

STATE LANDS COMMISSION

TRANSCRIPTS

October 18, 1991

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MEETING  
STATE OF CALIFORNIA  
STATE LANDS COMMISSION

ORIGINAL

PORT OF SAN FRANCISCO  
3100 FERRY BUILDING  
PORT COMMISSION ROOM  
SAN FRANCISCO, CALIFORNIA

FRIDAY, OCTOBER 18, 1991  
10:00 A.M.

Alene Weir, C.S.R  
License No. 7587

1 COMMISSIONERS PRESENT

2 Honorable Leo T. McCarthy, Lieutenant Governor, Chairman  
3 Mr. Gray Davis, State Controller, represented by  
4 Mr. James Tucker, Chief Deputy Controller

5  
6 STAFF PRESENT

7 Mr. Charles Warren, Executive Officer  
8 Mr. James F. Trout, Assistant Executive Officer  
9 Mr. Robert C. Hight, Chief Counsel  
10 Ms. Patsy Tomasello, Executive Secretary

11  
12 ALSO PRESENT

13 Mr. Jan S. Stevens, Deputy Attorney General  
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PROCEEDINGS

1  
2 CHAIRMAN McCARTHY: Ladies and gentlemen, this is  
3 a meeting of the State Lands Commission.

4 On my right is Commissioner Jim Tucker,  
5 representing the State Controller Gray Davis. My name is  
6 Leo McCarthy.

7 The minutes of the previous Commission meeting  
8 are approved without objection.

9 Let me announce that two items were pulled off  
10 the published calendar today. Item 01(B), section of 01,  
11 (B), and Item 06.

12 There are no items on the consent calendar  
13 today. This is the regular calendar.

14 Mr. Warren, would you like to open up?

15 EXECUTIVE OFFICER WARREN: Yes, Mr. Chairman. I'd  
16 like to skip the first calendar item temporarily and come  
17 back to that in a moment.

18 CHAIRMAN McCARTHY: All right.

19 EXECUTIVE OFFICER WARREN: And proceed to Calendar  
20 Item 2. Calendar Item 2, Mr. Chairman and Commissioners,  
21 concerns four Recreational Pier Permits. One in Huntington  
22 Harbour in Orange County; one in Petaluma River in Marin  
23 County; one at Lake Tahoe; and one in the Sacramento  
24 River.

25 The applications meet all State Lands Commission

1 requirements and the staff is recommending approval of the  
2 permits.

3 CHAIRMAN McCARTHY: Any questions? Any members of  
4 the public have any questions on Item Number 2? If not,  
5 Item Number 2 is approved.

6 Do you want to go on to Item Number 3 now or back  
7 to --

8 EXECUTIVE OFFICER WARREN: No, Item Number 3.  
9 Item Number 3, Mr. Chairman and Commissioners, is an  
10 approval of an assignment of a General Permit -  
11 Recreational Use Permit at Lake Tahoe at Carnelian Bay.  
12 The staff recommends approval.

13 CHAIRMAN McCARTHY: Any questions? Questions by  
14 the public? Number 3 is approved.

15 EXECUTIVE OFFICER WARREN: Number 4 is the  
16 approval of the assignment of a General Lease - Commercial  
17 Use at Lake Tahoe at Camp Richardson for the operation of a  
18 commercial marina, and we recommend approval of the  
19 assignment.

20 CHAIRMAN McCARTHY: Any questions? Questions from  
21 the public? The item is approved.

22 EXECUTIVE OFFICER WARREN: Returning to Item 1,  
23 Mr. Chairman. Item 1, Sub (H) is to be removed from the  
24 calendar.

25 CHAIRMAN McCARTHY: All right. Item (H).

1 EXECUTIVE OFFICER WARREN: Yes. The George O'Neal  
2 Rent Review.

3 CHAIRMAN McCARTHY: We removed (B), now we're  
4 removing (H).

5 EXECUTIVE OFFICER WARREN: (H), yes.

6 CHAIRMAN McCARTHY: All right.

7 EXECUTIVE OFFICER WARREN: The remaining items  
8 before you, which is to approve 10 Rent Reviews, three in  
9 the Petaluma River, one in the Sacramento River and one at  
10 Lake Tahoe. Staff recommends approval; there's no  
11 objection.

12 CHAIRMAN McCARTHY: Are we removing (H) with the  
13 knowledge of Mr. O'Neal?

14 EXECUTIVE OFFICER WARREN: Yes. Mr. O'Neal is  
15 here. He was going to testify. We are removing the item  
16 with his permission in order to discuss the differences.

17 CHAIRMAN McCARTHY: All right. Any questions on  
18 the remainder of Item 1? Questions from the public? Item  
19 Number 1 is approved.

20 EXECUTIVE OFFICER WARREN: Item 5, Mr. Chairman,  
21 and Commissioners, is an application by the Port of San  
22 Francisco for a dredging permit to enable it to dredge up  
23 to 100,000 cubic yards at Piers 27, 80 and 96 for the  
24 purpose of maintaining navigation channels. There is no  
25 royalty imposed for such dredging. There is being charged

1 the fee that the Commission imposed several months ago on  
2 dredging activities in the Bay waters of San Francisco, 25  
3 cents per cubic yard for any dredge material disposed of at  
4 any site in San Francisco Bay. The dredge spoils here are  
5 to be disposed of at the Alcatraz disposal site.

6 I should inform the Commission that we have  
7 received a request from Mr. James Strock, who is the  
8 secretary of the California Environmental Protection  
9 Agency, to use the proceeds of that fee to support the  
10 responsibility of the Bay Conservation and Development  
11 Commission to manage and supervise a study of upland  
12 disposal sites as part of the long-term management study  
13 sponsored by the U.S. Army Corps of Engineers.

14 As this Commission knows, dredging in San  
15 Francisco Bay is becoming a very critical issue, both  
16 maintenance dredging and channel deepening dredging. Port  
17 of Oakland proposes in the future deepening its channel 38  
18 feet to 43 feet in order to accommodate deeper draft  
19 vessels which are now plying the Pacific waters. Other  
20 ports, San Francisco, Richmond, have to maintain their  
21 existing channels by dredging.

22 As you also know, it is contended by some that  
23 the dredging and the disposal of dredge spoils in the Bay  
24 is harming the marine fisheries. Most recently the Fish  
25 and Wildlife Service has indicated that there is a

1 relationship between the decline of some species of fish  
2 and dredge spoils disposition in the Bay.

3           The LTMS project under the Corps of Engineers in  
4 which various state agencies are participating, is designed  
5 to find alternatives to the present method of dredging and  
6 dredge-spoil deposition. They are looking off-shore  
7 disposal; they are looking for additional in-Bay disposal  
8 sites, and they are also conducting inquiries to the  
9 possibility of upland disposal.

10           The LTMS project is designed to last  
11 approximately two years. The upland disposal aspect of the  
12 project is presently inadequately funded. And it is  
13 because of that that we've been asked to share with BCDC  
14 the fund which this dredging fee is creating.

15           The staff recommends approval. And I would at  
16 this time, if it is all right with the Commission, I would  
17 like to have Veronica Sanchez of the Port of San Francisco  
18 speak to the item.

19           CHAIRMAN MCCARTHY: Thank you.

20           We want to thank you, incidentally, before you  
21 begin, Ms. Sanchez, for the hospitality of the Port and  
22 allowing us to hold our State Lands Commission hearing here  
23 today. Thank you.

24           MS. SANCHEZ: Mr. Lieutenant Governor, thank you  
25 very much. I assure you it's our pleasure to host you at

1 the Ferry Building here. And it is our hope that you may  
2 consider this a site more often to come and have meetings  
3 whenever you need to have a meeting here in San Francisco.  
4 It is your home.

5 For the record my name is Veronica Sanchez. I'm  
6 the Director of Government and Public Affairs for the Port  
7 of San Francisco. I would like to make a statement in  
8 behalf of president Jim Herman, the president of our  
9 commission, and executive director Michael Huerta, who  
10 presently is in Japan and regrettably is unable to address  
11 you personally.

12 We'd like to begin by thanking you. Thanking you  
13 first of all for the extraordinary effort that you are  
14 taking to meet in this special hearing session to consider  
15 this permit. You are considering it one day before we hope  
16 to get that dredger in the water; we hope to have that  
17 dredger in the water by tomorrow morning, 8:00 o'clock, at  
18 Pier 27. And so it shows the close timing.

19 Also I'd like to say a special word of thanks and  
20 appreciations to your staff who has responded remarkably to  
21 try to turn around the paperwork that is required for this  
22 permit, and has just shown incredible support for our need  
23 to clear these berths and these terminals so that we don't  
24 have any further disruption of business at these  
25 terminals.

1           This permit, as we're here standing one day  
2 before the dredger moves at those terminals, it's hard to  
3 believe we're at this last stage. A few months ago when  
4 the Chinook salmon crisis hit this Bay in June, we were  
5 very skeptical as to whether we would be able to resume our  
6 maintenance dredging operation. And basically we were at a  
7 point of crises.

8           We have been able to resolve this crises today  
9 and be able to proceed with our maintenance dredging  
10 operations because of the incredible consensus that was  
11 able to be achieved, particularly on our permit. And we  
12 were successful because we were able to sit down in a  
13 cooperative fashion with the environmental community, with  
14 the fishing community and with total respect for the  
15 mandate of conservation agencies like the National Marine  
16 Fishery Service, Bay Conservation Development Commission,  
17 the State Lands Commission about the quality of San  
18 Francisco Bay.

19           They reviewed our permit, our samples. They  
20 recommended the scope for the samples that we would take.  
21 And the objective all along was really to balance both the  
22 environmental interests and the economic interests of  
23 keeping our terminals operative.

24           So while it represents a new way of doing  
25 business in maintenance dredging for the Port of San

1 Francisco, I think we're on the cutting edge of what's to  
2 come and it's a preview of what more ports will be doing  
3 and more dredgers will have to be doing in having to figure  
4 out ways to either scale back volumes or look for  
5 alternative sites to Alcatraz for disposal of material.

6 So again, just thank you very much. And it is a  
7 very good day for this waterfront and we're very relieved.

8 CHAIRMAN MCCARTHY: Thank you. Any questions?

9 ACTING COMMISSIONER TUCKER: Could you just tell  
10 us briefly what the impact has been in ' last few months  
11 of not being able to dredge.

12 MS. SANCHEZ: Mr. Tucker, through the Chair, the  
13 impact, we had a ship go aground at Pier 29, which is our  
14 newsprint terminal. And we also had a ship go aground at  
15 Pier 48.

16 Because both of those terminals had to be closed  
17 because they were mud-locked, we could only bring in ships  
18 to Pier 27. Which means the newsprint terminals were  
19 operating at minimal capacity. It was particularly a  
20 problem when the Navy needed to come in for fleet week to  
21 bring its ships in, and we had to balance both the need to  
22 accommodate the newsprint terminal and the Navy ships.

23 Newsprint is one of our biggest commodities at  
24 the port. So the dollars lost are opportunity losses that  
25 we have not been able to obtain. Additionally we suffered

1 problems, navigational problems at our north container  
2 terminal, Pier 80, which will be I think the bulk of the  
3 work that will be taking place. There was a lot of concern  
4 by the operator of that terminal and our biggest shipping  
5 line there, Nedlloyd Shipping Line, which is a \$2 million  
6 customer to this port a year, about their ability to bring  
7 in those container ships in there, that we assured them  
8 that we would be able to secure the permits in a timely  
9 basis and that gave them confidence.

10 No doubt though that if there was any further  
11 delay in this permit, that we would be talking about the  
12 shutdown of Pier 27, and also serious reduction in business  
13 at Pier 80 and the south terminal. The worst case  
14 scenario, if all the terminals that we would need to do in  
15 our dredging program, in this dredging program, couldn't  
16 have been done, we were talking about maybe a \$10 million  
17 annual loss to this port.

18 ACTING COMMISSIONER TUCKER: What does that  
19 represent in terms of the number of people that are  
20 working; loading, unloading, all that type of thing?

21 MS. SANCHEZ: Direct and indirect jobs are  
22 calculated to be over 6,000 jobs. Just on this side of the  
23 water.

24 ACTING COMMISSIONER TUCKER: Thank you.

25 MS. SANCHEZ: Thank you.

1           CHAIRMAN McCARTHY: Let me just make sure now. We  
2 obviously need the support of each port in the Bay area for  
3 the plan. The problem we're facing is that we have a  
4 multi-billion dollar shipping industry with tens of  
5 thousands of jobs involved, all over the Bay area, a very  
6 important object for us to try to save so that the people,  
7 the families depending upon this part of our economy will  
8 continue to be able to work. And we also have the critical  
9 issue of the serious environmental problems we have with a  
10 great amount of the marine life being poisoned and killed  
11 off because of all kinds of pollution being dumped into the  
12 Delta and the Bay.

13           The Port of San Francisco is going in the same  
14 direction that the State Lands Commission is in trying,  
15 through this two-year study, to find upland sites where we  
16 could deposit the dredging spoils. Are we together on  
17 that?

18           MS. SANCHEZ: Mr. Chairman, correct. Let me make  
19 the distinction for members of the public, too, who might  
20 value this information. We're talking about short-term and  
21 long-term needs for sites. Not all of our material will be  
22 able to go to Alcatraz because of the concern by the  
23 National Marine Fishery Service of the impact of this  
24 material on the Chinook salmon.

25           Therefore what the Service is recommending is

1 that dredgers cut the volume that's disposed at Alcatraz.  
2 So short-term we need to find a place to put the balance of  
3 that volume. So whereas in prior years we were dredging on  
4 an annual basis about 300,000 to 500,000 cubic yards, we  
5 anticipate that we will only be able to dredge 100,000  
6 cubic yards and dump that at Alcatraz. That means that's a  
7 lot more material that has to be disposed someplace. And  
8 we need to find places for that. And that might be the  
9 ocean or that might be upland sites. But we need to  
10 identify them. So before this huge planning process is  
11 completed in 1994, that is being spearheaded by the Army  
12 Corps of Engineers, the EPA, there are short-term solutions  
13 that need to take place.

14           The port is independently right now working with  
15 the BCDC to try to attempt to see if we can have a  
16 demonstration project for some of the yardage from that  
17 newsprint terminal that is mud-locked right now and that  
18 material will be able to go to Alcatraz. But we are  
19 pursuing to find a landfill where we can dump that  
20 material, as well as the material from the south terminal.

21           That's the short-term need. The long-term needs  
22 we are absolutely in agreement with the State Lands  
23 Commission about the need to study upland sites for  
24 disposal of this material. And for that reason the Port of  
25 San Francisco supported Assembly Bill 1058 by Assemblyman

1 Sher that was signed by the Governor two weeks ago to  
2 encourage and provide for the mechanism so the Bay  
3 Conservation and Development Commission can participate in  
4 those upland studies and have those results.

5 So I think we are on the same wavelength.

6 CHAIRMAN McCARTHY: Thank you very much.

7 MS. SANCHEZ: Thank you.

8 EXECUTIVE OFFICER WARREN: Mr. Chairman, let he  
9 interrupt at this point from the usual procedure.

10 CHAIRMAN McCARTHY: Yes.

11 EXECUTIVE OFFICER WARREN: Before we hear from a  
12 next witness. I'd like to address briefly another aspect  
13 of this item and subject to which Ms. Sanchez referred in  
14 her presentation. And that concerns the legislation that  
15 was passed this year enabling BCDC to impose a 10 cent per  
16 cubic yard charge on all dredging within all areas of the  
17 Bay in order to help fund its responsibilities under the  
18 long-term management study which we have mentioned.

19 That legislation unfortunately contained no  
20 appropriation language, and it will be some months until  
21 BCDC is in a position to implement its provisions. The  
22 delay in implementing the legislation was the reason why  
23 Mr. Strock, Secretary Strock of Cal EPA wrote us to assist  
24 them during the interim. We have negotiated with Bay  
25 Conservation Development Commission an agreement whereby

1 the benefit of our funds will be made available to BCDC  
2 immediately. It is understood by BCDC and by Port of San  
3 Francisco and other ports in the Bay that upon BCDC being  
4 able to effectively implement the legislation it will be  
5 our recommendation to you that our fee be terminated.  
6 Because what we would like to avoid here is a multiplicity  
7 of fees confronting the dredgers and the ports.

8           So I did want to mention that to you. We have  
9 the terms, a copy of the MOU or agreement between State  
10 Lands and BCDC is available. And speaking to that, I  
11 believe we have here Mr. Steve McAdam of BCDC. Mr.  
12 Pendleton, who is the director, was unable to be here due  
13 to other commitments. But I think Mr. McAdam can address  
14 that point.

15           CHAIRMAN MCCARTHY: You are correct, Mr. Warren.  
16 This is what you and I have discussed several times. I'm  
17 strongly opposed to several state agencies imposing  
18 dredging fees. So ours will terminate and we will use all  
19 of the money that we have gathered to pay BCDC costs for  
20 the beginning of this long-term management study to try to  
21 identify upland sites. The total cost of this study, as I  
22 understand it, is about \$600,000. The total amount that  
23 the State Lands Commission will be able to pay out of the  
24 fee it has imposed is approximately \$160,000. Our fee will  
25 terminate at the instant that the BCDC fee kicks in under

1 Assemblyman Sher's new legislation under AB 1059, which the  
2 Governor has signed.

3 Why don't we hear from you, Mr. McAdam.

4 MR. McADAM: Thank you, Mr. Chairman. I'm here  
5 simply to support the adoption of the MOU and to gratefully  
6 accept, should you chose to give us this money. I think it  
7 reflects several things. It reflects the good working  
8 relationship we've had with this Lands Commission for many  
9 years. It reflects both of our commissions' desires to  
10 move towards reusing this material, particularly in upland  
11 sites rather than disposing of it in the Bay and I think it  
12 reflects the generosity and the leadership that you are  
13 providing to us and we thank you very much.

14 CHAIRMAN MCCARTHY: Thank you very much.

15 Now Pat Flanagan, Port of San Francisco  
16 Waterfront Committee. Mr. Flanagan.

17 MR. FLANAGAN: Good morning, Honorable  
18 Commissioners. I guess that's proper.

19 CHAIRMAN MCCARTHY: We'll take it even if it  
20 isn't. That's all right.

21 MR. FLANAGAN: Just as a way of introduction, I've  
22 been president of a fishing company for 35 years on San  
23 Francisco waterfront, Standard Fisheries Corporation.

24 As far as politics, I think it's apropos to what  
25 I'm going to speak to today regarding the Burtcn Act, that

1 Phil Burton used to describe me, God rest his soul, as his  
2 probably closest Republican friend after his race against  
3 Senator Marx.

4 A number of years ago at the same time under  
5 Dianne Feinstein, I went to Japan and we spent eight days  
6 in Japan, which became, we had national press on the review  
7 of Bay of Tokyo in relationship to the Bay of San  
8 Francisco. And from that trip I came back, we spent eight  
9 days with scientists from the University of Chiba in  
10 Japan. And out of that, I was the author of a critique of  
11 the U.S. Army procedures on dredge materials in the United  
12 States. Which at that point had found that there were a  
13 tremendous amount of flaws in the Army Corps procedures.  
14 And that led to a number of almost three years of being  
15 told by the Army Corps I was crazy, and the press refused  
16 to cover it, Chronicle, Examiner, and it was very  
17 frustrating those first three years. And I look back and I  
18 almost think of myself as the father of this dredging  
19 issue.

20 There was a final breakthrough. After the Army  
21 Corps kicked me out of their office, I went to the regional  
22 water quality control board and the board told me to shut  
23 up, that I was out of order, and Marion Otsea said "I don't  
24 think he is. I want to hear what he has to say." And from  
25 that came all the, in fact the regional board adopted far

1 more stringent regulations on dredging than I had been  
2 requesting because they found that the situation was far  
3 worse than I had imagined.

4           Just trying to give you some background. I'm  
5 also a University of San Francisco graduate and Jesuit  
6 training. And I think that's important to what I'm going  
7 to address today in the fact that the Jesuits train you to  
8 think and also to be fully responsible for your actions.  
9 12 years after I introduced the dredging issue, I never  
10 imagined, never imagined, that it would reach this  
11 proportion. In fact the original solutions that I offered  
12 to the Army colonel in privacy was way below where we are  
13 today. And it's ironic that the colonel, instead of  
14 kicking me out of his office, if he had just listened and  
15 acted, we wouldn't be in this predicament today. I'm not  
16 asking for the moon. I was just asking for what's  
17 reasonable in balancing environmental issues with the  
18 shipping industry.

19           Well now looking at all the money we're spending  
20 and where we've come today, I felt that there was other  
21 issues involved: Where are we going to get the money? And  
22 this is not just the only problem that the Port of San  
23 Francisco is faced with. They are faced with deteriorating  
24 infrastructure, a number of other issues.

25           About five or six years ago we had a hearing in

1 Long Beach under Senator Dills, who was author of State  
2 Lands. And out of that hearing Senator Dills, we spent a  
3 lot of time in the Port of San Francisco, and Allen  
4 Pendleton was there. And we kept on raising all these  
5 problems, all these problems. But we couldn't find a  
6 common thread, a common solution, real answers. And that  
7 really bothered me. And staying in the port for probably  
8 six, seven years now, stopped the budget, and now all of a  
9 sudden on the waterfront committee I think I found part of  
10 the problem. And this is a statewide problem. This goes  
11 back to the Burton Act.

12           And on August 31st -- I'll submit this -- I wrote  
13 a letter to -- I'm also a Republican. So I wrote this  
14 letter thinking that maybe this should go to Daniel  
15 Lundgren. And this letter was given to Daniel Lundgren on  
16 August 31st. It was about seven pages on the legal  
17 background of the Burton Act and the transfer agreement  
18 with San Francisco approved by the voters of San  
19 Francisco. I've been told by a number of attorneys that  
20 this is probably irrefutable legally, and I've done it all  
21 myself. I'm not a lawyer.

22           This letter was copied to almost 30 government  
23 officials, in city government as well as state, including  
24 Mr. Warren, of State Lands. I'll submit this, because I  
25 know you people have got so many files you probably lose

1 things in those files. So anyways a month and a half has  
2 gone by and I'm getting pressure. This has been in the  
3 Examiner, the Chronicle is watching it. A month and a half  
4 has gone by and I've not got a letter or response from my  
5 fellow Republican. This isn't the first time, but I'm  
6 still thinking about going Independent or Democrat if this  
7 keeps up.

8 But anyways, two days ago I called the attorney  
9 general's office. I said "What's going on? How come  
10 there's no response? I have to report back to the Port of  
11 San Francisco." Mr. Tufts of BCDC requested that I write  
12 this letter to the city attorney's office for relief, and I  
13 told Mr. Tufts "Look, after review of the Burton Act and  
14 the transfer agreement, the responsible party in this  
15 matter is the attorney general's office. He is supposed to  
16 be the overseer."

17 So I called and all of things, 25 people in  
18 government received this letter but the attorney general  
19 can't find it. So I said "Okay, fine. We got to get this  
20 thing moving. Give me your fax number." She gives me a  
21 fax. It ends to be the housing department. Call back and  
22 I says "Look, are you Republican or Democrat?" And she says  
23 "I'm a civil servant." I said "How do we get this thing  
24 going?"

25 So I finally got her right fax. Then I wanted to

1 call the attorney general's and their phone was off the  
2 hook all day yesterday. We tried 60 times to reach the  
3 attorney general's office yesterday. Not once all day was  
4 that phone on the hook, including 5:30 in the evening. I  
5 think they all went home, but why is the phone busy then at  
6 5:30.

7           So anyways, they wrote back immediately and says  
8 "We cannot respond to this; we're not going to give this  
9 ruling." And they give me a section in the code, that  
10 yeah, they're right if they read it. But I've been  
11 involved in San Francisco politics. Phil Burton is  
12 classic. You want to get something done, you can get it  
13 done. You don't send that kind of letter. So I gave you a  
14 copy of the letter from the attorney general's office.

15           Why I have come here today is to follow the  
16 bureaucratic method. And I'm asking -- couldn't ask for a  
17 better forum. We have Mr. Warren, you can request that  
18 ruling from the attorney general. You have the Lieutenant  
19 Governor -- or I'm sorry, today "Governor" I understand.  
20 You can request that ruling from the attorney general.

21           I have also been in contact with Willie Brown's  
22 office, Assemblyman Burton's office.

23           CHAIRMAN McCARTHY: We'll believe it's a long  
24 list, Mr. Flanagan. Help us with what's before us here.

25           MR. FLANAGAN: I think that all I'm asking is this

1 is really coming to the grips of the issue of regional  
2 ports. It's going to have a major impact, I believe.  
3 Looking in the future I think I know where the rulings are  
4 going to go. This is going to be strong argument for  
5 regional ports. It is also going to finally come to grips  
6 with the issues of how various local ports fund their ports  
7 as opposed to Los Angeles, Long Beach, Oakland and San  
8 Francisco. There are underlying problems with certain  
9 ports and less problems with other ports.

10 And I believe this letter not only touches on the  
11 microcosm of Port of San Francisco, but will eventually  
12 affect all ports. And that the issue is how is it funded,  
13 where does the money go and how is it administered. And it  
14 states that very explicitly in the Burton Act, how it  
15 should have been done. The issue I'm raising is in the  
16 City of San Francisco, and I'm probably positive that the  
17 City of Los Angeles have adopted a different procedure of  
18 funding that's different than the Port of Long Beach and  
19 the Port of Oakland.

20 And as a result we've got a tremendous disparity  
21 in the local ports that are competing with each other. And  
22 we really need to address that. We're wasting a lot of  
23 money. And again, I think that it's even more of a  
24 stronger reason why we need regional ports. Not just for  
25 dredging, but for rebuilding our infrastructure, bringing

1 it up into the 21st century. There's a lot of issues.  
2 Dredging is just the tip of the iceberg and the provision  
3 of jobs and everything else.

4 What I'm really doing is asking you responsible  
5 parties to ask the attorney general formally to give us a  
6 response to this letter. Thank you.

7 CHAIRMAN MCCARTHY: Thank you Mr. Flanagan.

8 Any other witnesses on this issue?

9 I want to just conclude by saying that I strongly  
10 support this action, because I think that the multibillion  
11 dollar shipping industry around the Bay area is something  
12 the State Lands Commission must fight very hard, with  
13 others, to try to save. A lot of people depend on this  
14 industry for their livelihood. And at the same time we are  
15 going to fulfill our very important public trust  
16 responsibility to make sure that avoidable environmental  
17 damage does not occur in this area. We think there are  
18 ways to achieve both goals, and we're going to be working  
19 with the ports and with other agencies to make sure that we  
20 achieve both goals.

21 ACTING COMMISSIONER TJCKER: I wanted to ask Mr.  
22 Warren some questions.

23 The Controller's support of this is based on a  
24 few assumptions, and I just wanted to state those and make  
25 sure he's understanding these correctly.

1           First of all, your strong interest in the Bay and  
2 its resuscitation, if that's possible, I'm assuming that  
3 you personally think this is a desirable thing to do, given  
4 all the circumstances; is that right?

5           EXECUTIVE OFFICER WARREN: This particular item?  
6 Yes.

7           ACTING COMMISSIONER TUCKER: Okay. And I assume  
8 that that's based on the limited nature of the dredging  
9 involved and that the objections that were raised by Fish  
10 and Wildlife Services to the Corps of Engineers have been  
11 sufficiently addressed for the purposes of this limited  
12 permit; is that correct?

13           EXECUTIVE OFFICER WARREN: I'm not sure it's  
14 correct to say that the concerns of Fish and Wildlife  
15 Services have been adequately addressed, because as I  
16 understand it they still have those concerns.

17           ACTING COMMISSIONER TUCKER: I'm asking though in  
18 your view.

19           EXECUTIVE OFFICER WARREN: My view is that the  
20 concerns of Fish and Wildlife Services remain; they have  
21 not been resolved; they are there, but it is my view that  
22 this action has to be taken despite those concerns. And  
23 let me explain. We're in a very critical period right now,  
24 as the Chairman has indicated. What we are attempting to  
25 do is to maintain the integrity of a major industry in San

1 Francisco Bay while at the same time trying to implement to  
2 the maximum a program of avoiding environmental harm. The  
3 means by which we are going to do the latter rests with the  
4 success and the integrity of this long-term management  
5 study sponsored by the Army Corps of Engineers and the EPA  
6 in which the state is participating.

7 As we know unfortunately this LTMS program, as  
8 the witness indicated, should have been instituted years  
9 ago. But for the next two or three years, until that LTMS  
10 program is completed, until we identify either upland or  
11 offshore disposal sites for dredge spoils or possibly other  
12 substitute in-Bay disposal sites, although that is not a  
13 preferred option in so far as the state agencies are  
14 concerned, we're going to have to make some hard  
15 decisions. And this is one of them. We're looking to the  
16 future with hope on the success of this program. But at  
17 the same time I think we have to protect the industry as it  
18 exists. The ports are contributing, as I think Ms. Sanchez  
19 indicated, ordinarily they would be dredging/disposing of  
20 up to 500,000 cubic yards a year. That's just San  
21 Francisco. They are cutting back their dredging.

22 So I think that they're cooperating. To the  
23 extent that they are, we ought to work with them in  
24 exchange for their working with us to ensure the success of  
25 the LTMS program.

1           So the decision such as this will be tricky. But  
2 I think that in this instance it should be supported.

3           ACTING COMMISSIONER TUCKER: Okay. And so would  
4 you say it's fair to say that this decision isn't in any  
5 way turning our back on concerns about the health of the  
6 Bay and its ability to sustain fishing and other industries  
7 that are also important along with the ports?

8           EXECUTIVE OFFICER WARREN: Not at all. I think  
9 the State Lands Commission has been very aggressive in this  
10 effort. I think that our role in encouraging the formation  
11 of a state agency working group to participate more  
12 actively and aggressively in the Corps of Engineers' EPA-  
13 sponsored program reflects the urgency that staff feels  
14 about the need to deal with the dredging issue seriously as  
15 a critical issue confronting the state. We've sensed for  
16 some months that it was not that the issue was not  
17 receiving the appropriate attention that it deserved. I  
18 think that we are now beginning to move responsibly towards  
19 resolving the issue. And I'm personally assured that with  
20 the cooperation of agencies such as we're having with BCDC,  
21 such as we're having with Cal EPA, that we will have made a  
22 major contribution toward the success of this effort.

23           ACTING COMMISSIONER TUCKER: The only other  
24 assumption or fact that our decision is based on, other  
25 than the things that you've recited, are that it either has

1 been or will be approved by BCDC, Regional Water Quality  
2 Board, the Corps of Engineers; and our office has not  
3 received any opposition to the granting of this particular  
4 permit, other than the letter that I saw from the Fish and  
5 Wildlife Service to the Corps of Engineers.

6 EXECUTIVE OFFICER WARREN: As I understand it, the  
7 Fish and Wildlife Service advises the Corps of Engineers on  
8 the issuance of this 404 permit. That letter from Fish and  
9 Wildlife Services was directed to the Army Corps of  
10 Engineers in its review of this particular matter. The  
11 Army Corps of Engineers has issued a permit on this  
12 particular matter having satisfied itself that the concerns  
13 of the Fish and Wildlife Service were not sufficient to  
14 prevent the issuance of the permit. With that decision we  
15 are in concurrence. This is the last permit, as I  
16 understand it, necessary to undertake the activity. And  
17 you will be begin tomorrow, if approved?

18 MS. SANCHEZ: Mr. Chairman, Members, this is the  
19 last permit to be obtained. Wednesday the Regional Water  
20 Quality Control Board voted to approve our permit. We are  
21 waiting for the paperwork of the state Water Resources  
22 Board, and the U.S. Army Corps of Engineers did issue the  
23 permit and all that needs to be done is to be executed by  
24 the colonel this afternoon. So it's a matter of signatures  
25 only.

1           I do, for the benefit of Mr. Tucker if I may, I  
2 would like to read from the letter that was sent by the  
3 National Marine Fishery Service, which is a sister  
4 conservation agency of Fish and Wildlife, which addresses  
5 your concerns about the ecology of the Bay and the  
6 protection of marine species. This is specific to the  
7 Chinook salmon. In the letter they state: We've reviewed  
8 the information provided with reference to possible impacts  
9 on winter run Chinook salmon listed as threatened under the  
10 federal endangered species act. Based on the nature of the  
11 sediments and the biological test results presented, we  
12 conclude that the project as conditioned will not adversely  
13 affect the winter run salmon. And as you know NMFA is the  
14 lead agency in expressing their concern for the species.

15           ACTING COMMISSIONER TUCKER: Okay. Thank you.

16           EXECUTIVE OFFICER WARREN: Thank you very much.

17           CHAIRMAN MCCARTHY: Thank you.

18           I think we're ready to move to a vote on this  
19 issue.

20           All right. It's a unanimous vote. This  
21 commission approves the recommendation. Thank you, ladies  
22 and gentlemen.

23           All right. The remainder of the calendar?

24           EXECUTIVE OFFICER WARREN: Thank you, Mr.  
25 Chairman.

1           Item Number 6 has been pulled.

2           Item Number 7 is the annual report on management  
3 of state school lands. It's an informational item. We're  
4 pleased with this year's report, the contents of which are  
5 before you. I would like to just have a postscript. As  
6 you know, day before yesterday the House Interior Committee  
7 approved House of Representatives Bill 2929 establishing a  
8 desert protection area in the Mojave region of the State of  
9 California, included within the region to be protected, for  
10 over 250,000 acres of school lands. It was important to  
11 State Lands Commission to ensure that adequate compensation  
12 for those school lands was received in order to meet its  
13 obligation to protect the trust supporting education in  
14 California. After many months of negotiations and meeting  
15 with members of Congress, members of the committee, meeting  
16 personally with the authors of the bill and meeting with  
17 the Congressman Miller, who is the chairman of the  
18 committee, we were able to last weekend to successfully  
19 negotiate language protecting school land trust in the  
20 bill. We're very pleased with the results. We can now  
21 wholeheartedly, while we always supported the bill, we  
22 always had in mind the need to protect the trust. So we're  
23 very pleased with the results and we wanted to report to  
24 you the success of your effort.

25           CHAIRMAN MCCARTHY: Good work.

1 EXECUTIVE OFFICER WARREN: Item Number 8 is to  
2 approve a Reciprocal Agreement for the exchange of  
3 information between the State Board of Equalization and the  
4 State Lands Commission. This is a standard agreement which  
5 will enable us to better meet our enforcement  
6 responsibilities, and we ask for approval.

7 CHAIRMAN MCCARTHY: Questions? All right. So  
8 approved.

9 EXECUTIVE OFFICER WARREN: That concludes the  
10 calendar for today, Mr. Chairman.

11 CHAIRMAN MCCARTHY: Anything else to come before  
12 the Commission?

13 The meeting is adjourned. Thank you very much.

14 EXECUTIVE OFFICER WARREN: Thank you very much.

15 (Thereupon the October 18, 1991 meeting of  
16 the State Lands Commission was concluded at  
17 10:50 a.m.)

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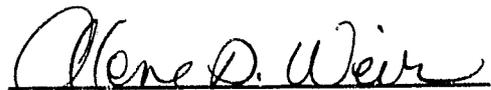
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CERTIFICATE OF SHORTHAND REPORTER

I, ALENE D. WEIR, a Certified Shorthand Reporter of the State of California, do hereby certify that I am a disinterested person herein; that the foregoing State Lands Commission Meeting was reported in shorthand and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of November, 1991.



Alene D. Weir  
Certified Shorthand Reporter  
License Number 7587