, but some of the
11 approvals that the attorney for the applicant refers to
12 weren't for new piers. They were for reconstruction by
13 TRPA Permit. I believe it says repair of an existing dock
14 and facility. So even if you wanted to consider those and
15 change the approach you've taken previously to allow the
16 Commission to approve existing decks where some other
17 agency approved them, not the Commission, we're not sure
18 how much there is for this applicant in that, but I think
19 Barbara's prepared to talk about the county situation.

20 CHAIRMAN GARAMENDI: Well, let's get into this
21 in a little bit of detail here.

22 MR. FOSSUM: Mr. Chair, I would like -- and
23 Barbara can certainly fill in, but there a couple items
24 that I wanted to respond to Mr. Sipos. First of all, he's
25 got the dates of this correspondence fairly accurate.

1 It's the characterizations of what I think he calls
2 permits that we would take exception to. This structure,
3 by his client's own submittals, has been in existence for
4 approximately 50 years without any leases from the State
5 Lands Commission, on a state property. It wasn't until it
6 had been in existence almost ten years that we discovered
7 it -- were in contact with him. Virtually, the vast
8 majority of the correspondence that he's referring to that
9 involve TRPA and the Corps and the county all took place
10 in 1969 and 1970, nearly 40 -- excuse me -- nearly 40
11 years ago.

12 That's the correspondence he's referring to. In
13 that correspondence, the State Lands Commission was
14 involved because they had an application with us at that
15 time to enter into a lease, so the State Lands Commission,
16 when it was commenting to the Resources Agency, for
17 example, didn't object because there was an application
18 pending. They were being asked to come under lease in
19 1969, 1970. The Corps did, in fact, defer because they
20 expected TRPA to step in at that time.

21 The permissions that were given by the county,
22 for example, he calls it a permit. There was a dispute.
23 The county claimed the property that the pier was put on.
24 They were not issuing a permit. They gave them a letter,
25 basically, of non-objection to use the county, what they

1 came to be county property for their existing permit --
2 excuse me, the existing pier that had been there since
3 1959 or '61, that era.

4 So there has been a pier for that long. We
5 think the railing on the pier and the deck have been there
6 probably since 1970 or thereabouts, '69 or '70, the
7 photograph shows that. What we now see, though, is all
8 this time that they have never come under -- gotten an
9 actual permit from any agency, including the State Lands
10 Commission. They've gone in just in recent years and
11 significantly expanded the facilities there. There were
12 -- according to their own drawings, and the photographs
13 seem to rely on that, the area of the -- what they call a
14 boat house, I would call it a covered berth, it became a
15 boat house recently when they added three new sides to it.
16 They also added catwalks, both on the left-hand side and
17 in front of the structure, and those catwalks are
18 supported by pilings. There were something, like, I
19 believe six pilings.

20 CHAIRMAN GARAMENDI: Could we put the picture
21 back up, please?

22 MR. FOSSUM: At one time and original drawings
23 there was either nine or six pilings. Barbara, maybe you
24 can do it? There's something like 25 pilings there now
25 that support that area of it, and none of those, as far as

1 we know, have any permits from anybody. So they're
2 constantly remodeling, not just replacing, but remodeling
3 by expanding the facilities there, and they haven't gotten
4 any permits. So, this is not a continuation of last --
5 the hearing from the last -- the Commission's already
6 taken action on this. They offered them to bring in
7 permits that would show all those types of activities,
8 have been permitted by somebody, and they frankly haven't
9 brought in anything, and that's --

10 CHAIRMAN GARAMENDI: No permit from the State
11 Lands Commission?

12 MR. THAYER: Nor from the Corps.

13 CHAIRMAN GARAMENDI: Nor from the Corps.

14 MR. FOSSUM: Or from TRPA.

15 UNIDENTIFIED SPEAKER: Nor for the original
16 construction.

17 CHAIRMAN GARAMENDI: One at a time, please.
18 Curtis?

19 MR. FOSSUM: What they have gotten is they've
20 gone in when they wanted to replace something, like a
21 piling that Barbara mentioned, and they were given a
22 permit to replace one piling. They have another -- what
23 the TRPA calls a qualified exempt activity, which means
24 basically you go in and fill out a form. It doesn't go
25 before the Board or anything, and saying they wanted to

1 replace their -- one of the boat lifts that they have on
2 the dock. They wanted to replace that, so they were given
3 a permit to replace that, but there's no permit for any of
4 the expansion that was done out there at the boat house
5 area, and it just doesn't exist.

6 CHAIRMAN GARAMENDI: Barbara, anything to
7 follow-up on that?

8 MS. DUGAL: No, Curtis explained how staff
9 interprets what we mean.

10 MR. FOSSUM: In fact, I think the -- and this is
11 certainly up to the Commission, but our recent analysis of
12 the type of activities that have taken place in the last
13 20 years, showing what has been added to the pier, I think
14 we would be concerned about whether TRPA or the Corps,
15 since they haven't apparently even looked at those issues,
16 would issue permits for those. So we would, what we
17 assumed was the facility out there, whether the staff
18 would even recommend a lease at this time, I'm not sure.

19 CHAIRMAN GARAMENDI: Okay. Mr. Sipos, would you
20 respond and then we'll come to a conclusion here.

21 MR. SIPOS: Yes, thank you, and I'll break it
22 down into two parts because there's two separate issues
23 raised. The first goes back to again, the 1970 timeframe,
24 and it's been suggested that staff agrees with the dates,
25 but not my characterization of the document. The document

1 from Murray McCormick, which was sent to all three state
2 agencies throughout -- excuse me, the State Lands, Placer
3 County and to the Army Corps states on it, "Application
4 for Permit for Existing Pier." The document coming back
5 from Placer County, which I am describing as a permit
6 states: "Type of construction, existing pier." The first
7 sentence of it states: "The Placer County Department of
8 Public Works approves this application, subject to the
9 following conditions, and then it says attached letter
10 acceptable in lieu of the usual agreement, and there's an
11 attached letter to that which doesn't contain any
12 relevant --

13 CHAIRMAN GARAMENDI: Let me go to -- to our
14 work here. Did you ever have a permit from the State
15 Lands Commission to occupy state land?

16 MR. SIPOS: Not to -- no, not to my knowledge.

17 CHAIRMAN GARAMENDI: Were you asked to obtain
18 such a permit?

19 MR. SIPOS: No. When this was -- let me take
20 this in order. First of all, when this was constructed,
21 to my knowledge, there was not a permitting entity back in
22 1959. TRPA didn't exist, Placer County didn't exercise
23 jurisdiction over piers. The Army Corps stepped in, I
24 think, in the 1960's, and it's not clear to me about what
25 the procedure was for State Lands back then.

1 In 1969 --

2 CHAIRMAN GARAMENDI: Just -- let me just --
3 please complete that.

4 MR. SIPOS: Okay. In 1969, the application was
5 submitted to State Lands, along with Placer County. I've
6 just gone through the Placer County lease and the Army
7 Corps. The Army Corps said it wasn't going to do anything
8 based on the formation of TRPA. A period of nine years
9 went by while the family and State Lands went back and
10 forth over title issues, approval from Placer County,
11 right of way issues, request for compensation. The State
12 Lands did not issue a permit.

13 CHAIRMAN GARAMENDI: Negotiations were
14 apparently unsuccessful, and you went ahead and built the
15 pier without permit?

16 MR. SIPOS: Well, the pier was constructed in
17 1959.

18 CHAIRMAN GARAMENDI: Very good.

19 MR. SIPOS: And --

20 CHAIRMAN GARAMENDI: Modifications apparently
21 took place over the years.

22 MR. SIPOS: The only modifications that
23 occurred, and I disagree with staff's statement that
24 there's been some sort of ongoing remodeling, the only
25 construction occurred in the 1959 timeframe when it was

1 originally constructed, and in 1987, when that new
2 structure was built, other than the two exceptions that
3 were mentioned, the one piling in 1986, and then in 1999,
4 a side boat lift with permit was put in.

5 CHAIRMAN GARAMENDI: Permit from who?

6 MR. SIPOS: There was no other construction in
7 any other timeframe other than 1987, and I pointed out
8 that there was a TRPA permit for that and that there was
9 an inspection done.

10 CHAIRMAN GARAMENDI: What's this -- what's the
11 date of this picture?

12 MS. DUGAL: I believe it's around the mid '70's,
13 if not the early '80's.

14 CHAIRMAN GARAMENDI: This is the mid-'70's.
15 Next picture. Are there side skirts on that?

16 MS. DUGAL: Yeah, and those photos were taken
17 about three months ago.

18 CHAIRMAN GARAMENDI: This is three months ago?

19 MS. DUGAL: Um-hmm.

20 CHAIRMAN GARAMENDI: Okay. So we know that you
21 have no state permit. We know that there were
22 negotiations under way. We know we're headed for a
23 lawsuit, and I see no reason for -- I have no desire to
24 change the action that we took last time, which was to
25 authorize a lawsuit, a trespass.

1 Well, there's insufficient votes to change what
2 we did last time. Okay. Thank you very much for the
3 information. We'll let it go at that. We now have --
4 what's our next item?

5 MR. THAYER: The next item is Item 67. This
6 is -- has to do with the -- thank you. I'm sorry. The
7 next item is Item 67. This is the violation having to do
8 with John Asuncion and the Blue Whale Sailing School in
9 Alviso Slough. As the Commission may recall, we've been
10 attempting to bring Mr. Asuncion and his improvements
11 under lease for several years.

12 You should know that he sent an e-mail yesterday
13 asking that this matter be put over again. He said that
14 his attorney -- he's fired his attorney, and that he's
15 trying to get some more information to give to us.

16 Staff is often sympathetic for the idea of
17 putting something over, but it seems we've been trying to
18 work with Mr. Asuncion for a number of years to finish
19 this work, and, well, our recommendation would be that the
20 Commission, at this meeting, find him in violation, and
21 Mary Hays will explain further about this, but it's also
22 true that should he get his application together and the
23 appropriate fees to us, we would bring that to the
24 Commission. So, to make a full presentation, Mary Hays
25 from our Land Management Division will speak.

1 CHAIRMAN GARAMENDI: Mary, we have heard this
2 thing over and over. What I would like to hear from you
3 is what is the recommendation of staff here?

4 MS. HAYS: The recommendation of staff is
5 similar to -- the same recommendation as we had in April
6 and that, if you'd let me read that --

7 CHAIRMAN GARAMENDI: Please.

8 MS. HAYS: -- if you want to cut to the chase
9 here.

10 CHAIRMAN GARAMENDI: I do.

11 MS. HAYS: Okay. I spent all this time
12 preparing this too. It's been a long day.

13 MR. FOSSUM: And if I could, Mr. Garamendi, I
14 think that one of the concerns staff has is even if Mr.
15 Asuncion does bring in an application, pays the fees in
16 full, BCDC has significant violations against him, and
17 it's unclear that what he has out there even should be
18 leased. So, the staff might even not recommend approval
19 of an application, and I just wanted to make that clear.

20 CHAIRMAN GARAMENDI: Let's have the staff
21 recommendation.

22 MS. HAYS: Staff is recommending that the
23 Commission find the Blue Whale Sailing School,
24 Incorporated is unlawfully occupying and trespassing on
25 state land located in Simonds Canal and Alviso Slough in

1 Santa Clara County, to authorize staff of the State Lands
2 Commission and the Office of the Attorney General to take
3 all necessary legal action, including litigation to eject
4 the Blue Whale Sailing School, Incorporated, seek removal
5 of the docking facilities and other improvements from
6 state-owned land in the beds of Simonds Canal and Alviso
7 Slough, seek restoration of the state lands at these
8 locations to their conditions prior to the placement of
9 the facilities and to recover the Commission's damages and
10 costs.

11 MR. CHIANG: So moved.

12 MS. HAYS: Thank you.

13 CHAIRMAN GARAMENDI: Thank you. As I recall,
14 Mr. Sheehy was very clear in this Commission, I think he
15 actually said it again today, that this Commission force
16 resolution of these issues, and we now have a motion and a
17 second to do just that. And without objection from the
18 maker of the motion and the seconder of the motion, we
19 adopt the staff's recommendation. Okay.

20 Paul, next question? Next issue?

21 MR. THAYER: I think that concludes the regular
22 calendar, but before we go into closed session, I wanted
23 to take just a moment to acknowledge Dave Mercier, who's
24 in the office here who's in the office here -- in the

25

1 office -- in the audience. Dave has been with the Lands
2 Commission for I don't know how many years, and --

3 CHAIRMAN GARAMENDI: How many, Dave?

4 MR. MERCIER: A little bit over 20.

5 CHAIRMAN GARAMENDI: A little bit over 20.

6 MR. THAYER: No way. Wow. Dave has been
7 responsible for all the fiscal analysis for all work that
8 was done on the PXP to try to get the best royalty from
9 them, that kind of analysis to determine whether or not
10 some of the oil companies that have been assigned lease,
11 whether they have the fiscal capability of carrying out
12 those leases. This has all been Dave's work.

13 He notified me last week that he's taken another
14 job, probably getting paid twice as much, and will be
15 potentially relocating, perhaps to Denver if he's unlucky,
16 and so we're going to lose him. But in spite of the pain
17 over that, I have to acknowledge and thank him for all the
18 great work he's done while he's been with us here.

19 CHAIRMAN GARAMENDI: John?

20 MR. CHIANG: I want to thank you for your
21 extraordinary service. You've been a wealth of
22 information and you've brought great integrity to the
23 process, so thank you very much.

24

25

1 CHAIRMAN GARAMENDI: David, I agree, and if it's
2 Denver and it's the Bureau of Reclamation, you and I are
3 going to have a conversation.

4 MR. MERCIER: Thank you.

5 CHAIRMAN GARAMENDI: Thank you. Thank you very
6 much and thank you for your years of service. All right,
7 I believe that is the end of the public session. Do we
8 have a closed session today?

9 MR. THAYER: Yes.

10 MR. FOSSUM: Very brief.

11 CHAIRMAN GARAMENDI: We do. Okay. Those of
12 you in the audience who are not supposed to be here, would
13 you please leave, and you can turn off the video and we'll
14 shut that down.

15 I want to thank the public that's out there for
16 their attention to these very important issues. Thank you
17 all very much. The public session is over. We will now
18 commence with the private session.

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CERTIFICATE OF REPORTER

I, TROY RAY, a certified electronic reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing Meeting of the California State Lands Commission, dated June 1, 2009; that it was 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 15th day of June, 2009.

Troy Ray
Certified Electronic reporter
California Reporting LLC

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