

MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

CAL/EPA HEADQUARTERS BUILDING
COASTAL HEARING ROOM
1001 I STREET
SACRAMENTO, CALIFORNIA

FRIDAY, OCTOBER 19, 2012
10:07 A.M.

JAMES F. PETERS, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

APPEARANCES

COMMISSION MEMBERS

Mr. John Chiang, State Controller, Chairperson,
represented by Mr. Alan Gordon

Mr. Gavin Newsom, Lieutenant Governor

Ms. Ana J. Matosantos, Director of Finance, represented by
Mr. Pedro Reyes

STAFF

Mr. Curtis Fossum, Executive Officer

Ms. Jennifer Lucchesi, Chief Counsel

Mr. Brian Bugsch, Chief, Land Management Division

Mr. Colin Connor, Assistant Chief, Land Management
Division

Ms. Nicole Dobroski, Environmental Program Manager, Marine
Facilities Division

Mr. Chris Huitt, Staff Environmental Scientist

Ms. Grace Kato, Public Land Manager, Division of Land
Management

Mr. Kevin Mercier, Assistant Chief, Marine Facilities
Division

Mr. Don Oetzel, Public Land Management Specialist

Ms. Holly Wyer, Sea Grant Fellow

ATTORNEY GENERAL

Mr. Joe Rusconi, Deputy Attorney General

APPEARANCES CONTINUED

ALSO PRESENT

Mr. John Berge, Pacific Merchant Shipping Association

Mr. Mike Bishop, Hanson Aggregates

Ms. Abigail Blodgett, San Francisco Baykeeper

Mr. Lloyd Bothwell

Ms. Sandra Burkhart, Western States Petroleum Association

Mr. Bill Butler, Jerico Products, Inc.

Mr. Braiden Chadwick, Ron & Billie Vanderbeek

Dr. Andrew Cohen, Center for Research on Aquatic
Bioinvasions

Mr. Michael Evans

Mr. Robert Gregory, Foss Maritime Company

Dr. Charles Hanson, Hanson

Mr. Richard Higbie

Mr. Marc Holmes, The Bay Institute

Dr. Barry Keller, Sand Miner

Ms. Christian Lind, Jerico Products, Inc.

Mr. Bob Marston

Dr. Karen McDowell, San Francisco Estuary Partnership

Ms. Marina, Secchitano, Inland Boatman's Union

Mr. Ron Vanderbeek

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PROCEEDINGS

ACTING CHAIRPERSON GORDON: I'll call this meeting of the State Lands Commission to order. Representatives of the Commission present are -- I'm Alan Gordon chairing the Commission today for the Controller John Chiang. I'm joined today by Lieutenant Governor Gavin Newsom to my right, and Chief Deputy Pedro Reyes representing the Director of Finance Ana Matosantos to my left.

For the benefit of those in the audience, the State Lands Commission manages State property interests in over 5 million acres of land, including mineral interests. Specifically, the Commission has jurisdiction in filled and unfilled tide and submerged lands, navigable waterways and State school lands.

The Commission also has responsibility for the prevention of oil spills at marine oil terminals and offshore oil platforms and prevention of the introduction of marine invasive species into California's marine waters.

Today, we will hear requests and presentations concerning the leasing, management, and regulation of these public sovereign and school land property interests, and the activities occurring or proposed thereon.

The first item of business will be the adoption

1 of the minutes from the Commission's Special October 1,
2 2012 meeting.

3 May I have a motion to approve the minutes?

4 ACTING COMMISSIONER REYES: So moved.

5 COMMISSIONER NEWSOM: Second.

6 ACTING CHAIRPERSON GORDON: Moved and second.

7 Could we call a vote, please. All those in if
8 favor?

9 (Ayes.)

10 ACTING CHAIRPERSON GORDON: Opposed?

11 That motion is passed.

12 Next order of business is the Executive Officer's
13 Report. Mr. Fossum, proceed.

14 EXECUTIVE OFFICER FOSSUM: Thank you. Good
15 morning, Commissioners. I'm pleased to report that the
16 staff was invited to the California Association of Port
17 Authorities meeting, in October, 3 weeks ago and had a
18 very positive conversation with the leader of California's
19 9 ports.

20 We emphasized the importance of maritime trade to
21 California's economy, and the quality of life, and the
22 desire of the Commission and its staff to assist the ports
23 in their missions. We believe that message was well
24 received, and expected opportunities for cooperation and
25 assistance to the ports will increase on that.

1 On the same note, our staff -- your staff has
2 continued to be involved in a significant number of
3 meetings with the Port of San Francisco representatives
4 and developers working on at least a half a dozen projects
5 to help revitalize the San Francisco waterfront.

6 Next week -- I wanted to let everybody know that
7 next week is the Commission's 10th biennial symposium on
8 technology, on offshore pollution prevention technology
9 and an exhibition that goes along with that. There will
10 be approximately 100 speakers at this meeting, and 50
11 exhibitors. It's a very important meeting. We have it
12 every 2 years, and this is our 10th of that.

13 I do want to acknowledge some of the sponsors
14 that have helped make this possible. We have Occidental
15 Petroleum. We have Phillips 66, Tesoro, Greka, NuStar,
16 Oxy, U.S.A., Port of Long Beach, BP, DCOR, Fish and Game's
17 Oil Spill Prevention Response Office, Port of Los Angeles,
18 Veneco, Western States Petroleum Association. And all of
19 the sponsors -- that's just 2 categories. All the
20 sponsors are on our website and we appreciate their
21 support, and encourage all people to attend. We expect it
22 to be a very productive program.

23 I'm also pleased to report that the Western
24 States Lands Commission Association has signed a
25 memorandum of understanding with the United States Bureau

1 of Land Management to advance the mutual relationships of
2 those 2 organizations. The MOU is designed to encourage
3 better communication between Western States, its members,
4 and the Bureau of Land Management.

5 More specifically, the MOU addresses real estate
6 transaction between Western Land Commission's 23 State
7 members and the Bureau. It lists a number of particular
8 items where the BLM will consider changing policy and
9 practice to encourage federal and State land transfers.

10 This MOU has been in work -- in progress for
11 several years, within input from many of the member
12 States. It's expected the MOU will help advance the
13 interests of the member States in their dealings with BLM.

14 I also want to acknowledge that along with our
15 Prevention First Symposium next week, yesterday was the
16 40th Anniversary of the Clean Water Act. And I think
17 that's worth bringing up as well and the progress that's
18 been made in that regard.

19 Next, I want to give you an initial update on
20 investigation on the use of State lands on the Colorado
21 River at the Buena Vista -- Rio Buena Vista community in
22 Needles. As you may recall at the August meeting, the
23 Commission authorized suspension of leasing for boat docks
24 at the Rio Buena Vista and directed staff to conduct an
25 investigation and report back to the Commission on the

1 Public Trust needs in the area within 6 months.

2 On August 11th, your staff visited the property
3 and talked with residents on site and held a public
4 meeting to listen to residents and other members of the
5 public. Your staff also met with representatives of the
6 United States Bureau of Reclamation and the Army Corps on
7 the property, and they also attended the public meeting.

8 Staff believes that the site visit and meeting
9 were very productive, and we hope to come back to you in
10 December with a recommendation on a path forward.

11 There are 2 -- currently, 2 audits associated
12 with the Oil Spill Prevention Administration Fund. The
13 BSA audit from 2 months ago identified 2 recommendations,
14 both have already been implemented. The Department of
15 Finance audit is not complete at this time, but we believe
16 it too will be productive and we will bring back to you
17 information on that when it's completed.

18 Last week, the staff also responded to the 1-year
19 follow up on the Bureau of State Audits audit of
20 Commission leasing practices.

21 A year ago, the Commission authorized an
22 amendment to the delegation of authority to expand the
23 criteria for issuing letters of non-objection for certain
24 uses of State land. As you all recognize, we have over
25 100 items on our agenda, and because the Commission only

1 meets every other month, we typically have things come up
2 periodically. And so last year, the Commission gave
3 delegation of certain limited projects to proceed, if they
4 were exempt from CEQA. And so this report will identify
5 that.

6 During that period ending in August -- end of
7 August, the staff had issued 16 letters of non-objection,
8 4 of those were on school lands and 12 on sovereign lands.
9 These activities included simple recreation-related
10 activities of short duration, like a motorcycle rally, and
11 America's Cup races. There were 20 archaeological and
12 cultural surveys connected to -- excuse me, 2
13 archaeological and cultural surveys connected to data
14 collection in preparation of environmental documents for
15 projects. There were safety issues, such as a placement
16 of airport-related sensors and dredging to remedy safe
17 navigation. There was remediation related activities and
18 removal of aquatic invasive species.

19 In order to consider issuing these leases, as I
20 said, they needed to be exempt from CEQA. The staff is
21 very aware of the need for the public to consider
22 activities on public lands, and the staff will continue to
23 be judicious in its consideration of the issuance of these
24 letters. And I have a copy -- or can provide you a copy
25 of the exact ones if you're interested.

1 Finally, what I'd like to do is acknowledge a
2 couple of long-term staff remembers of the Commission who
3 will be retiring very soon.

4 And the first is Debi Banks. And what we have
5 come up with is a couple of resolutions acknowledging
6 their dedication. And so if I could, I'd like to have
7 them come forward and stand.

8 First, Debi.

9 Debi has the honor of being the longest-serving
10 employee of the State Lands Commission.

11 (Applause.)

12 EXECUTIVE OFFICER FOSSUM: She's given the people
13 of California -- the people of California and the State
14 Lands Commission over 37 years of dedicated and
15 distinguished public service. Since 1975, she worked
16 diligently for the Commission in a variety of positions
17 starting from entry-level Clerical, Office Services
18 Supervisor, Management Services Technician, Staff Services
19 Analyst, process -- progressing through the Information
20 Systems Analyst series to the position of Information
21 Services Section Supervisor, which she's held for the last
22 11 years.

23 She's in charge of all our IS.

24 "Whereas, there are few office processes and
25 procedures that have been put in use over the

1 past 37 years that have not either been developed
2 or significantly influenced by her expertise.
3 She was the primary programmer and process
4 analyst in the development of many of the mission
5 critical databases in use at the Commission
6 today. She's managed the Commission's computer
7 information infrastructure system for the past 11
8 years, and provided superb customer service and
9 system reliability.

10 "As a result of her conscientious commitment,
11 dedication, and superior organization skills,
12 Debi Banks has succeeded in compiling an
13 impressive record of achievement and
14 accomplishments that have improved the
15 effectiveness and efficiency of the Commission
16 staff, earning her the admiration and respect of
17 all who have had the privilege of working with
18 her."

19 And this resolution reads, "Resolved by the
20 California State Lands Commission that Debi Banks
21 is commended and thanked for her distinguished
22 record of public service for more than 37 years
23 serving the State Lands Commission; and,

24 "Be it further resolved, that the Commission
25 extends its sincere best wishes to Debi Banks for

1 a rewarding and gratifying retirement, and the
2 very best in the years to come."

3 (Applause.)

4 (Thereupon pictures were taken.)

5 EXECUTIVE OFFICER FOSSUM: Everybody at the
6 Commission and staff has relied so much on here, when
7 anything goes down, computerwise.

8 (Laughter.)

9 COMMISSIONER NEWSOM: So we're dead now.

10 (Laughter.)

11 ACTING COMMISSIONER REYES: Thank you so much.

12 COMMISSIONER NEWSOM: Congratulations.

13 (Applause.)

14 EXECUTIVE OFFICER FOSSUM: We have one more here,
15 and that's Kevin Mercier. Kevin has been with the
16 Commission Since 1991 after completing a 20-year career in
17 the United States Navy, where he served with distinction
18 as a Petroleum Logistics Officer, his last assignment
19 being manager of the Navy's busiest west coast fuel
20 terminal at Point Loma in San Diego.

21 In January of 1991, Kevin became the first
22 Assistant Division Chief of the nascent Marine Facilities
23 Division of the California State Lands Commission, where
24 he was instrumental in managing the development and growth
25 of the Division and its programs.

1 Kevin introduced and implemented quality
2 management principles within the Marine Facilities
3 Division, which were directly responsible for creation of
4 the oil spill database and resultant data measurement as a
5 metric for management, so impressing auditors that it was
6 recommended as a model for other State agencies.

7 Kevin's implementation of quality management also
8 fostered creation of a risk matrix for focusing limited
9 Marine Facilities Division resources on areas of greatest
10 risk for oil spills, a direct extension of his efforts in
11 measuring data and creating effective program outcomes.

12 Kevin established the basic training program
13 ensuring that Marine Facility Division staff were properly
14 trained to safely and effectively perform their duties,
15 resulting in the necessary foundation for the Marine
16 Facilities Division's pollution prevention mission along
17 with the tools to be successful in accomplishing each
18 facet of the mission.

19 As a former marine oil terminal manager, he is
20 acutely aware of the relentless debilitating effects of
21 the marine environment on engineered structures and the
22 existence of a wide spectrum of age, design, and
23 construction materials of oil terminals in California's
24 marine waters.

25 He became an early proponent of assessing marine

1 oil facilities and championed an audit and inspection
2 scheme that has culminated in creation of the State's
3 Marine Oil Term Engineering and Maintenance Standards.
4 Those standards, known as MOTEMS, are a tool that arms the
5 Marine Facilities Division with the means to measure the
6 fitness for purpose of every marine oil terminal in
7 California, and guides marine oil terminal operators
8 towards measurable improvements in the condition and
9 operation of their terminals.

10 As a result of his conscientious commitment,
11 dedication, and superior organization skills, Kevin has
12 succeeded in compiling an impressive record of
13 achievements and accomplishment that have improved the
14 effectiveness and efficiency of the Marine Facilities
15 Division, earning him the admiration and respect of all
16 who have had the privilege of working with him.

17 "Therefore be it resolved that the State
18 Lands Commission that Kevin Mercier is commended
19 and thanked for his distinguished record of
20 public service for more than 21 years serving the
21 State Lands Commission. And be it resolved that
22 the Commission extends its sincere best wishes to
23 Kevin for a rewarding and gratifying retirement
24 and the best years to come."

25 (Applause.)

1 EXECUTIVE OFFICER FOSSUM: I'd like to call Kevin
2 a great soldier, but having been a sailor --

3 (Applause.)

4 MARINE FACILITIES DIVISION ASSISTANT CHIEF

5 MERCIER: I imagine people are a little bit worried about
6 me saying anything, but --

7 (Laughter.)

8 EXECUTIVE OFFICER FOSSUM: Those who know you
9 are.

10 (Laughter.)

11 MARINE FACILITIES DIVISION ASSISTANT CHIEF

12 MERCIER: I had no accomplishments without the support of
13 the staff here in Sacramento, and, in particular, the
14 staff of the Marine Facilities Division, both past and
15 present. Our staff at MFD are innovators and proactive.
16 They created the MOTEMS, the marine engineering standards
17 at terminals. They're world renowned for their marine
18 invasive species scientific solutions, and I think you'll
19 see some of that later in the day. And our admin staff
20 pulls things together for us.

21 And our marine safety series guys at both the
22 field offices in the Bay Area and in Long Beach are
23 responsible for putting together, what I believe, has to
24 be the best monitoring inspection program in any
25 government that I've seen anywhere, and our record speaks

1 for itself. Very few spills, and the ones that were there
2 were very small. And I remember you challenged me to get
3 rid of the ones that were there, but I probably couldn't
4 do it on my watch, but it might happen.

5 But I just wanted to make sure I did a shout out
6 for people that I've worked with. And they're the ones
7 that really have done all the work. I've just been lucky
8 to have been able to work with them.

9 Thank you.

10 (Applause.)

11 ACTING CHAIRPERSON GORDON: Well, since we seem
12 to have unanimous approval for the wonderful work of the
13 retirees maybe we could just have that for the rest of the
14 agenda.

15 ACTING COMMISSIONER REYES: Just do the roll
16 call.

17 (Laughter.)

18 EXECUTIVE OFFICER FOSSUM: We'll get them signed
19 by you guys later.

20 ACTING CHAIRPERSON GORDON: Exactly.

21 All right. Next order of business will be the
22 consent calendar. Mr. Fossum, could you please identify
23 items that are going to be pulled off of consent.

24 EXECUTIVE OFFICER FOSSUM: Yes, Mr. Chair. The
25 items that have been removed from the consent calendar are

1 Item 25, 27, 44, 53, 82, 89, and 90. And removed and put
2 on the regular agenda is Item 29.

3 ACTING CHAIRPERSON GORDON: Very good. Is there
4 anyone in the audience who wished to speak on an item
5 still on the consent calendar?

6 That being -- okay. Nobody. Can I have a motion
7 on the consent calendar, please?

8 COMMISSIONER NEWSOM: Move the calendar be
9 approved.

10 ACTING COMMISSIONER REYES: Second.

11 ACTING CHAIRPERSON GORDON: Moved and seconded.
12 All in favor?

13 (Ayes.)

14 ACTING CHAIRPERSON GORDON: The consent calendar
15 is unanimously adopted.

16 Let's then move on to Item 29, which I believe
17 was just pulled off of the consent calendar.

18 Staff, please present.

19 EXECUTIVE OFFICER FOSSUM: Yes. I think I'll
20 summarize it. You've seen this item before. It's a
21 request -- it's a lease application by the Vanderbeeks at
22 Lake Tahoe. The Commission has approved the dock element
23 of that and asked the staff to work with the Vanderbeeks
24 and come back with a recommendation on a rent for the deck
25 that is on top of their boat lift.

1 The staff had proposed a rent rate that would
2 increase their rent from, I believe, it's \$1,674. It
3 would increase it by \$2,950 for that sun deck. The basis
4 for that rent rate is the use of an upland value, upland
5 land value, because the deck is a type of structure that
6 could be created in a backyard, and so that's the value
7 that we've used. We've used that same approach both in
8 the Delta and in Huntington Harbor for decks that were
9 constructed over State property. And so that's the basis
10 for that. And, of course, Lake Tahoe land is quite
11 expensive. So that's why the rate seems fairly high.

12 Also, I believe that the neighbors of the
13 Vanderbeeks who have wished to have -- to maintain 2 buoys
14 that have never been approved by the State Lands
15 Commission or the TRPA or anybody else for that matter,
16 and wished to maintain those buoys.

17 Again, Commission's -- staff's recommendation is
18 that that be denied, because it's inconsistent with the
19 regulations that the TRPA has, and therefore we would
20 be -- the Commission would be countenancing something that
21 is clearly in violation of another agency's regulations.
22 If they ever were able to comply with TRPA's regulations,
23 we would be happy to support those buoys, and recommend
24 that they try and comply in some fashion and come back to
25 the Commission.

1 ACTING CHAIRPERSON GORDON: Is a representative
2 for the Vanderbeeks here to discuss their perspective on
3 this?

4 EXECUTIVE OFFICER FOSSUM: Yes, I believe he is.
5 Braiden Chadwick the attorney for the Vanderbeeks
6 has signed a request-to-speak card.

7 ACTING CHAIRPERSON GORDON: Along with a Bob
8 Marston.

9 EXECUTIVE OFFICER FOSSUM: And Mr. Marston is the
10 owner of the property in the rear of the Vanderbeeks.

11 ACTING CHAIRPERSON GORDON: Are you going to wish
12 to speak when Mr. Braiden is done -- Mr. Chadwick is done?

13 MR. MARSTON: Yes.

14 ACTING CHAIRPERSON GORDON: Why don't you come to
15 the front so you'll just be ready at the time.

16 MR. CHADWICK: Thank you very much. Good
17 morning, Commissioners.

18 I appreciate the time. This shouldn't take very
19 long. Essentially, my clients are okay with every portion
20 of the amended lease, with the exception of the rent,
21 which they view as excessive.

22 Just 3 quick points. The first one being is the
23 rent jumped from about \$1,600 to nearly \$5,000, just with
24 the addition of being able to throw down a towel on top of
25 the boathouse roof. My clients mentioned in the last

1 meeting that they were perfectly fine with paying
2 additional rent with being able to use the roof of the
3 boat house for recreational purposes.

4 They were on unaware when staff came back a few
5 weeks ago with a request to jump that up from \$1,600 to
6 \$5,000, that it would be so much.

7 And so what they would like to do is come into
8 conformance with essentially what the State Lands
9 Commission rental has been for neighboring property owners
10 for similar improvements.

11 For example, I'd just like to note that Section
12 2003(a)(4), the rental rate needs to be calculated based
13 on the value of the leased lands not on upland lands.
14 Curt mentioned, of course, that what the State Lands
15 Commission used was the calculation of upland land sales.
16 They used comps from lakeshore, lakefront properties to
17 calculate the rental rate for the use of the roof of the
18 boat house to sun themselves. It seems a little excessive
19 to use the lakeshore lakefront sales comparisons to
20 calculate the rent of the leased lands.

21 This doesn't take up any additional footage. It
22 doesn't take up any additional square footage over the
23 lake. It's just the roof of the boat house. And so using
24 upland values of sales comparisons for lakefront
25 properties seems a little off, especially given the

1 mandate of the regulation, which calculates its based on
2 the value of the leased lands, not upland lands.

3 The third thing is that what we want to do is my
4 clients are okay with paying additional rent. They just
5 want to be treated the same as everyone else. And I'll
6 point you to 2 other leases State Lands has approved in
7 just this year, both in June and in January for sundecks.
8 And the rental rate for both of those \$0.85 a square foot.

9 My clients are fine paying those rates that were
10 perfectly appropriate for these properties and those
11 sundecks also. They just want to pay -- they just want to
12 have parity with their neighbors and parity with the other
13 similarly situated improvements around the lake.

14 And so essentially, the appropriate rent using
15 the \$0.85 threshold that was used to these other leases
16 amounts to \$2,093.75 as the increase -- or the total,
17 because what they have is -- again, what was used around
18 the lake is \$0.85 and what was used for the Vanderbeeks
19 was almost \$6 a square foot, so that's quite the
20 discrepancy there.

21 So anyway, the end of the story is my clients
22 just wanted be to treated with parity with everyone else.
23 And since the sundecks for other lakeshore owners -- or
24 other property owners that have similarly situated
25 improvements is \$0.85 a square foot, we'd just like to see

1 the same.

2 COMMISSIONER NEWSOM: Curtis I obviously -- your
3 reaction to the letter that was submitted and to --

4 EXECUTIVE OFFICER FOSSUM: Thank you, Governor.

5 We did get a counter proposal from Mr. Chadwick,
6 and on behalf of his clients, it recommended that they pay
7 an additional \$419.75 cents, a little more than a dollar a
8 day for what was previously the lease.

9 Staff did -- does use the upland value of that,
10 because we characterize that use as one that is, in fact,
11 a -- not a water-dependent use. You can have a deck in
12 your backyard. I have a couple little decks in my
13 backyard. They're not required to be out over the water.
14 They have an impact on the public's use of the land in the
15 sense that they impact visual area. It puts people out
16 over the water doing things that are not water dependent.

17 So we view it as land. It is the State's land
18 out there. And if their use is that intensive and not
19 water dependent, then we believe it's akin to the upland
20 land values.

21 COMMISSIONER NEWSOM: Curtis, what about the
22 notion that there are 2 previous sundecks that we approved
23 at substantially lower cost?

24 EXECUTIVE OFFICER FOSSUM: Absolutely. Good
25 point. And parity -- we certainly believe -- one of

1 the -- I think one of the mantras that we try and live by
2 is being fair with the public. And what's happened is a
3 couple of events that have taken place.

4 The Legislature passed a law that we are now to
5 charge for piers up at Lake Tahoe and throughout the
6 State. People who had their applications in before March
7 31st of last year continue to not have to pay anything,
8 while other neighbors who filed an application the next
9 day do. And that doesn't seem fair, but that's what the
10 Legislature determined. In fact, it was based upon a
11 recommendation by the representative of the homeowners
12 association there, the lakefront property owners
13 association, that provision in the law.

14 As far as parity, we've also been -- I mentioned
15 the State audit earlier. The Commission staff was
16 criticized for not updating its benchmarks and keeping
17 them up to date. The dilemma that the Vanderbeeks find
18 themselves in is that while the Commission used a lower
19 rate for the few decks that had previously been
20 grandfathered in, we have now done a valuation of the
21 upland values, and that is what raised that rate
22 significantly.

23 So it does seem to be a large jump. It's an
24 extra \$2,950 from what had previously been the proposed
25 rate, if they didn't have the deck. And we certainly

1 appreciate their willingness to offer additional value,
2 but I think right now because we charge an upland land
3 value in the Delta for the 2 or 3 decks that have been
4 approved there, and for the probably over 100 decks that
5 extend out over Huntington Harbor that private property
6 owners use there, that would be its -- we feel it's
7 consistent to use that value as opposed to a
8 water-dependent recreational value.

9 COMMISSIONER NEWSOM: Thank you.

10 ACTING CHAIRPERSON GORDON: First, let me say,
11 I'm somewhat uncomfortable negotiating the rent --

12 EXECUTIVE OFFICER FOSSUM: You need the
13 microphone a little closer, Chair.

14 ACTING CHAIRPERSON GORDON: I'm somewhat
15 uncomfortable negotiating the rental price here in open
16 meeting. It strikes me that needs to be a much more
17 private negotiation.

18 However, it also strikes me that just having 2
19 options, plain deck or upland residential, also doesn't
20 serve our needs. It seems that this is somewhat of a
21 animal with different spots on it. They're not -- there
22 aren't any permanent appurtenances as one would put on a
23 deck that you had in your backyard. You've got -- we're
24 using the top of a boat deck.

25 So my inclination would be to look for a third

1 way, for want of a better term, where we could find maybe
2 a third definition that would have limitations, so it
3 would indicate that you couldn't have barbecue up there.
4 You know, if all they're using it for is to put towels on
5 it, and sun bathe, this strikes me as a fairly excessive
6 interest, but that's about what I think they should be
7 doing up there without having to pay significantly more.
8 And if there is a way to negotiate a lease that limits it
9 to a couple of deck chairs and some towels, then
10 increasing the rent by 300 percent over what it would be
11 without that is -- seems to me fairly excessive.

12 But I'm willing to listen to my colleagues up
13 here and see where they would like to go on this, as I am
14 searching here.

15 EXECUTIVE OFFICER FOSSUM: Just as a
16 clarification, Mr. Chair. The only limitations on the use
17 of the deck are that they don't build any permanent
18 structures. We did have a couple of examples in the Delta
19 where people started building another story on top and
20 bathrooms and kitchens and all kinds of things. And so
21 those type of uses are restricted, but if they want
22 tables, chairs, awning or umbrellas and anything that's
23 portable like that, that is not prohibited under the
24 lease, as described.

25 ACTING CHAIRPERSON GORDON: I understand.

1 EXECUTIVE OFFICER FOSSUM: The Commission can
2 certainly do that if they want to restrict it further,
3 because its --

4 ACTING CHAIRPERSON GORDON: Those would be the --
5 we've basically got 2 options for leases right now. And I
6 guess what I am looking for is to see if there is a third
7 lease we could develop that would be much more
8 prescriptive than the existing lease, but that would then
9 create a formula for something not looking at a 300
10 percent increase for the right to have a -- you we, know
11 basically grandfathered in the railing, because it had
12 been there for a long time.

13 Anyway, I think I've stated my peace.

14 ACTING COMMISSIONER REYES: I think -- I can
15 appreciate that there is no lease land value being used,
16 because it is different. I see it as if owned a
17 beachfront property and decided to extend my deck over the
18 water, it would not be a pier rate, it would be a upland
19 value calculation. And if I choose to use my pier for
20 upland value activities, then it should be an upland value
21 calculation.

22 Now, the argument is made that there are no
23 permanent fixtures, there are no plumbing, there's no
24 electricity. I have neither one of those in my deck at
25 home. It's just a flat structure, wooden structure, where

1 I enjoy barbecues -- a table actually, the barbecue is on
2 the side.

3 So I'm not concerned about the rate that's being
4 set. I think that's a fair rate. I think that the -- you
5 know, we don't -- we're trying to come up with a rate for
6 something that is not within what we do. We don't have
7 the provisions for providing for rental or lease value for
8 activities for this activity.

9 Now, we've grandfathered some in just because
10 that's way they were, but we're not set up to do this. So
11 in the interests of working with the family, the staff --
12 we told staff go and work something out. The option was
13 for us to say permission denied, you may not use the
14 lease, move on, and we wouldn't have to do a calculation.

15 But we said, no, go see out there and see what
16 you can do. And I think staff went and did that. They
17 came up with a rate that obviously folks don't find
18 comfortable. And I think the option is this is the rate
19 that is calculated. And I suspect that we will see more
20 of these as we move along. And we need to determine is
21 this what we're going to do or are we going to deny them?

22 If we're going to be willing to work with
23 families so they can maintain this other activity, then
24 the families need to understand that the rate is not going
25 to be the same as the pier.

1 And granted, they're not the rate of -- you know,
2 they're not building a house right on the shore. That
3 would be a totally different value. So I'm okay with the
4 staff's recommendation. I'm prepared to move it.

5 MR. CHADWICK: Mr. Reyes, if I may.

6 The only thing that I might respond to there is
7 that I think that if you look at just having parity with
8 other sundeck owners, if you want the term sundeck and the
9 disparity between similarly situated properties. And some
10 of these -- again, one of these was in January, one was
11 just in June with -- and it's been a fairly consistent
12 rate that's been applied there.

13 ACTING COMMISSIONER REYES: But hold on, we don't
14 have parity. We had a timeline, so anybody that came in
15 at a certain day got something just on the pier alone, and
16 then whoever came in the next day got a different rate --

17 MR. CHADWICK: Right.

18 ACTING COMMISSIONER REYES: -- so we don't have
19 parity. Moving forward, we will have parity.

20 MR. CHADWICK: My understanding, and I might be
21 wrong on this. And, Curt, can maybe correct me on it, but
22 I believe that the June 1 was outside of that date.

23 And the other thing that I would mention too is
24 just that I think basing the rental rate for use of a
25 sundeck with no permanent structures or anything, you're

1 throwing a towel or maybe a chair or 2 down or something
2 like, which is just the roof of the boat house again, on
3 the sales comparisons for multi-million dollar properties
4 that are on the beachfront of Lake Tahoe, I think, is not
5 only legally incorrect based on the regulation, but I
6 think it's skews it to the point of, you know, they're
7 being asked to pay 3 times as much for an additional 400
8 some odd square feet under the lease.

9 And you go -- you jump from a rental rate of -- a
10 recreational rental rate of, I think, it's -- well, 64
11 cents -- I'm sorry \$0.64 a square foot to almost \$6 a
12 square foot.

13 And again, what -- you know, we tried to work
14 with staff on this. And staff basically said this is, you
15 know, take it or leave it. We're not going to discuss the
16 rental issue with you.

17 And again, I view it as being contrary to State
18 Lands Commission regulations, but just a little bit
19 excessive. And I think, you know, we'd be willing to work
20 with staff to come to a more agreeable rate. It just
21 seems that jumping from \$0.65 a square foot to \$6 a square
22 foot is a huge -- I mean, it's \$20,000 for use of being
23 able to throw a towel down and sun yourself, which can
24 happen anywhere else on the pier also, I'll point out.

25 And so I think -- I don't think that the

1 classification of this as a residential use -- I mean,
2 there's -- if you just go to the definition of residential
3 use provided in the State Lands Commission lease, it
4 doesn't fit there. It says something that's used for a
5 residence or parking a boat that can act as a residence.
6 That's a residential use under the State Lands Commission
7 lease. The plain language of the lease it says that.

8 And so I think to classify this as a residential
9 use and then use lakefront Lake Tahoe property values and
10 sales comparisons to generate the rental for a sun deck
11 that's merely the roof of the boat house I think is just
12 excessive.

13 And again, for that -- this is just a family and
14 they're being asked to pay an additional \$20,000. And
15 they're appreciative of being able to maintain their
16 existing structure, and they make no bones about any of
17 the other provisions of the lease, is just -- this is --
18 to them a, you know, tripling the rental rate is a bit
19 excessive.

20 COMMISSIONER NEWSOM: Just to the Chair. Just,
21 Curtis, what about the discrepancy or at least the
22 assertion that there's discrepancy on the June rental?

23 EXECUTIVE OFFICER FOSSUM: Well, as I was saying,
24 there is -- there are justifications for why that took
25 place. One of the things is that the -- I should say

1 justifications. There's a history as to why that took
2 place.

3 There are a number of decks up at Tahoe, I think
4 it's more than a dozen, that were basically approved by
5 the Commission in the past, either with knowledge or the
6 fact that the staff had knowledge that these things were
7 out there and proceeded to approve them as uses that were
8 authorized.

9 In those instances, the rate that was being
10 charged, up until this year, was one based on a much lower
11 rate. Again, we were criticized by the Bureau of State
12 Audits for not looking at our benchmarks and upgrading
13 those, and so that's what the staff has done in trying to
14 comply with the State Auditor and her recommendations.

15 So it is a big jump. There's no doubt about
16 that. It is consistent with the approach that's been
17 taken throughout the State though, on these kind of decks,
18 where the Commission has been leasing them. And, you
19 know, certainly Braiden's comments about it's not -- you
20 can't build a house on there is absolutely right. There
21 are restrictions. He pointed out that the standard
22 covenants in the Commission's lease prohibit residential
23 use, meaning you can't sleep on it, and live on it, and do
24 all these things.

25 And I think the staff has maybe misused terms

1 that made people believe the rate we were charging was for
2 a residence. What we were charging was an upland value,
3 where residences are built, but your residence doesn't
4 take up every square foot of your property on the upland.
5 It takes up, you know, a portion of it.

6 So we look at those raw land values. The
7 comparables that the staff came up with were raw land
8 values, where there were no structures on the house -- on
9 the properties. And we took the low end of the values.
10 The values that were looked at were between 70 and about
11 120 dollars in that range, and we used a \$75 land value to
12 come up with the estimate of -- or the value based on 9
13 percent, and 9 percent is in the regulation. So that's
14 the rationale for it.

15 As was mentioned, however, there are some
16 restrictions on the use. You can't build a house on it.
17 You can't live on it, but there's also no restrictions on
18 anything -- the actual use out there. You can throw your
19 parties. You can be out there 24/7, if you want to. Not
20 much sun at night, but you could be out there and enjoying
21 it.

22 Again, I think Mr. Chadwick is right, that you
23 could put your lounge chair out on your deck and -- on
24 your dock, and that's certainly something that people
25 might want to do. But when you start going up with a

1 second level above your boat house or above your boat lift
2 and building another level of your private use on public
3 property, we see that as an increased value beyond the
4 water-dependent use. And so that's been the approach the
5 Commission has taken. But it's -- we take our direction
6 from you, and you get to vote, we don't. We just
7 recommend.

8 (Laughter.)

9 COMMISSIONER NEWSOM: I think we have someone
10 else that wishes to speak.

11 ACTING CHAIRPERSON GORDON: Yes, Mr. Marston,
12 would you like to address the Commission.

13 EXECUTIVE OFFICER FOSSUM: I think the other
14 speaker -- if I'm not mistaken, the other speaker has to
15 do with the buoys, not the rental rate.

16 And let me point out that the rental rate that
17 was recommended by Mr. Chadwick for this dock is less
18 than -- about \$420 dollars, roughly.

19 Buoys out at Lake Tahoe are \$370 a year. So the
20 increased rate that -- you know, yes, we would be going up
21 to \$2,950 more. Their recommendation was \$420 more. So
22 that's the range of difference, if you will. It's about
23 \$2,500 a year difference.

24 MR. CHADWICK: And we just applied the \$0.85,
25 which was applied to the other sun decks, approved earlier

1 this year. That's where we got our number from.

2 And if it would help, you know, we can go back
3 and work with staff to come up with a better -- to
4 mutually agreeable rate, I think, with direction from the
5 Commission itself. We'd be happy to do that.

6 ACTING CHAIRPERSON GORDON: Do we have a motion?

7 COMMISSIONER NEWSOM: Well, is there anyone --
8 just -- so no one else here to speak on this?

9 My first -- through the Chair. My first
10 instinct, as I was reading this -- you know, I mean,
11 maybe --

12 ACTING CHAIRPERSON GORDON: We do have one more.

13 Sir, would you identify yourself and please --

14 MR. VANDERBEEK: It's just a question.

15 COMMISSIONER NEWSOM: Come on up to the mic, sir.

16 EXECUTIVE OFFICER FOSSUM: This is Mr. Marston
17 who lives behind the Vanderbeeks, I believe.

18 MR. CHADWICK: This is Mr. Vanderbeek.

19 EXECUTIVE OFFICER FOSSUM: Oh, it is. I'm sorry.
20 He doesn't have a speaker's slip here.

21 MR. VANDERBEEK: You know, we've lived peaceably
22 at Tahoe for over 40 years, one side or the other. And
23 the fact that we're talking about this is stupid to me in
24 the first place, because that deck has been there like it
25 was for 40 some years, and with the railing on top.

1 You know, I can afford it, but can my kids and my
2 grandkids afford it?

3 It's like so many other things that are happening
4 in this State. Our State income tax is the highest in the
5 nation. Federal tax is high. And I've got to pay high
6 taxes on my cars, pay high taxes on my homeowners. I
7 think -- every dollar I make I think government somewhere
8 or other takes about 70 cents of it.

9 And maybe that's fair, but to me it's not fair
10 because I worked hard to earn that dollar. All my life
11 I've worked hard, and I've paid where it's due. And all
12 of a sudden to start making rules about something that's
13 been there for 40 years like it was, it just seems stupid
14 to me, and maybe that's because of government, I don't
15 know. This whole thing seems ridiculous to me.

16 ACTING CHAIRPERSON GORDON: I think we'll leave
17 that commentary as it is.

18 Mr. Marston, would you like to talk -- let's hear
19 about the buoys now before we go to a motion.

20 MR. CHADWICK: I'll be available for any
21 questions, if you have any.

22 MR. MARSTON: I'm Robert Marston, and I'm
23 representing myself and John and Linda Gage. They
24 couldn't make it here today.

25 Along with this application, we had applied

1 originally for 2 more buoys. And we worked with Mary Hays
2 here, and she's been a big help in helping me understand
3 how the system works and what the rules and regulations
4 are.

5 We originally applied for buoys with TRPA, and we
6 were rejected with the caveat that if the State Lands
7 Commission would allow us or if they saw clear to give us
8 a permit, then TRPA would probably do the same. And now
9 we stand here kind of doing the same thing with the State
10 Lands Commission saying if you can get something from TRPA
11 saying they agree, then we'll agree.

12 So I'm kind of caught in a Catch 22 here. I
13 guess the bottom line is listening to everything and
14 understanding the rules, the Army Corps of Engineers has
15 grandfather clauses that clearly would apply, I think, to
16 this and allow the buoys to remain, and circumventing
17 everything else that we're talking about.

18 I believe the State Lands Commission does not
19 have a written outline that explains a grandfathering
20 clause. Although, just now, it's been brought up that the
21 sun deck for the Vanderbeeks has been somewhat
22 grandfathered in. So obviously grandfathering is a part
23 of the process here, but it's not officially written.

24 So I've kind of got my back against the wall.
25 I've got 2 different agencies that are telling me we need

1 to get a response from either one. I can't go to TRPA,
2 because they won't accept any new applications now for I
3 don't know how long. I don't think anybody knows. So
4 we're stuck. And if the buoys are removed, it's going to
5 be very difficult probably to get them back.

6 So I'm asking that these things be grandfathered
7 in. If you need to adopt the Corps of Engineers
8 procedures on grandfathering, that would be a great thing.
9 And that's, in a nutshell, my consideration here. And
10 it's the way -- you know, we're all here to find a way to
11 do things that is legal, and this allows for the legality
12 of the buoys to remain, in my simple mind anyway. And if
13 you guys don't see fit, then I guess that's what it is,
14 but we've worked hard with Mary to try and figure this out
15 and the Vanderbeeks. And this kind of boils -- in my way
16 of thinking, it boils down to this grandfathering clause,
17 if we can extend that to these. These buoys have been
18 here for well over 60 years, way before TRPA was created.
19 And when you factor that in, it just seems unfair to take
20 them away.

21 That's my speech. Thank you very much.

22 ACTING CHAIRPERSON GORDON: Mr. Fossum.

23 ACTING COMMISSIONER REYES: Before Mr. Fossum,
24 sir, I have a question. Do you have anything in writing
25 from TRPA that says that they would give it to you if we

1 give it to you or this is just a verbal communication?

2 MR. MARSTON: I don't know. We've had several
3 different consultants help us on this. And I've got pages
4 and pages and pages of stuff from Dave Shelton - I don't
5 know if you're familiar with him - on through to other
6 legal counsel. And I don't know for sure if I have it in
7 writing or not, but I'd certainly enjoy the opportunity to
8 try and produce that.

9 ACTING COMMISSIONER REYES: Mr. Fossum, do we
10 have any -- my concern in not supporting your request last
11 time is that TRPA was not giving you that permission. But
12 if there is something there, Mr. Fossum, that says that
13 they're willing to provide for this provision if we're in
14 the same boat, I'm a little bit more willing to go that
15 route. But if, in fact, TRPA is a no we're not doing
16 anything, then I'm not going to be in a position to vote
17 for something where we don't have approval of the other
18 regulatory agency.

19 MR. MARSTON: In other words, documentation.

20 ACTING COMMISSIONER REYES: Right.

21 Mr. Fossum.

22 EXECUTIVE OFFICER FOSSUM: Commissioners, the
23 Corps of Engineers has grandfathered in buoys. They
24 existed back in the early seventies. TRPA, as well, has
25 done some of that, except -- and there's an exception to

1 that though, and that is if you're not a littoral property
2 owner. And so even though they would grandfather Mr.
3 Marston's buoys normally, if he was a waterfront property
4 owner, their own regulation prohibit that, and that's the
5 provision that prohibits us from making a recommendation
6 of approval.

7 We typically would approve this kind of thing and
8 recommend the Commission issue a lease for these, but when
9 TRPA's own regulations prohibit it, under these
10 circumstances -- now, maybe those should be changed.
11 That's not our purview.

12 The option we also gave him is that TRPA's
13 regulations do provide that if it's a homeowners
14 association, you can get an additional buoy. But
15 apparently between the Vanderbeeks, and the Marston's, and
16 Gages, they have not been able to come to a resolution on
17 that to create something that will give TRPA the authority
18 to issue a permit.

19 So unless TRPA changes their regulations or this
20 homeowners association is created, they just can't get a
21 permit. And for us to issue one that's inconsistent with
22 theirs rules seems to be bad government, frankly.

23 ACTING CHAIRPERSON GORDON: So we've essentially
24 got 2 different issues before us. We have the issue of --

25 EXECUTIVE OFFICER FOSSUM: We can't hear you.

1 Your microphone.

2 ACTING CHAIRPERSON GORDON: We've got 2 issues
3 before us. We've got the issue of the buoys, and then
4 we've got the issue of the rent. Let's start with the
5 buoys. Do I have a motion with regard to the buoys or do
6 we want to take an action on the buoys.

7 Let me somewhat summarize. If we take no action,
8 Mr. Marston, as he describes it, and I think accurately, a
9 Catch 22, where TRPA says they're not going to do anything
10 unless we do something. And if we don't do anything, he's
11 essentially -- the buoys are going to have to be removed.

12 ACTING COMMISSIONER REYES: Okay. I just want
13 clarification. If that is the case, if TRPA is waiting
14 for us to do something for them to do something, I view
15 that differently than TRPA regulations clearly prohibiting
16 them from doing anything.

17 So if TRPA regulations clearly prohibit, it
18 doesn't matter what we do. If TRPA regulations allow for
19 us to do something -- if we -- you know, if both agencies
20 agree, that his proposal can move forward, then I would
21 like to signal to TRPA that we are open for business, and
22 that they can move forward and we would move forward with
23 it.

24 But if the regulations clearly prohibit, then
25 it's pointless.

1 ACTING CHAIRPERSON GORDON: Mr. Marston, let me
2 propose an alternate solution maybe. Right now, we have
3 nothing in front of us that delineates clearly what TRPA's
4 position is. If we were to put this over and send you
5 back to TRPA to just get something in writing that tells
6 us specifically what their perspective is on their
7 regulations, and if they would grandfather this, if we
8 were to allow it, would that be acceptable to you?

9 ACTING COMMISSIONER REYES: Mr. Chair, with your
10 permission, I'd like to go a step further. I'd like him
11 to have something in writing from us, if that is the case,
12 so that he can -- we can signal to TRPA that we're open
13 if, in fact, they're open. Otherwise, TRPA is going to be
14 doing to him what we're doing to him now. So this way he
15 has something from us that says, yeah, the State Lands
16 Commission is willing to look at this and approve this
17 under the conditions that we normally do, if TRPA does the
18 agreement.

19 MR. MARSTON: That would be great.

20 COMMISSIONER NEWSOM: Curtis, I saw you caucusing
21 there. I imagine you have something to add.

22 EXECUTIVE OFFICER FOSSUM: Yes. Commissioners,
23 what we have before you the last meeting, and at this one
24 as well, is allowing the Gages, Schachts, and Marstons
25 till November 24th to get approval from TRPA, or to get

1 their home owners association, so that they would qualify
2 for a -- I believe, it's only one buoy.

3 And so that's still on the agenda give them till
4 November 24th. That's still the staff's recommendation to
5 give them till that date.

6 Staff certainly can send a letter to TRPA saying
7 we're trying to comply with your rules. If you you'd like
8 to clarify them to us, we don't have an objection to this,
9 but we don't want to issue permits that are inconsistent
10 with your jurisdiction.

11 As far as the new regulations that were thrown
12 out by the court, they wouldn't have really had any impact
13 whatsoever on this. The same rules apply as far as
14 prohibiting under their old regulations, a non-littoral
15 property own, unless they're part of a homeowners
16 association.

17 So whatever your will is, but I just wanted to
18 point that out, that staff had recommended that they be
19 given until -- November 24th to try and get permission or
20 comply with TRPA's regulations.

21 ACTING CHAIRPERSON GORDON: Curtis, was that
22 November 24th date based on a calendar as to when we were
23 expecting to have our next meeting, because we've changed
24 our meetings a couple of times during the fall.

25 CHIEF COUNSEL LUCCHESI: Yeah, December 5th.

1 ACTING CHAIRPERSON GORDON: December 5th.

2 EXECUTIVE OFFICER FOSSUM: Do we know why it was
3 the 24th of?

4 Why did he set the 24th of November?

5 PUBLIC LAND MANAGER HAYS: We gave them 6 months.

6 EXECUTIVE OFFICER FOSSUM: Six months from when
7 this was first awarded. And so in 6 months they
8 haven't -- well, it's another month away yet, but --

9 ACTING CHAIRPERSON GORDON: I'm inclined to go
10 along with what Mr. Reyes just indicated, that if we would
11 send -- if staff would send a letter to TRPA that says we
12 are open to this if your regulations allow it. If the
13 other Commissioners would agree, I think that would be
14 where we would like to go. And, Mr. Marston, we will
15 provide you that letter shortly. And with that in hand,
16 you will be able to go to TRPA and get an answer from
17 them.

18 MR. MARSTON: That would be great. I'd really
19 appreciate you consideration and trying to figure this
20 out.

21 ACTING CHAIRPERSON GORDON: Excuse me. Mr.
22 Fossum, you have some --

23 EXECUTIVE OFFICER FOSSUM: And a response from
24 TRPA is that our regulations prohibit it?

25 ACTING COMMISSIONER REYES: Then that's the

1 decision.

2 ACTING CHAIRPERSON GORDON: Then we're done.

3 Then we're done. But we want to at last stop this Catch
4 22 of being run around from different government agencies.
5 He'll now have in writing from us that we're open to it if
6 TRPA has a way around their regs to do this.

7 MR. MARSTON: And you folks will send that to us?

8 EXECUTIVE OFFICER FOSSUM: Yes. Absolutely.

9 ACTING CHAIRPERSON GORDON: Staff what's a
10 reasonable timeframe to get that letter to him?

11 EXECUTIVE OFFICER FOSSUM: I don't know if we'll
12 have it out this afternoon, but we'll try.

13 ACTING CHAIRPERSON GORDON: That's a little long,
14 but we'll --

15 ACTING COMMISSIONER REYES: By early next week
16 for sure.

17 MR. MARSTON: Thank you very much.

18 ACTING CHAIRPERSON GORDON: All right. Now, we
19 are back to the issue of the rent. We have before us a
20 proposed -- a proposed rent identified by staff at \$4,564,
21 somewhere around there.

22 CHIEF COUNSEL LUCCHESI: 4,624.

23 ACTING CHAIRPERSON GORDON: \$4,624. Mr.
24 Vanderbeek's representative has counter offered with an
25 offer of a little bit over \$2,000. And those are, at this

1 point, the 2 options before us. A third option would be
2 to send it back to renegotiate.

3 Do we have a motion from the --

4 COMMISSIONER NEWSOM: Yeah. I don't know why, I
5 think in the spirit of flexibility we just showed, and in
6 the spirit of reconciling the frustration that Mr.
7 Vanderbeek expressed, which I hear from many folks, and
8 respecting the fact you're here again, and with respect to
9 your attorney spending a lot of money to work through this
10 process, which always concerns me, and at peril of you
11 spending even more to extend a negotiation, Mr. Chadwick -
12 I hope you're sensitive to that - you know, I would -- my
13 first instinct was to -- and it was, you know, not
14 literal, but can we split the difference.

15 And now I listen to I this and that's imprecise.
16 And I think the Chair expressed that, I think, quite
17 appropriately. Negotiating in this way is difficult, but
18 I appreciated the sentiment of the Chair to begin with.
19 And I conclude, having listened to this and thought
20 through this, that I'd like to see us go back and see if
21 we can get a more reasonable rent here.

22 It does seem, just on first blush, excessive.
23 But at the same time, I want to also just express, Mr.
24 Reyes' point, you know, and Mr. Fossum's, I mean, we've
25 been pushing you to be more aggressive. Audits,

1 appropriately, have stated we need to be more aggressive
2 to get Market value. We have changed the rules and
3 regulations, but we're in this very difficult position
4 with all these grandfathered leases. And there's always
5 some exception to every damn rule, and we seemingly
6 express that in June, because there's certain
7 circumstances here and there. So the whole thing is
8 messy.

9 And, you know, with that, I don't want to
10 continue to complicate it, but I just feel in this
11 circumstance, once again, we should address another
12 potential exception here, and see if you guys can come
13 back and get that mutually agreeable rent, and then we'll
14 step up our game, as it relates to the new year, and
15 really put our foot down that we've got to operate with
16 these new set of rules.

17 ACTING CHAIRPERSON GORDON: And I would associate
18 myself with the Lieutenant Governor's comments. Mr.
19 Reyes, did you want to still make your motion, or should
20 we --

21 EXECUTIVE OFFICER FOSSUM: If that's direction to
22 staff from 2 of the Commissioners, it wouldn't necessarily
23 take a --

24 ACTING COMMISSIONER REYES: Yeah, that's all it
25 takes. At this point, I wouldn't have a second, so

1 there's no sense --

2 ACTING CHAIRPERSON GORDON: I'm trying to show
3 equanimity here.

4 EXECUTIVE OFFICER FOSSUM: You're asking us to
5 bring this back in December with a new recommendation?

6 ACTING COMMISSIONER REYES: I just want to signal
7 that I was ready to move on this item, because I think,
8 you know, there's a cost of getting some fringe benefits
9 beyond -- above and beyond what the lease provides. And
10 it is what it is. The option is not to get that benefit,
11 and then it falls back into the regular tier, but I
12 respect the fact that there's 3 of us, and two-thirds.

13 ACTING CHAIRPERSON GORDON: Yeah. I think what
14 I -- just to be clear for staff, what -- at least from my
15 perspective, is that I would really like to not turn this
16 into individual exceptions. I'm trying to find a
17 standardized way of dealing with these, where it is
18 something less than upland use, and something more than
19 just a deck. And if there were a third category, that
20 would, I think, satisfy our -- where we're coming from.

21 EXECUTIVE OFFICER FOSSUM: And let me say, Mr.
22 Chair, that staff has done that in the past, and we
23 certainly, I think, have a sense of where the
24 Commissioners would like to go on this. And, in fact,
25 anticipating that, we've already been doing some thinking.

1 ACTING CHAIRPERSON GORDON: Excellent.

2 Mr. Chadwick, I think we're then going to put
3 this over without a motion. Hopefully, you will sit down
4 with staff shortly.

5 Well, actually let me put it a different way.
6 Let staff do a little work on this on -- I think I'm
7 hearing from my colleagues that they're also interested in
8 trying to develop a third formula. And let's get back to
9 you with that, and then we can have some negotiations
10 based on that, okay? Is that satisfactory?

11 MR. CHADWICK: That works. Thank you very much.

12 ACTING CHAIRPERSON GORDON: All right. Very
13 good. All right.

14 So we're going to put Item 29 over and we will
15 move on now to Item 98 having to do with the always
16 wonderful subject of marine invasive species in ballast
17 water.

18 Staff, please.

19 EXECUTIVE OFFICER FOSSUM: Yes. Actually, this
20 is the marine debris item dealing with the Tsunami from
21 Japan and the efforts --

22 ACTING CHAIRPERSON GORDON: Sorry 98, not 99.
23 It's Item 98 for the record.

24 EXECUTIVE OFFICER FOSSUM: And Holly Wyer of our
25 staff will be presenting this item. It's informational.

1 No voting.

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

4 MS. WYER: Good morning, Commissioners. My name
5 is Holly Wyer, and I'm a Sea Grant Fellow in the Division
6 of Environmental Planning and Management.

7 And I'm going to talk to you today a little bit
8 about tsunami debris. Tsunami debris is actually a new
9 aspect of the broader longstanding marine debris problem
10 we've been having in the Pacific Ocean.

11 And the Tohoku Tsunami was first and foremost a
12 human tragedy. Entire communities were destroyed by the
13 tsunami wave and the debris from tsunami reflects this
14 widescale damage. Fortunately, the debris is not
15 radioactive. It was far offshore when the Fukushima
16 nuclear emergency occurred. And since then, as large
17 items have washed up on our shores, they've been tested
18 for radiation and nothing has come up above background
19 levels.

20 COMMISSIONER NEWSOM: I'm just going to, through
21 the Chair, interject. Through our source here in
22 California or mostly Oregon and Alaska. They've been -- I
23 mean, we've actually had substantial debris here on the
24 California coast?

25 MS. WYER: No, not yet. Mostly Oregon,

1 Washington, and Alaska.

2 COMMISSIONER NEWSOM: Yeah, okay. I just wanted
3 to clarify.

4 MS. WYER: And actually, this vessel that is up
5 on the screen right now was the first item to turn up on
6 the west coast. And it turned up in northern British
7 Columbia, then moved its way to Alaska, where it was sunk
8 by the Coast Guard.

9 And the size of debris can range from vessels
10 like this to small pieces of plastic. The Japanese
11 government estimates that 1.5 million tons of debris from
12 the tsunami is floating on the ocean. And the large
13 visible concentrations of the debris that were visible
14 after the tsunami have broken up, so it's very hard to
15 track.

16 --o0o--

17 MS. WYER: So to track the debris, the National
18 Oceanic and Atmospheric Administration is running a model
19 once a month that forecasts, that -- sorry hindcasts where
20 the debris is right now, rather than telling you where it
21 will be in the future.

22 This was the most recent results of that. And as
23 you can see, the bulk of the debris is in that dotted area
24 above the islands of Hawaii. And then the full range of
25 where debris can be is included in the larger outline.

1 And as you can see, it does include the full west
2 coast of the continental United States.

3 --000--

4 MS. WYER: A very new report just came out of
5 Washington State Sea Grant predicting where debris would
6 end up going. And what was very interesting was that they
7 estimate that 75 percent of the debris will not actually
8 make landfall. It will remain stuck in the Pacific gyre,
9 which is in between that circular set of currents in the
10 middle of the Pacific. Of the debris that does make
11 landfall, 50 percent of it is estimated to land in Alaska.

12 --000--

13 MS. WYER: The Japanese government estimates that
14 90 percent of the floating debris is composed of parts of
15 collapsed houses and driftwood and other sorts of building
16 materials. In addition to building materials, plastic is
17 another very common debris item. It's also a part of that
18 broader marine debris problem. It's very chemically
19 stable and doesn't breakdown in the ocean well. It will
20 break into smaller and smaller physical pieces as a result
21 of sunlight exposure, but it doesn't ever chemically
22 degrade.

23 Plastics are often made with a number of filler
24 chemicals associated with them, like BPA. And when
25 they're released into the ocean, BPA ends up being

1 released from the plastic and going into the marine
2 environment.

3 In addition, because plastics are made of oil,
4 they can also accumulate oil soluble pollutants, like DDT.
5 And that's an emerging area of research of how plastic is
6 accumulating oil soluble pollutants and transporting them
7 around the environment.

8 In addition to plastics, some hazards are
9 associated with tsunami debris. I'd say the most common
10 issue is large items posing navigational hazards. And the
11 U.S. Coast Guard is handling offshore items that are
12 deemed to be navigational hazards. They respond on a case
13 by case basis after consulting with appropriate agencies
14 to determine what they'll do.

15 In addition to this, because the Tsunami washed
16 out entire towns, there's a potential for medical hazard
17 waste, industrial hazardous waste, to potentially wash up
18 on our shores. There's no estimate for how much of this
19 is out there, but it's likely to be a minority.

20 --o0o--

21 MS. WYER: Finally, the tsunami washed out a
22 number of items associated with marine infrastructure and
23 activities, including fixed fishing nets, ships, cargo
24 containers, and docks. Derelict fishing gear, regardless
25 of its origin, is very destructive to marine life. And it

1 can potentially be a hazards to swimmers and divers if it
2 ends up in an are where it's accessible.

3 Marine species often become entangled and trapped
4 in gear and they die because they can't continue their
5 vital life functions. And then as they're in this net,
6 they look like easy prey for something else, which comes
7 along and tries to eat it and then gets tangled up as
8 well.

9 --000--

10 MS. WYER: These larger items of marine origin
11 from Japan have brought forth an interesting problem we
12 didn't necessarily foresee. In early June, a dock that
13 was ripped out of a fishing port in Misawa, Japan appeared
14 on Agate Beach in Oregon, which you can see here.

15 And what made this dock really surprising was
16 that there were 2 tons of living fouling organisms that
17 were able to reproduce and maintain a biological community
18 living on it.

19 For debris of marine origins, such as docks,
20 buoys, and vessels, marine invasive species are of
21 concern. Because these items are sitting in coastal
22 waters in Japan, they have species that are likely to do
23 very well and become invasive in coastal waters of
24 California.

25 This dock specifically carried a number of

1 species that are already invasive in San Francisco Bay,
2 and also carried species that are not found on the west
3 coast yet, but are known to be invasive and problematic
4 elsewhere.

5 --o0o--

6 MS. WYER: The species we're most concerned about
7 that were found on this dock are the Northern Pacific
8 Seastar and the Asian Shore Crab. Both of these species
9 are currently invasive on the east coast of the United
10 States and are on a number of watch lists on the west
11 coast.

12 --o0o--

13 MS. WYER: Commission staff is participating in a
14 number of activities related to tsunami debris. We are
15 participating in the Marine Debris Steering Committee at
16 the invitation of the Ocean Protection Council. There's a
17 large number of agencies participating, but I'm only going
18 to cover the actions of a couple of them here.

19 The California Emergency Management Agency is
20 taking the lead on tsunami debris response here. The
21 short-term goal of the steering committee is to support
22 CalEMA in its work. And the CalEMA has a draft Concept of
23 Operations document that's currently in the Governor's
24 office for review.

25 The way this document, from what I understand,

1 how it's structured is that the landowner is responsible
2 for the clean up of debris on their land.

3 And good news, the Japanese government has
4 mentioned that they will be providing the U.S. with 6
5 million in funding for debris removal to be distributed
6 among affected states. And this could become funding for
7 future clean-ups.

8 In addition to CalEMA, the Coastal Commission is
9 expanding its adopt-a-beach program to have volunteers
10 handle increases in non-hazardous debris, like plastics
11 that we'll be seeing on the coastline.

12 --o0o--

13 MS. WYER: So in addition to the steering
14 committee, staff is also participating in the NOAA marine
15 debris program's update calls. This provides us with a
16 big picture on Tsunami debris, including those modeling
17 results of where the debris field is right now, most
18 recent shoreline and offshore sightings, and what the
19 governments are doing about new debris.

20 --o0o--

21 MS. WYER: Finally, the NOAA marine debris
22 program felt that it was necessary to bring a group of
23 experts together to deal with the marine invasive species
24 problem associated with marine debris. Your marine
25 invasive species program staff has been participating in

1 this group of experts to develop west coast-wide protocols
2 and standards for handling invasive species on tsunami
3 debris.

4 As part of these protocols, they are also
5 participating in the Japanese Tsunami Marine Debris
6 Taxonomic Assessment Team, which is meant to be a group
7 that provides rapid response to sightings of debris with
8 fouling, and they look at images of these debris items and
9 determine whether or not fouling species are of concern.

10 --o0o--

11 MS. WYER: Thank you for your time.

12 EXECUTIVE OFFICER FOSSUM: Thank, you Holly.

13 ACTING CHAIRPERSON GORDON: Mr. Reyes.

14 ACTING COMMISSIONER REYES: I have one question.
15 Has any of the debris that's come over been radioactive or
16 are we not seeing that yet?

17 MS. WYER: Nothing has been radioactive.

18 ACTING COMMISSIONER REYES: Thank you.

19 EXECUTIVE OFFICER FOSSUM: I think the reasoning
20 for that is that the -- actually, the tsunami took place
21 several days before any leakage was taking place in
22 Daiichi, so that's the good news, if there is any.

23 ACTING COMMISSIONER REYES: Yeah, I just wondered
24 if some of the subsequent stuff that, you know, was still
25 out there for awhile.

1 EXECUTIVE OFFICER FOSSUM: I don't believe.

2 ACTING COMMISSIONER REYES: Okay. Thank you.

3 EXECUTIVE OFFICER FOSSUM: Unfortunately not.

4 COMMISSIONER NEWSOM: I compliment you and the
5 coordination with other agencies. And I appreciate staff
6 stepping up individually and volunteering and thank you
7 for the presentation as well as the written presentation
8 you provided us. Congrats.

9 ACTING CHAIRPERSON GORDON: We're going to move
10 on to Item 99, which is to consider approval of a report
11 to the Legislature assessing ballast water treatment
12 systems for use in California waters.

13 Staff, please.

14 (Thereupon an overhead presentation was
15 presented as follows.)

16 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Good
17 morning, Mr. Chair, and Commissioners. My name is Nicole
18 Dobroski, and I'm the Commission's Marine Invasive Species
19 Program Manager.

20 Today, I submit for your approval staff's report
21 reviewing the efficacy, availability, and environmental
22 impacts of ballast water treatment systems for use in
23 California.

24 --000--

25 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Over 250

1 species of non-indigenous -- 250 non-indigenous species,
2 or NIS, are established in California coastal waterways.
3 San Francisco Bay is one of the most heavily invaded water
4 bodies in the world. And recent research by the
5 Smithsonian Environmental Research Center in conjunction
6 with our Marine Invasive Species Program colleagues at the
7 Department of Fish and Game Oil -- Office of Spill
8 Prevention and Response has demonstrated that California
9 is a gateway for species introductions to the entire west
10 coast of North America.

11 Seventy-nine percent of all coastal
12 non-indigenous species from California through Alaska were
13 first detected in California before they then spread along
14 the coast.

15 Non-indigenous species have significant impacts
16 on the ecology of coastal waters, human health, and the
17 economy. California has the second largest ocean-based
18 economy in the United States and California is first in
19 ocean-based employment opportunities.

20 The coastal tourism and recreational boating
21 industries accounted for more than 15 billion of
22 California's gross State product in 2009. Non-indigenous
23 species pose a threat to these and other components of
24 California's ocean-based economy, including fish
25 hatcheries and aquaculture, recreational and commercial

1 fisheries and marine transportation.

2 Shipping is the main vector of species
3 introductions to California coastal habitats. Up to 81
4 percent of all established non-indigenous species in
5 California are the result of shipping activities,
6 including the discharge of ballast water and the
7 biofouling on vessel hulls and wetted surfaces.

8 --o0o--

9 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: In
10 recognition of the threat posed to California waters by
11 non-indigenous species, the California Legislature passed
12 several key pieces of legislation in 1999 and 2003 that
13 established and enhanced the marine invasive species
14 program. The governing statute was later amended by the
15 Coastal Ecosystems Protection Act of 2006.

16 Among its provisions, the Act established
17 California's performance standards for the discharge of
18 ballast water. These standards are being implemented via
19 regulations, but it is important to note that the
20 standards and the associated implementation schedule are
21 set in statute and must be implemented by Commission
22 staff.

23 --o0o--

24 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: The
25 Coastal Ecosystems Protection Act also requires the

1 Commission to regularly prepare reports for the
2 Legislature assessing the efficacy availability and
3 environmental impacts of ballast water treatment systems
4 for use in California waters. These reports are due 18
5 months prior to each of the implementation dates for the
6 performance standards.

7 The report presented today is a status update and
8 addresses the availability of treatment systems for
9 existing vessels, so those are those that were built
10 before January 1 of 2010, with a ballast water capacity
11 between 1,500 and 5,000 metric tons. And just as you can
12 see from the pie chart there, vessels in this size class
13 encompass 8 percent of all vessels that have called on
14 California ports since the beginning of the program in
15 2000. So it's a small percentage.

16 --o0o--

17 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Vessels
18 have several options for complying with California's
19 performance standards for the discharge of ballast water.
20 Approximately 85 percent of all vessel arrivals to
21 California retain all ballast water on board the vessel.
22 This is the most protective management strategy available,
23 and these vessels are compliant with California standards.

24 Vessels may also discharge ballast to a
25 shore-based or barge-mounted ballast water treatment

1 facility. Although, currently, no such facilities exist
2 in California.

3 In most cases, potable water used as a ballast
4 water -- used as ballast water and sourced from U.S. or
5 Canada would also comply with California standards.
6 Finally, vessel owners and operators may choose to install
7 a ship-board ballast water treatment system in order to
8 meet California's standards.

9 --000--

10 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI:

11 Commission staff has assessed performance and
12 availability of ballast water treatment technologies to
13 meet California's performance standards in reports to the
14 California Legislature since 2007. In only 5 years since
15 that first report, we have seen a large increase in the
16 number of treatment systems available for review by
17 Commission staff, from 28 systems in 2007 to 63 in 2012.

18 We have seen a similar increase in the number of
19 systems that have received type approval according to the
20 International Maritime Organization Guidelines from 1 in
21 2007 to 22 today.

22 Few treatment system manufacturers had heard of
23 the California State Lands Commission in 2007, and today
24 we are frequently approached by technology developers
25 wishing to work with us to review their available data,

1 and assess system testing plans to determine likely
2 compliance with California standards.

3 California's standards and the Commission's
4 program to implement those standards are impacting the
5 development of treatment systems worldwide, and ship
6 owners are taking note.

7 For example, Carnival Corporation began an
8 intensive assessment of over 30 ballast water treatment
9 systems 3 years ago to meet California's standards. They
10 are down to a short list of 3 systems and all of those
11 systems are on California's list of -- that have
12 demonstrated the ability to meet the standards.

13 --000--

14 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: The 2012
15 Ballast Water Technology Assessment Report before you saw
16 continued improvement in the quantity and quality of
17 available data. Importantly, almost all system
18 performance data that were received for this report came
19 from the third-party testing sources.

20 Commission staff continues to review data
21 collected from both land-based and ship-board testing of
22 current technologies. As stated on the first page of the
23 report, no system yet meets California's standards in 100
24 percent of land-based testing.

25 Treatment systems are tested multiple times

1 though across the land-based and ship-board regime, and 12
2 systems have demonstrated the ability to meet California's
3 standards in at least 1 test.

4 Six of those systems have demonstrated --

5 ACTING COMMISSIONER REYES: May I interrupt for a
6 second.

7 ACTING CHAIRPERSON GORDON: Stop, please.

8 ACTING COMMISSIONER REYES: So I'm trying to, in
9 my mind, grasp this. On the cover page you say there are
10 no systems, and then here we say 12 systems demonstrate
11 ability to meet California standards in at least 1 system.
12 Can you kind of do a bridge for me and what am I missing?

13 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Sure.

14 So there's 2 main testing regimes. There's one,
15 there's land based, so large storage units, the entire
16 system is test on land with a laboratory. There's also
17 ship-board meeting, where the system is actually either
18 installed into the vessel or you put it in like a
19 container and put on board the vessel. So those are 2 of
20 the testing regimes.

21 The land-based testing is much more rigorous.
22 There's requirements for a soup of -- testing soup so that
23 has to go through all of the treatment systems. That's
24 soup is unlike any natural waterways that would be seen in
25 the entire world. They're trying to push it to the limits

1 of sediment load, temperature, salinity, organism. So
2 it's really -- it's the most rigorous testing out there,
3 and none of these systems have complied 100 percent of the
4 time.

5 These systems are tested multiple times in
6 land-base test, oftentimes 12 to 15 different tests. So
7 while no one has complied a hundred of the time. Many of
8 the systems have at least complied for 1 test. We have 6
9 systems that have complied for 50 percent of those tests,
10 and we have -- and for ship-board testing we have 3
11 systems that have complied for 100 percent of tests. So
12 there's a range of differing testing approaches.

13 ACTING COMMISSIONER REYES: All right. Thank
14 you.

15 CHIEF COUNSEL LUCCHESI: And, Nicole, the
16 ship-board tests are more reflective of real life.

17 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Correct.
18 So the ship-board tests are -- it is a system being put on
19 a ship in normal operation. So, you know, the normal
20 rigors of going out to sea and coming back. So Commission
21 staff has put higher reliance on those ship-board tests
22 because they're more indicative of real world situations.

23 ACTING CHAIRPERSON GORDON: I'm getting confused
24 here.

25 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Yes, Mr.

1 Gordon.

2 ACTING CHAIRPERSON GORDON: So if you have 3
3 systems that can meet the tests a hundred percent of the
4 time, what does U.S. EPA mean when they say that these are
5 not statistically verifiable.

6 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Could I
7 ask in what documented they stated that?

8 ACTING CHAIRPERSON GORDON: The U.S. EPA report
9 says based on the know detectable limits standard that you
10 can't test. That there's -- they're not statistically
11 viable tests. So, I guess, I'm getting confused of if it
12 meets the tests 100 percent of the time, why does U.S.
13 EPA seem to think this can't be done?

14 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: There's
15 different standards for that. You're talking -- referring
16 to the greater than 50 organism size class, so these are
17 the largest of the animals that we see in the ballast
18 water discharge.

19 The no detectable living organism standard
20 indicates that you need to set methods for determining if
21 there are organisms in there. So I want to be clear that
22 it's not a 0 organism standard. It doesn't mean that
23 there's nothing alive in there. It means that we have set
24 specific methods. When we use those methods, if we can't
25 find anything, then we determine that there's no

1 detectable living organisms.

2 Depending on that method of detection, there are
3 different statistics involved with the amount of water
4 that is sampled. The compliance protocols that we have
5 brought to the Commission before -- I believe we
6 brought -- the proposed protocols we brought them in May,
7 I believe. Those would set specific methods for detection
8 of these organisms and we would be able to run statistics
9 on that. So if EPA has been commenting on it, it's from
10 previous reports or previous data prior to the development
11 of these compliance protocols.

12 ACTING CHAIRPERSON GORDON: Okay. Proceed.

13 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: So, as I
14 said, 3 systems had demonstrated in 100 percent of
15 ship-board tests. And, as I mentioned, given that
16 treatment systems must perform on vessels while underway,
17 Commission staff has placed greater weight on ship-board
18 testing and demonstrating the ability to meet California
19 standards.

20 --o0o--

21 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: We do
22 want to -- it's encouraging to see the continued
23 improvement in the performance of treatment systems, but
24 we do want to point out that there are challenges in the
25 analysis of some data, particularly for the 10 to 50

1 micron class size. So this is kind of the next size down
2 from those biggest plankton organisms.

3 At this time, available measurement techniques
4 are not sensitive enough to verify compliance to
5 California's standard of 0.01 organisms per milliliter.
6 The existing data suggests compliance, but we cannot
7 confirm or deny at this point. However, our inability to
8 verify treatment system performance to a particular level
9 based on available measurement techniques should not be
10 confused with the system's inability to meet that
11 standard.

12 So the measurement and the ability to do it
13 are -- they're linked, but they're certainly not the same
14 thing.

15 Additional data will be necessary to confirm
16 which systems can and cannot meet standards in this
17 organism size class.

18 So California has proposed ballast water
19 compliance protocol regulations, which I mentioned you
20 seen a first draft of in May, which will provide staff
21 with a mechanism to fill these information gaps and
22 collect additional data on the ability of treatment
23 systems to meet the 10 to 50 standard, as well as the rest
24 California's standards across a wide range of operational
25 and environmental conditions.

1 The protocols will include specific methods of
2 analysis for each organisms size class. They'll included
3 grandfathering provisions, as necessary, and will also
4 include a Commission-directed provision to delay
5 enforcement beyond the IMO U.S. Coast Guard standards for
6 all but the E. coli and enterococci standards for 2 years.

7 During this time, staff will collect data and put
8 together recommendations for the Commission prior to the
9 next technology assessment report, which is due in
10 mid-2014.

11 Commission staff will bring these proposed
12 protocols to the Commission for approval once the
13 peer-review process and rule-making process are completed.

14 --o0o--

15 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: So in
16 conclusion, this report is just one in a series of status
17 updates that we have presented to the Legislature over the
18 past 5 years, assessing currently available ballast water
19 treatment technologies.

20 After review of the available data and recent
21 improvements in system performance and in recognition of
22 plans by Commission staff to adopt compliance verification
23 protocols, including a Commission directed 2-year abeyance
24 on enforcement beyond IMO U.S. Coast Guard levels, the
25 report recommends that the Legislature continue to support

1 the Commission's implementation of the California
2 performance standards for the discharge of ballast water.
3 And staff requests that the Commission consider approval
4 of this report and direct us to submit to the Legislature.

5 Thank you.

6 ACTING CHAIRPERSON GORDON: Questions?

7 What I would like to do then is go forward with
8 supporters of adoption of the report in its existing form,
9 please come forward.

10 I've got a list of speakers.

11 EXECUTIVE OFFICER FOSSUM: Yes, Mr. Chair. We
12 have 2 people who've identified they'd like to speak in
13 support, I believe.

14 Karen McDowell and Abigail Blodgett.

15 ACTING CHAIRPERSON GORDON: Ms. McDowell, can you
16 please identify what organization you're representing?

17 MS. BLODGETT: I'm actually -- I'm Abigail
18 Blodgett.

19 ACTING CHAIRPERSON GORDON: Oh, you're Abigail
20 Blodgett. Okay.

21 MS. BLODGETT: I hope it's okay that I came up
22 first.

23 ACTING CHAIRPERSON GORDON: Let's start with Ms.
24 Blodgett.

25 MS. BLODGETT: All right. Good morning. I'm

1 here on behalf of San Francisco Baykeeper to express our
2 support of the Commission's 2012 assessment of ballast
3 water treatment systems, along with our -- the State
4 management program for aquatic invasive species, as a
5 whole.

6 Baykeeper is a nonprofit organization with 2,300
7 members that aims to protect and enhance the water quality
8 of the San Francisco Bay, and its surrounding ecosystems.

9 Over the past decade, we have been the tireless
10 advocate for the regulation of ballast water discharges
11 under both State and federal law. In 2008, Baykeeper and
12 other plaintiff environmental groups won a lengthy battle
13 when the Ninth Circuit Court of Appeals agreed that
14 ballast water discharges must be regulated under the Clean
15 Water Act

16 It is widely known that the introduction of
17 non-native aquatic species into local waters has massive
18 environmental and economic impacts. These organisms
19 destroy local habitats by preying on native organisms,
20 competing with natives for food and space, and introducing
21 deadly pathogens and parasites.

22 Many California waterways already listed as
23 impaired under Section 303(d) of the California -- of the
24 Clean Water Act, including every single segment of the San
25 Francisco Bay and the Delta.

1 These organisms also cause massive economic
2 impacts by clogging pipes at drinking water, wastewater,
3 and power plant facilities.

4 So considering these series and widespread
5 environmental and economic consequences, I believe that
6 it's essentially that the State Lands Commission continues
7 to move forward with implementing it's legislative
8 mandated aquatic invasive species program as quickly as
9 possible, develops a program that effectively reduces the
10 presence of aquatic invasive species in California waters.

11 The technology report before the Commission today
12 clearly shows that ballast water treatment technologies
13 are greatly improving each year, and there are additional
14 options for meeting the California standards that have not
15 been fully explored, such as land-based treatment
16 facilities.

17 The report also states that the Commission
18 intends to continue gathering meaningful data on the
19 effectiveness of treatment technologies, which will not be
20 possible if there's no incentive for vessels to install
21 these systems due to a delayed implementation or weakening
22 of the California standards.

23 Putting this debate over the effectiveness of
24 treatment technologies aside, I'd like to point out that
25 the State ballast water standards are based on the level

1 of regulation needed to improve the quality of
2 California's waters, rather than what technologies are
3 actually available at the time.

4 The Commission should look to the federal Clean
5 Water Act as a model for its invasive species program,
6 underwhich water quality objectives are routinely set at
7 levels consistent with environmental health.

8 Any technological challenges associated with
9 meeting these standards must be dealt with at the vessel
10 compliance stage, but should not be confused with or
11 displace the standards themselves.

12 Also, the proposed ballast water regulations that
13 the Commission will be considering at a future meeting
14 would include several protections that give the shipping
15 industry and the Commission plenty of time to determine
16 which technologies can be used to effectively meet the
17 California standards, like the proposed 2-year limited
18 enforcement provision, and the 10-year grandfathering
19 scheme for vessels that have already installed on-board
20 treatment systems.

21 For all these reasons, the Commission's decision
22 to adopt the technology report would be a reasonable and
23 necessary step towards continuing to address the complex
24 and significant problem of aquatic invasive species in
25 California waters.

1 Thank you very much for your time.

2 ACTING CHAIRPERSON GORDON: Ms. McDowell.

3 DR. McDOWELL: Hello. I'm Karen McDowell from
4 the San Francisco Estuary Partnership, which is part of
5 the National Estuary Program. I have a Ph.D. in Marine
6 Ecology and I'm an environmental planner.

7 I've been working on ballast water issues since
8 1999, and from '99 to 2003 my sole job was to work on
9 ballast water and the development of systems and find out
10 what was going on.

11 I'm currently on a series of federal, regional,
12 and aquatic invasive species panels. And as you know, San
13 Francisco estuary is one of the most invaded systems in
14 the world. And it's important that we move forward with
15 the ballast water treatment and ballast water management
16 program and treatment systems.

17 And I just want to impress that even though the
18 California standard is below the current detection limits
19 in a few size classes, it's standard practice in water
20 quality to set compliance protocols based on current
21 detection limits.

22 And as Nicole mentioned earlier, they do have the
23 draft verification protocols that were presented, at least
24 once, to this Committee, and those verification protocols
25 would be used to test verification to the standards.

1 The California standard has been in place for
2 many years, and it is more stringent than the IMO level.
3 And this is critical, because the international community
4 is using this as a target, and it's critical that they
5 have this lower target, that's the target that's
6 protective for the environment.

7 If that target is made less stringent, there will
8 be no incentive for further development of treatment
9 systems, and they'll just stop at the current IMO level.
10 So it's critical that we maintain the target that's going
11 to be protective of the environment.

12 The report does show that these systems do have
13 potential to meet the standard. And I've been doing this
14 for a long time. The testing for ballast water treatment
15 systems is a little bit slow. It is expensive. It's not
16 the same as being in a laboratory and being able to test
17 hundreds and hundreds of times in a period of weeks. It
18 just takes longer. But things are moving closer. We're
19 getting close.

20 And I think this next phase of vessels that's
21 coming in is a small percentage of the fleet. And the
22 most practical approach to move forward is to move forward
23 with the current schedule and test the systems with the
24 verification protocols. And that will give us data for 2
25 years, so you can enforce to the IMO level, and then

1 you'll collect this data for 2 years, and be able to
2 answer everyone's questions of whether the systems can
3 meet the California standard or not.

4 So we support this approach to move forward and
5 accept the report.

6 Thank you.

7 ACTING CHAIRPERSON GORDON: Thank you.

8 Mr. Holmes.

9 Is Marc Holmes in the audience, Bay Institute?

10 And can Mr. Cohen please be ready to testify
11 after Mr. Holmes.

12 MR. HOLMES: Thank you, Mr. Chairman. I'm not
13 here to speak in support of the report.

14 Are we on the next list?

15 ACTING CHAIRPERSON GORDON: (Nods head.)

16 MR. HOLMES: Okay. My name is Marc Holmes. I'm
17 the Program Director of The Bay Institute, a nonprofit
18 environmental organization established in 1981. I'm a
19 former member of the CalFed Bay-Delta Authority from 2003
20 through 2009, and I was and advisory panel member
21 appointed at the invitation of the State Lands Commission
22 that culminated in the recommendation of the standards
23 that were adopted in the legislation in 2006.

24 I'm here today to express a concern about the
25 report, and specifically related to Commissioner Reyes'

1 question about what actually is a testing protocol that
2 actually tells us whether these on-board facilities are
3 meeting our standards or not.

4 And I'd like to clarify that our read of the
5 report is that the land-based assessments give you the
6 more accurate evaluation of whether ship-board facilities
7 are treating these invasive species adequately or not.
8 And the answer clearly is that they are not.

9 I'd like to give you some background on our
10 decision at the time to essentially recommend that State
11 Lands Commission staff go forward with investigating
12 primarily exclusively really ship-board treatment methods,
13 in order to do this.

14 There was very little known at the time about
15 ship-board treatment methods. We hope that, in fact, what
16 has happened would happen at that time, that it -- the
17 recommendation would spur private innovation in the
18 development of these ship-board technologies. And we were
19 informed that we were pretty close to actually having
20 ship-board treatment technologies that were effective.

21 It's 6 years later, and what we now know is that
22 no ship-board treatment technology can meet the standards.
23 We had investigated, at that time, and considered the
24 question of land-based treatment technologies, because we
25 knew that land-based treatment technologies could

1 effectively treat all the invasive species and organisms.

2 The challenge was getting the ballast water to
3 land-based treatment facilities. We were informed at the
4 time and concluded that there were logistical problems
5 associated with that, that were, if not, insurmountable,
6 that didn't exist in the ship-board treatment. And so we
7 opted to recommend, given the representations that
8 ship-board technology was just about there.

9 At this point, it seems that we -- it would be
10 prudent to expand the investigation to include land-based
11 treatment technologies, that this may or may not be a
12 promising course of action to continue to investigate
13 exclusively ship-board technologies.

14 So I'm suggesting that the report should be
15 amended, and that the recommendation from the Land's
16 Commission to the Legislature should be to expand the
17 investigation, because it has been sufficient -- we've had
18 sufficient time to consider whether these treatment
19 technologies should board will be effective.

20 They will not, in the near term, and we should
21 expand the consideration for land-board facilities as
22 well.

23 Thank you very much for your time.

24 ACTING CHAIRPERSON GORDON: Mr. Holmes, have you
25 given any thought to -- let's -- I'm going to jump a

1 little bit. Assuming that the land-based systems were to
2 work, have you given any thought to how many ports these
3 would have to be installed at and what the cost would be,
4 and also who might pay that cost, being as last time I
5 checked, the general fund is broke?

6 MR. HOLMES: Those were exactly the questions
7 that we considered at the time, and one of the reasons.
8 Not because we know what the cost would be or how many
9 ports, but just because we were informed that ship-board
10 technologies were more promising.

11 Well, let's save the time and energy, et cetera.
12 And actually, I had hope that by this time that we would
13 have several systems ship board. But those are the
14 questions that we think it's time to ask and instruct the
15 staff to investigate. Now, I don't think anybody has the
16 answers to those questions, and so I would recommend that
17 you not rush to presume that they are insurmountable.

18 ACTING CHAIRPERSON GORDON: Okay. Thank you very
19 much. We appreciate your testimony.

20 EXECUTIVE OFFICER FOSSUM: Mr. Chair, if I
21 could --

22 ACTING CHAIRPERSON GORDON: Hold it. We have a
23 question from --

24 ACTING COMMISSIONER REYES: No, Curtis.

25 ACTING CHAIRPERSON GORDON: Oh, Curtis, you have

1 a --

2 EXECUTIVE OFFICER FOSSUM: I think Mr. Holmes'
3 comments are very well taken. And that I think it's
4 almost a given that having on-land-board or either barge
5 or land-based treatment systems for ballast water would be
6 preferable. And I think we've always believed that we
7 were told by industry really was that they didn't think it
8 watt practical, because they would be traveling all over
9 the world to different ports. And if you put a treatment
10 system on your vessel, then you could go to all those
11 ports.

12 Whereas, if California had a system of --
13 treatment systems here, then vessels would still be
14 required to put their treatment systems on their end, and
15 they would -- it would kind of be a doubling down, but I
16 think we would agree that if it was practical, that that
17 would certainly be preferable.

18 If the Commission wants the staff to start
19 investigating the costs associated with that or the
20 practicality of that, and include that in the next report,
21 I think that would be something that would be worth
22 investigating.

23 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Mr.
24 Chairman, if I may.

25 ACTING CHAIRPERSON GORDON: Yes, ma'am.

1 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: The
2 Public Resources Code established standards. Vessels may
3 meet those standards in whatever form they choose, whether
4 that be ship-board or land-based treatment.

5 Additionally, we are required to review available
6 treatment technologies. It does not specify -- the PRC
7 does not specify ship-board versus any other type. At
8 this time, there are no currently available shore-side
9 ballast water treatment facilities to review. There are
10 water treatment facilities, and many of those methods may
11 be applied to ballast water treatment, but none -- there
12 are no facilities, at this time, that are land based for
13 us to review to then provide information to you.

14 ACTING CHAIRPERSON GORDON: No facilities or no
15 systems?

16 I mean, we understand that there aren't any
17 facilities, because we haven't gone that route yet, but
18 strike -- maybe I'm splitting hairs is there. Is there a
19 difference between facilities systems that could be
20 installed onshore?

21 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: I would
22 argue that at the land-based level right now, there are no
23 systems or facilities. There are methods of approach, but
24 I could say that I could pour -- part of this, I can pour
25 Tabasco in a ballast water treatment tank, and that would

1 kill everything. Now, that's a method that's available to
2 me, but really it's not an available system.

3 ACTING CHAIRPERSON GORDON: Got it.

4 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: We
5 encourage port operators to develop shore-side ballast
6 water treatment facilities. We encourage scientists to
7 work with them. We do have research funds available each
8 and every year to support methods that may address ballast
9 water treatment systems, and we would be more than happy
10 to entertain proposals to address shore-side treatment.

11 So we're working in that direction. Just -- we
12 did not review them for this report, because they are not
13 currently available.

14 ACTING CHAIRPERSON GORDON: Okay. Mr. Cohen, I
15 think he can speak to the same --

16 Mr. Reyes.

17 ACTING COMMISSIONER REYES: I do have a question.
18 When is the next report to the Legislature do?

19 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI:
20 Mid-2014.

21 ACTING COMMISSIONER REYES: 2014. Okay.

22 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: After
23 this one, yes.

24 EXECUTIVE OFFICER FOSSUM: Certainly, but the
25 Commission staff can begin investigating, you know, costs

1 associated with that. I think the conversations that we
2 have had with ports and with the shipping industry and
3 everything else is that it raises a lot of complexities.

4 They concluded the simple solution was everybody
5 put one of these million dollar ballast water treatment
6 systems on your ship and you're good to go. That was the
7 easy answer for them.

8 Are they as effective?

9 No.

10 Will they ever be?

11 Probably not, because if you're putting every
12 ounce of water into an onshore system that can treat it
13 much more rigorously, you're better off.

14 But if it's not practical, if the ports can't
15 have the kind of plumbing installed in them, and have
16 everyone of these vessels that come in hook up to it,
17 because they all have different ports -- discharge ports
18 and intake ports on their vessels, you know, it could
19 happen. It might be 20 years from now or something. But
20 we can certainly still investigate it and see where it
21 leads.

22 ACTING CHAIRPERSON GORDON: Let's go to Mr. Cohen
23 and then I think we'll -- when industry comes up after Mr.
24 Cohen, I would really like you to address the issue of, in
25 addition to your testimony that you were planning, also

1 address the issue of onshore, and from the industry's
2 perspective, whether that is an avenue that would make
3 sense to you.

4 Mr. Cohen.

5 DR. COHEN: Thank you. My name is Andrew Cohen.
6 I'm the Director of the Center for Research on Aquatic
7 Bioinvasions. I'm a marine biologist. I've been studying
8 biological invasion in ballast water for 20 years.

9 I have some history with ballast water
10 regulations. In 1999, I was asked by California
11 Assemblyman Ted Lempert to co-write the bill that became
12 California's first ballast water law in 2005. I was part
13 of the panel that developed California's ballast water
14 standards, and have since continued to periodically serve
15 as a technical advisor to the State Lands Commission
16 staff.

17 And in 2100/2011, I was part of the science --
18 the EPA Science Advisory Board, which was tasked with
19 assessing what ballast -- what treatment technology can do
20 to treat ballast water.

21 And this brings me here to make 2 points.
22 They're actually uncomfortable points for me to make, but
23 I think they need to be made and they need to be made as
24 clearly as possible.

25 The first of which is that the conclusion in the

1 current report and in previous reports were similar, but
2 in the current report that there are systems -- ship-board
3 treatment systems that can meet California's ballast water
4 standards is contrary to what the EPA Science Advisory
5 Board Panel found, which was a panel of the leading
6 scientists in Canada and the U.S. who are working on this
7 issue.

8 It's contrary to what the test data actually
9 show. It's contrary to what every scientist I know who's
10 working on this concludes, including other advisors to the
11 State Lands Commission staff, 2 of whom were on the -- 2,
12 in addition to myself, were on the Science Advisory Board
13 Panel.

14 And I believe it's contrary to what the equipment
15 manufacturers feel about their own equipment. There is no
16 evidence that equipment manufacturers have made any effort
17 to build systems specifically to meet California's
18 standards, which are far more strict than the IMO
19 standards. They all, as far as we know, have simply been
20 building systems to meet the IMO standards, and they've
21 simply been testing them to determine whether they meet
22 the IMO standards.

23 So this requires a little bit of review if I can
24 have a moment on this, which is that California standards
25 address 7 categories of organisms. There's the biggest

1 category, which is basically zooplankton, the next
2 category, phytoplankton, there's bacteria viruses and then
3 3 what are called microbial indicator species to indicate
4 fecal contamination and one is a pathogen.

5 The IMO standards, these international standards,
6 developed by the International Maritime Organization, in
7 2004, in which all of these treatment systems are built to
8 meet contain 5 categories, the 2 biggest ones that
9 California has, but no standard for bacteria, no standard
10 for viruses, and then the same microbial standard. It's
11 the same categories.

12 And in each of these groups, in 4 of these, the
13 standards are actually pretty similar. The largest
14 category -- they're worded differently, but the California
15 standard basically comes out to be somewhere around the
16 IMO standard. And for the 3 microbial indicators, it's
17 pretty close to or the same standard.

18 So what really matters when you're comparing what
19 these systems can do is the phytoplankton, the bacteria
20 and the viruses. Phytoplankton standards are a thousand
21 times more stringent in California than IMO. Bacterial
22 standards are very stringent, and there's no standard in
23 IMO, and viral standards are stringent and there's no
24 standard in IMO.

25 When we look at the phytoplankton standards that

1 the protocols that are followed have -- are designed to
2 have the resolution to tell whether these systems meet the
3 IMO standard, a thousand times less stringent standard.
4 They simply do not have the resolution to tell you whether
5 they meet the California standard. All they can tell you
6 is whether there is or is not a gross violation of the
7 California standard on the order of 100 times or 1,000
8 times too high a concentration.

9 And what we find when we look at the test results
10 is that all of these systems have gross violations of that
11 standard. All of them have numbers that show up that
12 would indicate gross violations of the California standard
13 in some of the tests.

14 Now, some of those systems have passed the
15 California standard in one test, in the sense that you get
16 a non-detect. Now, a non-detect doesn't mean it meets the
17 California standard, again because the test isn't suitable
18 for that. It only tells you there wasn't a gross
19 violation of the California standard.

20 But the State Lands Commission says, well, if it
21 passes in one test, then we say, well, it's shown an
22 ability to meet the California standard in at least one
23 test, ignoring the fact that in the other 12, 13 tests
24 there were gross violations of California standard.

25 Again, sometimes they say more than 50 percent,

1 sometimes they say in ship-board it passes, but you have
2 to look at all the test data.

3 It's like -- an analogy that may not work for
4 you, but an analogy is if you're correcting a math test,
5 if you only look at the correct answers and refuse to look
6 at the incorrect answers, then the score is going to be
7 100 percent, even if only one answer is correct.

8 We've got to look at all the answers, how many
9 right, how many wrong. And even more on the wrong ones,
10 are then in the ballpark or do they show that the student
11 has no clue?

12 In this case, the answers aren't even in the
13 ballpark where we have answers. Where there's violations,
14 they are gross violations of California. In other
15 cases --

16 ACTING COMMISSIONER REYES: Yeah, you're you
17 right, bad analogy.

18 (Laughter.)

19 DR. COHEN: What's that?

20 ACTING COMMISSIONER REYES: Bad analogy.

21 DR. COHEN: Bad analogy. But you have to look at
22 the whole test, I guess, is what I would say. You can't
23 just look at one trial or just the ship-board trials. You
24 have to look at all the data that you've got.

25 And this is what the Science Advisory Board did

1 and other scientists do. And their conclusion is there is
2 no way that these systems can meet that standard.

3 Then we got to the bacterial standard, where it's
4 even worse. There is no bacterial standard in IMO. And
5 what the IMO says to -- and so there's no real protocol
6 for testing bacteria, but it says you should test bacteria
7 to the testers, because we want to have this information
8 for future. So the testers did -- they did different
9 things.

10 Mostly, they did the easiest tests, which is to
11 take some water, stick it on a culture media, a culture
12 plate, and count the number of bacteria that grow, a very
13 standard test. And what that counts is what's called
14 culturable bacteria, or sometimes culturable heterotrophic
15 bacteria or even culturable heterotrophic aerobic
16 bacteria. It all means the same thing. It means the
17 things that will grow on these plates.

18 And what we know from 20 years of ocean studies
19 and ballast water studies is that in ocean water and in
20 ballast water what grows on these plates is only a tiny
21 fraction of the bacteria that are in the sample. It's
22 usually less than a tenth of a percent. It's always less
23 than a percent.

24 So if you're only counting what grows on the
25 plates, which is what staff does when it says that these

1 tests meets the standards, then you're only -- then you're
2 ignoring generally 99.9 percent of the bacteria that are
3 in the sample. And if you ignore 99.9 percent of the
4 bacteria, it's pretty easy to get low numbers.

5 But, in fact, if you look at the tests where they
6 count total bacteria, these tests fail all the time. In
7 fact, some of these systems increase the amount of
8 bacteria in the treatment process. They basically turn
9 ballast water tanks into incubators of bacteria -- I see a
10 puzzled look -- because they kill off the things that eat
11 bacteria very well - that's the biggest stuff - and they
12 kill off a lot of the things that bacteria eats, so
13 there's a lot more food lying around for bacteria. That's
14 what the thinking is.

15 But what the test data clearly show is that many
16 of these systems increase the concentrations of bacteria
17 in ballast tanks.

18 And then we get to viruses and there's no data
19 whatsoever on viruses, so there's no basis whatsoever for
20 concluding that these systems meet California standards.

21 And as I said, the scientific census, the clear
22 conclusions of the Science Advisory Board is that the
23 California systems are -- the ship-board treatment systems
24 are about 1,000 times shy in those areas where we can do
25 numerical comparisons of meeting the California standards

1 with possible developments that might come to within 100
2 times being shy of meeting California standards, but
3 there's no way in the world they're going to meet
4 California standards. That was one point. I'm sorry it
5 took awhile.

6 The second point is that there is a way of doing
7 it, and that is using standard water treatment processes,
8 what is called conventional water treatment. Taking the
9 water off the ship and treating it onshore. The Science
10 Advisory Board also did the most thorough review of this
11 that's been done. They concluded that it's technically
12 feasible, that the studies that have been done that have
13 looked at the economics that have compared ship-board to
14 onshore treatments, have found that onshore would be
15 cheaper. They found that it could be developed in the
16 same period of time that ship-board treatment did, at
17 least as a first analysis.

18 They found several other advantages, not the
19 least of which is that it would be far easier to monitor
20 and to enforce.

21 In California, you had asked the question how
22 many? How many plants would be needed and so on?

23 In 2000, the California Association of Port
24 Authorities commissioned a study from the URS Dames and
25 Moore Corporation to a study of what it would take to do

1 onshore treatment in California. And they did an
2 engineering analysis -- preliminary engineering analysis
3 and cost analysis.

4 And they found that it was technically feasible.
5 They estimated that 10 ports would need treatment plants.
6 The model they used was 1 treatment plant at each port.
7 It might actually be cheaper to put 2 in at some ports,
8 depending on their configuration. But we're probably
9 looking at 10 to 15 plants.

10 At other ports, there's so little ballast water
11 that comes in, that it's not worth building a treatment
12 plant. And so they would just store it and then barge it
13 down to where there was a plant when it was needed.

14 So we're looking about 10 plants. They're quite
15 small plants actually. They're smaller than some of the
16 plants you would have to put on the largest ships. I can
17 explain what that is, but it's in the report. We can let
18 it go for now, but it's really a quite small capacity
19 that's needed.

20 The big costs are in putting in the pipes and
21 retrofitting the ships to offload ballast water. The
22 Dames and Moore costs came out to about \$200 million,
23 which is -- at a million dollars a vessel, that's less
24 than it's going to cost for ship-board. That covered part
25 of the cost. It covered the treatment plants, the piping,

1 the outfalls, the storage onshore and so.

2 But there were some costs that weren't. But
3 again, when you look at the costs, they don't seem to
4 be -- they seem to be in the same ballpark as doing
5 ship-board, if not cheaper.

6 And so really, you know, you all have a choice at
7 this point. And I think -- I can't put it more starkly, I
8 don't now how you can accept the report. Although, that's
9 not my main concern.

10 My main concern is that we stop -- that the State
11 Lands Commission staff stop saying we're going to solve
12 this by -- with on-board systems, because as long as
13 you're saying that, nobody is going to build an onshore
14 system. The ports have no interest if you're telling them
15 that we're going to solve it by putting treatment plants
16 on-board ships.

17 And therefore, there are no treatment plants
18 onshore to observe. And if that's your basis for
19 rejecting onshore treatment, which it has been, you're
20 always going to reject it.

21 But my concern here is that you -- that they're
22 stopping this pretense that this is going to be solved by
23 onshore systems, because it's not, and to start moving
24 towards doing whatever work is needed, the studies that
25 you need, the conversations with the ports, the work that

1 needs to be done to start moving us towards a system that
2 actually will do it.

3 Thank you very much. I'm happy to answer any
4 questions.

5 ACTING CHAIRPERSON GORDON: Hold on, I think
6 there's a few questions for, sir.

7 Mr. Reyes.

8 ACTING COMMISSIONER REYES: Is there anybody
9 else?

10 No.

11 Yeah, I have a question. King for the day. Your
12 onshore system vision, what would that? What would you --
13 if you could come up with a system right now, what would
14 that be for the onshore.

15 DR. COHEN: What would that look like?

16 ACTING COMMISSIONER REYES: Yeah.

17 DR. COHEN: So you would build a treatment plant
18 for it. This is not treating it in existing wastewater
19 treatment plants. Some people have talked about the
20 possibility of doing that. That might work in some cases,
21 it might not. But we assume we're going to build
22 treatment plants. If we don't have to, it's cheaper.

23 And you would probably use media filtration,
24 which is like a sandbed filter and other material filter,
25 commonly used in water treatment, and then followed by a

1 disinfection step, like UV or chlorine. If that wasn't
2 good enough, you'd do 2 disinfection steps. If that
3 wasn't good enough, you could use membrane filtration.

4 The fact is that with only 10 small plants to
5 deal with, you can put a lot of money into the treatment
6 process itself and it doesn't change the cost to the
7 overall effort very much. The actual treatment process is
8 down around 5 percent of the total cost.

9 On ship-board, the treatment plants are basically
10 the total cost. So if you decide you want to upgrade
11 them, you've got to upgrade them on hundreds of ships,
12 thousands of ships, whatever it is.

13 Onshore you can just add a new process or change
14 these small plants. So that's what the basic plant would
15 be like. There would be pipes that go out to each wharf
16 that ships come on, so they discharge when they're at the
17 wharf. They don't have to go to some special wharf
18 discharge. That's why the pipe cost is so much, because
19 you have to connect to every place that they're coming in.

20 And you outfit the ships. There is an outfitting
21 process that's needed. They need to outfit their pumps,
22 so that they can discharge their ballast water in the time
23 it takes to unload cargo. Some of them don't currently
24 have that ballast pumping capacity, so they will have to
25 increase it.

1 And there have been engineering studies done to
2 assess that, again my major engineering firms. And the
3 costs seem quite feasible.

4 And so the ship would come in. It would
5 discharge whatever ballast water it has to while it's
6 loading cargo, and then it would go. It would pay a fee
7 for doing this. That was what we'd pay for the --
8 ultimately. You know, amortized over time would pay for
9 the treatment plants themselves.

10 The ports presumably would have to be involved in
11 building them initially and then operating them. And the
12 ports do this routinely for other kinds of services that
13 are needed for ships to come into port.

14 If something is needed, they will make sure that
15 that service is provided, provide it themselves, contract
16 to somebody to provide it, provide space for it. They'll
17 make it happen, but they're not going to do it as long as
18 you're telling them that we're going to solve this with
19 treatment systems on board a ship.

20 ACTING CHAIRPERSON GORDON: Mr. Newsom, do you
21 have anything?

22 COMMISSIONER NEWSOM: I'd like to hear from
23 others.

24 ACTING CHAIRPERSON GORDON: Let me ask one, kind
25 of what I think is the, foundational question here, which

1 is that before us today is a report --

2 DR. COHEN: Could you speak into your microphone.

3 ACTING CHAIRPERSON GORDON: Oh, I'm sorry.

4 The foundational question before us today is that
5 we have a report, which we are being asked to vote on to
6 pass to the Legislature. Is it your opinion that the
7 report, as written, does or does not accurately represent
8 the science as it exists today?

9 DR. COHEN: I believe it's completely
10 inconsistent with the science as it exists today.

11 ACTING CHAIRPERSON GORDON: Okay. Thank you.

12 EXECUTIVE OFFICER FOSSUM: Mr. Chair, if I could.
13 As I said with the prior speaker, we think that the
14 efficacy of a shore-based treatment system is clearly more
15 advantageous, from the standpoint of the treatment of the
16 ballast water. Mr. Cohen estimated a \$200 million. That
17 could be it. One of the problems is California can't
18 require ships to install on their vessels, either water
19 treatment systems or devices that would enable them to
20 hook up to an onshore treatment system. Federal law
21 preempts. And even though shippers may willingly do that,
22 California couldn't require it regardless.

23 So I think the idea of investing in these kind of
24 treatment systems, if they were practical land-based
25 systems, would be wonderful. But as Nicole pointed out to

1 you, there are none to report on. They don't exist.

2 And should they exist?

3 Probably, but they don't exist. So we can't
4 report to the Legislature that we think that these systems
5 are great. I mean, we could say that we think that would
6 be a good idea. We'd agree with that, but they don't
7 exist. So the report is basically on what the status is
8 of these systems.

9 We also agree that the systems aren't where we
10 want them to be, at this point. We admit, as again Nicole
11 said in the very first page of the report, that no
12 treatment systems are at the level that they should be
13 right now.

14 When we talk about potential or ability to treat,
15 we're talking about tests of individual systems that have
16 been made by others that show that they can treat to most,
17 if not all, of California's standards. There are
18 exceptions, the virus standard, for example, and the
19 bacteria. Some of these are problematic.

20 But as to the -- and when you have a level that
21 says treating, so that you can't measure it anymore. In
22 other words, is it to the standard -- when they talk about
23 it being 100 times -- California standards being 100 times
24 more or 1,000 more than the IMO standards, what they're
25 talking about is the standard is higher, but the

1 technology for even measuring that standard doesn't exist.

2 So what we do is we take the technology of what
3 does exist to be able to measure to that standard. And
4 based upon that, determine whether or not there's any
5 viable organisms left, because you can't do perfection.
6 You can only measure to what science allows you to measure
7 to. If you have a perfection goal, that's fine, but we
8 can only report on what's measurable, and that's the basis
9 for that.

10 ACTING CHAIRPERSON GORDON: My concern is this,
11 we've been doing this for 6 years now. Though, I've only
12 been on this Commission for a year and a half. There is
13 still serious data gaps and technology gaps in what the
14 California standard is driving. Now, that's not to say
15 that the California standard is wrong. I think it does
16 drive technology. We've done it in numerous fields in air
17 pollution, water pollution, et cetera, in California.

18 This is a report though. This isn't a regulatory
19 regime we are looking to pass. And if the report were to
20 say -- and we've done this in other areas that -- and I am
21 just going to extrapolate now for a second some things
22 that I would like to hear maybe some of the industry folks
23 say, that the industry is interested in onshore, and that
24 the report said that we recommend that the federal
25 government work with the industries towards developing an

1 onshore protocol that would work nationwide. California
2 could again drive that engine to the standard we want, but
3 on something that, if it is practical, works better.

4 The other aspect that appeals to me, frankly, is
5 working on numerous bonding authorities in California,
6 that the ports do have the ability to pass bonds that
7 would make this financially feasible and pass the costs of
8 those bonds onto the shipping companies that use their
9 facilities, rather than simply onto the general public of
10 California, or otherwise.

11 Since what is going to be before us today is
12 adopting this report and sending it as is to the
13 legislature -- and as Mr. Reyes' question was answered
14 before, since there won't be another report for 2 years,
15 it strikes me that this onshore option and how one might
16 move in that direction is something that we should include
17 in a report to the Legislature.

18 And with that, unless other of my colleagues have
19 any comments, I would like to ask the industry reps,
20 starting with Mr. Berge to come forward, comment on the
21 onshore proposal, first, and then your general comments on
22 the report, please.

23 MR. BERGE: Good morning. Thank you,
24 Commissioners. John Berge with the Pacific Merchant
25 Shipping Association.

1 It's not often I agree with Andy Cohen. We've
2 had our differences in the past, but we both agree that I
3 think we need clarity here. And the clarity that we see
4 is the fact that these systems cannot meet the standard.
5 Using the available data to extrapolate that they might
6 meet the standard is scientifically inappropriate, and we
7 need to look at other options. And that's where I think
8 we stand right now.

9 As far as shore-side treatment, I think that
10 debate needs to happen. But as Mr. Cohen said, that's not
11 going to happen until we have some clarity about exactly
12 what is the capabilities of on-board treatment systems
13 right now.

14 And I think it's clear, from what you've heard,
15 we've provided abundant information over the last few
16 years to the Commission, essentially to support the
17 comments that Mr. Cohen -- Dr. Cohen could make much
18 better than I could.

19 In terms of the debate for onshore treatment,
20 there's a lot of issues to discuss. You know, we don't
21 see it being quite as simple as Dr. Cohen does, but the
22 fact of the matter is, no matter what we do, it's going to
23 take some time to reach that conclusion, to see whether
24 that's a feasible option or not.

25 Right now, in statute, we have an implementation

1 schedule, 2 milestones which have already passed. And new
2 ships -- with the majority of all new ships being built
3 right now, which starting in January 2012, which will be
4 arriving in the State waters within the coming months, at
5 least the coming year, are not going to be able to comply.

6 And the fact of the matter is this debate needs
7 to be had at the Legislature. And the only way we can
8 have this debate is if we're really clear about what's
9 feasible, what isn't.

10 And right now, while not intentional, I think the
11 report the way that it's been drafted over the last few
12 iterations has actually clouded this issue.

13 So I don't know if that makes sense what I said,
14 but, you know, again, we're willing to have that debate.
15 It's an important debate to have, but we need to have it
16 based on all the best science available.

17 ACTING CHAIRPERSON GORDON: Next witness, please.

18 MR. BERGE: If I could just continue on?

19 ACTING CHAIRPERSON GORDON: Sure, Mr. Berge. I'm
20 sorry.

21 MR. BERGE: In regards to this report, I think
22 the Legislature was very clear in their charge to the
23 Commission. The report is to answer whether current
24 technology can meet the standard.

25 I think based on what you've heard and the

1 material that we provided to you, the answer to that is
2 no. And I think the Legislature needs to hear that
3 concisely, so that they can have a valid debate about
4 where are the options available and how we address this
5 issue.

6 The only other item I'd like to address briefly
7 is our disagreement with the report's interpretation of
8 the Commission directive from May regarding an abeyance of
9 enforcement.

10 The fact is vessels must install treatment
11 systems to treat the entire discharge, all of the
12 standards. And to essentially have an abeyance that's for
13 some of the standards but not others, is essentially
14 impractical and essentially leaves us, I would say, a
15 little bit pregnant.

16 Adding to that the fact that Mr. Cohen said that
17 perhaps a bacterial standard, the one they want to
18 continue enforcing, is perhaps the most problematic of the
19 whole suite of standards.

20 I think it's clear that we need to have a
21 complete abeyance for the 2 years to allow this
22 information to unfold and get a better idea of essentially
23 what these systems can do.

24 I also want to point out that under federal law,
25 adopted in May of this year, vessels will be unable to use

1 any treatment systems in U.S. waters that have not
2 received Coast Guard approval. That's adopted federal
3 law.

4 That approval process is underway right now. The
5 Coast Guard employs even greater or more rigorous testing
6 protocols than the protocols that are being referenced in
7 the report, the IMO G8/G9 protocols. And already we're
8 seeing systems that have passed -- or I should say been
9 approved under the IMO testing regime are showing lower
10 performance rates under this more rigorous testing.

11 So as this process unfolds, we're going to have a
12 much better understanding of the true efficacy of
13 treatment systems. And hopefully at the end of this,
14 ships will actually have the best available onboard
15 treatment technology installed.

16 So, in closing, I would just ask that the
17 Commission shed light on this reality and issue a factual
18 assessment, so we can have an honest debate in the
19 Legislature about how to fix this.

20 ACTING CHAIRPERSON GORDON: Thank you, Mr. Berge.
21 Ms. Burkhart.

22 MS. BURKHART: Good afternoon. Thank you for
23 allowing me the opportunity to speak. My name Sandra is
24 Burkhart, and I'm with the Western States Petroleum
25 Association, WSPA for short. WSPA is a nonprofit trade

1 associate representing 27 companies that explore for,
2 produce, refine, transport, and market petroleum,
3 petroleum products, natural gas, and other energy supplies
4 in California and 5 other western states.

5 We do support the comments PMSA just made and we
6 have submitted a comment letter ourselves, which you've
7 received. In fact, our engineering staffs at our member
8 companies had over 100 comments on the draft report, and
9 they were virtually all related to the clear lack of
10 scientific evidence that the California discharge
11 standards can be met by any viable technology.

12 WSPA had mentioned we did submit the comment
13 letter. There's 2 concerns in particular I wanted to
14 highlight today.

15 The first one is that the conclusions in the
16 draft legislative report are clearly inconsistent with the
17 data analysis. Thus, our recommendation is to revise the
18 report to provide a scientifically valid assessment of
19 whether currently available technologies can meet the
20 standards as was just suggested by many others.

21 Or alternatively, clearly acknowledge that we are
22 not there yet, which was mentioned earlier, is that we're
23 getting closer. We're almost there, but we're not there
24 yet. And we need to be honest with the Legislature about
25 where we are.

1 And secondly, our second concern is in regards to
2 the inappropriate requirement of the implementation of the
3 E. coli and intestinal enterococci bacteria. Neither of
4 these species are considered invasive species, and
5 therefore should not be regulated under State Lands under
6 the Marine Invasive Species Program.

7 Additionally, if this scenario described in the
8 draft report comes through, vessel operators could be
9 required to install treatment systems and then later be
10 required to replace those treatment systems in order to
11 meet the full suite of species that we would be required
12 to meet.

13 So in recommendation number 2, we would defer
14 that these 2 standards for the 2 species be removed, and
15 that it be a full 2-year abeyance as was directed
16 originally by the staff.

17 And so I did want to go back to the onshore
18 treatment and let you know that WSPA would be in support
19 of having discussions and having, you know, debates about
20 the potential for onshore treatment. However, with that
21 being said, assuming that the lege report does not get
22 approved today -- it should not be approved today. And
23 with that being said, we would be more than happy to meet,
24 have industry come in, have discussions, look at what we
25 can do to have a viable option in that area.

1 So thank you for your time. I appreciate it.

2 ACTING CHAIRPERSON GORDON: Mr. Fossum, you look
3 like you would like to respond.

4 EXECUTIVE OFFICER FOSSUM: I just want to make it
5 clear that -- and I think we did that on the very first
6 page of the report that says, "No systems demonstrated the
7 ability to meet California's ballast water discharge
8 standards in 100 percent of land-based third-party tests".

9 I don't think we can be much clearer that we
10 aren't there yet. There's been progress made. The
11 Commission has not adopted testing protocols yet, and that
12 is an opportunity that will be coming up to you in a few
13 months. Both the last speakers have asked for a 2-year
14 abeyance on all standards.

15 Certainly, with staff looking at that as part of
16 the protocols for studying compliance and measuring
17 protocol -- adopting measuring protocols, that can be
18 considered at that point in time.

19 As far as the staff's position at this time, we
20 are not prepared to recommend that the Commission ask the
21 Legislature to do that, until we've even had the ability
22 to study it further. It's certainly the Legislature's
23 protocol -- or prerogative. It's yours as well. But we
24 believe that the progress is being made and that we've
25 acknowledged in the report that they can't meet it at this

1 point. There is no 100 percent.

2 This morning -- you know, if somebody asked us
3 did Babe Ruth have the ability to hit a home run? I think
4 the answer would be yes. Did he have the potential to hit
5 a home run? Yes. Did he hit a home run every time he was
6 at the plate? No.

7 ACTING CHAIRPERSON GORDON: He's dead, isn't he?
8 (Laughter.)

9 EXECUTIVE OFFICER FOSSUM: He is, but the point
10 is did he have the potential, did he have the ability?
11 And if some of the tests show in some of the testing that
12 they have the ability, we want to report that. And we're
13 acknowledging that no system did 100 percent of the time
14 in these land-board tests. We think it's a very factual
15 report. We want the Legislature to have this kind of
16 information. It certainly doesn't say we're home free
17 here, and there's no problem, just slap one of these
18 things on your vessel. It's not that simple.

19 And, you know, if there's hearings this year, we
20 will be reporting to you on that. You can give us
21 direction if you'd like, this coming year. But we think
22 it's important to get this report over there as soon as
23 possible. People can certainly debate about some of the
24 conclusions reached, but staff stands by this report.

25 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Curtis,

1 if I may. I just would like to comment on the E. coli and
2 enterococci standards that we are talking about moving
3 forward with.

4 First of all, we have the authority to regulate
5 them because they are set in standard in the statute. So
6 by that nature we have the authority. Those standards are
7 the same as the recreational water quality contact
8 standards set by the EPA and the State Water Resources
9 Control Board.

10 Commission would -- commission staff would like
11 to continue with enforcing them for multiple reasons.
12 One, the methods to analyze those 2 types of bacteria are
13 well established. Any biological lab in the United States
14 can do the analysis for those 2 type of bacteria, and they
15 can analyze to the sensitivity the level of our standard.

16 For the land-based and ship-board testing, the
17 analysis we did of those systems, 17 of 17, 100 percent of
18 the systems out there met those standards in the
19 ship-board tests, and 16 out of 18 met the standards 100
20 percent of the time for those 2 bacteria. So we're not
21 talking about once in awhile. We're talking about 100
22 percent of the time. Those bacteria we can analyze the
23 tests and we know that the systems out there can meet
24 those standards.

25 Regarding the rest of the --

1 ACTING CHAIRPERSON GORDON: Can I stop you right
2 there, because we do seem to have 2 separate issues before
3 us today. One would be whether we're going to send the
4 report forward, and 2, whether we are going to continue to
5 enforce or begin -- continue or begin enforcing the
6 bacterial standards.

7 EXECUTIVE OFFICER FOSSUM: With no way to measure
8 it --

9 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Well,
10 that matter should -- you know, we should bring it up when
11 we bring the compliance protocols forward. I was just
12 trying to clarify for the Commission's --

13 ACTING CHAIRPERSON GORDON: Okay. On the
14 bacteria issue, Mr. Cohen and Mr. Holmes, could you come
15 forward. I need to have a better understanding. I'm not
16 a scientist, and I -- we seem to be -- from my
17 perspective, we're getting very conflicting testimony as
18 to whether the bacterial standards can be met today.

19 DR. COHEN: They can be met with technology that
20 exists, which is the technology that we use to treat
21 water. You know, these systems under the EPA surface
22 water treatment rule are required to have reductions in
23 viruses and in other organisms that are reductions that
24 would allow you to meet the California standard. And they
25 are far greater reductions than we see achieved by

1 ship-board treatment tests.

2 Once comment that was just made, I believe, was
3 about how the E. coli and enterococci standards are met
4 many, many times, and not just a few times, but often.
5 They are met in these tests. And, in fact, the other
6 standard, the Vibrio cholerae test, is met all the time.
7 The Vibrio cholerae is met in every single test, because
8 there are no Vibrio cholerae going into the system. The
9 protocols are so poor, that in every single one of the
10 tests, the intake water has none of this bacteria in it,
11 the untreated controls have no other bacteria in it, and
12 the treated water has no bacteria in it. It tells you
13 nothing at all about what the treatment system does, yet
14 the treatment system passes because nothing is coming out
15 of the treatment pipe.

16 The same thing, not quite as extreme, but
17 essentially the same thing is true for the E. coli and
18 enterococci tests, in most of these tests the water going
19 into the system also passes the standard.

20 And so the fact that it passes the standard when
21 it comes out of the treatment system, and out of the
22 parallel pipe where it's not treated at all and just comes
23 out the pipe, tells you that it's really not telling you
24 anything about the capabilities of the treatment system

25 So, again, I don't think those indicator

1 microbial standards are the most important. It's really
2 the 4 categories of zooplankton, phytoplankton, bacteria
3 and viruses that really matter the most, I think. But the
4 tests are as we've got a paper in publication showing the
5 tests are essentially meaningless, that in almost all of
6 the tests that have been conducted under the IMO rules.

7 ACTING CHAIRPERSON GORDON: So let me ask another
8 question and maybe I need an industry rep to answer this
9 one.

10 So we continue to enforce the bacterial and viral
11 standards over the next 2 years, what is the impact? I'm
12 missing that.

13 DR. COHEN: Well, there isn't a ship-board
14 treatment system that will meet them. So I guess that
15 means you would have to find every single vessel that
16 comes in and discharges ballast water, if you were really
17 to enforce it. Now, the maximum penalty under the law is
18 only \$27,500. So whether that's -- you know, that's sort
19 of a small slap on the wrist kind of level for vessels
20 that have -- who's daily operating costs are more than
21 that and that spend far more than that typically coming
22 into port on the various services that they have to pay
23 for.

24 So whether, you know, a ship coming into port
25 half a dozen times in the year, even if you hit them with

1 that fine, whether it would be enough to induce them to do
2 something that would be effective, there is no treatment
3 system available that they could put on their ships. But,
4 you know, under current law your fining capacity is really
5 extraordinarily limited. It was an issue we raised in
6 2006, but your staff didn't want to see the fining
7 capacity go up any -- their maximum fine ability go any
8 higher. So you're kind of stuck on your enforcement
9 capability.

10 ACTING CHAIRPERSON GORDON: Staff, is that your
11 interpretation, that we have no on-board systems that meet
12 and we'd be required to fine every ship that comes into
13 California for violating the standard?

14 EXECUTIVE OFFICER FOSSUM: California is not in
15 the position of telling people to put a treatment system
16 on their vessel. That is their option. The standards
17 that the Legislature adopted were standards of discharge
18 only. As Nicole said early, there's 5 -- 4 or 5 different
19 ways they can deal with this, ship-board treatment systems
20 is one of those.

21 If California tried to direct ships from all over
22 the world what to put on their vessels, we'd be in
23 violation of federal and probably international law. So
24 we're leaving it up to them to find the best way for them
25 to deal with it, whether it's on-board treatment systems,

1 or land-based treatment systems. You know, that -- we're
2 just -- this is just a report to the Legislature on the
3 status of those things. We're not in a position to tell
4 them to put a treatment system on their vessels.

5 ACTING CHAIRPERSON GORDON: But here's what I'm
6 trying to understand, if the testimony that I've just --
7 if I understand the testimony I just heard, that there's
8 no system they could put on board that would meet this
9 standard, and there -- let me finish -- and they're going
10 to come into California ports with the option of treating
11 it however they choose, aren't we pretty much just -- why
12 don't we just send them the bill for the \$27,000 for every
13 ship that comes in, because they can't meet the standard
14 we've established.

15 EXECUTIVE OFFICER FOSSUM: I think they're
16 assuming that these things will be on those ships.
17 Without being able to measure those, because we have no
18 testing protocol, we don't know that any of them will be
19 bringing that material on board the ships.

20 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: This is
21 why -- if I may just interject. This is why we planned to
22 have the 2-year abeyance on enforcement. And for those 2
23 bacteria species, enterococci and E. coli, there are
24 standard methods to detect them. The influent waters --
25 we don't care about what's coming into the tank. We have

1 a discharge standard.

2 All of the results -- available results show that
3 they are not exceeding that discharge standard. The Coast
4 Guard uses the exact same methods of analysis. The EPA's
5 Environmental Technology Verification Program uses the
6 exact same methods of analysis.

7 No one takes a bunch of E. coli, since they could
8 cause disease, and throws them into a tank to load it up
9 and then sees how the system does. You just use what are
10 in available waters. That's all that we can do.

11 The discharge meets the standard, and therefore
12 these vessels should be fined and should be in compliance
13 when they operate in California waters.

14 ACTING CHAIRPERSON GORDON: Mr. Cohen and Mr.
15 Berge, could you come forward. I need to hear your
16 interpretation of what's going on here, too, because
17 I'm -- for me, it's getting murkier and murkier.

18 MR. BERGE: Thank you, Mr. Chairman. I can't
19 speak to the scientific validity of either what Ms.
20 Dobroski or Dr. Cohen is saying. But from a practical
21 purpose, in order to enforce one aspect of that standard,
22 essentially you're saying you're going to have to choose a
23 treatment system to meet that particular aspect of the
24 standard, knowing full well that that treatment system
25 probably won't meet the other 2 aspects of the standard,

1 the greater than 50 and the 10 to 50.

2 And when you throw on that the fact that the
3 Coast Guard is saying you can't operate in the United
4 States without an approved system, and we don't know what
5 those approved systems are right now, we are in a complete
6 dilemma here. If we were to choose a system to somehow
7 meet the bacterial standard, knowing full well it won't
8 meet the other standards, finding out that the Coast Guard
9 won't approve it, only to have it torn out 2 years later,
10 I think is unacceptable to us.

11 I would point out one kind of ironic thing too, I
12 looked at the list of treatment systems that staff had
13 identified as being the most promising of the suite of
14 50-some systems out there. And the system that actually
15 had the very best test results for treating the bacterial
16 standard or the other smaller standards that was
17 mentioned, also happened to have the worst test results
18 for treating the greater than 50 and 10 to 50. That would
19 be the Moll System, which had no failures on shore-based
20 treatment system -- or shore-based testing for bacteria,
21 but showed about a 90 percent failure for greater than 50
22 microns and a 63 percent failure for 10 to 50.

23 So we're kind of in a dilemma here that in order
24 to follow that particular venue, we would essentially have
25 to just be pursuing other aspects of the treatment that we

1 have no idea whether it will even be legal to operate with
2 in 2 years.

3 So again, I can't speak from a scientific
4 perspective. From a practical perspective, we don't see
5 how we can operate in this type of environment.

6 ACTING CHAIRPERSON GORDON: Let me ask you
7 another question that was just raised. Okay. So we're
8 going to have to deal with this issue of whether we have
9 full abeyance or abeyance absent -- we're going to have to
10 deal with the issue of whether we're going to have full
11 abeyance for 2 years or whether we're going to have
12 abeyance minus these 2 -- with the exception of these 2
13 bacterial identified substances.

14 Other than that specifically in the report, Mr.
15 Fossum points out that the opening line, as I read it,
16 is -- let me get back there -- "No systems demonstrated
17 the ability to meet California's ballast water discharge
18 standards in 100 percent of land-based third-party tests".

19 That strikes me as a fairly straightforward
20 statement of acknowledgement that the systems don't work
21 right now. Tell me what is it in that opening statement
22 that you object to?

23 MR. BERGE: Well, first of all, as the Science
24 Advisory Board, Dr. Cohen, EPA specifically has referred
25 to, is the fact that all these assessments are based on

1 testing protocol that is not sufficiently rigorous to
2 demonstrate efficacy with the California standard, a
3 standard more stringent than the D2 standard.

4 So even though that particular statement does --
5 you could argue does address that question, there are a
6 myriad other statements in the report that suggest that
7 the systems are meeting it based on ship-board treatment,
8 or ship-board testing, various types of percentages. It
9 really does infer that these systems are very close to
10 meeting the standard.

11 And depending on how you look at it, they might
12 meet the standard. The fact is I don't think that's a
13 scientifically appropriate analysis, as Dr. Cohen said, to
14 use even that data to generate that kind of a conclusion.

15 All you can use that data for is to demonstrate
16 failure, but it's not rigorous enough to demonstrate
17 actual meeting the standard.

18 ACTING CHAIRPERSON GORDON: Mr. Newsom.

19 COMMISSIONER NEWSOM: Thank you, Mr. Chair.

20 Have you highlighted this? Curtis, have you guys
21 had a conversation about the specific language in this
22 report? I'm just trying to sort of cut to the chase here.
23 I hear this is just a report. We're not the Legislature.
24 We're not going to start. We don't want to get into the
25 details here of nuances of actually legislating this damn

1 thing. That's a -- I've got to run for another office,
2 and we're in the wrong place.

3 I get the concern about the report, and I get
4 Curtis's point, hell, we're saying this is hardly perfect.
5 But you make a very fair point. Have you specifically
6 laid out though details of what language you want to see
7 struck out of this -- the core of the report? Have you
8 guys had conversations?

9 We've been talking about this for a long time. I
10 think this is the third hearing we've had on this. So you
11 must have been able to sit down or someone sat down and
12 worked through this. If you haven't, I would love to know
13 why, what we've been doing all those months, because it's
14 a little frustrating just sitting here having these
15 granular conversations that frankly need to be had
16 subsequent to this report being submitted, whatever the
17 hell it looks like, at the Legislature.

18 And I'm sorry to be a little more obtuse here
19 than I normally am. I'm just expressing a little concern
20 by this circular arguments and -- you know, that may lead
21 to really nothing here, but more delay.

22 MR. BERGE: Is that a question to me?

23 COMMISSIONER NEWSOM: Yes, and to Curtis.

24 MR. BERGE: Shall I go first?

25 COMMISSIONER NEWSOM: Please.

1 MR. BERGE: We've had numerous discussions over
2 the last few years with staff. We've also submitted
3 numerous comments along this line. To be honest with you,
4 I think the Science Advisory Board is pretty much the
5 definitive -- their Science Advisory Board Report was kind
6 of --

7 COMMISSIONER NEWSOM: Specific to language that's
8 currently drafted in the report?

9 MR. BERGE: Yeah. They specifically address
10 that. The EPA, in their vessel general permit fact sheet,
11 specifically looked at the California report, and made
12 comment that it's inappropriate to use the data they're
13 using to determine efficacy with their standards. So we
14 put that information forward, and I've had those
15 discussions with staff. To be perfectly honest, with you
16 Mr. Lieutenant Governor --

17 COMMISSIONER NEWSOM: I hope everything you said
18 was perfectly honest up to this point.

19 (Laughter.)

20 MR. BERGE: Yeah. No, to be perfectly honest, up
21 till now it has essentially been a couple of industry
22 people making these statements, even though we're
23 referring to, I think, independent documentation. And
24 essentially, I would suggest that the State Lands staff
25 has disagreed with that interpretation.

1 I think this is the first time we've heard the
2 environmental community expressing our same concerns about
3 the validity of this report. The academic community doing
4 a similar type of presentation.

5 We actually did also present a letter from one of
6 the leading scientists who was also on the Science
7 Advisory Board, Dr. Mario Tamburri, it was kind of a
8 question and answer type thing, or frequently asked
9 question document that basically said these same things.
10 But, to date, we've never really been able to get any
11 traction with that.

12 COMMISSIONER NEWSOM: All right. So may I ask
13 Curtis, is that an accurate reflection?

14 EXECUTIVE OFFICER FOSSUM: Well, let me just say
15 that the report is, as was just read by the Chairman, that
16 we admit that there are no systems. If you go on, even to
17 the next page, "In general, the quantity and quality of
18 ballast water treatment systems have improved since the
19 2010 report, but important areas of uncertainty persist in
20 the field". The next sentence says, "Staff's ability to
21 make robust conclusions is limited by availability -- or
22 available data sensitive enough to be applicable to
23 California's standards for this size class", talking about
24 10 to 50 class.

25 And then we go on to talk about, unless we have

1 an ability for California, for the Commission and staff,
2 to test this data, the rest of the world isn't testing for
3 it. We admit that. They are looking at standards for
4 IMO, a much lower, in some instances, standard. They
5 aren't testing to it. And so unless we're given direction
6 by the Commission on how to test that, we're not going to
7 know. It's ignorance here is what we're dealing with.

8 We haven't got enough data. What we have is,
9 based upon the data that's been made available, it shows
10 progress in all of those categories. What it doesn't show
11 is 100 percent.

12 And so I think the report is honest on its face.
13 It's showing progress, but we aren't there. And we caveat
14 all those things to be able to say we need more
15 information. We can't make robust conclusions on these
16 things.

17 COMMISSIONER NEWSOM: I guess what -- and sorry
18 to belabor, Mr. Chair. It seems to me -- I mean, it may
19 sound naive that we're a heck of a lot closer than
20 everyone thinks we are here, unless there's a different
21 agenda that's not being expressed, which is let's just
22 kill the report.

23 If the desire is to have a report, as we must,
24 and then submit something that's a little more objective,
25 is what I'm hearing from industry, then it sounds like

1 there's some language you're concerned about. And I'd
2 love to know specifically, not generically, not a Q&A, not
3 abstractly, what that language is and have a substantive
4 dialogue about whether or not that takes away from the
5 spirit of what staff believes is appropriate to move this
6 agenda forward, as we were directed to move forward, as
7 long as 2006. And that's what I'm trying to sort of
8 workout.

9 Because if we delay this and then we come back
10 and then there's still that angst and frustration, then
11 we've wasted everyone's time. You guys -- I mean, have
12 you had a granular conversation? Have you had direct
13 conversations about that specific language.

14 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Mr.
15 Newsom, I would like to point out that Dr. Cohen, Mr.
16 Berge, they are on the Science -- the Technical Advisory
17 Group that met to review a draft of this report as
18 required by statute. So they did -- were involved in the
19 development of this report. They had seen a draft before
20 anyone else from the public has seen it.

21 The report was brought to the August meeting and
22 it was pushed back because of another item, so the report
23 has been out in the public realm for several months now.
24 We have not received --

25 COMMISSIONER NEWSOM: Did you have specific --

1 you don't have any specific comments to the report as to
2 the language?

3 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: And I
4 would like to comment that the EPA SAB report that
5 everyone keeps referring to was published in 2011, so it
6 does not directly address this report, because this report
7 we are looking at right now was not started until, you
8 know, more recently.

9 COMMISSIONER NEWSOM: All right.

10 ACTING CHAIRPERSON GORDON: Well, let me go to
11 what you just said there, because there is something. So
12 if Ms. -- could you come please come back on up.

13 If some of the members of this Science Advisory
14 Panel -- I mean, what I heard from Dr. Cohen was that he
15 doesn't think that the existing report accurately
16 represents the existing science.

17 How many members are on Science -- the Technical
18 Advisory Panel?

19 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Twenty
20 odd -- 20 to 25.

21 ACTING CHAIRPERSON GORDON: So was he -- is he in
22 a minority opinion on that panel? Are there -- is this a,
23 you know, 18 to 2, 15 to 5? I mean, he seemed to have
24 some fairly strong feelings, as did Mr. Holmes. Are you
25 also on the Panel, Mr. Holmes?

1 MR. HOLMES: I want to clarify, because the
2 panel's named has changed. I'm not a scientist.

3 ACTING CHAIRPERSON GORDON: Okay. All right.

4 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: I'm
5 sorry, there's 2 panels. There's a Science Advisory Board
6 that is at the EPA level and we have no control over that
7 at all.

8 ACTING CHAIRPERSON GORDON: Okay.

9 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: There is
10 a Technical Advisory Panel. Mr. Holmes is a member of
11 that, Dr. Cohen and Mr. Berge are members of that, that
12 are brought together to review this report. So that Panel
13 is not just scientists. There are scientists. There are
14 industry representatives. There are regulators and there
15 are other environmental organizations.

16 ACTING CHAIRPERSON GORDON: So is there a split
17 decision on that Panel as to the accuracy of this report?
18 We've also got Mr. Tamburri -- Dr. Tamburri, who I believe
19 is part of the Technical Advisory Panel?

20 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: No.
21 He's part of the Science Advisory Panel.

22 ACTING CHAIRPERSON GORDON: No, he's also jus the
23 Science -- okay, the Science -- who also disagrees with
24 the findings in the report. So on the Science Advisory
25 Panel, which is the pure science. Let's leave out the

1 politics, leave out the economic concerns, the pure
2 science. Are the scientists divided evenly? Is it 99 to
3 1? Is Dr. Cohen an outlier in the scientific community?

4 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Those
5 scientists have not reviewed this report. The scientists
6 were put together by the EPA in 2010 to create a report
7 looking at available treatment technologies for the
8 purposes of the EPA drafting a vessel general permit and
9 to put standards into that permit.

10 So they were referring to a report that was put
11 together by the scientists. When it comes to our report,
12 our report is not reviewed by that Science Advisory Board,
13 because that's an EPA group. That's outside of our area,
14 and was also several years ago now, 2 years ago.

15 So, yes, some of the same people are involved
16 with these panels and these boards, but one is an EPA
17 federal action and one is a panel for California.

18 ACTING CHAIRPERSON GORDON: Okay. All right.
19 Thank you for clarifying that. I appreciate it.

20 Mr. Reyes.

21 ACTING COMMISSIONER REYES: So I just -- you
22 know, I like clarity when I'm listening to a presentation.
23 They were involved in the review of the report, Nicole, is
24 that correct?

25 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: As Panel

1 members, yes.

2 ACTING COMMISSIONER REYES: As Panel members.

3 And was their input considered or -- I mean, did
4 they get a chance to add to the report or where the review
5 was take a look, thank you for playing?

6 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: I think
7 they were, but I must admit I was on maternity leave at
8 the time.

9 ACTING COMMISSIONER REYES: Mr. Berge, were your
10 comments take into consideration, ignored, or how involved
11 were you in the final draft or were you shown what it was
12 and thank you for playing?

13 MR. BERGE: This last report, we provided
14 comments, other people had provided comments. We
15 participated in some conference calls, expressed these
16 same concerns, other people expressed the same concerns as
17 we did, including some of the scientific members of the
18 Panel. But from what I can see, the fundamental aspect of
19 the fact that the report is using insufficiently rigorous
20 data, which was scaled for the IMO D2 standard to make the
21 assumptions of what the efficacy is meeting the California
22 standard has not been addressed at all in the report.

23 They essentially assume that we can use that
24 standard and extrapolate it to determine the efficacy with
25 the California standard. And I think that's absolutely

1 incorrect, and not consistent with science.

2 ACTING COMMISSIONER REYES: So, Mr. Chair, I'm
3 sort of struggling. I think this is what the Lieutenant
4 Governor is also struggling with, that if we were to give
5 them more time, it's going be more time to do what, if it
6 hasn't happened already?

7 COMMISSIONER NEWSOM: Right.

8 ACTING COMMISSIONER REYES: On the other hand, if
9 there is pearls of wisdom that folks are adding to it that
10 are being ignored, you know, I'd like to certainly give
11 folks the opportunity to try to incorporate those pearls
12 of wisdom, but I'm not quite sure where we are.

13 On the one hand, I'm reluctant to go with the
14 report that is not viewed as accurate, because it is our
15 agency that's putting it out there. On the other hand,
16 I'm trying to figure out what would be the benefit of
17 going out and spending more time with the opposition and
18 supporters to try to come up with a report that better
19 reflects if we, in fact, have that difference of
20 philosophical views of this. I'm struggling with that.
21 I'm not sure what the answer is.

22 COMMISSIONER NEWSOM: Yeah.

23 ACTING CHAIRPERSON GORDON: I'm in the same
24 place.

25 EXECUTIVE OFFICER FOSSUM: Well, admittedly, I'm

1 not a scientist either. I guess none of the 3 of you are
2 in that category either, so it is a difficult thing.

3 One thing the Commission could do is send the
4 report to the Legislature with a cover letter
5 acknowledging that, and say the staff of the Commission
6 has developed its report, stands by it. We don't feel
7 that we're in a position to judge it one way or the other,
8 and that we encourage those people who disagree with the
9 report to submit to the Legislature their comments.

10 So that you're basically neutral. You're
11 providing -- you're allowing them to have the staff's
12 comments on this, whether you want to bless it or not.
13 And I think the more important thing is that the
14 Commission has a role to play in adopting regulations.
15 Issuing reports is kind of a -- you know, there's going to
16 be people debating it. You have a quasi-legislative role
17 when you adopt regulations. They're you're making your
18 judgment calls.

19 And if you adopt regulations that say we believe
20 that this is how you should measure these things and
21 whether they should be enforced at some point in time, and
22 which ones should be enforced, that's really conversation
23 for another day, I believe. And whether you want to
24 report to the legislature separately on some of these
25 items like we think -- or you can direct staff to report

1 to the Legislature on the ability of land-based treatment
2 systems to be developed and what the costs are and all
3 those things.

4 It is difficult for all of us to try and
5 understand all the details that go into this science.
6 People on both sides of this have been working for dozens
7 of years looking at these things. Can they come to
8 different conclusions based on the facts?

9 Absolutely.

10 But we believe that this reflects the best
11 ability we have, as a staff, to measure these things. We
12 don't -- we aren't out there with laboratories going
13 through this. The staff isn't doing it. It has to
14 extrapolate from other people's studies to try and reach
15 conclusions.

16 As I read to you a few minutes ago, we don't
17 believe we can reach those robust conclusions based upon
18 that. We're admitting that. It's in the report. And so
19 to try and characterize it being an absolutist report
20 that, you know, people can put these systems and meet
21 California standards, it's not in the report. It doesn't
22 say that anywhere.

23 ACTING COMMISSIONER REYES: I appreciate the
24 suggestion, Mr. Fossum, but I think, you know, the
25 Legislature tasked the State Lands Commission that --

1 staff of the State Lands Commission to do that, and I view
2 the 3 members up here as the State Lands Commission. And
3 we either stand by the work of the staff and vote for it
4 or we don't. And so, for me, to separate myself is just
5 not a comfortable -- I appreciate that, but that's where I
6 am.

7 EXECUTIVE OFFICER FOSSUM: May I add that we did
8 get a comment letter last night from PMSA, and we received
9 one I think in the last few days from WSPA. It should be
10 in your package. There's also 3 additional comment
11 letters from San Francisco Bay Water Board, the Oregon
12 Department of Environmental Quality and the California
13 Water Resources Control Board all -- the last 3 supporting
14 the staff's report to the Legislature while the other 2 do
15 oppose it.

16 COMMISSIONER NEWSOM: Yeah. In the ideal
17 world -- I mean, this is not the Supreme Court, so I'm
18 almost thinking there needs to be a dissent opinion here.

19 (Laughter.)

20 COMMISSIONER NEWSOM: But I'm not sure we're
21 dissenting necessarily -- or we may be the dissent to your
22 report in terms of clarity, which I do think -- I mean, I
23 guess here's the point. I hesitate to say this, because
24 nothing more frustrating than, you know, tyranny without
25 end.

1 But if there is a way to just -- I mean, you've
2 acknowledged, which I think is important, and you've in
3 the preamble of the report itself have put that in
4 writing, your understanding that there are those that may
5 not necessarily agree, and -- or you've stated that you
6 agree that there's not clarity on some of these points I
7 guess is a better way of saying it.

8 But I think there could be some additional
9 comments in the report that would begin to address some of
10 the concerns we've heard expressed, because I think
11 they're legitimate. I'm hearing a lot of things that,
12 I -- you know, I'm shaking my head, but, as you note, the
13 science is above at lot of our, you know, pay grade.

14 I'm just wondering if there's a way to add some
15 additional language that goes beyond just the 2 citations
16 that you've noted that could be put in this report in a
17 way that would more -- would reflect the conversation
18 we've been having today rather than a cover letter itself.

19 EXECUTIVE OFFICER FOSSUM: May I suggest that the
20 Commission, if it wishes to submit this report, to be sure
21 and include an appendix with the written statements made
22 by those people who submitted those --

23 COMMISSIONER NEWSOM: I guess my concern is it
24 seems additive. It loses -- I mean, I think I'd like to
25 see things woven into the report to more reflect the

1 concerns that I'm hearing and the concerns that I'm
2 feeling.

3 EXECUTIVE OFFICER FOSSUM: And frankly, that's
4 what we attempted to do after the last hearing on this.
5 We went back and looked at the criticisms that were made.
6 And we did edit the report, to some degree, based upon
7 those criticisms, and tried to make it much clearer from
8 that standpoint. And that's why some of the statements
9 that you've heard us say are much clearer. They're up
10 front. They're not being hidden, not that they were
11 intended to before, but to the extent that they -- anybody
12 felt there was any kind of misleading statements in there,
13 we tried to make that very clear.

14 COMMISSIONER NEWSOM: I just think we need to go
15 a little further is, I guess, what I'm expressing. That's
16 my current judgment based on someone saying something
17 spectacularly insightful that may change my point of view.

18 ENVIRONMENTAL PROGRAM MANAGER DOBROSKI: Mr.
19 Newsom, just one additional comment. The transcripts from
20 the -- or notes from the Technical Advisory Panel meeting
21 where people did -- we did bring these individuals
22 together to discuss this report, it is included as an
23 appendix at the end. So the record of that discussion is
24 available.

25 COMMISSIONER NEWSOM: Yeah. Again, I just want

1 to -- I'd prefer to see something woven in here that deals
2 with some of this.

3 ACTING CHAIRPERSON GORDON: Let me -- Mr. Fossum,
4 unless -- I'm going to glance to both sides as we do this,
5 your recommendation that we send the -- that we adopt the
6 report with essentially qualifying letters or disclaimers,
7 I'm not hearing 2 votes for here.

8 So I think we are really left with the fact that
9 we are going to have to amend the report. Though I
10 actually tend to believe 100 percent with what the
11 Lieutenant Governor has just said which I think sending
12 you folks backs -- and I'm being -- having been way to
13 involved from -- in this for -- I mean, it seems like one
14 of the very first meetings I had when the Controller
15 appointed me to this job 18 months ago were on this
16 subject. And it's not striking me that we're really
17 making any progress. I think we have people of very good
18 will and very smart people working on this and we seem to
19 have gotten to loggerheads.

20 And I'm going to suggest a way forward, and I
21 really somewhat hesitate to do this, because I think it's
22 pretty clear we're not going to put this report out today
23 in this existing form.

24 I've spent 5 years negotiating the Delta
25 Stewardship Accord and have some skills in coming up with

1 language that is acceptable to various parties. And what
2 I think I'm going to offer, if it would be acceptable to
3 my 2 colleagues, would be for myself, through the Office
4 of the Controller, to call a meeting. I would like to
5 have Dr. Cohen there, Mr. Holmes there, your staff there,
6 industry representatives there. I would like each of
7 you -- other than the staff who've put forward their best
8 effort, I would like each of you to go through that report
9 as suggested by the Lieutenant Governor, and I want -- I
10 literally want an annotated copy of the existing report
11 coming into that meeting. I'll decide when I get back to
12 my office today, assuming that this is okay with my 2
13 colleagues, when we're going to hold that. They are both
14 welcome, if they would like, to be there, obviously.

15 EXECUTIVE OFFICER FOSSUM: Not if it isn't a
16 noticed meeting, Mr. Chairman.

17 (Laughter.)

18 ACTING CHAIRPERSON GORDON: Oh, never mind.

19 (Laughter.)

20 ACTING CHAIRPERSON GORDON: Never mind that
21 comment. But I would like each of you to go through that
22 report. You know, we have these -- I think Nicole has
23 done a phenomenal job of shepherding this through. And
24 rather than somewhat obtuse comments of we don't really
25 like the report. It's not accurate. I mean, there are

1 clearly statements in here, as Mr. Fossum has accurately
2 pointed out, that simply say, we acknowledge that the
3 science isn't there yet.

4 But beyond that, there are then cloudying(sic),
5 if that is a word -- other statements that make that less
6 than clear. And having spent 20 years in the Legislature
7 and knowing how they are going to look at this report, the
8 fact that it doesn't call out the possibility of moving
9 forward on an onshore to at least compare it and see if it
10 whether that is doable in itself is a problem for me.

11 What I would like to do is come forward. We will
12 have a meeting in 2 or 3 weeks where everybody comes
13 forward, so that you can be helped rather than them
14 saying, gee, we don't really like the report, and an
15 granular, to use the Lieutenant Governor's, analysis of
16 the report. And we will sit down and we will hammer out a
17 report that hopefully we can get agreement on.

18 I would like to put that forward to my 2
19 colleagues if that is an acceptable path forward for them.

20 COMMISSIONER NEWSOM: Well, certainly I think
21 that's a fabulous recommendation.

22 (Laughter.)

23 EXECUTIVE OFFICER FOSSUM: You're just glad it
24 isn't you.

25 ACTING CHAIRPERSON GORDON: Okay. And at the

1 next meeting, we will either have a report -- and I might
2 be here, because I will have --

3 (Put hand in shape of gun to his forehead.)

4 (Laughter.)

5 ACTING CHAIRPERSON GORDON: Anyway. So I think
6 we're going to put this over right now. I will get in
7 touch with all the parties, and hopefully we will have a
8 negotiated report that everybody can agree on that we can
9 send forward.

10 I don't know. Mr. Cohen, are you acceptable to
11 that, can we make you available? And Mr. Holmes, you seem
12 to be very, very knowledgeable on this subject and I would
13 like your input.

14 DR. COHEN: Yes. I want to clarify that since
15 I've first read this report in April -- in August, I mean,
16 in its earlier version, I've been in contact with Chris
17 Scianni, who was the acting director, and others at the
18 Lands Commission, have repeatedly offered to come up and
19 meet with them to discuss these issues.

20 ACTING CHAIRPERSON GORDON: All right. Well,
21 great. Now you're there.

22 DR. COHEN: They've not taken that up. But what
23 I want to say, the problem with the report is not so much
24 the individual statements that he's read, which are taken
25 as a sentence are factual, it's what's missing from the

1 report, what we know --

2 ACTING CHAIRPERSON GORDON: Okay. Well,
3 that's -- that's what I would like you to submit, and I
4 will set out a schedule of when I want things submitted,
5 and we will then sit down -- Ms. Lucchesi, lucky you,
6 you're going to be part of this.

7 CHIEF COUNSEL LUCCHESI: Yes.

8 ACTING CHAIRPERSON GORDON: And hopefully we will
9 be able to come back and put this thing to rest in 2
10 months.

11 Yes, ma'am.

12 DR. McDOWELL: I'm just wondering if we could
13 also ask possibly a few other scientists to participate in
14 the process.

15 ACTING CHAIRPERSON GORDON: What I will do is put
16 out an email to the people that I've just mentioned, and
17 they will have an opportunity to vet other people. And to
18 the extent that there aren't any objections as to that
19 person is carrying cholera and we can't let them in the
20 room, I think we will have -- we'll have a robust
21 discussion and hopefully we'll be able to move it forward,
22 okay?

23 DR. McDOWELL: Thank you.

24 ACTING CHAIRPERSON GORDON: All right. Thank
25 all -- and I want to thank all of you. I do recognize

1 that for the time that -- the little time that we have all
2 put in on this, you guys have spent, you know,
3 exponentially more hours. And hopefully we are going to
4 make some progress.

5 Let's move on now to Item number -- are we up to
6 number 100 I believe, which is the --

7 EXECUTIVE OFFICER FOSSUM: Mr. Chair, can we take
8 a break for --

9 ACTING CHAIRPERSON GORDON: No.

10 (Laughter.)

11 ACTING CHAIRPERSON GORDON: Yeah, let's all take
12 a break. Let's see, it's a quarter to -- let's come back
13 at 5 to 1:00.

14 (Off record: 12:47 PM)

15 (Thereupon a recess was taken.)

16 (On record: 1:02 PM)

17 ACTING CHAIRPERSON GORDON: Everybody, please
18 take their seats.

19 All right. Call the California State Lands
20 Commission back to order. That's not fair, Mr. Fossum.

21 And we're going to move on to Item 100, which is
22 to consider a lease application for a floating restaurant
23 on San Francisco Bay in the wonderful City of Burlingame.

24 May we have the staff presentation, please.

25 Ms. Kato.

1 PUBLIC LAND MANAGER KATO: I'm short.

2 Good afternoon, Mr. Chairman and Commissioners.
3 My name is Grace Kato, I'm a member of the Commission's
4 Land Management Division staff.

5 (Thereupon an overhead presentation was
6 Presented as follows.)

7 PUBLIC LAND MANAGER KATO: Before the Commission
8 today is the application for a general lease commercial
9 use of filled and unfilled sovereign land located at 410
10 Airport Boulevard in the City of Burlingame.

11 The Commission has already heard at its August
12 meeting the History of the site. So in the interests of
13 moving this along, I will not include any of the
14 historical information on the site here, but I'm available
15 to answer any questions specifically to this site, if
16 necessary.

17 --o0o--

18 PUBLIC LAND MANAGER KATO: At the August meeting,
19 the Commission directed staff to continue to work with the
20 applicant and to resolve the outstanding issues that we
21 had presented at the meeting.

22 --o0o--

23 PUBLIC LAND MANAGER KATO: Staff has been working
24 with the applicant to alleviate the concerns raised
25 regarding the operations proposed -- the floating

1 restaurant operations proposed at the site.

2 --o0o--

3 PUBLIC LAND MANAGER KATO: Although the applicant
4 has responded to several of these issues, and the
5 information that has been provided to staff does not
6 sufficiently address our concerns regarding the proposed
7 restaurant operation.

8 --o0o--

9 PUBLIC LAND MANAGER KATO:

10 Additionally, staff has been made aware that
11 ownership of the vessel is no longer held by Mr. Bothwell,
12 but by Maxim Commercial Capital, LLC.

13 --o0o--

14 PUBLIC LAND MANAGER KATO: I'm going to skip the
15 next 2 slides here.

16 The understanding of staff is that Mr. Bothwell
17 has sold the vessel to Maxim under a lease-back scenario.
18 Maxim has told staff that they have conducted a thorough
19 title search on the vessel, and it is their position that
20 there are no other valid title claims against this vessel.

21 Maxim has indicated that they will grant the
22 applicant the use of the vessel for the floating
23 restaurant operation. Details regarding the business
24 arrangement between Maxim and the applicant were requested
25 by staff, but have not been provided yet at this time.

--000--

PUBLIC LAND MANAGER KATO: So staff still believes that there are significant issues surrounding the applicant's request for the State to enter into a lease. Those concerns are an extensive 40-year history of difficulty establishing a viable restaurant operation at this location; inadequate documentation by the applicant demonstrating the financial viability of the proposed business venture and how their restaurant will be different and more viable than previous operations; ownership of the vessel; and the pending and yet unresolved trespass action authorized by the Commission at this location.

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PUBLIC LAND MANAGER KATO: Based on these factors, staff does not believe it would be prudent or in the best interests of the State for the Commission to approve this lease. Consequently, staff is recommending denial of the application and direction from Commission to pursue the existing trespass action.

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PUBLIC LAND MANAGER KATO: However, should this Commission staff decide to issue a lease, staff does believe that certain special lease provisions are necessary to protect the State's interest and assure

1 adequate remedies are available to the State should the
2 lease operation fail and the proposed leaseholder cannot
3 be compelled to perform, including removal of the vessel
4 without any cost to the State. Some of these lease
5 provisions are listed here.

6 --o0o--

7 PUBLIC LAND MANAGER KATO: At the time of the
8 staff report, the applicant could not agree to a number of
9 these special lease provisions. Consequently, the staff's
10 recommendation is that the Commission deny this lease
11 application, because it is not in the State's best
12 interests

13 I'm available for any questions.

14 COMMISSIONER NEWSOM: I read through the report,
15 so I don't have any questions for you yet, but obviously
16 I'd love to hear from the representation of the applicant
17 and the applicant himself.

18 MR. HIGBIE: Good afternoon, gentlemen. My name
19 is Richard Higbie. I'm a member of the LLC that's the
20 operator of -- going to be the operator of the vessel.

21 I don't think there are any issues that concern
22 the staff that can't be adjusted. We are able to obtain a
23 report from the tow boat -- a reputable tow boat company,
24 that if the lease is terminated, at any time, they will be
25 available to tow it from the site in exchange for their

1 rights to be paid for that.

2 ACTING CHAIRPERSON GORDON: Sir, can I stop you
3 right there. You said a report from the tug boat company.
4 We asked for a contract. Do we have a contract with the
5 tug boat company?

6 MR. HIGBIE: We don't have it completed at this
7 time. We'd like the application to be conditioned on the
8 acceptable provision -- providing a contract. The one we
9 negotiated with wanted a few assurances that I don't think
10 that the staff would have agreed with, so I'm going to
11 have to negotiate a little more to get the contract done,
12 so there will be no question that the boat will be
13 removed.

14 And any of the other conditions the staff has
15 imposed appear to be a reasonable way to protest the
16 interests of the State and we have no objection. And it
17 would be my suggestion that this be approved subject to
18 the staff accepting our contract.

19 And that should cover it. I did indicate that
20 because of all of the problems and the delays that we
21 would have liked the 20-year lease that was offered
22 initially. And I spoke to Ms. Kato, and she said that she
23 believed the staff would be acceptable to adding to the
24 lease, two 5-year options, which would give the investors
25 and the owner an opportunity to recover their investment.

1 And she said -- she then indicated there'd be no
2 objection to that. And she just wanted to ensure that if
3 things weren't running as smoothly as Mr. Bothwell
4 proposes, that the State would have a -- you know, another
5 chance to reconsider things.

6 And we don't want the State to have any concerns
7 or any worries. Mr. Bothwell bought that boat in 1955 and
8 has been close to it ever since. And he ran it very
9 successfully for 10 or 11 years. And subsequent owners
10 haven't had his skills or ability, and -- but the most
11 important thing is the area where it's now moored has
12 become very vital, and another restaurant is going to
13 be -- make that area even more exciting.

14 ACTING CHAIRPERSON GORDON: Sir, let me stop you
15 right there. From my perspective, for the interests of
16 the State right here, and I'm going to be fairly green eye
17 shade accountant type.

18 Whether Mr. Bothwell can run the restaurant or
19 not is not a major concern for my. My concern is what
20 happens if he fails? The restaurant business has a
21 remarkable failure rate, so the 2 things that we were
22 primarily interested in here were the lease guarantee and
23 the ability to have this boat removed if the restaurant
24 fails for any reason.

25 So I'm hearing your testimony, you know, we had

1 indicated that one of the very first items on there is
2 that Maxim, as a co-lessee, they are a deep pocket that
3 the State could recover losses from. You're indicating
4 that the only remaining issue for you is the towboat
5 contract. Is that to say that Maxim has agreed to sign on
6 as a co-lessee?

7 MR. HIGBIE: They will sign on -- I've got a
8 commitment, they will sign on the co-lessee, but they
9 would like their obligation under the lease limited to
10 just removing the boat. They have subleased it to the
11 LLC, so they don't have anything to do with the operation,
12 but they are the -- they do have title to the boat, and
13 it's important that they're the ones that sign on to the
14 two agreement that -- and it would be very helpful if I
15 could have an understanding that when -- at any time Maxim
16 removes the boat, they no longer have any liability under
17 the lease, because this really isn't their problem, but it
18 is a problem that -- since it's their boat.

19 And with those concessions, or those
20 understandings, we have no objection to providing a tow
21 agreement that is acceptable to the staff and that it be
22 also signed by Maxim.

23 ACTING CHAIRPERSON GORDON: All right. So let me
24 summarize. So we -- if we were to grant a conditional
25 lease today with codicils that Maxim would sign on as a

1 co-lessee with responsibility for removal of the boat, and
2 a two company would sign on with legal responsibility to
3 remove the boat upon cancellation of the lease for any
4 reason. You would be able to deliver that to staff in
5 what time frame?

6 MR. HIGBIE: That's correct. I think it would
7 take us at least 10 days to get those documents all
8 approved and drafted.

9 ACTING CHAIRPERSON GORDON: Ms. Kato, can you
10 come forward, please?

11 MR. HIGBIE: I beg your pardon?

12 ACTING CHAIRPERSON GORDON: I'm talking to Grace.
13 If you could let her have the microphone.

14 PUBLIC LAND MANAGER KATO: So just a few points
15 of clarification. When I spoke with Mr. Higbie earlier
16 this afternoon, he had asked whether or not staff would be
17 amenable to the two 5-year options. I advised him that
18 that would be a situation that the Commissioners would
19 need to take into consideration, that staff recommendation
20 is for a 10-year lease term.

21 He had requested a 20-year lease term or a
22 25-year lease term that number varies. However, that it
23 would be the Commission's ability to make that
24 determination whether or not 2 additional 5-year terms
25 would be acceptable.

1 As far as the operations or the relationship
2 between Maxim and the Frank M. Coxe, LLC, it has been --
3 our understanding, Staff spoke with Doug Houlahan of Maxim
4 yesterday, and they specifically stated they would not be
5 a co-lessee on this lease. So we had been working with
6 them about the possibility of doing a guarantee type
7 agreement. We have not been able to finalize that out
8 yet.

9 ACTING CHAIRPERSON GORDON: Okay. Let's put --
10 but if we -- so we're getting conflicting opinions on what
11 Maxim said. If we were to grant the lease with the
12 condition of Maxim signing on, would that, in your
13 opinion, plus the tow contract, cover the State's
14 interests here?

15 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:
16 I'm Colin Connor. I'm the Assistant Chief. I
17 spoke to Doug Houlahan of Maxim yesterday, and actually
18 have had 2 conversations with him, and I was following
19 up -- my conversation yesterday was a follow up to an
20 email that he had sent us, basically saying that he did
21 not want anything to do with a lease, being a co-lessee.
22 That's not their line of business. He would do a
23 guarantee that the vessel would be removed if there was
24 a -- if Mr. Higbie and Mr. Bothwell defaulted on their
25 lease.

1 So we've been working along that line. The
2 concern that staff has is under the sale and lease-back,
3 it's for a limited term, and it could very well be that
4 the sale and lease-back would be less, if Mr. Bothwell and
5 Mr. Higbie satisfied the terms of their arrangement with
6 Maxim, which we don't know what it is, that they could --
7 that guarantee would be null and void at that point in
8 time, in the sense that now Maxim, they've been paid off
9 as part of their arrangement. They are now out of the
10 picture. Transfers title back -- is transferred back to
11 Mr. Higbie and Mr. Bothwell, title of the vessel that is.
12 So that guarantee could be for a shorter duration than the
13 lease itself.

14 ACTING CHAIRPERSON GORDON: Let me play lawyer
15 for a second, because this seems solvable. If we were to
16 draft the lease that said Maxim -- that the initial lease
17 would require Maxim to be the guarantor to remove the
18 boat.

19 Upon Maxim transferring title within 30 days, Mr.
20 Higbie -- Coxe, LLC must have a subsequent guarantor or
21 the boat would be, at that point in time, required to be
22 towed by the tugboat company on the second codicil. Would
23 that cover the State's interests? Counsel, Mr. Rusconi?

24 DEPUTY ATTORNEY GENERAL RUSCONI: I would suggest
25 that it be 30 days prior to any transfer.

1 ACTING CHAIRPERSON GORDON: Okay. Good point.
2 Well put. Very well put. Okay. So would that cover the
3 State's interest if we did it that way?

4 EXECUTIVE OFFICER FOSSUM: If I can, Mr. Chair,
5 we had a list of 13 items that we felt were necessary to
6 protect the State's interest, 7 of them they did agree to.
7 The ones that we weren't provided were, as Grace said, the
8 copy of the arrangement between the 2 parties, Maxim
9 and --

10 ACTING CHAIRPERSON GORDON: Let me stop you right
11 there. Mr. Higbie, why haven't we been able to receive a
12 copy of the agreement between the LLC and Maxim?

13 MR. HIGBIE: We just concluded that agreement and
14 I don't have a copy here with them now, but we could
15 certainly make that a condition that we'd submit that.

16 If you could give us a short time, we can have
17 that concluded too.

18 ACTING CHAIRPERSON GORDON: COB Tuesday. Does
19 that work?

20 Mr. Higbie, COB Tuesday?

21 Mr. Higbie.

22 MR. HIGBIE: Sure. Certainly.

23 ACTING CHAIRPERSON GORDON: All right. So
24 condition would be that we have a copy of that agreement
25 by Tuesday, which is -- I don't have a calendar in front

1 of me.

2 Next condition that hasn't been met, Mr. Fossum?

3 EXECUTIVE OFFICER FOSSUM: We asked the
4 applicants to personally, because it being -- dealing with
5 an LLC can sometimes be problematic, because of bankruptcy
6 and other things, to personal indemnify, insure, and hold
7 the State harmless from any claims arising from a
8 challenge to the ownership of the vessel.

9 Mr. Higbie, in fact, is in the chain of title to
10 the extent that in 1978, I believe, or thereabouts, signed
11 over the property to another party. And to this date, I
12 haven't seen anything as to how Mr. Bothwell or Mr. Higbie
13 or Frank Coxe, LLC have obtained title from anybody.

14 We do have the deed from them to Maxim, but we're
15 not exactly sure how they got access to the ownership of
16 the vessel. So we asked that they personally be
17 responsible for if the State gets sued from --

18 ACTING CHAIRPERSON GORDON: From a title issue.

19 EXECUTIVE OFFICER FOSSUM: -- that assumption
20 that they do have control over the vessel

21 ACTING CHAIRPERSON GORDON: Is that acceptable to
22 you, Mr. Higbie?

23 MR. HIGBIE: Oh, certainly.

24 ACTING CHAIRPERSON GORDON: Okay. Condition 2.

25 EXECUTIVE OFFICER FOSSUM: And one other item

1 that we received no response on was a lease provision
2 prohibiting the transfer of vessel to another party
3 without prior notification and consent of the Commission.

4 ACTING CHAIRPERSON GORDON: Is that acceptable to
5 you, Mr. Higbie?

6 MR. HIGBIE: Certainly, yes.

7 ACTING CHAIRPERSON GORDON: Okay, 30 days prior,
8 just as Mr. Rusconi did with the other condition, okay?

9 EXECUTIVE OFFICER FOSSUM: So at this point,
10 there's only 3 outstanding matters. The first one being
11 whether or not Maxim is a co-lessee. Actually, the way we
12 have it --

13 ACTING CHAIRPERSON GORDON: Guarantor I think is
14 what we're looking for at this point.

15 EXECUTIVE OFFICER FOSSUM: And if there's a
16 guarantor -- and again, we -- I had one of the counsel
17 working all day yesterday on a guarantee. There is the
18 question, as Mr. Rusconi brought up, about well what if
19 they -- what if Maxim just decides to deed back or deed to
20 a third party, how do we tie that? It's not like a piece
21 of property, you can record it against the land, so that
22 there's knowledge to any purchaser.

23 ACTING CHAIRPERSON GORDON: You can take a lien
24 against a piece of personal property, can't we? I haven't
25 been in law school in 30 years, but memory --

1 EXECUTIVE OFFICER FOSSUM: Neither have I.
2 Thirty-five years, I think.

3 MR. HIGBIE: I think Maxim is an entity that we
4 can always find. And their agreement to remove that boat
5 at any time that lease is terminated should protect the
6 State, because -- just because they sell the boat doesn't
7 mean they're no longer liable on the lease that they made
8 with the -- that they signed on with the State of
9 California.

10 ACTING CHAIRPERSON GORDON: Mr. Rusconi, I think
11 we can draft that, would you agree, to cover the State's
12 interest?

13 DEPUTY ATTORNEY GENERAL RUSCONI: I think that,
14 yeah, a lease term or a guarantee can be drafted to
15 incorporate that to protect the Commission.

16 EXECUTIVE OFFICER FOSSUM: But we do still -- we
17 are struggling with it. We did come up with a draft. I
18 don't think we're quite ready to share it right now, but
19 we did have one put together. And that was really in lieu
20 of the fact that we'd asked for a bond, half a million
21 dollar bond, because of the instance we've recently had
22 where the State ended up -- lucky not the State Lands
23 Commission, but another agency, picked up the tab of over
24 \$600,000 to remove a floating vessel from the Delta and
25 having it scrapped. We don't want the State to be in that

1 position.

2 So we really -- I think what's going to be key is
3 the guarantee and the contract from this company that --
4 and I really am struggling with seeing a company. We got
5 an estimate with all kinds of caveats on it from them as
6 to what a company would be willing to do, but this vessel
7 probably would need to be surveyed before it was moved.
8 There may be dredging involved. There may be all kinds of
9 issues. And so if they can get that by close of business
10 Tuesday, I would be very impressed.

11 ACTING CHAIRPERSON GORDON: Now, I don't think
12 that's the contract we're talking about close of business
13 Tuesday. The Tuesday is the agreement --

14 EXECUTIVE OFFICER FOSSUM: I'm sorry. You're
15 right, a contractual arrangement.

16 ACTING CHAIRPERSON GORDON: -- between Maxim and
17 the LLC.

18 EXECUTIVE OFFICER FOSSUM: So you haven't
19 specified a date certain yet.

20 ACTING CHAIRPERSON GORDON: We will specify a
21 date before we get through here. But I want to be clear,
22 Mr. Bothwell and Mr. Higbie. I just -- for full
23 advertises, I met with Mr. Bothwell down in San Francisco
24 several weeks ago in an attempt to try to find a way to
25 give him an opportunity to run his business.

1 That said, the most critical issue -- and I think
2 I speak for both Commissioners -- is covering the State's
3 interests in case the restaurant, like numerous other
4 restaurants on that boat at that location, fails, can we
5 cover the State's interests?

6 And, for me, now I'll speak strictly for this one
7 Commissioner, it is about that contract with a reputable
8 insured towing company that is enforceable, that in case
9 this restaurant fails, the State is fully covered, and
10 that boat is going to be removed and the State is not
11 going to pay for it. The taxpayers of California cannot
12 be on the hook for your personal business opportunity.

13 MR. HIGBIE: Your Honor, I'd like to address that
14 point. The State has that problem now. We're trying to
15 relieve it for them, and we're doing everything we can,
16 and we'll be successful.

17 EXECUTIVE OFFICER FOSSUM: And we appreciate
18 that. That, as Grace mentioned, the Commission did
19 authorize ejectment from the last operator there, and
20 that's still pending.

21 One last thing that is -- that the staff had
22 recommended and that is proofs of letter of commitment.
23 Mr. Chair, you indicated that that was not a priority for
24 you necessarily as far as whether they are going to
25 succeed, as far as having investment funds there, as long

1 as we get these other things. And I don't know what the
2 other Commissioners inclination is in that regard, but
3 I --

4 COMMISSIONER NEWSOM: This is verification of
5 that vessel.

6 EXECUTIVE OFFICER FOSSUM: That they have funds
7 available to actually operate the restaurant.

8 MR. HIGBIE: The provisions of that deposit, I
9 think we can meet those conditions.

10 ACTING CHAIRPERSON GORDON: With that, do I have
11 a motion?

12 COMMISSIONER NEWSOM: Is there -- I'm just --
13 well, there have been plenty, so I've got to ask, is there
14 anything else?

15 (Laughter.)

16 PUBLIC LAND MANAGER KATO: There is one
17 additional caveat.

18 COMMISSIONER NEWSOM: Okay.

19 PUBLIC LAND MANAGER KATO: That if the vessel
20 were to be removed by a reputable tugboat company, that
21 that vessel does not end up on State property at a
22 different location, so we don't have this problem all over
23 again.

24 EXECUTIVE OFFICER FOSSUM: In the middle of the
25 bay.

1 LAND MANAGEMENT DIVISION CHIEF BUGSCH:

2 And we also need clarification that -- I'm still
3 not clear as to whether or not Maxim is going to be on
4 this lease or not.

5 ACTING CHAIRPERSON GORDON: What we're looking
6 for is a guarantee from -- if Maxim will sign a
7 guarantee --

8 MANAGEMENT DIVISION CHIEF BUGSCH: Okay. So they
9 will not be part of the lease, but we will get a
10 guarantee.

11 ACTING CHAIRPERSON GORDON: Yes.

12 LAND MANAGEMENT DIVISION CHIEF BUGSCH: Okay. In
13 that situation, we also need a guarantee that if it
14 transfers back to that lessee, that we may gain title to
15 that vessel at the end of that as well, if they haven't
16 removed it within 90 days.

17 So we already have a provision in there that if
18 the lessee -- if this lease is in default, in any way,
19 that they have to remove the vessel within 90 days. We
20 need to add to that, because there's 2 kind of issues. We
21 need to have the financial wherewithal to remove the boat.
22 The State needs to be protected there, and also the
23 authority to remove that boat.

24 ACTING CHAIRPERSON GORDON: Understood.

25 LAND MANAGEMENT DIVISION CHIEF BUGSCH: So those

1 2 conditions need to be set.

2 ACTING COMMISSIONER REYES: And who has the
3 responsibility for removing -- and who has the
4 responsibility -- not just the authority, but the
5 responsibility for removing the boat.

6 LAND MANAGEMENT DIVISION CHIEF BUGSCH: Right.

7 ACTING COMMISSIONER REYES: That's one of the
8 things -- thank you for bringing that out, because that's
9 one of the things that I wanted to seek clarification on,
10 that to the extent that there is this agreement and the
11 lease is settled, and we do get the 30- or 90-day
12 notification, whatever it is we do, so what? Is then --
13 is he responsible then for getting somebody else
14 guaranteed, because if the business is successful, we
15 don't want to tow it. We want him to be successful and
16 continue, but I still want some back-stop, somebody else
17 to then assume that responsibility in the event that a
18 year later he's not as successful.

19 EXECUTIVE OFFICER FOSSUM: And I believe that
20 that is probably going to be the hardest one to
21 accomplish, the guarantee. This company, I guess, has
22 \$100,000 into this boat as a loan. Are they willing to
23 enter into a guarantee that ties them up for the next 20
24 years --

25 ACTING BOARD MEMBER REYES: Or terminate the

1 lease.

2 EXECUTIVE OFFICER FOSSUM: -- or costs that could
3 exceed \$100,000? I don't -- I'd be surprised if we can
4 get a guarantee that they're willing to sign to that
5 extent, but we'll certainly attempt to do so.

6 ACTING COMMISSIONER REYES: But in the event they
7 do, I want to make sure that we have a guarantee. Even if
8 they do guarantee, when the current owners do provide the
9 guarantee and that guarantee goes away when the terms of
10 the lease are satisfied, who then provides that
11 guaranteed? Who comes into -- who is the --

12 EXECUTIVE OFFICER FOSSUM: I think the way -- and
13 I had looked at this recently, I believe, and was
14 considering a provision that said the guarantee continues
15 for at least 90 days after the termination of the lease,
16 so that there's time for the Commission to take action to
17 call the guarantor and direct them to remove the vessel.

18 ACTING CHAIRPERSON GORDON: Yeah, or enforce the
19 towboat contract to have it pulled away at that point in
20 time.

21 ACTING COMMISSIONER REYES: But I guess my point
22 is though, if 5 years from now the terms of the lease are
23 satisfied, he's successful enough to be able to pay the
24 lease -- the property, okay, if he's successful, I don't
25 want to tow his property. He should continue to be

1 successful.

2 EXECUTIVE OFFICER FOSSUM: Absolutely.

3 ACTING COMMISSIONER REYES: However -- but I want
4 to make sure there's somebody there. Ms. Kato and Colin
5 understand what I'm trying to get at or am I too confused?

6 PUBLIC LAND MANAGER KATO: No, I think,
7 Commissioner Gordon had specifically stated that if, in
8 fact, Maxim does get paid off or the lease-back situation
9 does get completed and resolved, that within 30 days,
10 prior to the transfer of that, that we must have a
11 subsequent guarantor, we can go ahead and call that out in
12 the lease as well.

13 ACTING CHAIRPERSON GORDON: That's it exactly.

14 EXECUTIVE OFFICER FOSSUM: Otherwise, they
15 would -- the breach would result again and we would use
16 the existing guarantor at that point.

17 ACTING CHAIRPERSON GORDON: Belt and suspenders.

18 COMMISSIONER NEWSOM: And just for my own
19 edification, there's a 3-year prepayment on the rent.
20 What is the monthly rent?

21 PUBLIC LAND MANAGER KATO: It's like -- it would
22 be a yearly rental term. And I think that is at \$10,700.

23 COMMISSIONER NEWSOM: And there's any gross --

24 PUBLIC LAND MANAGER KATO: We did not do a
25 percentage of gross rental associated with this. However,

1 we would have the ability to reassess the rental value at
2 a 5-year mark.

3 COMMISSIONER NEWSOM: At 5-year mark.

4 PUBLIC LAND MANAGER KATO: At 5-year mark. And
5 then at the 4th year would start an annual CPI adjustment
6 as well.

7 COMMISSIONER NEWSOM: Okay. And then the
8 subsequent 2 options would be at market mutually agreeable
9 or what's the language on the options.

10 PUBLIC LAND MANAGER KATO: Assuming that the
11 Commission would entertain the two 5-year options, we
12 would be able to write in any lease term that you would so
13 choose.

14 COMMISSIONER NEWSOM: And if we did, what would
15 you recommend?

16 PUBLIC LAND MANAGER KATO: Most likely market
17 rate, and then possibly additional -- assuming that the
18 restaurant operations did continue or were successful, we
19 may want to do a percentage of rate -- percentage of
20 gross.

21 COMMISSIONER NEWSOM: Right.

22 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

23 I just want to add that it has been staff's
24 practice not to do options or first rights of refusals or
25 things of that nature. If the restaurant is successful at

1 the end of a 10-year term, it's in the State's best
2 interest to continue it. So that's kind of the way we're
3 looking at it.

4 COMMISSIONER NEWSOM: Interesting. Okay.

5 ACTING CHAIRPERSON GORDON: So I'm looking for a
6 motion from one of the Commissioners.

7 COMMISSIONER NEWSOM: I'll move it with every
8 damn one of those caveats.

9 (Laughter.)

10 COMMISSIONER NEWSOM: And so you guys all have a
11 lot of work to do. I guess I'll say, I've got 7 of these
12 things, these restaurants, I'm going to just say good
13 luck. This isn't easy, in any respect. These conditions
14 just make it more challenging. I'll be impressed too if
15 we can work this thing out.

16 But I want to just compliment staff, despite I
17 think their best instincts, for be willing to work with
18 the Commission. And I really do appreciate the Commission
19 working with the applicant to give this guy a shot, give
20 these folks a chance. And I think it's important that
21 folks recognize that that wasn't necessarily the path we
22 were walking down. And so I'm grateful to everyone for
23 being willing to extend this opportunity.

24 ACTING COMMISSIONER REYES: I'll second and echo
25 those sentiments.

1 I just want to make sure that the applicant is
2 aware that we're not obstructionists. We're just trying
3 to protect all the taxpayers, including yourself.

4 COMMISSIONER NEWSOM: Yeah, absolutely.

5 ACTING CHAIRPERSON GORDON: So we have a motion.
6 And that is without two 5-year extensions, with the
7 implicit understanding that if the restaurant is
8 successful, it will be in the State's interest to do it.
9 So you're getting a 10-year lease, based on all of those
10 conditions that we have listed.

11 Anybody in the audience wish to comment?

12 Public comment?

13 EXECUTIVE OFFICER FOSSUM: Is that clear --

14 ACTING CHAIRPERSON GORDON: That being said,
15 we've got a motion, a second.

16 ACTING COMMISSIONER REYES: He's got a clarifying
17 comment.

18 ACTING CHAIRPERSON GORDON: Oh, I'm sorry, Mr.
19 Fossum.

20 EXECUTIVE OFFICER FOSSUM: I want to make sure
21 what the motion was, was for the 10-year lease?

22 ACTING CHAIRPERSON GORDON: Yes, a straight
23 10-year lease.

24 EXECUTIVE OFFICER FOSSUM: And if they're
25 successful we'll be welcoming them back with open arms.

1 ACTING COMMISSIONER REYES: And did we establish
2 a timeline for the -- we established one timeline.

3 ACTING CHAIRPERSON GORDON: Oh, we didn't
4 establish a timeline for the tugboat --

5 EXECUTIVE OFFICER FOSSUM: The guarantee.

6 ACTING CHAIRPERSON GORDON: -- the tugboat
7 guarantee. Is 30 days reasonably for you folks?

8 MR. HIGBIE: That would be.

9 ACTING CHAIRPERSON GORDON: Okay, 30 days from
10 today you must come forward with a guarantee from a
11 reputable tugboat operator.

12 EXECUTIVE OFFICER FOSSUM: As a condition of
13 approval.

14 ACTING CHAIRPERSON GORDON: As a condition of
15 approval of the lease, yes.

16 Ms. Lucchesi.

17 CHIEF COUNSEL LUCCHESI: And in lieu of the bond
18 a guarantee by Maxim to remove the vessel as well.

19 ACTING CHAIRPERSON GORDON: That's also -- that's
20 already been part of that.

21 EXECUTIVE OFFICER FOSSUM: Both of those, the
22 contract and the guarantee.

23 ACTING CHAIRPERSON GORDON: Yeah. Exactly.

24 EXECUTIVE OFFICER FOSSUM: And so the Commission
25 is approving it with a condition subsequent or are we

1 looking at --

2 ACTING CHAIRPERSON GORDON: I think that's real
3 property law.

4 ACTING COMMISSIONER REYES: Some criteria that
5 needs to be -- there's some criteria that needs to be met
6 before it is approved by -- are we delegating to staff to
7 take care of it.

8 EXECUTIVE OFFICER FOSSUM: We will not execute
9 the lease until we have those.

10 Thank you.

11 ACTING CHAIRPERSON GORDON: It's an approval
12 based on conditions that must be met. We've got a motion.
13 We've got a second.

14 All those in favor?

15 (Ayes.)

16 ACTING CHAIRPERSON GORDON: Opposed?
17 Unanimously adopted. Gentlemen, good luck.

18 COMMISSIONER NEWSOM: Good luck.

19 PUBLIC LAND MANAGER KATO: Thank you.

20 Now the easiest -- yes, Mr. --

21 COMMISSIONER NEWSOM: You already won your
22 arguments.

23 ACTING CHAIRPERSON GORDON: Yeah, go ahead.

24 MR. BOTHWELL: Do you know how hard it is to do
25 anything with the building not having, you know, any

1 ground under it. So I need this lease to do anything.
2 But I also want to say that in my -- my son will run this.
3 I will help him, but he's been -- he's 30 years old now,
4 and he's been with me since 15 running restaurants.

5 I've had 44 bars and restaurants from the Terri
6 Pines Inn that we built, hotels in Reno, not one that I've
7 ever operated, has failed. So I just want you guys to
8 sleep good tonight

9 (Laughter.)

10 COMMISSIONER NEWSOM: Hear, hear.

11 ACTING CHAIRPERSON GORDON: Good luck, sir.

12 MR. BOTHWELL: Thank you and also to staff. I
13 understand.

14 Thank you.

15 MR. HIGBIE: The first thing they teach a young
16 lawyer is when you're ahead to quit talking.

17 (Laughter.)

18 MR. HIGBIE: And I'm sure you -- Mr. Bothwell
19 feels strongly about his obligation and it will work.

20 COMMISSIONER NEWSOM: Well done.

21 ACTING CHAIRPERSON GORDON: Thank you, folks.

22 All right. Moving on -- the rest of you folks
23 are all here because you want to dredge sand from San
24 Francisco Bay or oppose it.

25 All right. Item 101 is to consider certification

1 of a final Environmental Impact Report and issuance of 4
2 leases for commercial sand and gravel extraction in
3 central San Francisco Bay.

4 Staff presentation, please, sir.

5 (Thereupon an overhead presentation was
6 presented as follows.)

7 PUBLIC LAND MANAGEMENT SPECIALIST OETZEL: Good
8 afternoon, Mr. Chairperson and members of the Commission.
9 I am Don Oetzel with the Commission's Land Management
10 Division. And I'm here to present information on Calendar
11 Item number 101. This item asks the Commission to
12 consider certifying a Final EIR, adopting a Statement of
13 Overriding Considerations, and authorizing a 10-year lease
14 between the Commission and Hanson Marine Operations,
15 covering the continued extraction of sand and gravel from
16 San Francisco Bay.

17 The 4 proposed leases presented to you for your
18 consideration, lease numbers PRC 709, 7779, 7780, and 2036
19 comprise approximately 2,601 acres of submerged land in
20 San Francisco Bay.

21 The application for lease number PRC 7781, suisun
22 Associates, is currently incomplete pending the receipt
23 and review of information required for determining the
24 appropriate consideration for its sand.

25 Hanson Marine Operations has applied for renewal

1 of their sand mining leases, as well as modification of
2 annual volume limits for a term of 10 years. Hanson's
3 proposed project would allow mining a combined maximum
4 volume of 1,540,000 cubic yards per year. Staff
5 recommends that the Commission authorize each of the 4
6 leases for 2 different mining levels.

7 Initially, the leases would be issued for the
8 lower volumes set forth in the reduced project
9 alternative, analyzed in the EIR, and identified as the
10 environmentally superior alternative.

11 At this level, the 4 leases combined would allow
12 a total maximum mining volume of 1,060,656 cubic yards per
13 year, which is the same as the 5-year annual average
14 volume mined from 2002 to 2007. The leases would allow an
15 increase to the proposed project mining volumes provided
16 that the lessee complies with 2 conditions that
17 demonstrate the significant environmental effects of the
18 increased mining identified in the EIR have been mitigated
19 to a less-than-significant level.

20 The first condition requires that Hanson obtain
21 an incidental take permit from the Department of Fish and
22 Game for the mitigation of impacts to Delta smelt and
23 longfin smelt.

24 The second lease condition requires Hanson to
25 provide documentation that they have met the California

1 Air Resources Board regulations to upgrade to cleaner
2 burning diesel engines for their mining equipment.

3 The lease described in Calendar Item 101 is for a
4 term of 10 years beginning January 1, 2013. It has a base
5 biannual royalty of \$2.09 per cubic yard mined, and
6 requires for each of the leases liability insurance in the
7 amount of \$1.5 million, water quality and environmental
8 insurance of \$1.5 million, performance bonds in the
9 following unique provisions:

10 1, the biannual royalty of \$2.09 per cubic yard
11 is to be adjusted annually by the PPI;

12 2, minimum biannual royalty payments require a
13 minimum biannual payment regardless of the amount of sand
14 mined for a given lease area. Minimum biannual royalty
15 amounts will increase by 25 percent from their 2013 levels
16 beginning January 1, 2018;

17 3, annual land rent of \$2 per acre for all of the
18 leases; and,

19 4, the lease provides for reimbursement of staff
20 costs for mitigation monitoring required by the EIR.

21 Present today from the Commission staff is Mr.
22 Chris Huitt, Staff Environmental Scientist of the
23 Commission's Division of Environmental Planning and
24 Management who will be providing you with information
25 regarding the EIR.

1 Also present is Mr. Jim Frey and Ms. Pam Griggs,
2 staff counsel who are available for your questions.

3 Mr. Mike Roth and Mr. Greg Knapp are the
4 representatives in attendance for Hanson.

5 I'm available for your questions. Thank you.

6 ACTING CHAIRPERSON GORDON: Let me ask one
7 question before we go farther with the presentation. I'm
8 looking through the requested speakers, I have 9 speakers
9 in support of the lease. Is there anybody in the audience
10 opposing the lease today?

11 There's not.

12 As was recommended earlier, and I'll go back to
13 my days as a trial attorney, when you've won your case,
14 keep it short. Go forward.

15 COMMISSIONER NEWSOM: And the only thing I'd add,
16 and not to disrupt, but we did receive a number of letters
17 from Baykeeper and others that have expressed some
18 concern, so I'm candidly surprised they're not here to
19 represent their written word.

20 STAFF ENVIRONMENTAL SCIENTIST HUITT: Good
21 afternoon, Mr. Chairman and members of the Commission. My
22 name is Christopher Huitt and I am with the Commission's
23 Division of Environmental Planning and Management, or
24 DEPM.

25 I'm here to present the final Environmental

1 Impact Report for the San Francisco Bay and Delta sand
2 mining project Calendar Item 101.

3 DEPM staff is asking the Commission to consider
4 certifying the Final EIR and leases to be continued for
5 extraction of sand and gravel from San Francisco Bay.

6 --000--

7 STAFF ENVIRONMENTAL SCIENTIST HUITT: First of
8 all, I'd like to show you is the area that we're looking
9 at in the Environmental Impact Report. These are the
10 location of the lease areas, and the lease area of the
11 entire project that was analyzed in the EIR.

12 --000--

13 STAFF ENVIRONMENTAL SCIENTIST HUITT: This map
14 here shows the central bay leases specifically that are
15 being addressed today for your consideration. And these
16 are called the central bay leases 709, 2036, 7779 and
17 7780.

18 --000--

19 STAFF ENVIRONMENTAL SCIENTIST HUITT: The State
20 Lands Commission is acting as the lead agency for this
21 project pursuant to the California Environmental Quality
22 Act, or CEQA, and in accordance with the State's CEQA
23 guidelines.

24 The mining of sand for us as a construction
25 material has occurred within the central bay and Delta for

1 more than 7 decades. Channel and harbor dredging to
2 remove sand and other sediment deposits from the Bay Area
3 began in the 1800s. Construction sand mining within the
4 Bay-Delta Estuary began in the 1930s.

5 --o0o--

6 STAFF ENVIRONMENTAL SCIENTIST HUITT: The
7 depletion of sand from the San Francisco Bay littoral cell
8 has been a topic of discussion relating to the sand mining
9 EIR. What I'm showing you here are the impacts and the --
10 and the environmental -- excuse me, the Environmental
11 Impact Report evaluated the potential impacts and
12 identified mitigation measures for the reduced project
13 alternative with the increased volume option, which is
14 being presented to you today.

15 Some of the significant and unavoidable impacts
16 that were identified in the document are for Delta and
17 longfin smelts -- smelt, excuse me, and that's found in
18 the biological resources section.

19 Air emissions are as a result of indirect impacts
20 to the project. Sand being shipped from Canada and sand
21 being mined from local quarries in opposition to sand
22 being mined from the central bay. And these are found in
23 air quality and climate change and greenhouse gases.

24 The concept was raised in comments in the Notice
25 of Preparation by the San Francisco Bay Conservation and

1 Development Commission, or BCDC, and the U.S. Geological
2 Survey. And the EIR explored these concepts and was one
3 of the principal aims of the hydrodynamic modeling and
4 bathymetric analysis performed by Coast and Harbor
5 Engineering, CHE, and AMS, Applied Marine Sciences. And
6 it was described in Appendix G of the EIR.

7 The CHE study was used in the EIR as the basis
8 for impact -- hydrodynamic impact 2, in Section 4.3,
9 hydrology and water quality. The conclusion reached in
10 the EIR for impact hydro -- excuse me, hydrodynamic 2 is
11 that the extension of sand mining for a 10-year period is
12 not to expect to have a substantial effect on the amount
13 of sand delivered to the bar or coastal beaches. This is
14 the San Francisco Bar that directly is outside the Golden
15 Gate. And the impact of the proposed project on sediment
16 transport and the geomorphology of the coastline and on
17 the floor of the bay, and Delta, and ocean would therefore
18 be less than significant.

19 The discussion of cumulative impacts on sediment
20 transport and coastal morphology found in Section 4.3 of
21 hydrology and water quality, similarly concluded that the
22 project would not make a cumulatively considerable
23 contribution to a cumulative impact on coastal morphology.

24 --000--

25 STAFF ENVIRONMENTAL SCIENTIST HUITT: Impact

1 Biology 1 -- or for biological resources, the impact of
2 regular operation of sand mining activities will cause an
3 entrainment and mortality of Delta and longfin smelt.

4 The mitigation measures that were applied to the
5 EIR was timing of dredging, relative to X2. And X2 is a
6 distance from the Golden Gate to inland that an -- and it
7 signifies the total distance in miles to the point where
8 the water quality for salinity reaches 2 parts per
9 million.

10 Currently restrictions on sand mining operations
11 for other agencies and additional requirements and
12 restrictions to minimize and avoid take will be set
13 through consultation with Fish and Game through the use of
14 an ITP and it will be issued for the project.

15 And there will be other compensatory mitigation
16 measures as well. And the impact will remain significant
17 and unavoidable after the impact mitigation measures are
18 enacted.

19 --o0o--

20 STAFF ENVIRONMENTAL SCIENTIST HUITT: For air
21 quality and climate change and greenhouse gases, the
22 impact for the reduced project mining volumes -- excuse
23 me, I'm getting cotton mouth here -- from non-project
24 sources would result in emissions that exceed significant
25 thresholds. Air 1, 2 -- thank you, Mr. Rusconi.

1 EXECUTIVE OFFICER FOSSUM: Does the Commission
2 wish to have the entire report or do you want to ask
3 questions or make a motion or --

4 ACTING COMMISSIONER REYES: Well, this
5 Commissioner is ready to move the item. I've read all 72
6 pages of this, and staff has briefed me when I had
7 questions. So, at this point, I move that we certify the
8 EIR, we adopt the mitigation monitoring program, and adopt
9 the findings made in conformance with the California Code
10 of Regulations in the Statement of Overriding
11 Considerations in the conformance of the California Code,
12 Title 14, Section 15093 as outlined in Exhibit D.

13 And I also further find that this activity is
14 consistent with the use of classifications designated by
15 the Commission for the land use --

16 COMMISSIONER NEWSOM: Curtis, can you cut him off
17 now.

18 (Laughter.)

19 EXECUTIVE OFFICER FOSSUM: Oh, no. No sir.

20 ACTING CHAIRPERSON GORDON: We have a motion.
21 Before we have a second, we do have numerous members of
22 the public who have sat here through fascinating
23 conversations about invasive species, viruses, bacteria,
24 et cetera. I would like each of you who has come and
25 passed in a card to just come up, identify yourself very

1 briefly. You've sat here very patiently all day. Just
2 come forward, identify yourself, your organization. And
3 if you've got a sentence you'd like to say, feel free, but
4 don't repeat what the person before you said.

5 Okay.

6 STAFF ENVIRONMENTAL SCIENTIST HUITT: I will be
7 available for questions.

8 ACTING CHAIRPERSON GORDON: So why don't we start
9 with Marina Secchitano.

10 ACTING COMMISSIONER REYES: And as they make
11 their way up, my motion also includes renewal of the
12 lease.

13 (Laughter.)

14 MS. SECCHITANO: Marina Secchitano, regional
15 director of the Inland Boatman's Union. We represent
16 maritime workers up and down the coast, ferry workers,
17 workers on tugboats and dredges.

18 I just wanted to say that I appreciate your
19 support of this project, because we have a lot of good
20 union jobs paying great wages, great union pensions, great
21 union health care. And by keeping that operation here
22 working, we are keeping those very important jobs.

23 Thank you.

24 ACTING CHAIRPERSON GORDON: Mr. Robert Gregory,
25 please, and Christian Lind will come up after him.

1 MR. GREGORY: Yes. Robert Gregory. I'm the
2 operations manager for Foss Maritime Company that operates
3 the dredges for Hanson, and we're in support of you
4 certifying this. And thank you for your time.

5 ACTING CHAIRPERSON GORDON: Mr. Lind followed by
6 Shane Gusman.

7 MR. LIND: Good afternoon, everybody. Christian
8 Lind, Jerico Products, Incorporated. We are a responsible
9 tugboat company that you were looking for a few minutes
10 ago.

11 (Laughter.)

12 ACTING CHAIRPERSON GORDON: Can you just write a
13 bond before you leave? Thank you.

14 COMMISSIONER NEWSOM: You may have a customer.

15 MR. LIND: And we did that, the tow job for Cal
16 Recycle recently, the 600,000 -- we didn't get the
17 600,000, but we did that -- we were part of that process
18 in moving forward with the State's contractor to do all
19 that towing work.

20 Anyway, so we are a small family-owned and
21 operated business, also employee owned. Been in business
22 over 100 years. Mining materials from San Francisco Bay
23 and Delta. We are a small business with the State of
24 California and the SBA. I'm a 4th generation mariner, 4th
25 generation mining resources from the bay.

1 We'll be seeing you here again when we do --
2 we've been part of this EIR process for the Suisun
3 Associates and the middle ground, another lease up in
4 Suisun Bay, so you'll be seeing us again at probably the
5 next meeting. But anyway, so we -- this process is just
6 really important to our business as a small business. It
7 represents a huge part of our small business.

8 So with that, I'll shut up.

9 ACTING CHAIRPERSON GORDON: Thank you for taking
10 your time away from your job, Mr. Evans.

11 Let's see, next, Mr. Bill Butler, please.

12 MR. BUTLER: Good afternoon. Bill Butler. I'm
13 also with Jerico Products. And I would just like to say
14 following Mr. Lind's comments, you know, that the staff
15 and the professionals that they hired to do the EIR
16 process did an exhaustive and thorough examination. And
17 from the applicant's perspective, a very conservative
18 examination of the potential impacts, and to -- you know,
19 we are committed to working through the process, and being
20 responsible operators.

21 Thank you.

22 ACTING CHAIRPERSON GORDON: Mr. Mike Bishop,
23 please followed by Dr. Barry Keller.

24 MR. BISHOP: Good afternoon. Mike Bishop. I'm
25 the marine operations manager for Hanson Aggregates. I've

1 been involved with the sand mining for about 12 years.

2 Thank you very much.

3 ACTING CHAIRPERSON GORDON: Thank you. Short and
4 sweet.

5 Mr. Hanson. Dr. Hanson.

6 DR. KELLER: Dr. Barry Kelly, Ph.D. in Marine
7 Geophysics, also a State Licensed Professional Geologist
8 and Certified Hydrogeologist. I've been involved in
9 studies of sediments within the San Francisco Bay
10 Estuarine system for about 10 years.

11 First off, I'd like to say that the latest
12 scientific information which was discussed this week about
13 2 blocks away in the Bay-Delta Science Conference supports
14 the conclusions of the EIR, as represented by the Coast
15 and Harbor Engineering studies. And so I think we're up
16 to date with the latest science and in very good shape.

17 And for the Commission's information, an
18 important thing to note that based on USGS studies by Dr.
19 Patrick Barnard, Bruce Jaffe and Amy Foxgrover is that in
20 central bay we have sources of sand that come both down
21 the Sacramento River and from outside the Golden Gate
22 inward into the Bay. And the ones that come inward into
23 the Bay are ones that are not likely to impact other
24 coastal resources. And that's where a lot of the sand
25 mining happens.

1 ACTING CHAIRPERSON GORDON: Thank you, sir.

2 And Dr. Hanson. Last witness.

3 DR. HANSON: Good afternoon. My name is Chuck
4 Hanson. I'm a fisheries biologist. I've been working
5 with both Hanson and Jerico for the past 10 years on the
6 effects of sand mining on aquatic habitats within central
7 San Francisco Bay, as well as Suisun Bay. I've worked on
8 those same issues for over 30 years.

9 Two points. One is I'd like to compliment the
10 State Lands Commission staff and the consultants that
11 worked on preparing the EIR. I had an opportunity to
12 provide a variety of comments on drafts. They were
13 considerate of those comments. They engaged in open
14 discussions, and it was a good process, in terms of how
15 this was actually developed.

16 The second is I'd like to point out the
17 importance of the EIR from a regulatory and a resource
18 perspective. This will serve as part of the foundation,
19 not only for the State Lands Commission actions, but also
20 for BCDC, for the Army Corps of Engineers, for the
21 Regional Water Quality Control Board that all have
22 regulatory authority regarding this activity, as well as
23 it serves as an important foundation for the ongoing
24 discussions, the collaborative discussions that we're
25 currently having with the Department of Fish and Game in

1 support of the issuance of the incidental take permit
2 that's part of the mitigation requirements.

3 That information will be also used in support of
4 a biological assessment that will be provided to the Fish
5 and Wildlife Service. We have provided information to the
6 National Marine Fisheries Service who has issued a
7 biological opinion. So it has a variety of regulatory and
8 resource agency implications, but most importantly the
9 process has led to constructive dialogue and to
10 identifying actions that not only allow the sand mining to
11 continue, but to do so in a way that reduces and avoids
12 adverse impacts.

13 ACTING CHAIRPERSON GORDON: Thank you, sir.

14 I think we have one more witness who would like
15 to testify.

16 Please identify yourself, sir.

17 MR. EVANS: My name is Michael Evans. I've been
18 employed in the dredging industry since 1978. In fact, I
19 just got off the boat this morning. It's been an
20 all-nighter for me.

21 And I'm here to speak on behalf of the crew of
22 the dredges that operate -- that are operated by Foss
23 Maritime, servicing Hanson Aggregates facilities
24 throughout the greater San Francisco Bay. We on the crew
25 are all environmentally conscious people who enjoy our

1 outdoor recreation on our days off. We are proud to work
2 for Foss Maritime who's commitment to safety and the
3 environment is industry leading and second to none.
4 Working in the industry has allowed us to support our
5 families, buy homes, and send our kids to college, and we
6 are eager to work with all agencies to mitigate concerns
7 and lessens any impact we may have on the areas in which
8 we operate.

9 We ask that you renew the leases and give us
10 guidance in improving our systems and procedures, so that
11 we may continue to operate in the benefit of all parties
12 involved.

13 Thank you.

14 ACTING CHAIRPERSON GORDON: Thank you, sir.

15 We have a motion. Do we have a second?

16 COMMISSIONER NEWSOM: I second.

17 ACTING CHAIRPERSON GORDON: Anymore testimony?

18 Great.

19 All those in favor?

20 (Ayes.)

21 ACTING CHAIRPERSON GORDON: Opposed?

22 Passes unanimously, 3 to nothing.

23 Congratulations, folks.

24 Mr. Fossum, were there any items that we pulled
25 from consent that still need to be heard?

1 EXECUTIVE OFFICER FOSSUM: I don't believe so.
2 There was one individual who identified that they wanted
3 to speak on the public, as well as testify earlier, but I
4 don't believe that she's still here.

5 ACTING CHAIRPERSON GORDON: Nobody, left
6 Okay. What is the next order of business, sir?

7 EXECUTIVE OFFICER FOSSUM: Next order of business
8 is adjourning into closed session.

9 ACTING CHAIRPERSON GORDON: That concludes the
10 regular calendar, and we will now move into closed
11 session.

12 Gentlemen, can you please clear the room.

13 (Thereupon the meeting recessed
14 into closed session at 1:54.)

15 (Thereupon the meeting reconvened at
16 2:08 PM.)

17 ACTING CHAIRPERSON GORDON: We are back in open
18 session. Mr. Fossum, any other thing to report?

19 EXECUTIVE OFFICER FOSSUM: There is no reportable
20 actions from the closed session.

21 ACTING CHAIRPERSON GORDON: All right. Then with
22 that, I will adjourn this October meeting of the
23 California State Lands Commission.

24 (Thereupon the California State Lands
25 Commission meeting adjourned at 2:08 PM)

CERTIFICATE OF REPORTER

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

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

That the said proceedings was taken before me, in shorthand writing, and was thereafter transcribed, under my direction, by computer-assisted transcription.

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 2nd day of November, 2012.

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