SPECIAL MEETING

STATE LANDS COMMISSION

STATE OF CALIFORNIA

LIBRARY AND COURTS BUILDING

ROOM 500

914 CAPITOL MALL

SACRAMENTO, CALIFORNIA

WEDNESDAY, OCTOBER 7, 1987

3:00 P. M.

Nadine J. Parks
Shorthand Reporter

ORIGINAL

1 MEMBERS PRESENT

2 Leo T. McCarthy, Lieutenant Governor, Chairman

3 Gray Davis, State Controller, Commissioner

4 La Fenus Stancell, representing Jesse Huff, Director of Finance, Commissioner

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Stephen Hopcraft, representing Leo T. McCarthy,
6 Lieutenant Governor, Chairman

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10 STAFF PRESENT

11 Claire T. Dedrick, Executive Officer
James Trout, Assistant Executive Officer
12 Robert Hight, Chief Counsel
Jan Stevens, Deputy Attorney General
13 Sue Breece, Executive Secretary

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1 P R O C E E D I N G S

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3 CHAIRMAN MC CARTHY: This meeting of the State

4 Lands Commission will commence.

5 Any minutes from the last meeting to be

6 confirmed? Unanimously confirmed.

7 EXECUTIVE OFFICER DEDRICK: Well, we have

8 confirmation of the minutes of the meeting of September

9 23rd, Mr. Chairman.

10 CHAIRMAN MC CARTHY: All right. That's fine.

11 1, 2, and 3 were pulled. The consent calendar?

12 EXECUTIVE OFFICER DEDRICK: No consent calendar,

13 but --

14 CHAIRMAN MC CARTHY: 4?

15 EXECUTIVE OFFICER DEDRICK: No. 4. This is an

16 application from the Texaco Corporation to remove two

17 platforms in the Santa Barbara Channel, Platforms Helen

18 and Herman. Their original proposal was to -- in

19 cooperation with the Department of Fish & Game -- put

20 artificial reefs in Santa Monica Bay.

21 They have now withdrawn the reef proposal and

22 will be abandoning the platforms on -- by salvage on land.

23 There is no protest in this matter that we know of.

24 CHAIRMAN MC CARTHY: Any questions? Your

25 recommendation is approved. Five?

1 EXECUTIVE OFFICER DEDRICK: Thank you. And
2 this item, of course, is the geophysical program item.
3 Mr. Chairman, since the last meeting, several questions
4 were raised at the last meeting. And we have done our best
5 to prepare responses to them and to clarify the program,
6 as proposed by the staff, in light of those questions.
7 Staff, as you know, is recommending that an
8 environmental impact report be done on the high energy
9 instruments that are used for geophysical and geoseismic
10 surveys.
11 As Exhibit B attached to the permit, which is
12 part of the calendar item -- and I don't know what page
13 that is. Do you have a page number on this? -- is a
14 summary of the staff recommendation.
15 The permit would limit the use of geophysical
16 survey equipment to those which have no more than two
17 kilojoules of energy input. A kilojoule is defined in
18 Webster as under the two headings, "kilo," which is a
19 prefix meaning one thousand, and "joule," which is a
20 work -- a unit of work in the metric system. It is
21 equal to 10 to the 7th ergs. Ergs are really little. But
22 more to the point, it's about three-quarters, somewhat
23 under three-quarters of a foot-pound. So, that's kind of
24 more into English.
25 The energy input is a regulatable item. We can

1 limit -- we can examine the instruments and show that they
2 cannot exceed two kilojoules of energy input.
3 That means that their energy output would be
4 less than two kilojoules because of the conservation of
5 energy, which is a physical law.
6 We also clarified that the equipment now in
7 use that can be used is listed under Item 2. In all
8 cases, these are equipment that are very low input and
9 which are categorized on their energy input again. So
10 that the two kilojoule energy input standard, rather than
11 the energy output that is used by the industry for the
12 high energy devices, is the appropriate measure by which
13 to -- to identify these things.
14 Finally, as Item 3, we would recommend that
15 you specifically prohibit the use of air or water
16 compression devices until an EIR is completed.
17 If there are any other questions, I'd be happy
18 to answer them. Have I -- I do have some more questions
19 of yours to answer.
20 You asked -- the Commission asked whether or not
21 it is true that there are requirements on the -- on power
22 plants on the coast that would require this kind of
23 high energy survey, the sort that we would not be
24 authorizing. That is true. In at least the case of
25 Diablo Canyon, it is a condition of their operating permit

1 that they do deep seismic studies in order to identify
2 seismic faults at depth.
3 In the Alquist-Priolo Act case, that is also
4 a requirement, but that is very seldom exercised offshore.
5 Primarily, Alquist-Priolo deals with onshore faults.
6 The sewer outfall construction, in the main, the
7 types of survey equipment which the staff recommends
8 you authorize -- which are Item 2 in Exhibit B, the
9 mini-sparkers, et cetera -- limited to two kilojoules of
10 energy input would, in the main, be adequate to handle
11 such things as required sewer outfall construction (sic).
12 So that's my basic report of additional
13 information from the last meeting.
14 CHAIRMAN MC CARTHY: Any questions? All right.
15 Miss Kirwan, would you like to start the testimony,
16 please?
17 MS. KIRWAN: Governor, Commission members, my
18 name is B. J. Kirwan. I'm an attorney with McClintock,
19 Kirwan in Los Angeles. I came here from Los Angeles
20 today. And after all the earthquakes that we've suffered
21 in the last few days, I'd sure hope you'd be in favor of
22 seismic exploration.
23 I am here representing 13 companies, including
24 GSI, Meridian Ocean Systems, Harding Lawson, Exxon, and
25 Arco. I'm defending them in a lawsuit filed by some

1 Santa Barbara commercial fishermen, some of whom you heard
2 from at the last hearing, who are against geophysical
3 surveys, because they say the surveys affect their
4 ability to make a profit fishing.
5 And I am sympathetic to their problem, although
6 I, for one, don't see it as an environmental problem. My
7 clients perform many diverse surveys for as many diverse
8 purposes in the ocean, some for 40 years or more. And the
9 main areas they have in common is that they can't operate
10 without permits from you.
11 Three years ago, we were in a similar situation.
12 There wasn't a lawsuit then, but we were concerned that
13 the Commission would refuse to renew permits on grounds
14 that an EIR or some other kind of environmental compliance
15 was required.
16 And, Governor McCarthy, I remember meeting with
17 you in Los Angeles three years ago. And you gave us a
18 concrete useful proposal. You said, "Organize a
19 committee. Start meeting with the fishermen. Start
20 working with them, and try to respond to their claims."
21 And we have tried to do that. And we've learned
22 a lot. And there's been a lot of work which has been
23 done since that time. And my clients are certainly willing
24 to spend a lot more time and more money in this effort to
25 learn more.

1 But in my opinion -- and I'll explain a little
2 bit more on this in a minute -- the public will get a lot
3 more out of this -- this cooperative effort than if an EIR
4 is required by you.
5 I've spent a considerable amount of time in the
6 last month trying to convince your staff, and my clients
7 have met with some of you, in an effort to get your
8 agreement to renew these permits, because I don't believe
9 that the agency process works best by confrontation. And
10 I was really dismayed at the hearing on September 23rd,
11 because it was clear to me that most of the opponents to
12 the permits are opposing oil development in general under
13 all circumstances, and it has nothing to do with
14 geophysical survey effects. And -- but I know that you
15 all have open minds and that you'll listen to the factual
16 and the legal arguments today why, in our opinion, a permit
17 should issue.
18 As you know, before receiving testimony at the
19 last hearing, Governor McCarthy said that because the
20 staff report wasn't made available before the hearing,
21 the Commission would hold this further hearing today. And
22 I just assumed that the Commission would not decide the
23 permit issues until they finished hearing the matter.
24 And so, unlike those opposed to the permits,
25 I didn't insist on speaking then. And many of the other

1 people who are hopeful permittees didn't insist on
2 speaking then.
3 And over my objections at the end of two and
4 a half hours of testimony by the -- those opposed to the
5 permits and an hour of testimony -- testimony by those
6 in favor of the permits, all of a sudden there was a
7 motion that was moved, seconded, and voted unanimously
8 by the two Commissioners here to deny all pending
9 geophysical survey permits.
10 And I wrote you all a letter asking for
11 reconsideration of that decision. And I'm here today to
12 do it in person and to give you the reasons why.
13 One of the reasons is we believe that the
14 action taken by the Commission at the last hearing violates
15 the Public Resources Code. As you know, that law requires
16 the Commission to approve or reject permit applications
17 within six months, within 180 days of submission.
18 And similarly, we have something of California --
19 of course, Governor McCarthy, you're well aware of this
20 one -- the Permit Streamlining Act, 'cause I know you
21 participated in it.
22 And the purpose of these laws, of course, is to
23 prevent delays without cause by any agency in the
24 processing of permits. And I believe here that all the
25 permits were denied without regard to the merits, solely

1 to avoid their being granted by operation of law. And
2 in denying the permits without prejudice and inviting
3 resubmission of the same applications, the Commission has
4 been motivated solely by the desire to obtain an
5 additional six months to revisit these applications.
6 Denial of the permits on September 23rd was
7 particularly troublesome to me, because many of the permit
8 applications have actually been pending before the
9 Commission for 16 months already.
10 You will hear from Mr. Tom Morneau of Exxon,
11 for example, who I believe will give you a chronology
12 of his permit applications from his company. And it's
13 similar to many of the other companies who have permits
14 before you. It's a series of -- of extensions with-
15 drawals, requests for resubmittals that go on and on and
16 on by the Commission staff.
17 So, a number of these companies have been
18 waiting since early 1986 for the Commission to decide
19 whether to renew permits that they've been operating
20 under for many years. And the denial on September 23rd
21 placed all these applications on a new six- to twelve-
22 month time clock for action, which could mean that these
23 permits are before you for 28 months before they're
24 actually acted upon.
25 Let me now move just very briefly to CEQA, the

1 California Environmental Quality Act, which is used as the
2 basis for saying that these permits should be denied.
3 I'm not going to read my written remarks that
4 I wrote to you a few weeks ago, but I do want to summarize
5 the law in the area. Because, of course, it's the law
6 and not anti-oil rhetoric which should govern and guide
7 your decision today.
8 Very simply, geophysical research survey permits
9 are categorically exempt under CEQA and, in my opinion,
10 because of this, the Commission doesn't have a reason to
11 prepare an EIR. While CEQA generally requires agencies
12 such as your Commission to evaluate the environmental
13 impacts of proposed projects before issuing permits,
14 the Legislature, of course, has exempted certain classes
15 of projects from EIR requirements.
16 And these are classes which the Secretary of
17 Resources has specifically determined don't have a
18 significant effect on the environment. Class 6
19 exemptions consist of data collection and resource
20 evaluation activities which do not result in a series
21 or major disturbance (sic) to environmental resources.
22 CEQA guidelines are binding on the Commission
23 of course. And you've mirrored them when, in 1981, the
24 Commission adopted its own categorical exemptions, which
25 include an exemption for information collecting --

1 collection,specifically for collection of information
2 for surface or underwater biological, geological,
3 geophysical, cultural, and geochemical surveys where
4 minimal or no disturbance of the land surface results.
5 We looked at the legislative history to see if
6 there was anything different then, as to why this
7 Commission adopted geophysical surveys as categorically
8 exempt activities under CEQA. And the statement of
9 reasons which accompanied the proposed regulations states
10 that the Commission was tailoring the general provisions
11 of the CEQA guidelines, the Class 6 exemption, to the
12 Commission's own permitted activities.
13 So, the way I look at it is that you have a
14 specific and affirmative act by this Commission, which
15 says, geophysical survey activities are exempt. And I
16 assume that the reason why they were exempted was because
17 at that point in time, in 1981, there'd already been over
18 30 years of geophysical activities which had shown no
19 environmental effect.
20 So, what's the legal effect of the adoption of
21 this categorical exemption? CEQA guidelines say that
22 if an activity falls within an exempt class, the agency
23 may not prepare an EIR, except under three very narrow
24 circumstances, none of which apply here.
25 Only one of the possible exceptions to the

1 exemption was even discussed by your legal staff. But
2 since they didn't mention it in the staff report, I won't
3 spend any more of your time talking about it here.
4 But, in summary, the categorical exemption
5 provision clearly applies to the 19 applications which
6 are before you. And the exceptions to the categorical
7 exemption do not.
8 So, in my opinion, the Commission is not
9 required to and should not prepare an EIR. The staff
10 report says that an EIR is then required because of
11 public controversy. But CEQA says that the existence of
12 public controversy over environmental effects of a
13 project shall not require preparation of an EIR. And
14 there's nothing in CEQA or the CEQA guidelines which
15 directs that the existence of any public controversy
16 would affect a categorical exemption which has been
17 formally adopted by this Commission.
18 The CEQA guidelines do provide that in marginal
19 cases where an agency can't determine whether there is
20 substantial evidence of adverse environmental effects,
21 public controversy may be germane to the decision whether
22 to prepare an EIR or a negative declaration.
23 But that's only if the controversy relates
24 to the environmental effects of a proposed activity. And,
25 in my opinion, when you heard the testimony on September

1 23rd, you had two controversies, but neither of them were
2 environmental.
3 The most vocal of the two was whether the
4 Commission should even allow offshore oil development.
5 But that's not before you when you're considering whether
6 to allow these geophysical survey permits.
7 The second controversy, which people sure spent
8 a lot of time about -- talking about on September 23rd
9 concerned the claims that geophysical surveys reduce
10 fish takes. And even -- I'm not here -- I'm just a lawyer.
11 I'm not here to discuss all the scientific merits or
12 demerits. You'll hear more about that from other people.
13 So even if you drop the discussion or the debate
14 over whether there is any scientific evidence, there is
15 no environmental issue. It's an economic issue. And
16 CEQA doesn't require environmental review of a project
17 based on its economic effect.
18 This is also in the CEQA guidelines, which say
19 that an economic change shall not be considered a
20 significant effect on the environment. So public
21 controversy -- and you heard a lot of it, of course, on
22 September 23rd -- is irrelevant to whether an EIR is
23 required in this case.
24 And I think it's also important that your own
25 staff in 1984 advised you that the public controversy

1 which existed then -- which the same is before you today --
2 it's whether oil development should be allowed, didn't
3 require preparation of an EIR.
4 A new point I'd like to make to you is that
5 the time is long past since the Commission should have
6 been deciding whether to prepare an EIR. I already
7 discussed with you the deadlines in the Permit
8 Streamlining Act and the Public Resources Code, which
9 created the Commission.
10 There are also deadlines in CEQA. And there's
11 a provision in the Public Resources Code that an agency,
12 such as the Commission, must decide whether an EIR or a
13 negative declaration is required within 30 days from the
14 date an application is accepted as complete.
15 So, the only delay allowed by law is a 15-day
16 extension which all the parties agree to. Just as with the
17 Permit Streamlining Act, the CEQA deadlines are intended
18 to ensure that an applicant doesn't sit forever in a state
19 of limbo, but rather that review of his application will
20 proceed in a timely fashion.
21 So, according to CEQA, if an EIR or even a
22 negative declaration was required before renewal of
23 geophysical permits, that decision should have taken
24 place in June of 1986, not now. And if it had taken place
25 in June of 1986, there would have been plenty of time to

1 prepare any documents without a hiatus of what we're now
2 looking at, which will be about a year, in permitting
3 activities.
4 So, to decide not to -- now to prepare an EIR,
5 in my opinion, is unlawful. But it's also really unfair
6 to the applicants.
7 Let me now just -- I'm almost done -- review with
8 you a practical question. What will you get out of an
9 EIR? All the testimony that we heard from the proponents
10 of an EIR said that more needs to be known, and that more
11 studies need to be undertaken.
12 But please be aware, CEQA has nothing to do
13 with original research. It doesn't require original
14 research, and it won't accomplish this goal. The purpose
15 of CEQA is to gather existing scientific knowledge and to
16 use it to evaluate the environmental impact of a proposal.
17 Studies to understand the effect, if any, of
18 geophysical surveys on sea urchin divers and on shellfish
19 won't be done for an EIR. To the contrary, to deny these
20 permits, the Commission will prevent seismic geohazards
21 and infrastructural integrity research required by State
22 and Federal law to protect the public and public
23 resources.
24 And I understand, too, that the companies, which
25 in the past have funded these recent studies which you, of

1 course, suggested, they've spent over $600,000 to date
2 in the last few years doing these studies. And they don't
3 have the same incentive to continue to make available
4 funds in the future if they don't have permitted
5 activity.
6 So, we've just seen what an EIR won't do. What
7 will it do? Most obviously, it will stop geophysical
8 research work for about a year. And it won't only stop
9 oil-development related work, but you'll hear from other
10 people who are testifying today that it'll stop some
11 dredging and harbor work, seismic safety work, and the
12 like.
13 Now, some companies who've applied for permits
14 won't be greatly affected if you deny them for a year,
15 but others will. And I received a letter from Palagos,
16 for example, who couldn't be here, and another gentleman
17 will be reading it. But basically, Palagos, as one
18 company, says it doesn't know if it'll survive.
19 So that'll be an impact, of course, of your
20 activities. For -- I guess my conclusion is for all the
21 reasons I've just discussed, which I believe are legal
22 ones, factual ones, and fundamental fairness, I'm
23 requesting that you reconsider the action taken at the
24 last hearing on September 23rd, and that you approve the
25 permits which would then be before you again, based on a

1 categorical exemption for CEQA.

2 I appreciate your listening to my comments.

3 CHAIRMAN MC CARTHY: Thank you very much.

4 The central question posed by Miss Kirwan is

5 whether or not recent studies have adduced evidence that

6 have prompted legal counsel to this Commission -- our own

7 counsel, Mr. Hight, and the Attorney General's Office,

8 Mr. Stevens and his colleagues -- to advise the members of

9 this Commission that an EIR is required, scope yet to be

10 determined.

11 I'd like to call on Mr. Hight and Mr. Stevens

12 to address that point.

13 MR. HIGHT: Yes, Mr. Chairman. It is the

14 position of the Lands Commission's staff that the Public

15 Resources Code, specifically Section 21100, provides that

16 State Boards, Agencies, and Commissions shall prepare or

17 cause to be prepared by contract and certify the completion

18 of an environmental impact report on any project they

19 propose to carry out or approve which -- and I

20 emphasize -- "may" have a significant effect upon the

21 environment. That's in the Public Resources Code.

22 The CEQA guidelines, which are in the

23 California Administrative Code, then go on to say that if

24 the lead agency finds there is substantial evidence in the

25 record that a project may have a significant effect on the

1 environment, the lead agency shall prepare an environmental
2 impact report.
3 It is our position that these two sections
4 supersede the provisions in the Commission's Administrative
5 Regulations, which state that geophysical is a categorical
6 exemption. And the reason for that is the new studies
7 which lead our staff to believe that substantial impact
8 may occur.
9 The studies, while arguably inconclusive, lead
10 to that result. And we believe there's virtually little
11 option for the Commission.
12 CHAIRMAN MC CARTHY: Which studies are you
13 referring to?
14 MR. HIGHT: I'm referring to the Mineral
15 Management studies and the study in which the Commission
16 was a party through the -- it was a committee study of the
17 Commission, fishing study, and the oil industry which
18 studied eggs and larvae. And both of those studies
19 we believe concluded or can be read to conclude that
20 there is potential for harm to eggs and larvae and
21 dispersal of fish.
22 CHAIRMAN MC CARTHY: All right. Mr. Jan
23 Stevens of the Attorney General's Office, would you like
24 to comment at this point?
25 MR. STEVENS: Thank you, Mr. Chairman and members.

1 We concur in the remarks of Mr. Hight. The mandates of
2 the statute prevail over the administrative exemption
3 which has been adopted by the Commission in this case.
4 And they would seem, on the basis of the evidence that is
5 in the record of the Commission, to require the direction
6 of -- to prepare an environmental impact report.
7 The burden is on one who seeks exemption from
8 CEQA. And the burden is on one who seeks a categorical
9 exemption. The exemption is a moving target. What may
10 have been applicable several years ago is not necessarily
11 applicable today as our knowledge increases and as the
12 experience in the field has grown. And the experience
13 in this case would seem to warrant that there is indeed
14 a substantial likelihood of adverse changes which would
15 warrant the preparation of an environmental impact report
16 here.
17 CHAIRMAN MC CARTHY: Does either of the
18 Commissioners have any questions of Mr. Hight or
19 Mr. Stevens?
20 COMMISSIONER DAVIS: I'd just --
21 CHAIRMAN MC CARTHY: Commissioner Davis.
22 COMMISSIONER DAVIS: -- like to make sure I
23 accurately characterize what the attorneys are telling us.
24 In essence, then, you're saying that new
25 information poses a greater -- suggests that there's a

1 greater risk than previously thought by the seismic
2 testing. And rather than grant the categorical exemption,
3 we should now have the benefit of an environmental impact
4 report.
5 MR. STEVENS: That's correct, Mr. Davis.
6 COMMISSIONER DAVIS: Or put another way, we --
7 it's not that there wasn't potential adverse consequence
8 to testing in the past. We just weren't aware of it.
9 MR. STEVENS: That's right. CEQA requires
10 evaluation in light of the knowledge that's available and
11 existing. And it wasn't available then, and it is now.
12 CHAIRMAN MC CARTHY: Any questions of Miss
13 Kirwan?
14 I have one other point. Miss Kirwan testified
15 that there was one applicant before us who has had a permit
16 request before us for some 16 months.
17 MS. KIRWAN: There are several.
18 CHAIRMAN MC CARTHY: Miss Dedrick, would you
19 address that point? I'm not aware of -- have we
20 dilatorily delayed action on these permits in -- what was
21 said -- what I heard was a clearly unfair way to the
22 applicants.
23 EXECUTIVE OFFICER DEDRICK: I'm sure that there
24 have been no completed or certified permits -- applications
25 before us for 16 months, because that would have violated

884 and triggered those permits to perhaps be -- you know, under 884, they would be authorized.

We have had an ongoing working relationship and a very positive and productive one with the industry and with the fishermen. Applications were made last year in a -- what was a fairly inappropriate time frame it turned out in retrospect, because we were still waiting for the results of those studies, which we didn't receive until June and August of this year.

And that's the reason why, you know, the timing was such that we didn't know we needed an EIR until very recently.

Those applications were withdrawn at the request of the staff in a timely fashion. No one, to my knowledge, who has -- has not been able to operate until the action of the Commission at the last meeting.

CHAIRMAN MC CARTHY: So the applicants before us have continued to conduct their testing throughout this period of time?

EXECUTIVE OFFICER DEDRICK: They have continued to have viable permits during that period, yes, sir.

CHAIRMAN MC CARTHY: Miss Kirwan, would you like to close with any comments?

MS. KIRWAN: Yeah, I would. And I'll be very, very brief. On the issue of -- of whether there is a

1 significant environmental effect. Again, I'm just a
2 lawyer, and there are people here who will speak to you
3 in very brief summary as to what the evidence is as to
4 what, if any, environmental effects have been discerned
5 from geophysical survey activity.
6 And we do turn -- the issue of whether the
7 categorical exemption applies or not does turn on this
8 factual question.
9 But the focus -- when you have a categorical
10 exemption -- is not the basic, do you do an EIR or not?
11 When you have a categorical exemption already set out by
12 law, you have a different standard. And the standard was
13 in my letter, and I left it out of this statement. But
14 it's in 14 Cal Administrative Code Section 15300.2(c).
15 The standard is different when you have a
16 categorical exemption. And that says that a categorical
17 exemption shall not be used only when there's a reasonable
18 possibility the activity will have a significant effect
19 on the environment due to unusual circumstances (sic).
20 And I won't go through all the details I had in
21 my letter, but I do think it's very different from the --
22 from the looking for the first time at whether you do an
23 environmental impact report for a new activity. We're
24 talking here about something that's been going on for 40
25 years, and we're asking: Is there an environmental effect?

1 Are there unusual circumstances? Is it an adverse effect?
2 And the only other point I want to make is
3 Mr. Morneau's here-- he's much better at it than I am --
4 to explain what happened with his permit. And his is
5 illustrative, from what I can tell from talking with
6 several of my clients -- and I'm getting their permit
7 history -- of the repeated requests for withdrawal,
8 resubmittal, withdrawal, resubmittal. And, yes, there's
9 a lot of cooperation between the staff and the oil
10 companies. But the fact remains that nothing has ever
11 been asked of these companies in addition to what they
12 originally submitted.
13 So, essentially, it's the same application
14 that's been going on for 16 months, and that will be
15 before you for about 28 months if you take this action
16 today.
17 Thank you very much for your attention.
18 CHAIRMAN MC CARTHY: Thank you, Miss Kirwan.
19 MS. KIRWAN: There are a number of other people
20 who want to speak who were not able to speak at the last
21 hearing.
22 CHAIRMAN MC CARTHY: Thank you very much. Are
23 there any of -- applicants, other than the clients that
24 Miss Kirwan represents, who would like to address the
25 Commission? Applicants for permits in the audience.

1 So, Miss Kiran represents all applicants for
2 permits that are here in the audience?
3 MS. KIRWAN: No. Governor, I am litigation
4 counsel. And they have a lot of things to say, which is
5 entirely different with different expertise than --
6 CHAIRMAN MC CARTHY: I --
7 MS. KIRWAN: -- what I --
8 CHAIRMAN MC CARTHY: I --
9 MS. KIRWAN: -- have to say.
10 CHAIRMAN MC CARTHY: -- appreciate that. I am
11 trying to be fair to anyone you don't represent to give
12 them an opportunity to be heard.
13 So, hearing no response from the audience, then
14 only the permit applicants that Miss Kirwan represents
15 are at this hearing. All right.
16 Miss Kirwan, would you like -- Miss Kirwan?
17 MS. KIRWAN: Sir?
18 CHAIRMAN MC CARTHY: Would you like to identify
19 anyone who perhaps did not have an opportunity to testify
20 at the last hearing?
21 MS. KIRWAN: I would be happy to. Larry --
22 CHAIRMAN MC CARTHY: Why don't -- so we can keep
23 this -- why don't you pick three that can address the
24 points --
25 MS. KIRWAN: I can't.

1 CHAIRMAN MC CARTHY: -- raised?

2 MS. KIRWAN: I can -- I can tell you, sir, that
3 we'll speak, as far as I can tell, less than an hour
4 total. But people have very different things to say, and
5 I don't control them. I don't have --

6 CHAIRMAN MC CARTHY: I appreciate that.

7 MS. KIRWAN: But I'm aware of what the kinds of
8 subjects --

9 CHAIRMAN MC CARTHY: We did have --

10 MS. KIRWAN: -- they want to talk about.

11 CHAIRMAN MC CARTHY: -- we did have one hour
12 of testimony from each side --

13 MS. KIRWAN: No, no.

14 CHAIRMAN MC CARTHY: -- a little over an hour
15 from each side while --

16 MS. KIRWAN: Sir --

17 CHAIRMAN MC CARTHY: -- I was -- if I may
18 finish.

19 MS. KIRWAN: I'm sorry.

20 CHAIRMAN MC CARTHY: We did have a little over
21 one hour from each side while I was present. And then
22 after I left, we had another hour presented from opponents.
23 So if we could try to bring fresh points to the Commission
24 today and try not to be repetitive of the testimony we
25 heard last time -- so, if there are specific witnesses that

1 will give us something fresh or in fairness to the
2 applicants who want to address this the specific points
3 the Commission's legal counsel, Mr. Hight, just mentioned
4 or the Attorney General's representative to the
5 Commission, Mr. Stevens, just mentioned, that would be
6 very useful, too.
7 All right. Do you want to -- let's start by
8 identifying three people that fit in that description,
9 then we'll go from there.
10 MS. KIRWAN: Larry Toimil from Harding
11 Lawson, Bob Nazarenus, and Dee Chamberlain.
12 CHAIRMAN MC CARTHY: All right. Would those
13 three people kindly come up to the witness stand?
14 Why don't you establish your own order of
15 presentation, gentlemen. Who would like to go first?
16 MR. CHAMBERLAIN: Governor, Commissioners,
17 I appreciate this opportunity to make a statement at this
18 time.
19 EXECUTIVE OFFICER DEDRICK: Would you identify
20 yourself and spell your name for the record?
21 MR. CHAMBERLAIN: Yes. My name is Dillworth
22 W. Chamberlain. I'm employed by Arco as a senior
23 environmental science consultant -- it just changed -- in
24 our environmental protection department. And I've worked
25 for Arco for 14 years.

1 My formal training is in ichthyology,or the
2 study of fishes, and marine biology. My work experience
3 has been mainly in environmental protection. Employment
4 prior to my present position was as a research associate
5 for 14 years at the Allen Hancock Foundation, University
6 of Southern California, and at the USC School of Medicine.
7 I hold a Bachelor of Science degree and a Ph.D.
8 degree in zoology and biology respectively. I'm a member
9 of the Eggs and Larvae Committee, representing the
10 petroleum industry. I'm also chairman of the American
11 Petroleum Institute Fisheries Issues Task Force, involved
12 in seismic effects research.
13 I've been fishing, swimming, diving, and
14 working professionally in California ocean waters for
15 the past 36 years.
16 In the State Lands Commission general seismic
17 permit hearing three years ago, I reviewed the information
18 available at that time concerning the effects of
19 nonexplosive seismic energy releases on marine organisms.
20 This information said that seismic gear which did not
21 employ explosives was no significant hazard to fish or
22 fish eggs at distances greater than one to ten meters.
23 Fish response to noise is related to the
24 presence of natural environmental factors as well as to the
25 level of noise that they hear. Fish become accustomed to

1 noise when it is repeated at time intervals of less than
2 several minutes.
3 During the intervening three years, additional
4 research studies related to the effects of seismic energy
5 releases on fish have been accomplished, and these include
6 the U.S. Department of Interior Minerals Management
7 Service study on the effects of sound on fish, on fish
8 dispersal; a joint study by the American Petroleum
9 Institute and the California Eggs and Larvae Committee on
10 the effects of seismic energy releases on anchovy, an
11 earlier -- an earlier industry funded an in-kind supported
12 study on rock fish dispersal. This was a pilot study
13 done in cooperation with the commercial fishermen.
14 And there's been two seismic energy release
15 effects studies on fish done by the Institute of Marine
16 Science -- I mean Marine Research in Bergen, Norway, and
17 they -- one addressed the scaring effects of fish and the
18 other physical effects on eggs and larvae of fish.
19 I've also critically reviewed these recent
20 studies, and can conclude that these also show no
21 significant environmental impact on any marine species,
22 whether of commercial value or not.
23 The Minerals Management study that I just
24 mentioned on the effects of sounds from a geophysical survey
25 done on fishing success demonstrated no environmental

1 or physical effects to the rock fish exposed to seismic
2 energy releases.
3 This study is referred to as a fish dispersal
4 study, but fish dispersal was not demonstrated. In fact,
5 the Minerals Management news release in June of -- 29th of
6 this year, said, Bottell Investigators, the contractor
7 for MMS, cautioned against concluding that these
8 experiments represented fish behavior during actual
9 geophysical surveys.
10 The most significant finding of this study was
11 that fish went off the bite, would not or could not take
12 the baited hooks offered them in 53 percent of the
13 experimental trials. But even this, I feel, is not
14 really conclusive. Because although correlated
15 statistically with the presence of seismic energy
16 releases, the cause/effect relationship remains unclear.
17 In other words, because of the many tests --
18 because many of the tests were not paired; that is,
19 control and exposure not done at the same time and the
20 same depths, other environmental factors known to affect
21 fish feeding behavior could have been in effect also.
22 These other factors include changes in water
23 temperature, the proximity of predators or food items like
24 other fish they prey on, a change in barometric pressure
25 with a change in weather, the time of day, and even previous

1 fishing efforts.

2 Another major factor that influences feeding
3 behavior is the amount of food remaining in the stomach
4 when presented a feeding opportunity. If feeding has been
5 recent, fish may not feed again for some time, even given
6 the opportunity to do so. Also, a fish in a reproductive
7 state is most likely to stop feeding. The possible
8 effects of these additional environmental parameters
9 significantly affecting the study results are not
10 addressed in the MMS study.

11 The anchovy study referred to earlier -- in
12 that, the largest effect demonstrated was a reduction
13 in the survival of two- and four-day-old fish larvae.
14 This result only came from -- about from exposures to
15 three to four times that which an organism would normally
16 be exposed to. The effect was limited to a six- to ten-
17 foot radius from the energy source. In older larval fish,
18 there was no difference between exposed animals and those
19 not exposed.

20 No physical injury to exposed anchovy eggs --
21 larvae or adults -- was seen. Data from this study was
22 not put into a model to look at the effects of seismic
23 operations on the populations of anchovy, because the
24 impacts were so small, the Committee thought it more
25 profitable to put limited funds available to them onto other

1 studies with a better chance of producing data.

2 The Eggs and Larvae Committee, I might mention,
3 are made up of the fishermen; regulatory agencies, State
4 and Federal; and the industry.

5 The Norwegian study on scaring effects showed
6 changes in overall fish distribution following six days
7 of seismic operations. However, behavior was a variable,
8 with some species migrating out of the area, others
9 moving to the ocean bottom, and some demonstrated no
10 particular distribution change.

11 Exposure of cod eggs, larvae, and fry to air
12 and water guns resulted in no detectable damage from a
13 small air gun. The only effect from a large air gun
14 apparently was a momentary disorientation of older
15 juvenile fish with recovery within a few minutes.

16 These exposures were tested with -- within six
17 to fifteen feet of the energy source.

18 In the recent suit by the Santa Barbara
19 Commercial Fishermen's Association, the petitioners list
20 in Section 2, entitled, "The Facts," a number of items
21 and suggest these are substantial evidence that
22 environmental impacts from seismic testing may take place.

23 The fact is, none of the items listed provide
24 empirical data or any other kind of information showing
25 that fish are significantly impacted by seismic activities.

1 Further, the report, "Eggs, Larvae, Science
2 Panel Discussions," are personal notes taken during the
3 science panel discussion by one of the attendees. They
4 record a portion of the discussions and contain comments
5 about possible impacts made in the meeting, but no
6 specific data or information or any actual effects
7 resulting from research were given.
8 In the model mentioned in the -- under "The
9 Facts," this was a relatively quick desk-top exercise.
10 Some things have been said about this model showing
11 significant impacts to fish, but this is not true. As the
12 author indicates in his title, it was a preliminary model.
13 It's main purpose was to see if a model could be
14 constructed that might show an impact from the interaction
15 between seismic activities and fisheries.
16 The model was not developed any further, never
17 finalized. It was never run, and never used to assess
18 interaction impacts between fish and seismic (sic). In
19 other words, no fishery impact data whatsoever was ever
20 obtained as an output from this model.
21 And I'd like to read just a couple of comments
22 from the author in his -- from the model itself.
23 "A simulation model is generic
24 in that it was developed mainly as a
25 tool that could be used to see if

1 seismic exploration can have an
2 effect on adult population levels.
3 This model cannot be applied to any
4 particular fish stock."
5 Then further:
6 "It must be stressed that this
7 is not a realistic model."
8 CHAIRMAN MC CARTHY: The AMS model?
9 MR. CHAMBERLAIN: No. This is the model that's
10 referred to in the suit, the fishermen's suit, as a
11 basis for their --
12 CHAIRMAN MC CARTHY. Okay.
13 MR. CHAMBERLAIN: -- as a partial basis for their
14 suit.
15 CHAIRMAN MC CARTHY: Go ahead, please.
16 MR. CHAMBERLAIN: The report, "Alternative
17 Fish Protection Techniques, Pneumatic Guns and Rope Nets,"
18 by the Empire State Electric Energy Source -- this is
19 another one of those facts -- reviewed research done by
20 the -- that body on fish scaring devices. The study
21 results show that a small pneumatic popper similar in
22 operation to an air gun caused some fish to move towards
23 the operating device, while other fish avoided the poppers
24 and took up positions about 30 feet away.
25 There was no significantly -- significant

1 mortality for any species of fish tested.

2 No significant impacts on fish were

3 demonstrated, other than some species would not approach

4 the devices and other species were attracted by them.

5 When the stimulation was removed, the fish returned to

6 their normal behavior patterns. These devices were not

7 used in a way similar to the ways -- the way the

8 geophysical industry uses them and, therefore, this is

9 not evidence of significant adverse impact.

10 Industry -- the oil and gas, geophysical

11 industry has continuously supported seismic effects

12 research since before the 1984 permit. This support has

13 been with dollars, technical expertise, and in-kind vessel

14 help - help with vessels, equipment, and data. And we

15 have fully supported the needs and recommendations of the

16 State Lands Commission, as has been mentioned before,

17 relative to the permit stipulations.

18 And we'd also like to continue this support,

19 such as the Eggs and Larvae Committee study on the

20 dungeness crab and the MMS study. But the timing of these

21 additional studies should not be rushed by political need

22 or hearing schedules to the extent that science is

23 compromised. The goal should be good science and

24 supportable results.

25 In conclusion, my review of the available

1 literature and other information, including scientific
2 studies and government reports, both recent and in the
3 past, leads me to conclude that there is still no evidence
4 that geophysical activities significantly affect marine
5 fish or mammal populations. And I don't see the
6 possibility of any potential environmental effects at the
7 level or proposed level of seismic exploration. And I
8 don't see any significant environmental reason to do an
9 EIR or put limits on nonexplosive energies used.
10 More benefit might come from using this money,
11 from whatever source, to gain more information with
12 research. I can't see how anyone else, with the same
13 scientific information that I've reviewed and is available
14 to anyone -- and I think you have and your staff have --
15 can come to any other conclusion.
16 I personally feel, based on information
17 available and my studies, that seismic energy releases
18 are not a problem to fish. This is my honest opinion
19 as a biologist and is not tempered by who I work for.
20 If I could, I'd like to rebut a couple of
21 comments that were made in the hearing on the 23rd of
22 September, specifically those made by Richard Charter. And
23 he said -- he mentioned that fish are more sensitive
24 to pulsed sound. My response is that all fish are
25 sensitive to the sounds they hear. They're built to

1 receive sound. They have two different systems that
2 do so. If you look at all the literature available,
3 you'll find that generally fish response to sound is
4 variable.
5 Sounds attract some fish, some species, some
6 individual fish, or it may repel them, or they may have no
7 response at all.
8 The startle response, which was mentioned last
9 week -- last month, exhibited by fish is not an adverse
10 effect to fish. In fact, it's a protective mechanism that
11 all fish have, and fish become accustomed to even pulse
12 sound very quickly.
13 A statement was made at that time, also, that
14 the Minerals Management Service is going to do a study
15 of seismic effects on fish, eggs, and larvae. As far
16 as I know, they're not going to do that. The only study
17 that they're going to do is another one on fish dispersal.
18 Another statement was made that the industry
19 participated in the Minerals Management Service fish
20 behavior study. Well, this is not true. If we had, it
21 would have been more realistic.
22 Industry did a related study, an earlier one
23 I mentioned, prior to the MMS study. And the Minerals
24 Management Service used this to -- as a model for theirs
25 to some extent.

1 And the only other statement I'd like to make
2 is that an EIR does not do new research, but is
3 constructed with existing information.
4 Thank you.
5 CHAIRMAN MC CARTHY: Mr. Chamberlain, let me
6 make an observation --
7 MR. CHAMBERLAIN: Yes.
8 CHAIRMAN MC CARTHY: -- if I may. We don't
9 doubt your professional qualifications. I don't think
10 you'd be working for the people who have employed you
11 to utilize your services if you weren't highly qualified.
12 I don't doubt for a moment that you're a man of
13 extraordinary impeccable integrity. What we're faced with
14 here, so you understand it, is you are looking at three
15 nonscientists sitting on a State Commission who hear a
16 clash of scientific opinion.
17 There are scientists on the State Lands
18 Commission staff who have looked at the same study you
19 just analyzed -- we're not referring to the lawsuit now.
20 I don't think that was the basis for suggesting that an
21 environmental impact report was appropriate. As you've
22 heard, the MMS study was. And they have interpreted it
23 in a different way. The study itself has raised at least
24 sufficient doubts so that it would trigger the mechanism
25 of law requiring an environmental impact report. That is
the staff recommendation to us. And I fully appreciate

1 that you come at the analysis of the MMS study, and
2 whoever's doing it for the commercial fishermen come at
3 an analysis of the MMS study, and other interests as well
4 trying to be honest and analytical, but also obviously
5 looking at the study coming from some mind set. That
6 doesn't mean that there's by design any kind of dishonesty.
7 I don't believe that for a minute. I don't think that
8 there is.
9 What we're faced with here and what we're
10 listening to is to see whether there is any testimony
11 that so shatters the premise offered by our own staff
12 that there simply isn't any plausibility to believe what
13 they have just said -- that the MMS study should not
14 suggest evidence, does not suggest evidence that says
15 our point of view must be different now than it's been
16 for several years, that an environmental impact report
17 is required.
18 So, I just wanted to be frank with you and
19 tell you what my state of mind is, and tell the other
20 witnesses, too. My clear inclination, absent some kind of
21 evidence to seriously undermine what our own staff is
22 telling us -- unless I hear that evidence, I'm going to
23 vote for an environmental impact report.
24 Now, the question is: What's the reasonableness
25 of that environmental impact report? What's the scope of

1 that environmental impact report? And how do we do this
2 in a way that's as fair as we can be to the companies who
3 are trying to earn a livelihood by doing this testing?
4 I just thought I ought to put that on the table
5 right now as I'm listening to you, sir -- what I've got
6 here, having listened to some testimony at the last meeting
7 and heard your testimony. Thank you.
8 COMMISSIONER DAVIS: Could I --
9 CHAIRMAN MC CARTHY: Commissioner Davis.
10 COMMISSIONER DAVIS: I just -- I think Leo's
11 comments are helpful for those people who intend to testify
12 because they give you a frame of reference in which --
13 from which the Commission is operating.
14 For a long time, 20 or 30 years, there was
15 general agreement in the scientific community that
16 seismic tests and geophysical studies were not harmful.
17 Now there's at least some studies that suggest to the
18 contrary. One was funded by the Federal Government, one
19 in part by the State Government. And it would not be
20 responsible for this Commission to simply ignore those
21 studies, pretend they didn't exist, and act on the basis
22 of information that motivated our decisions for the past
23 30 years.
24 So, those of us who come -- those of you who
25 come before us today have to tell us why we should, in

1 effect, ignore these recent studies and not heed the
2 advice of our attorneys, some of whom suggest that if we --
3 both of them suggest that if we do not heed the results
4 of the studies, we're likely to lose in court and be
5 forced to conduct the environmental impact report anyway,
6 you know, six months, nine months, a year down the line.
7 So, if you could address those general points,
8 those are the, you know, those are observations that we,
9 as public officials, have to deal with.
10 MR. CHAMBERLAIN: I don't think we're asking
11 anyone to, you know, disregard the studies. I think we
12 have not. We have addressed them, and I would debate the
13 results with anyone. I mean they're in black and white,
14 and would like to do so, if possible, sometime if not here.
15 CHAIRMAN MC CARTHY: Thank you. Which one of
16 you gentlemen would like to go next?
17 Yes, sir. Would you identify yourself for the
18 record?
19 MR. TOIMIL: Yes. Governor, Commissioners, I'm
20 Larry Toimil, principal geophysicist with Harding Lawson
21 Associates.
22 Harding Lawson Associates is a geotechnical
23 engineering firm employing approximately 500 engineers and
24 earth scientists. We use advanced exploration tools,
25 laboratory testing, and analytical methods to evaluate soil

1 and rock for the design of foundation types and to evaluate
2 the relative performance, safety, and cost of various
3 designs -- design criteria for both onshore and offshore
4 structures and facilities.
5 Harding Lawson Associates has been actively
6 engaged in the application of geophysical methods to aid
7 in the design and construction of coastal facilities within
8 California since 1972.
9 Typically, the projects in which geophysical
10 techniques are used by our offices include offshore
11 pipelines and platforms, city and county wastewater outfalls,
12 material resource evaluations for the evaluation of
13 feasibility for sand and gravel beach replenishment
14 projects, the evaluation of offshore geologic hazards,
15 slopes stability investigations, offshore fault studies,
16 and studies related to port and harbor construction and
17 rehabilitation.
18 In general, the surveys we perform employ an
19 array of geophysical systems which include both seismic
20 reflection and seismic refraction. HLA does not maintain
21 a permanent survey vessel. For the survey work that we do
22 in the coastal environment, we deploy our equipment from
23 vessels that we charter locally, many of them from local
24 fishermen or charter services.
25 Since 1980 -- the period 1985 through 1987, we,

1 as a firm, have paid over a hundred and fifty-thousand
2 dollars in such charter fees related to our coastal
3 survey activities.
4 Although most of the systems that we commonly
5 employ for engineering services are below the two
6 kilohurtz (sic) level as indicated in the recent amendment,
7 HLA is opposed to the establishment of such a limit.
8 HLA's position is based in part on the following
9 considerations.
10 The two kilojoule restriction will impair our
11 ability to conduct seismic refraction activities and some
12 seismic reflection activities related to engineering
13 studies.
14 Seismic refraction work oftentimes -- commonly
15 is used to determine compressional wave velocities of
16 sea bed sediments and rock that are data used in soil
17 structure interaction analysis with respect to earthquake
18 events and ground motion studies.
19 Secondly, the adoption of a two kilojoule
20 ceiling would codify an arbitrary limit that is
21 disassociated from any data that equates geophysical
22 activities with environmental harm. We believe that to
23 set such an arbitrary limit provides us with considerable
24 uncertainty as to the arbitrary nature of future
25 restrictions and sets a dangerous precedent.

1 And thirdly, the restriction imposed by the
2 Commission's actions on the offshore exploration activities
3 in general will affect Harding Lawson's as well as a number
4 of similar firms' future revenues.
5 A considerable portion of our geophysical
6 and marine geotechnical investigations has been in support
7 of the oil industry's activities offshore as well as both
8 private and municipal communities along the coastal zone.
9 I would like to quote from a letter that Palagos
10 Corporation, a firm that is doing similar work in the
11 coastal zone -- both for industry and for the public
12 sector -- addressed to the Commission from Mr. Randy
13 Ashley, the vice-president of Palagos Corporation. And I
14 quote:
15 "The probable loss of business
16 is predicted to be greater than 50
17 percent of our total sales if geophysical
18 permits are not renewed. Since the
19 predicted loss of revenues to Palagos
20 Corporation is so extreme, the impact
21 may be fatal. Even if the company is
22 able to survive, we will face certain
23 layoff, as much (sic)-- of much of our
24 professional staff, and have no chance
25 of growth within the market for our

1 services -- for our services (sic)."
2 End quote.
3 Because of the impact of the Commission's
4 actions on the offshore industry in general, and MRA in
5 particular, I strongly urge the Commission to reconsider
6 its present course of action.
7 CHAIRMAN MC CARTHY: Thank you very much. Any
8 questions from the Commissioners?
9 One point. You used the word "codify" when you
10 talked about the possible or prospective action of
11 selecting the two kilojoule level. You may remember at
12 the last meeting, we had some testimony against that -- I
13 think it was by Mr. Charter -- that that was arbitrary
14 and it may well be that seismic testing below that level
15 might be harmful to certain marine life.
16 The truth is we're searching for information
17 that would give us a better basis on which to try to
18 understand what harm there might be, if any, on certain
19 kinds of marine life.
20 This is not codifying anything. This is the
21 best human effort possible based on the information that's
22 available at this moment. We don't, frankly, know whether
23 it should be higher or whether it should be lower at this
24 point. We're searching for data to try to come up with
25 the answers.

1 MR. TOIMIL: Of course.

2 CHAIRMAN MC CARTHY: All right. You, sir.

3 Would you identify yourself for the record, please.

4 MR. NAZARENUS: Governor and Commissioners,

5 my name is Bob Nazarenus. And I'm the general manager

6 of Meridian Ocean Systems. And we're a small company

7 located in Ventura, California.

8 I not only represent myself and the company,

9 but its 19 employees and families, along with

10 approximately 35 other people that we hire on a temporary

11 basis from time to time, as the need arises, based on the

12 activities of seismic work done off the coast of

13 California.

14 It's important that you understand that losing

15 a permit for -- from Meridian's standpoint is quite

16 severe. Like was just stated, Palagos, who is a

17 competitor of ours, is, in fact --

18 (Thereupon Chairman McCarthy exited

19 the hearing room.)

20 ACTING CHAIRMAN DAVIS: You can continue.

21 MR. NAZARENUS: In any event, Meridian is a

22 ten-year-old company. Like Palagos, the effect of

23 removing the permits from clients for which we work for

24 has a very severe, dramatic impact on our ability to

25 perform work and to exist in the future.

1 There is another side to Meridian which most
2 other companies do not have, in that we also provide
3 different types of services other than just those to the
4 petroleum industry. However, the petroleum industry is,
5 in effect, our bread and butter, representing about 50
6 percent or more of our total revenues.
7 And we currently have taken technology from the
8 oil industry and applied it to other applications, one of
9 which is the Naval Civil Engineering Laboratory, NCEL;
10 various other contractors involved with outfalls as did
11 Palagos. We also do the work in San Francisco. Various
12 contractors involved in dredging in the Sacramento Delta.
13 Leslie Salt. Monterey Bay Aquarium and the work they're
14 doing. Bechtel at Three Mile Island and the frustration
15 and difficulties they're having, we're involved in helping
16 them along with their projects. National defense. We've
17 been able to take this technology from the oil industry
18 and develop a mine detection system, which obviously is
19 rather sensitive with the Persian Gulf situation.
20 And we supply the United States Navy with mine
21 detection equipment on the West Coast. We're involved
22 extensively in Australia, Canada, United Kingdom, and
23 Israel. And I can only assure you that the removal of
24 permits and the removal of 50 percent or more of our income
25 will not allow us to continue the types of progress and

1 supply the types of products that go into there industries.
2 Meridian and companies like Palagos will no
3 longer be around. I have a great deal of frustration
4 with, quite frankly, the departure of the Governor at
5 this moment. And I can tell you why. The Governor, I
6 suppose, is like commander in chief as I am of my
7 company. I've been the president of two other companies.
8 I know what it's like when you have a staff of people
9 that present information to you in a diligent a fashion,
10 as effectively as they can, with as little bias as
11 possible. But all of us are human. And I can only tell
12 you that when I was here last hearing on the 23rd, I think
13 all of us would agree we heard a very emotional plea from
14 the fishermen, not very factual.
15 There was a statement made by -- I think a
16 Mr. Breit -- who read a letter that quoted the fact that
17 someone told him that there was few sightings of seals
18 and fish off the coast of Mendocino. And I think, as Dee
19 has described here earlier, there's all kinds of
20 potential impacts from a biological standpoint that could
21 cause that to occur, that obviously the conclusion that was
22 drawn was it was seismic activity that caused that with no
23 conclusion, no base of fact. It's hearsay. And I know
24 when I sit in the chair and you hear people give you
25 input and you have to make a decision -- you try to make

1 the best decision you can. And I hope that's what the
2 Commission is doing, because it has a dramatic impact on
3 my life and my employees, and the welders, the carpenters,
4 the vessels we hire; Palagos, a competitor. Competition
5 is good.
6 We've heard testimony from your own attorneys,
7 which they deduced that there has been or appears to be
8 some substantial impact. And the word "may" was used and
9 so forth. And it is true that, if you will, our side of
10 the argument, Dee has indicated that, in fact, he's found
11 evidence that, in fact, there is no significant impact.
12 All I know is we've been in this business for
13 ten years. I know people that have been in this business
14 for 40 years. I just find it peculiar why the fishermen
15 are allowed to survive and Palagos and Meridian are not.
16 And I think we have to set aside the emotional impact
17 of this issue and look at the legal issue. Those people
18 who sat down and figured out a way to function during a
19 nonemotional time (sic). Just to give you an analogy of
20 what I'm trying to say, so it's clearer, I'm involved at
21 this moment in preparing a five-year strategy for
22 Meridian. And I prepare, as a part of that, a contingency
23 program for things that might happen that will have an
24 adverse impact on my business.
25 And I sit down with my managers, as you would

1 sit down with your staff, and you analyze in a very clear,
2 comfortable, and emotional time (sic) what you would do
3 if those events occurred. When they, in fact, occur,
4 you're caught up in the emotion of having to fire people.
5 Very difficult to do. You procrastinate. Before you know
6 it, you lose your business.
7 And so, you make decisions when it's a
8 nonemotional time. And I think testimony by B.J. is an
9 indication that at some time prior, people sat down and
10 set out some guidelines to be followed in case situations
11 like this occurred.
12 And I think we're in the emotional time and
13 we're hearing emotional testimony. I suppose you would
14 classify mine as emotional. Let's not get caught up
15 in the emotional. Let's look at what people with calmer
16 minds had to say about what to do with the problem like
17 it is.
18 And I'd like to find a way in which all of us
19 can work together. We have for 40 years. And I know
20 there are some exceptions in the sense that we are
21 required to put out a fisheries advisory whenever we go
22 out to do work. Ironically enough and funny enough, when
23 we go out there after giving a 15-day notice, our area is
24 filled with nets, traps, buoys floating all over the place.
25 boats all over the place. That's not coincidental. And I

1 find it interesting that the oil industry has supplied
2 $600,000 in order to provide studies to help you make
3 decisions. I haven't yet heard -- there may have been
4 some investment made by the Fishermen's Association, but
5 I don't know if there has or hasn't.
6 And I know that one of the gentlemen here
7 indicated that it behooves the oil industry to come up with
8 the solution, since they're the ones requesting the
9 permits. So be it.
10 But I still, as a rational individual, when I've
11 read these reports, have found no indication of
12 substantial impact on fish, larvae, salmon, whatever they
13 may be.
14 And I guess I'd implore you to consider the
15 fact that when you arbitrarily pull back permits for a per-
16 iod of time, it has a significant,negative impact on my
17 business and my people.
18 And I'd like to suggest that if we're not sure
19 yet what the right decision is, let's not kill one
20 industry. Let's find out with a few more tests to find
21 out if there is a significant impact. Let's get the people
22 from -- the experts, if you will, from the fishermen as
23 well as from the petroleum companies together to perform
24 the tests -- not an environmental impact study which stops
25 everything. We've performed these other tests while we've

1 continued to operate.

2 I think there's got to be a solution that is not
3 so severe as to absolutely eliminate exploration, which
4 eliminates Meridian and Palagos. There's a way to
5 cooperate. And one of the suggestions that was suggested
6 by the gentleman who represented the fishing association
7 was that we could divide up the calendar year.

8 Unfortunately, he suggested that we function in
9 December, January, and February. That's a pretty tough
10 time to be on a vessel out there bobbing around on the
11 water in 12-foot seas trying to take seismic information
12 or to do anything, for that matter, except hang over the
13 side.

14 And that's why the fishermen don't want to be
15 out there. However, if, in fact, it's a necessity for us
16 to give a permit (sic) a 15-days' notice, and that's not
17 sufficient enough time for the fishermen to fish prior to
18 us going out there, then make it 30 days. Let them fish
19 in that area, and then we'll go out and do our work.

20 There's been no proof, no substantial proof
21 that when they go back out there after we've been there,
22 that they can't catch fish. Well, I guess my point is that
23 we need to devise a way that all of us can work together
24 without anyone going out of business. And I mean this
25 sincerely. Thank you.

1 ACTING CHAIRMAN DAVIS: Let me just respond to
2 a couple points you made. First of all, the Lieutenant
3 Governor, like all of us, is on a number of boards and
4 commissions and can't be everywhere at once. I'm on more
5 than 40 boards. I was not at the September 23rd meeting.
6 It's just a fact of life for statewide public officials.
7 So, in terms of all of our reliance on staff in addition
8 to personal staff, the Lands Commission itself provides
9 us with expert advice. And it is their recommendation
10 that, in light of new studies, that an environmental
11 impact report is appropriate.
12 And maybe in a perfect world nothing would
13 change. I know I'm always frustrated everytime I learn
14 that something I was told was good for me to eat is no
15 longer good for me. And I say, "How can that be?"
16 But, you know, one of the challenges of life is
17 to cope with change. And we're trying as best we can to
18 cope with it in a way that will minimize adverse impact,
19 but still allow us to discharge our responsibility under
20 the Public Resources Code.
21 I know that doesn't totally respond to your
22 frustration and the consequences of this likely decision,
23 but it's the best response I can give you at this time.
24 Who is the next witness?
25 MS. KIRWAN: The only other people I'm aware of

1 who would like to speak are first, Tom Morneau, then
2 very, very short remarks from John Laker, Ebert Baxter,
3 and Larry Bowles.
4 MR. MORNEAU: Chairman Gray, Commissioners,
5 my name is Tom Morneau. I'm an attorney employed by
6 Exxon. One of my clients with Exxon is the geophysical
7 operations group that's responsible for offshore
8 geophysical operations, onshore and offshore Alaska, and
9 offshore California.
10 As Miss Kirwan indicated earlier, I'd like to
11 take a few minutes with you and review the history of the
12 permit applications that you're considering today and
13 also to comment, if I might, on the inappropriateness
14 of a decision to deny the permits and to prepare an EIR.
15 Exxon's original permit application that you're
16 considering today was submitted on May 27th, 1986. The
17 reason for that time period was that under the CEQA Act,
18 if you make a determination that an EIR is required, you
19 have a year to do that. We've made the application in such
20 time that there would be no interruption to activities,
21 because the current permit was at that time running
22 until I believe May 28th of this year. And so, it was
23 done approximately one year beforehand.
24 About six and a half months after that initial
25 filing by Exxon, the staff came to Exxon -- the Commission,

1 acting through its staff, came to Exxon and requested that
2 we agree to a one-time 90-day exception (sic) so that
3 they could complete their review of the permit.
4 Exxon, in an attempt to cooperate, which we
5 wanted to do -- and we always thought the staff worked well
6 with the industry and tried to be very fair in its
7 dealings with us. So we agreed to that.
8 Three months later in February -- I believe it
9 was like February 17th -- we again received advice from
10 the Commission that they were unable to complete their
11 review of the permit; that they were then conducting an
12 environmental review of the entire seismic permit program,
13 and that we had an opportunity to withdraw our permit and
14 resubmit it and/or the alternative was to face a denial of
15 the permit.
16 That takes us through February. We again agreed
17 to resubmit the permit. And I believe the effective date
18 was approximately February 28th or March 1, that time
19 frame.
20 Then in May, we were advised that the
21 recommendation would be to prepare a new negative
22 declaration. But instead in the May hearing, the decision
23 was made to extend the current permit another four months
24 till September 28th.
25 That brings us up to our September 23rd hearing,

at which time we learned that the permits were actually denied without an opportunity for many of us applicants to present our testimony.

On September 25th again, we were advised that our permits were deemed resubmitted and complete as they were back in February. And the point to make here is that at no time from the original filing back in May of 1986 to the current date, have we been asked for any additional information that was not already provided in our original application.

This finally brings us to our hearing today. The purpose of that chronology is to highlight for you Commissioners the fact that a denial of the permits at this time is basically unfair, especially in light of the following reasons.

We've worked with the Commission throughout this entire 16-month period. We've done everything that is required of us under the statute and under the regulations for the State Lands Commission to obtain a permit. Additionally, as I indicated, we've been advised several times that a permit would issue.

I believe in the February letter that we received, it indicated that they -- the Commission was going -- or the recommendation would be to the Commission that -- permits should issue in March.

1 Then in May, of course, we were advised that
2 a new negative declaration would come out and then, again,
3 the permits would issue.
4 Finally, on September 23rd, we were really
5 surprised to learn that the permits were to be denied and
6 that an EIR would be required.
7 I'm not trying to indicate that anyone has acted
8 unreasonable here. What I'm trying to tell the Commission
9 is that we have a period where we have worked with the
10 Commission and done everything that is required of us.
11 And when you take that and put it in the light of had a
12 decision been made 15 months ago to conduct an EIR, as is
13 required by CEQA, that EIR could have already been
14 completed. And that was our thinking when we submitted our
15 permit application.
16 If worse comes to worse and an EIR had to be
17 done back then, it could have been completed by now
18 without any interruption to activities. Now we face a
19 substantial interruption to our operations, unless the
20 Commission overturns their September 23rd decision.
21 Additionally, I think a decision to deny the
22 permit is inappropriate. The reasons for this are three:
23 First, the timing or the time to make a decision to
24 conduct an EIR, as Miss Kirwan indicated earlier, is 30
25 days after a permit is deemed complete. Second, I know

1 there's a disagreement amongst the lawyers here. Our
2 position is clearly that CEQA, as a statute, the
3 regulations that were promulgated under CEQA, and the
4 State Lands Commission's regulations state that a
5 categorical exemption calls for the permits to be issued.
6 The Commission does not have that choice of
7 conducting an EIR until those regulations are overturned,
8 unless they can bring themselves under the exceptions.
9 And it's our strong belief that they cannot.
10 Finally, and I think most importantly, we have
11 to keep in mind that this is a dramatic, a hundred-eighty
12 degree, in fact, change in direction from the Commission's
13 earlier decisions over the last few years to issue these
14 permits. And in our -- from our view, it's without any
15 new evidence to indicate that our operations are causing
16 a significant impact.
17 We really believe that what is happening here
18 is that there is a reaction to conjecture. There's
19 allegations from a small faction of the fishing industry
20 and, as a result of that, a decision is being pushed upon
21 the Commission to prepare an EIR. I personally believe
22 that this small faction within the fishing industry is not
23 willing to work with the seismic industry to resolve what,
24 in our opinion, is nothing more than a multiple-use
25 conflict.

1 Given that we are faced with a multiple-use
2 conflict and that we don't believe there's any new or
3 old information to show a significant impact on the
4 environment, I respectfully request that you reissue the
5 permits.
6 That completes my actual comments, but I've got --
7 this is not my place, but I'm going to make a suggestion.
8 I heard earlier Governor McCarthy make the statement, "I'm
9 faced with a situation where my staff and my experts and
10 my scientists are telling me that we have a disagreement,
11 that there is the potential for a significant impact."
12 Our experts, as you heard, Mr. Dee Chamberlain,
13 are telling you that there is no significant impact.
14 Periodically, being a nonscientist myself, when I'm faced
15 with that type of situation, I say, "Wait a second.
16 There's only one way to resolve this. We're in a
17 confrontation mode here. Let's step back and avoid that
18 confrontation mode. Let's pull those scientists together,
19 and I want to hear both sides from these people. I want
20 to hear it up front."
21 And then, once I've heard it, if I still --
22 you know, I will know myself, after hearing both sides of
23 the argument and the interaction, the rebuttal, if you
24 would, back and forth, I'll know what decision to make.
25 Or at least I'll have made it on the best possible

1 information.

2 I think that this situation has some potential

3 for that type of a method. And I'd like to suggest that

4 for your consideration. Thank you for hearing me today.

5 ACTING CHAIRMAN DAVIS: Robert, do you or Claire

6 want to respond to any of the comments about the delay

7 in the permit or the -- his interpretation of the

8 governing statute?

9 EXECUTIVE OFFICER DEDRICK: Yeah, I'd speak to

10 the program, Mr. Chairman. As I've said earlier,

11 the process has taken a while, because there have been a

12 substantial number of changes in knowledge during the

13 period.

14 Three and a half years ago, when the Commission

15 authorized renewal of the program, it at that time

16 authorized the studies, because -- though there was a

17 lot of conjecture, even more than you've heard in this

18 series of hearings -- there was absolutely no evidence.

19 Those studies were thought -- we thought that

20 those studies would take one to two years, which was a

21 reasonable expectation at the time. At the -- a year

22 ago, the period that Mr. Morneau refers to when he says an

23 EIR should have been ordered, we did not have any

24 different data than we had had two years prior to that.

25 But in early last -- early this year, we began

1 to hear from the people who were conducting the studies,
2 without having seen the studies, that they were going to
3 come up with results that were -- indicated potential
4 damage.
5 At that time, Mark Meier, attorney on our staff,
6 met with the geophysical industry and told them that if
7 those results came through as they were expected to come
8 through -- and this would have been in probably around May
9 or June -- that staff -- in March? -- in March. That
10 staff, and I'm speaking now of legal staff, would recommend--
11 would feel that an EIR probably had to be done.
12 The reason we asked you for an extension to the
13 program in May, as you recall, was because we were told
14 that the results of those two studies,which we had waited
15 for for over a year, would be coming out during the
16 summer.
17 In fact, the MMS study was released in about
18 June, and the other study -- the Committee study in, as
19 I recall, August. When those results were received by
20 the Commission staff, it became apparent -- to us at any
21 rate -- that the legal requirements could not be met with
22 anything other than an EIR.
23 The geophysical industry, as they've indicated,
24 worked very closely with us and we with them, as well as
25 with the fishermen, over a long period. At no time have we

1 ever misled them on these issues. They have always been
2 aware that this is the case.
3 It's somewhat ironic that they're pleading
4 delay in permitting when your only alternative prior to
5 this time would have been to deny those permits. Our
6 efforts were to try to keep a working program going until
7 we were sure what the legal requirements would be. We
8 now feel those legal requirements have forced us into
9 this position.
10 And, I think -- you want comment on that,
11 Mr. Chairman? Mr. Hight should do that.
12 MR. HIGHT: Mr. Chairman, I think that the
13 essence of the argument is when the evidence -- when the
14 evidence of the studies was made public, that crystalized
15 our worst fear, if you will. And at that point, we saw
16 little option.
17 ACTING CHAIRMAN DAVIS: I assume during this
18 period of delay the geophysical testing continued?
19 MR. HIGHT: That's correct.
20 MR. MORNEAU: Yes.
21 ACTING CHAIRMAN DAVIS: So, if we had --
22 MR. MORNEAU: No, we were not trying to imply
23 that at any time we were shut down during this time period.
24 You know, more than --
25 ACTING CHAIRMAN DAVIS: No, but I just want to