

MEETING  
STATE OF CALIFORNIA  
STATE LANDS COMMISSION

STATE CAPITOL  
ROOM 113  
SACRAMENTO, CALIFORNIA

TUESDAY, FEBRUARY 8, 2000

10:00 A.M.

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APPEARANCES

COMMISSIONERS

Dr. Kathleen Connell, Chairperson  
Mr. Cruz Bustamante, Member  
Mr. B. Timothy Gage, Member, represented by  
Ms. Annette Porini

STAFF

Mr. M. L. Eskijian, P.E.  
Ms. Marya Faulkner  
Mr. Curtis Fossum, Senior Staff Counsel  
Ms. Kimberly L. Korhonen, Executive Secretary  
Mr. Jack Rump, Chief Counsel  
Mr. Paul Thayer, Executive Officer

ALSO PRESENT

Mr. Dennis Eagan, Deputy Attorney General

PUBLIC SPEAKERS

Mr. Martin Collins  
Mr. Lester Denevan  
Ms. Lisa DiMaggio  
Mr. Robert Keller  
Mr. Kenneth Levin  
Ms. CiCi Sayer  
Mr. Alan Schretzmann

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1           The next order of business is the Executive  
2 Officer's report.

3           Mr. Thayer, may we have your report.

4           EXECUTIVE OFFICER THAYER: Yes. I just have several  
5 brief items that I wanted to cover. I want to draw your  
6 attention to one of the items on the consent calendar, C48,  
7 which is an oil lease quitclaim. As the Commission will  
8 recall we've had several of these. Last year we had four.  
9 This will be the fifth one in the last 12 months.

10           It's moving the Commission down the road towards a  
11 situation where there won't be these leases along the coast  
12 in oil development any longer. This is a sunset industry.  
13 We do expect to have one more of these at the next Commission  
14 meeting which would mean six in 12 months.

15           The next issue I wanted to mention is that, as the  
16 Commission will recall, we had a rigs to reefs workshop at  
17 our December meeting. As we indicated, we would then, and at  
18 the request of the Commissioners, expect to have that on our  
19 web page, all the presentations that were made both by the  
20 Commissioners and the individual witnesses in the next couple  
21 of weeks. We have a rough draft of that already and it  
22 should soon be on. And we'll notify the Commissioners and  
23 their offices once that occurs.

24           CHAIRPERSON CONNELL: Thank you, because, as you  
25 recall, when we did the rigs to reefs, I thought it would be

1 a vital element for the science programs of our elementary  
2 schools in particular.

3 EXECUTIVE OFFICER THAYER: Absolutely. I wanted to  
4 also draw attention to another item that's on the consent  
5 calendar, which is the fiber optic project at C5. This is  
6 the first of four. And there's been a fair amount of  
7 publicity in the papers about the resurgence of new projects  
8 along these lines.

9 I'm proud of the staff who have worked on this  
10 project for the last year and a half. And their work has  
11 resulted in this being placed on the consent calendar. There  
12 were serious issues when the project was originally proposed  
13 dealing with fishing for the most part, but some  
14 environmental issues as well.

15 And due to mitigation, including rerouting and cable  
16 burial, all of these issues have been taken care of and we  
17 can have it on consent. And I think it's a tribute to the  
18 staff.

19 CHAIRPERSON CONNELL: Is this item C05?

20 EXECUTIVE OFFICER THAYER: C05.

21 CHAIRPERSON CONNELL: Mr. Thayer, we have a number  
22 of people who wish to speak to that item, so we're not going  
23 to be able to put that on consent. It is going to have to be  
24 called upon as a regular item, because they wish to speak.

25 EXECUTIVE OFFICER THAYER: Madam Chair, I believe

1 that most of those individuals, perhaps all of them, let me  
2 check, are individuals that represent the applicant. And  
3 they had put in their names to speak only in case that came  
4 off consent, if somebody else had asked.

5 CHAIRPERSON CONNELL: Is there anyone who wants to  
6 speak if we handle this as -- if we don't handle this as a  
7 consent item?

8 Is everyone comfortable with keeping this on  
9 consent?

10 Let me give you a suggestion in the future whoever  
11 may be here. Don't put your name in if you want to keep it  
12 on consent, because under California law, we will pull it off  
13 the consent, if there's a request to speak. So you kind of  
14 destroy your opportunity to be on the consent calendar. So  
15 from a strategy viewpoint, wait till you see whether or not  
16 your item is adopted as part of the consent calendar. Safer  
17 strategy in the future.

18 Go ahead, Mr. Thayer.

19 EXECUTIVE OFFICER THAYER: And then I would just  
20 close on that item by saying that we expect to have on the  
21 April Commission meeting three more fiber optic projects.  
22 And that's the final issue that I wanted to raise as well is  
23 to let the Commissioners know that we're working towards  
24 having our next Commission meeting in the first week in  
25 April. And, of course, we'll be contacting your staffs to

1 see if we can arrange for it in the time interval.

2 And that concludes the Executive Officer's report.

3 CHAIRPERSON CONNELL: Thank you. Are there any  
4 questions by Members of the Commission?

5 The next order of business will then be the adoption  
6 of the consent calendar. Is there anyone in the audience who  
7 wishes to speak to the consent calendar?

8 Mr. Thayer, can you tell us what items are going to  
9 be on the consent calendar?

10 EXECUTIVE OFFICER THAYER: There are several items.  
11 There will be the items that are in your binder and there's  
12 several items that will be removed for additional work. They  
13 include items 6, 7, 32, 45, and 51.

14 CHAIRPERSON CONNELL: Okay. May I have a motion  
15 then to adopt the consent calendar?

16 ACTING COMMISSIONER PORINI: I'll move the consent  
17 Calendar.

18 COMMISSIONER BUSTAMANTE: Second.

19 CHAIRPERSON CONNELL: It's been moved and seconded  
20 and welcome, Mr. Bustamante. All in favor of the consent  
21 calendar?

22 (Ayes.)

23 CHAIRPERSON CONNELL: All right, that's a unanimous  
24 vote.

25 Now, that takes us to the items on the regular

1 calendar. And I believe we should move to item 52?

2 EXECUTIVE OFFICER THAYER: That's correct.

3 CHAIRPERSON CONNELL: Which is the status report on  
4 Oil Terminal Engineering Regulations. And, Mr. Thayer, will  
5 you begin the staff presentation, please.

6 EXECUTIVE OFFICER THAYER: Yes. This presentation  
7 will be made by Martin Eskijian, one of our attorneys, who's  
8 been working on this project.

9 Mr. Eskijian.

10 MR. ESKIJIAN: Thank you, Mr. Thayer. I'm not an  
11 attorney, I didn't go to law school. I dropped out.

12 CHAIRPERSON CONNELL: Something that many of us  
13 would be pleased to hear. Do not feel you need to apologize.

14 (Laughter.)

15 MR. ESKIJIAN: Thank you. I started law school and  
16 I didn't like, so I went back to engineering grad school.  
17 One of my bigger mistakes in life, but it's worked out.

18 (Thereupon an overhead presentation was  
19 presented as follows.)

20 MR. ESKIJIAN: Thank you for letting me be here  
21 today. And it's a pleasure to speak to you Commissioners  
22 about this project. We spoke to you about a year and a half  
23 ago about the MOTERP project. It's not some sort of an  
24 insect. It will start up in a minute.

25 CHAIRPERSON CONNELL: Can we lower the lights in

1 here, it's difficult to see the screen.

2 Thank you.

3 MR. ESKIJIAN: Give us one second here to get back  
4 to the beginning. Don't peek, this is the briefing.

5 Again, I'm Martin Eskijian and I'm with the  
6 Engineering Branch with the Marine Facilities Division of the  
7 California State Lands Commission.

8 --oOo--

9 MR. ESKIJIAN: What is MOTERP? There is a need to  
10 develop some set of standards for marine oil terminals  
11 because, as it is today, there is no uniformed building code,  
12 there is no accepted standard in the United States for  
13 these.

14 We've inspected them since about 1992. And as we  
15 inspect, we say well, there's damage. And then the people  
16 that own or operate these facilities can rehabilitate to any  
17 standard they want. So if you built it in 1930, you could  
18 fix it to 1930 standards. We find that unacceptable.

19 The other complication is that very likely the  
20 vessels that are used in that facility are much larger today  
21 than when it was originally designed. So whatever you did in  
22 1930, 40, 50 or 60 may not be applicable today.

23 CHAIRPERSON CONNELL: What did you say the design  
24 expectancy was?

25 MR. ESKIJIAN: What?

1           CHAIRPERSON CONNELL: What was the design expectancy  
2 when they were first built?

3           MR. ESKIJIAN: That's a good question. One of the  
4 best ones in California was built the year I was born in  
5 1946, and the life expectancy is usually something like 50  
6 years for these sorts of structures. And now they're finding  
7 as their life expectancy comes to a close, they want a new  
8 lease on life and they want to go another 20 to 30 to 40 more  
9 years. So that's a real big issue and it's very important.

10          CHAIRPERSON CONNELL: Well, when they determine life  
11 expectancy, was it because of the expected deterioration of  
12 the materials that went into the construction or what limited  
13 the life expectancy?

14          MR. ESKIJIAN: Engineering design in the marine  
15 environment, usually 40 to 50 years, is kind of the expected  
16 lifetime.

17          CHAIRPERSON CONNELL: Because of the corrosion?

18          MR. ESKIJIAN: Yeah, because of the marine bores  
19 because of the corrosion, because of any kind of abrasion or  
20 problems. We have some timber structures that have been  
21 around since the twenties. And many of them are not fit for  
22 purpose today but they're still being used.

23          CHAIRPERSON CONNELL: What can you do to extend the  
24 life of these structures? Is there a coding or something?

25          MR. ESKIJIAN: That's another good question.

1 There's people that have coded it. They have clad it, by  
2 putting a cladding round it. They have, what's called,  
3 twinned the piles where they put another pile next to the  
4 first pile. There's all kinds of options. We're going to  
5 provide the standard to give you some of those options.

6 Also, I should mention new marine oil terminals,  
7 there's no standard for those either, so you could be one  
8 operator and build to one standard. Whereas, your cousin  
9 down the street that's building a new marine facility could  
10 use a totally different set of standards.

11 --oOo--

12 MR. ESKIJIAN: We came before this group about a  
13 year and a half ago and we were telling the Commissioners  
14 that we were ready to proceed and put a contract out for  
15 funding. We've done that now. The project is about half  
16 over.

17 Our prime contractors are a joint venture between  
18 Han-Padron & Associates and Ben C. Gerwick. The gentlemen on  
19 the joint venture have over a hundred years of experience.  
20 Han-Padron is about one block away from our office in Long  
21 Beach. Their specialty is marine oil terminals.

22 Ben C. Gerwick is an elderly gentlemen in his  
23 eighties that was very much involved in some of the original  
24 designs of these structures in northern California, as well  
25 as his company being active on ridge retrofit and on seismic



1 a few seconds. This is the real engineering that's involved  
2 here. How often do you inspect and where do you inspect  
3 above water and below the water. What kind of design  
4 criteria and seismic analysis are required. And this is  
5 where we've had Dr. Priestley help us with setting  
6 state-of-the-art solutions to these problems. Mooring and  
7 berthing is pretty much routine, but nobody has put it in a  
8 format that is actually into regulation.

9           Geotechnical hazards have to be assessed and then we  
10 do a structural analysis of components and we use a, what's  
11 called, a deformation performance standard for the  
12 structures. And one thing that's kind of nice is the grant  
13 has allowed us to get into fire detection suppression, which  
14 we thought was kind of a jump to seismic, but they bought it  
15 and we said yes, yes, yes. And that's the way it worked.

16                           --oOo--

17           MR. ESKIJIAN: What have we done so far in terms of  
18 peer review is very important to this project. We have kept  
19 everybody in California and the United States and even  
20 internationally aware of what we're doing. We had a workshop  
21 in July of '99 and had about 100 engineers come to that  
22 workshop at USC. And we invited, of course, the regulated  
23 community of marine terminal operators, consulting and port  
24 engineers including Los Angeles, Long Beach and the Port of  
25 Oakland. POO is the Port Of Oakland.

1           The next workshop will be coming up and I'll show  
2 you a schedule of that in a minute. The second group that  
3 has reviewed it and is totally aware of our work is the ASCE  
4 group. I'm on a number of committees, one involved in  
5 underwater inspection criteria and one involved in seismic  
6 criteria for coastal structures. In both of these groups,  
7 the people on these national committees are also part of our  
8 team. So our team knows very well this is the same  
9 information they're trying to use nationally for standards.

10           We have also talked to, what's called, the OCIMF.  
11 These are the big oil companies that take care of the mooring  
12 and berthing issues for major oil companies. And they're  
13 aware of our work. We briefed them a year ago in New Orleans  
14 and we'll brief them again as we complete the marine mooring  
15 and berthing aspects of the project.

16           We've also been working with the Japanese. Dr.  
17 Susumu Iai is the head of an international committee to  
18 develop similar standards in Japan. We've worked with him.  
19 These are the gentlemen in the organization inviting me to  
20 Kobe after the Kobe earthquake. And so we've got a good  
21 relationship there. They look at our work and we look at  
22 their work.

23                           --oOo--

24           MR. ESKIJIAN: Our schedule. We're going to have  
25 our next workshop in May of this year. And then the

1 remaining task will be to develop a cost benefit analysis to  
2 see if what we're doing is cost beneficial to an operator.  
3 And then by the end of this year, we hope to have draft  
4 regulations in some sort of format, start a public hearing  
5 process in 2001 and come to you in mid-2001 and say here's  
6 some regulations and they refer to our book of standards that  
7 we would like to adopt. So about a year, year and a half  
8 from now, we're going to come back and that should be our  
9 last visit to this group.

10 We do have technical advisory groups that are  
11 working and they'll be more active as we continue the  
12 process.

13 --o0o--

14 MR. ESKIJIAN: Some of the things that we're looking  
15 at into the future as we begin to put this in regulatory  
16 format is that our goal is to project the environment and the  
17 economy of California. We know that there are people that  
18 may resist these changes because this will cost some money,  
19 but there are benefits to the protection of the environment  
20 and the economy. And I'll talk about that for a few minutes  
21 now.

22 --o0o--

23 MR. ESKIJIAN: We were privileged to go to Turkey  
24 about one week after the first earthquake. The earthquake  
25 occurred on August 17th, 1999 and one week later we were in



1 there were more than 3,000 barrels of oil that were put into  
2 the eastern section of the Sea of Maramara.

3 And as we came to this little fishing harbor with  
4 these -- this very poor little villages with very poor  
5 fishing boats, John took this picture and there's about three  
6 to six inches of oil in this little marina. It was very sad.

7 CHAIRPERSON CONNELL: But was that related to the  
8 earthquake or because of an accident?

9 MR. ESKIJIAN: Oh, yes. Oh, yes related to the  
10 earthquake, directly related, as a result of the earthquake,  
11 directly related. So my point is oil spills do happen  
12 following earthquakes in refinery areas. They do occur, and  
13 this was a classic example for us.

14 --o0o--

15 MR. ESKIJIAN: It was also interesting that just as  
16 you would expect, it was a week after the earthquake before  
17 the Government and the people that were controlling the oil  
18 refinery got serious about cleaning it up. The first concern  
19 is life, the preservation of life and taking care of the  
20 people and the next concern is the environment. So just as  
21 you'd expect, it's about a week after the earthquake they  
22 began to get interested in the oil spill.

23 This is closer to home. One of, you know, hundreds  
24 of examples I could show you. But this is a facility in  
25 northern California. It is just a little thing, just a

1 little break here in this conduit. But what that means is  
2 that if there is a hazardous vapor around, which is very  
3 possible as they're transferring oil or product, that a spark  
4 here could cause an ignition source and we could have a  
5 massive fire.

6 This is one of the little things that we inspect for  
7 as we go around and do our little inspections, in addition to  
8 the structural and looking under water and surveys and all  
9 those kinds of things.

10 --o0o--

11 MR. ESKIJIAN: Our mandate, as explained in the Oil  
12 Spill Prevention Response Act, is that the Commission, the  
13 State Lands Commission, is responsible for adopting rules.  
14 And we consider this performance standards. And that's what  
15 we're doing is we're trying to set up performance standards  
16 that could be used in California as well as the rest of the  
17 United States, but primarily for California, to minimize the  
18 discharge of oil.

19 --o0o--

20 MR. ESKIJIAN: Where did our money come from? As a  
21 result of the earthquake of January 17th, 1994, Northridge,  
22 FEMA began to make monies available for, what they called,  
23 mitigation. And that means that you don't want this damage  
24 to happen again, so you try to do something to reduce the  
25 effect next time. And so they made some money available.

1           Fortuitously, we had worked on a project for the  
2 Seismic Safety Commission called California At Risk. We  
3 documented that the State Lands Commission is involved in  
4 those coastal structures to reduce the oil in the water.  
5 Gee, it would be great to have more money, so we can do a  
6 better job. And that was our vehicle that gave us the money,  
7 to go ahead, to request money from FEMA. We did that. We  
8 got 500 K and it comes through the Office of Emergency  
9 Services of California.

10           The catch is with the funding is that we have to  
11 provide what's called a soft match. So to get 500 K we have  
12 to put in 167 K of our own resources, which we do by our time  
13 and our effort. And so that's how we funded this project.  
14 The State Lands Commission put in 300 K for the non-seismic  
15 parts because this grant money was for the seismic parts of  
16 the problem.

17   --oOo--

18           MR. ESKIJIAN: We have two collateral projects and  
19 this is what we were requested to go to Turkey through this  
20 project. Dr. Costas Synolakis of USC is funded from OES,  
21 FEMA for the Tsunami hazard and the seismic hazard. And the  
22 interesting thing about these two projects is FEMA doesn't  
23 want to fund research, but if that research can be applied  
24 and put into our regulations to reduce the earthquake damage  
25 the next time, FEMA said we'll fund you.

1           So FEMA agreed to fund with the stipulation that  
2 whatever they come up with goes into our set of quote  
3 "regulations or standards."

4                               --oOo--

5           MR. ESKIJIAN: And that work specifically relates to  
6 the three-county area affected by the Northridge earthquake,  
7 Los Angeles, Orange and Ventura.

8           So that sort of summarizes our project. I don't  
9 want to take anymore time, but that's sort of where we're at.  
10 We'll come back in mid-2001, hopefully, with some regulatory  
11 format and a set of standards ready to present to you. Thank  
12 you very much for your time and interest.

13           Are there any more questions?

14           CHAIRPERSON CONNELL: Thank you.

15           Are there questions by Members of the Commission?

16           COMMISSIONER BUSTAMANTE: It indicated that the oil  
17 spill that took place off Turkey was directly related to an  
18 earthquake. Do we have facilities that are susceptible?

19           MR. ESKIJIAN: Yes, we do. We could have the exact  
20 same problem in California. And as you know by looking at  
21 the --

22           COMMISSIONER BUSTAMANTE: Which ones specifically?

23           MR. ESKIJIAN: Specifically, I think there's a  
24 number of them in northern California with the exact same  
25 similar design built in the sixties and fifties. Now,

1 whether they will spill, I can't guarantee that, but I'm  
2 saying structurally they're very similar.

3 COMMISSIONER BUSTAMANTE: And they're right on the  
4 same types of faults?

5 MR. ESKIJIAN: Yes, they are. I didn't bring my  
6 Kobe -- I'm sorry, my briefing for that earthquake in Turkey,  
7 but there is -- one of our briefing charts has an overlay of  
8 Turkey here and California here. Okay, the fault of the  
9 North Anatolian fault and the San Andreas fault are very  
10 similar. And as you know by reading what's going on right  
11 now on the Seismic Safety Commission and USGS there's a 70  
12 percent chance that the northern California Hayward fault  
13 area will experience, I think it's, a 6.5 or greater  
14 earthquake in the next 30 years.

15 So within my lifetime and maybe I'll still be here  
16 at that time and maybe you will too, that maybe for sure  
17 there's going to be an earthquake in California in the north  
18 and bay area, almost guaranteed.

19 COMMISSIONER BUSTAMANTE: Is there a way of listing  
20 the number of facilities that are susceptible that are near  
21 water or waterways?

22 MR. ESKIJIAN: Sure, we can do that. I think tank  
23 farms are also a greater risk. And the tank farms here  
24 caught fire and I think that's a very, very large risk that's  
25 underrated in California. And I can tell you something about

1 that maybe you haven't heard yet is that remember this little  
2 earthquake we had in southern California, the one that was  
3 way out in the desert that nobody really wants to say that  
4 anything major happened.

5 That affected tank farms in the Long Beach and  
6 Wilmington area because of the energy associated with that  
7 earthquake and because those tanks were filled to the top.  
8 And that problem is real and that problem is in California.

9 COMMISSIONER BUSTAMANTE: And so you're saying first  
10 on one hand that only northern California has refineries, yet  
11 you're saying that there may be some tank farms?

12 MR. ESKIJIAN: There's refineries in southern  
13 California, Wilmington. And they could be at risk. They are  
14 at risk.

15 COMMISSIONER BUSTAMANTE: And only those areas as  
16 far as you know at this point?

17 MR. ESKIJIAN: There's a lot of areas at risk. I  
18 can't tell you for the entire State, but marine oil terminals  
19 and tank farms definitely pose a risk.

20 CHAIRPERSON CONNELL: Any further questions?

21 No action is necessary on this item. I believe this  
22 is information only.

23 EXECUTIVE OFFICER THAYER: That's correct, Madam  
24 Chair.

25 CHAIRPERSON CONNELL: Okay. Then we will go on to

1 Item 53 and we have a number of people who want to speak on  
2 item 53. What I'm going to do is have the staff presentation  
3 first, Mr. Thayer, and then we will ask for the members of  
4 the audience who indicated they wish to address us to come  
5 forward.

6 Mr. Thayer.

7 EXECUTIVE OFFICER THAYER: Thank you, Madam Chair.  
8 This staff person who will make this presentation is Curtis  
9 Fossum from our legal division.

10 SENIOR STAFF COUNSEL FOSSUM: Chair Connell,  
11 Commissioner Bustamante, and Commissioner Porini, good  
12 morning. I'm Senior Staff Counsel Curtis Fossum. And this  
13 calendar item 53 involves a request by the Port of San Diego  
14 for your consent to sublease four mooring areas in San Diego  
15 Bay to the San Diego Mooring Company.

16 For over 20 years the Commission and its staff have  
17 cooperated with the Port of San Diego in an attempt to remedy  
18 the results of what was an unregulated and haphazard free  
19 anchorage over much of San Diego Bay. The free anchorage  
20 resulted in adverse navigation and water quality impacts to  
21 both Port and State Lands Commission lands.

22 The port took the lead by drafting a baywide small  
23 craft mooring and anchorage plan in the early nineteen  
24 eighties. This was followed by a joint EIR/EA with the Coast  
25 Guard and approval of the Coastal Commission in amending the

1 Port Master Plan.

2           Finally, the Coast Guard eliminated the free  
3 anchorage designation and recognized the Port's authority to  
4 regulate anchorage in the bay. Legal challenges to the  
5 Port's mooring plans and regulations were filed in both State  
6 and federal courts. The Commission participated with the  
7 Port in several of these. The Port's authority was upheld in  
8 each instance.

9           The Port, like the Commission, generally operates as  
10 a lessor of its properties and not a direct operator of  
11 facilities. Direct operation of the moorings has resulted in  
12 annual losses for the Port in excess of \$200,000, that's per  
13 year.

14           After a number of years of study of how to improve  
15 management efficiency and cut financial losses to the Port  
16 resulting from the mooring operations, the Port decided to  
17 initiate a process to solicit operational alternatives. In  
18 June of 1998 the Board of Port Commissioners authorized the  
19 preparation of an RFP for an operating and maintenance  
20 agreement for lease of the mooring buoy system. A  
21 representative of the mooring tenants sat on the panel giving  
22 input into that RFP process.

23           Nineteen proposals were received in response to the  
24 RFP. These were evaluated by a cross-departmental committee  
25 of port staff based upon services offered, reasonableness of

1 proposed fees, experience of bidders and financial  
2 responsibility.

3           The Committee's evaluation concluded that the lease  
4 proposal submitted by the San Diego Mooring Company met or  
5 exceeded all evaluation criteria while offering additional  
6 services to the boater at little or no cost.

7           At its November 1998 meeting, the Board of Port  
8 Commissioners approved the Committee's recommendation. In  
9 December the Port approved the fee structure. It's shown on  
10 your Exhibit C to this item. And in March of 1999 granted a  
11 lease to the San Diego Mooring Company subject to your  
12 approval.

13           In April, the Port formally requested the Commission  
14 consent to the proposed sublease between the Port and the  
15 mooring company for operation of the Port's mooring system.  
16 Last June, due to continuing operating losses, the Board of  
17 Port Commissioners raised the mooring fee from \$2 a day,  
18 which it's been since 1994, to \$3.40 a day effective  
19 September 1st of last year.

20           Such time as the sublease, which is before you  
21 today, goes into effect, the fee that is charged to 351 of  
22 the 437 moorings will decrease to the amount shown on Exhibit  
23 C. The other 86 moorings will increase by 15 cents a day.

24           Since the Port first proposed operating  
25 alternatives, a number of issues have been raised by the

1 mooring tenants. These issues concern the ongoing condition  
2 and maintenance of the moorings, the RFP process, the terms  
3 and conditions of the lease and the successful bidder.

4           The staff of the Commission has treated these issues  
5 seriously and in attempt to both understand and address the  
6 boaters concerns has investigated and reviewed the complaints  
7 and the Port's responses thereto. Two of the issues of  
8 primary concern were mooring safety and the opportunity for  
9 public review and comment.

10           After investigating and analysis of the complaints  
11 and responses, staff believes the safety issue has been  
12 adequately addressed in the sublease, which contains specific  
13 criteria adopted as part of the development of the RFP. That  
14 criteria and inspection schedule in the lease exceeds that of  
15 any lease we are aware of including Commission leases.  
16 Criticism of past Port maintenance practices is inapposite to  
17 the issue of future maintenance by a new operator.

18           Although there were several misunderstandings  
19 requiring clarification in the bidding process, staff  
20 believes that any errors committed were neither intentional  
21 nor prejudicial to the final outcome.

22           On the public view issue. In order to ensure that  
23 members of the public had an opportunity to review the lease  
24 and offer comments to the Board of Port Commissioners, State  
25 Lands' staff requested the Board of Port Commissioners hold

1 an additional public hearing at which time the public would  
2 have an opportunity for a full and complete airing of the  
3 issues and be able to comment on the procedures followed by  
4 the Port, as well as any other relevant issues. And frankly,  
5 that's the sixth hearing they've had in the last 18 months on  
6 this issue.

7           The Port did so at its November 16th board meeting.  
8 And after the staff report, public comment and board member  
9 discussion, voted unanimously to ratify the approval of the  
10 lease. Your direct involvement in this contract is more  
11 narrow than that of the Port. The Commission's criteria for  
12 sublease consent is set forth in Section 4 paragraph 10 of  
13 lease PRC 7987.

14           That section requires that the State shall have a  
15 reasonable period of time to consent or deny approval of the  
16 sublease and that consent shall not be unreasonably withheld.  
17 The standard review of the sublease is commercial  
18 reasonableness considering the following factors: the  
19 sublessee's financial strength, reliability, business  
20 experience and expertise --

21           CHAIRPERSON CONNELL: Can you slow down. Why don't  
22 you go through this slowly.

23           SENIOR STAFF COUNSEL FOSSUM: Yes, okay. The  
24 sublessee's financial strength. We're talking about the San  
25 Diego Mooring Company, their reliability, business experience

1 and expertise, personal and business reputation, managerial  
2 and operational skills, and the proposed use and rent. And  
3 frankly, those are the almost identical issues that the Port  
4 used in its criteria in the bidding process.

5           Following review of all relevant information, staff  
6 has concluded that the Port has complied with the terms of  
7 lease PRC 7987 relating to sublease approval. It is  
8 therefore staff's recommendation that the Commission consent  
9 to the sublease of those portions of 7987 provided for in the  
10 lease between the Port District and the San Diego Mooring  
11 Company as described in Exhibit B hereto.

12           That concludes my remarks. I understand that  
13 several representatives of the mooring tenants are prepared  
14 to make remarks. And representatives of the Port and the  
15 mooring company are prepared to answer questions of the  
16 Commission as am I.

17           Thank you.

18           CHAIRPERSON CONNELL: We have a number of people who  
19 want to really speak to this issue today. I think it's  
20 appropriate, at this point, to bring them forward. And I  
21 will just read them in the order in which we've received  
22 them. Lorenzo Miller, would you like to come forward,  
23 please?

24           MR. MILLER: I'm available to answer questions, but  
25 it may not be necessary.

1           CHAIRPERSON CONNELL: All right. John Grimstad. Is  
2 it Grimstad?

3           MR. GRIMSTAD: The same. I can answer questions. I  
4 represent the San Diego Mooring Company.

5           CHAIRPERSON CONNELL: Okay. Is it Barber Robert?

6           MR. ROBERT: The same thing. I'm just here to  
7 answer questions if called on.

8           CHAIRPERSON CONNELL: Such a quiet audience today.  
9 (Laughter.)

10          CHAIRPERSON CONNELL: Ellen Corey Born?

11          MS. BORN: The same thing. I'm here to answer  
12 questions.

13          CHAIRPERSON CONNELL: Is there anyone here who wants  
14 to speak?

15          (Laughter.)

16          CHAIRPERSON CONNELL: Martin Collins?

17          That was a hypothetical.

18          MR. COLLINS: Madam Chair, I'm the same.

19          CHAIRPERSON CONNELL: The same thing okay. And what  
20 about Eric Leslie, the same thing?

21          MR. LESLIE: The same party.

22          CHAIRPERSON CONNELL: Well, how about Robert Keller.

23          Robert, we're delighted to have you come up.

24          (Laughter.)

25          CHAIRPERSON CONNELL: Normally, we would restrain

1 the amount of time that you have to speak, Robert, but you  
2 have won the lottery.

3 (Laughter.)

4 MR. KELLER: Good morning. My name is Bob Keller.  
5 I'm the technical advisor to the San Diego Mooring Tenants  
6 Association. I'm a marine engineer and I'm intimately  
7 familiar with the operation and maintenance of underwater  
8 systems and components.

9 The San Diego Mooring Tenants Association from its  
10 inception had a goal of ensuring safe moorings to their  
11 tenants at a reasonable cost. For the system to meet these  
12 goals, a suitably designed system using quality equipment,  
13 and on which adequate maintenance is performed, is  
14 essential.

15 At the November 16th, '99 meeting of the San Diego  
16 Port Commissioners, I requested that the technical issues  
17 that related to the RFP, the proposed lease and the actual  
18 configuration of the system in the harbor be corrected prior  
19 to submitting a lease for approval. In the information  
20 package I sent the Commissioners, I described the many  
21 technical issues related to the proposed lease. Let me  
22 summarize just a few of these deficiencies.

23 The inspection criteria provided for the chain is  
24 different than that that's used by the Port. The inspection  
25 criteria that is specified for the wear of the remaining

1 structural components of the system, i.e., shackles, swivels,  
2 mooring block bails, is different than that -- it is not in  
3 the lease itself.

4           The inspection intervals specified by the lease is  
5 not the inspection interval that's used by the Port. No  
6 inspection criteria is specified for the anchor blocks  
7 themselves. Incorrect replacement chain size is specified by  
8 the lease. No criteria is specified for the quality of chain  
9 to be used in the system. Shackles required by the lease are  
10 of a different material and type than is used by the Port.  
11 The chain lengths to be used are not specified by the lease.  
12 No specification is included for the size, type or length of  
13 mooring lines.

14           It is not difficult to understand why the Port has  
15 had such a problem in specifying the necessary technical  
16 requirements to operate the mooring system. During the RFP  
17 process, Port staff readily admitted that it did not have the  
18 baseline information on the maintenance requirement for a  
19 particular mooring or a mooring area. This was even after 15  
20 years of operation of their system.

21           The mooring tenants offered their services free of  
22 charge to the Port and additionally suggested outside  
23 consultants to help the corrected technical issues. The  
24 issues still exist.

25           CHAIRPERSON CONNELL: You don't feel that the issues

1 have been corrected in this latest draft?

2 MR. KELLER: No. There's still many discrepancies  
3 as far as the technical specifications and criteria for all  
4 the components that hold the boats in the harbor.

5 Most of the deficiencies could have been corrected  
6 by the inclusion of an accurate drawing depicting the  
7 configuration of the mooring assemblies. Although the lease  
8 references a drawing of the mooring assemblies in a number of  
9 places, no drawing is included anywhere in the document nor  
10 is any specific number drawing referenced.

11 Drawings and specifications provide the necessary  
12 instruments for anyone to use to audit the Port for the new  
13 operator's performance relative to the maintenance  
14 requirements of the system. It appears that neither the Port  
15 nor the new operator is interested in this type of  
16 accountability.

17 I'm sure that the Port has argued that all of these  
18 issues of technical deficiencies listed in your package have  
19 been resolved, but this is not the case. Since the RFP was  
20 issued Port records indicate that an additional 19 mooring  
21 assemblies have failed in the harbor. I have personally dove  
22 many of the Port's operated moorings in San Diego Bay and I  
23 have seen the neglect of the system, the overgrown chains not  
24 routinely inspected and cleaned, chains worn dangerously  
25 thin, mooring blocks out of position lying on their sides and

1 mooring lines frayed to a thread.

2           And what is the Port's response to our request? The  
3 Port threatened an additional rate increase of \$5 a day and  
4 still the lease has not been corrected.

5           All the above issues are not new. Resolutions of  
6 the technical inaccuracies of the RFP and the lease were  
7 requested on August 26th, 1998 during the RFP pre-submittal  
8 meeting. So finally after a year of -- over a year of phone  
9 calls, conversations, meetings and hearings and analysis, you  
10 now are presented with a lease which is still technically  
11 flawed.

12           Since a majority of the components of the mooring  
13 system are under water and cannot be inspected except by  
14 diving, a matter of trust must exist between the mooring  
15 tenants and the mooring system operator. The Port has not  
16 earned this trust of the mooring tenants nor will the  
17 issuance of a lease, which is technically flawed, reassure  
18 the tenants.

19           Since the new operator has no experience in the  
20 maintenance or operation of a mooring system, accurate  
21 drawings, detailed inspection requirements and complete  
22 material specifications are essential to ensure the safe and  
23 efficient operation of the mooring system in San Diego Bay.

24           The conditions described above are not just the  
25 opinions of the mooring tenants. The Port's performance with

1 respect to mooring operations and lease negotiations have  
2 been extensively discussed in numerous newspaper articles  
3 which we have included in your package.

4 Verbal assurances are not enough. The mooring  
5 tenants demand a mooring system operated based on  
6 contractually documented requirements. Nothing else will  
7 do.

8 On a different note, speaking as a taxpayer of the  
9 State of California, I would like to know why the State Lands  
10 Commission would approve a lease, which produces State  
11 revenues for the use of the State controlled lands, by over a  
12 million dollars and give these funds to the business sector.  
13 If this is not a giveaway of the public resources, I don't  
14 know what is.

15 CHAIRPERSON CONNELL: Thank you. Mr. Keller, why  
16 don't you stay right where you are. And could we have our  
17 staff come back up and respond to the concerns that have been  
18 expressed. You expressed so many of them, but I think they  
19 can fall into the general category of maintenance and of  
20 repair.

21 And, Mr. Keller, could you address them? I mean Mr.  
22 Fossum.

23 SENIOR STAFF COUNSEL FOSSUM: Yeah. In fact, I  
24 think after reviewing the submittal made by Mr. Keller and  
25 the opponents, I think they really make the case for this

1 lease. What they do point out is that there have been  
2 concerns about the past operation by the Port, that the  
3 comparison of what this lease calls for and the criteria in  
4 it is much greater in all instances than the Port's current  
5 operation.

6 And as I pointed out in my statement, the details  
7 are better than we've seen in any other lease including our  
8 own. Because of all the controversy over that, the boaters  
9 even sat on the panel that helped put together the RFP and  
10 the criteria for the tackle. And so they've had input for a  
11 year and a half. Or even prior to the RFP process, there was  
12 input on those criteria.

13 I think they'd probably like to have Martin Eskijian  
14 working for them. And after several hundred thousand dollars  
15 in studies, they could have maybe a seismically safe thing.  
16 But what we're really talking about here is mooring tackle  
17 and not a marine terminal.

18 Mr. Keller does work for a nuclear power plant and  
19 deals with those kind of issues for them and I'm sure his  
20 standards are quite high. We believe the standards that the  
21 Port has adopted in this are safe and more than safe. And  
22 the reputation of the winning bidder in operating over 2,100  
23 slips in California and having constructed slips in three or  
24 four marinas throughout California goes to their ability not  
25 only to construct and maintain maritime facilities, but they

1 also have the expertise and the ability to contract if they  
2 don't have the sufficient personnel.

3 In addition, the other bidders who bid on the  
4 project did not score as high in many of the categories as  
5 the San Diego Mooring Company. And so after our review, we  
6 concurred with the Port and believe that this is the safest  
7 and best operation for the moorings.

8 The last statement that Mr. Keller made about us  
9 giving up millions of dollars worth of real estate in this  
10 instance is that we actually will be increasing the revenue  
11 both to the Port District and to the State on this. And so I  
12 don't understand where we're losing money.

13 The mooring tenants have tried for many years to  
14 keep the rents down. And the result of that has been the  
15 Port has lost money and has not been able to maintain the  
16 mooring tackle as good as they would have liked to.

17 CHAIRPERSON CONNELL: Is there a requirement in the  
18 lease to bring the Port up to a level of repair and  
19 maintenance that we are comfortable with? I mean, everyone  
20 seems to have acknowledged here that there's been a  
21 deterioration of this facility. Is there any requirement  
22 that we bring it up to a basic minimum so that some of the  
23 concerns that Mr. Keller represented, even if he is more  
24 fastidious than perhaps others might be in analyzing the  
25 condition of this facility, there obviously is some disrepair

1 from reading your materials and Mr. Keller's and other  
2 materials that have been submitted to the Board. What is the  
3 requirement under the lease document?

4 SENIOR STAFF COUNSEL FOSSUM: There's a detailed  
5 exhibit to the agreement that talks about the type of chain  
6 to be used and so forth. And part of the criticism of the  
7 mooring tenants has been that some of those were left blank  
8 when the lease was printed and it went to the Board of Harbor  
9 Commissioners. That was cured last May when they put in the  
10 size of the link of the chain and those kind of details.

11 CHAIRPERSON CONNELL: Mr. Keller, you're disagreeing?

12 MR. KELLER: I disagree. The quality of the chain  
13 as specified by the lease is indeterminate. And we've had a  
14 problem for years with chain that was of poor quality,  
15 foreign made chain, which has a tendency to fail and wear out  
16 rapidly. There is no specification that says what quality we  
17 need to put the chain in. Yeah, there's one that says what  
18 size it is and there's one that says it has to be galvanized,  
19 but that's all. The chain comes in various qualities and we  
20 don't want junk chain installed in the harbor. There's  
21 nothing in the lease that prevents that.

22 SENIOR STAFF COUNSEL FOSSUM: Part of the details I  
23 think have been included is that as the chain does  
24 deteriorate, because all chain does, the standards are set in  
25 there at what point they have to be replaced. Plus, there is

1 a twice-a-year inspection system on this, which we're not  
2 familiar, is required in any other lease. And actually the  
3 winning bidder is required to inspect twice a week to  
4 actually go out and inspect the facilities as part of this  
5 operation. And they will actually go and inspect, dive this,  
6 twice a year.

7           That's been one of the problems. The Port has not  
8 had the ability to do that in the past. Some of our other  
9 leases for moorings require an annual inspection. This will  
10 require it twice a year and it's in a protected buy, so our  
11 analysis is that this is more than sufficient to ensure that  
12 this chain will be safe. It's higher standards than we've  
13 seen in any other lease such as this. And even though it may  
14 not have every possible detail in it, that's the kind of  
15 determination that the operator and the people who are  
16 maintaining the chain should be making as opposed to us,  
17 frankly.

18           CHAIRPERSON CONNELL: So you feel that the standards  
19 have been upgraded?

20           SENIOR STAFF COUNSEL FOSSUM: Absolutely.

21           CHAIRPERSON CONNELL: So it's a matter of a period  
22 of years before the chain, which may be at a lower quality or  
23 have deteriorated, would be replaced, is that a correct  
24 analysis?

25           SENIOR STAFF COUNSEL FOSSUM: Well, there's existing

1 chain there now. And as the divers inspect it, they make a  
2 determination, based on the criteria in the lease and their  
3 own professional knowledge, whether or not a particular chain  
4 and tackle really need to be replaced. But the inspection  
5 period is much more often than is typical or required.

6 MR. KELLER: But that's pretty much the problem with  
7 the chain itself. We use one size chain in the harbor for  
8 all boats whether they be a little 22 foot or a 65 foot  
9 boat. The specification of four-tenths of an inch is not  
10 really good enough for the biggest boats and the Port divers  
11 do recognize this.

12 They recognize that you must put -- what the new  
13 operator with no experience doesn't have that ability to do  
14 that. He doesn't know what the big boats need to hold them  
15 in place. The criteria is not clearly specified. They're  
16 not adequate.

17 SENIOR STAFF COUNSEL FOSSUM: I haven't personally  
18 met the divers, but the contract or the submittal by the San  
19 Diego Mooring Company indicates that they have two divers on  
20 staff and an additional maintenance diver as a backup. And  
21 I'm sure that they would be able to speak to these issues  
22 specifically.

23 CHAIRPERSON CONNELL: Why don't we ask them to do  
24 that?

25 EXECUTIVE OFFICER THAYER: And Madam Chair, if I

1 might interject just as a suggestion, I think there are three  
2 or four other witnesses who have concerns about this  
3 sublease. And perhaps one method that we might approach this  
4 would be to hear from all of the witnesses who have problems  
5 and then ask the Port and the potential sublessee to come up  
6 and respond to those. Curtis is familiar with the law but  
7 he's not so good on --

8 CHAIRPERSON CONNELL: I have CiCi Sayer. Would you  
9 come forward. CiCi, are you also with the tenants  
10 association?

11 MS. SAYER: Yes, I am.

12 CHAIRPERSON CONNELL: Good. Thank you, Mr. Keller.  
13 Standby for further dialogue.

14 Then we're going to be calling Alan -- Wow, Alan, I  
15 don't think I'm going to get your name right. Is it  
16 Schretzmann?

17 MR. SCHRETZMANN: Schretzmann.

18 CHAIRPERSON CONNELL: Okay. You'll be next if you  
19 want to be available.

20 Go ahead, CiCi.

21 MS. SAYER: Thank you, Madam Chairman. Can  
22 everybody hear me? I've got like some laryngitis here,  
23 sorry.

24 Good morning. My name is CiCi Sayer. I'm the  
25 president of the San Diego Mooring Tenants Association. I

1 represent over 200 tenants who currently moor their vessels  
2 on the public mooring system operated by the San Diego Port  
3 District. Additionally, I am here on behalf of many of the  
4 mooring tenants who are not members of the association but  
5 who have also expressed their concern regarding the proposed  
6 lease now before you.

7 I am here today to ask that you do not approve this  
8 lease. While there are numerous reasons to deny this lease,  
9 fundamentally, we believe that this is illegal and  
10 unethical. Time doesn't permit a full recital of all the  
11 reasons for this, but I will focus on a few of the most  
12 compelling reasons, the legally questionable motives behind  
13 the attempt to privatize and the inproprieties behind the RFP  
14 process and the lease itself.

15 I'd first like to say very clearly here that the  
16 Port District staff has not been truthful with the public  
17 concerning the underlying reasons they wish to have the  
18 moorings privatized. This effort, in fact, dates back to a  
19 letter sent to the Port of San Diego by the Chairman of the  
20 Marina Committee of the Port Tenants Association. The Port  
21 Tenants Association represents among others the Marina  
22 Operators in San Diego Bay.

23 This letter stated that one of the biggest problems  
24 affecting the marinas is the existence of the large number of  
25 port moorings. The letter went on to say that the Port was

1 losing \$50 to \$90 per month for every boat using a port  
2 mooring rather than being in a marina slip.

3           This figure is based on fees paid to the Port by the  
4 marinas for each vessel in their marina. Not coincidentally  
5 this amount is equal to about \$22,000 per month an amount  
6 suspiciously similar to the \$20,000 per month that the Port  
7 claims to have been losing on operating costs of the mooring  
8 system.

9           Obviously, this was the amount which was suggested  
10 to the Port District in the letter from 1993. The marina  
11 operators decided that an appropriate adjustment was  
12 necessary and demanded that the Port increase the mooring  
13 rates. It's become quite clear now what the marinas were  
14 after. They wanted to reduce competition from the Port by  
15 reducing or eliminating altogether the number of public  
16 moorings.

17           They even went on to suggest in that letter that the  
18 Port should not be operating any moorings at all. They  
19 wanted their marinas full and the moorings privatized. To  
20 achieve that goal, the rates on the moorings first needed to  
21 be increased. However, the Port knew that this would never  
22 be supported by the public, so a fabrication was put forth  
23 that they were losing \$20,000 per month in operating costs.

24           There was never any mention of privatization or  
25 marina concerns. Shortly after this letter was written, the

1 Port attempted to increase the rates for the moorings 500  
2 percent. While that extreme increase was denied, a 100  
3 percent rate increase was approved.

4 Since then, the marina operators continued to lobby  
5 the Port to increase the rates on the moorings. And the Port  
6 continued to tell the public that they were losing \$20,000  
7 per month and must increase the rates even further or  
8 privatize the mooring.

9 Recently, the rates were increased again to 240  
10 percent of the original 1993 rates that were charged. As you  
11 know, this latest increase took place after the decision to  
12 privatize the moorings was made and after the San Diego  
13 Mooring Company was selected to operate them.

14 So while the Port was telling the boaters on the  
15 moorings and the public one story to justify why the rates  
16 had to be increased, in reality these increases had nothing  
17 to do with the cost of maintaining the moorings. Rather, the  
18 Port was working behind the scenes with the marina operators  
19 and the Port Tenants Association laying the groundwork for  
20 privatization of the moorings.

21 The Port's rate increases clearly ensure  
22 profitability for the new private operator and is certainly  
23 in keeping with the marina's requests that they raise the  
24 rates prior to privatization.

25 A few issues concerning the lease that I'd like to

1 address are the terms of the lease document that you have  
2 before you were negotiated outside the scope of the RFP and  
3 give significant economic advantage to the San Diego Mooring  
4 Company over any of the other bidders.

5           Number one, the RFP clearly stated that the moorings  
6 were to be purchased in an as-is condition and that all  
7 investigations as to their conditions would take place prior  
8 to the signing of the lease. The new lease that was  
9 negotiated violates the RFP by permitting the proposed  
10 operator to perform his inspections up to six months after  
11 the lease is signed. And it provides monetary compensation  
12 up to \$40,000 for any deficiencies found.

13           The second major issue is permitting the sale of  
14 ground tackle to the mooring buoy occupants. This term was  
15 specifically deleted from the RFP. Thus, all of the  
16 respondents to the RFP presumed that this revenue source  
17 would not be available to them. While the Port has finally,  
18 just this morning, clarified the term ground tackle, if the  
19 moorings were to be reconfigured in the future as provided in  
20 this lease, this could still be an advantage to the new  
21 operator if he should go to an all-lined mooring system.

22           This would permit the San Diego Mooring Company to  
23 sell the components of the mooring assembly to the tenant and  
24 additionally charge rent. The economic advantage and the  
25 ramifications of these terms are huge because it increases

1 revenue and reduces the cost to this particular operator.  
2 This is akin to renting an apartment and being required to  
3 purchase the building first.

4           The third major issue is a provision on page 15,  
5 paragraph 16 at the top of the page, "The lesser agrees to  
6 reasonably consider modifications to maintenance  
7 specifications upon request of the lessee." In essence, this  
8 would allow the proposed new operator to reduce his required  
9 level of maintenance from that which is now specified in the  
10 lease.

11           Thus, in conjunction with the permitted sale, the  
12 possibly permitted sale of ground tackle to the mooring  
13 tenant in the future, the new operator could totally  
14 eliminate all his material costs for the upkeep of the system  
15 and reduce his maintenance costs by extending the inspection  
16 intervals which are now required by the lease.

17           Nowhere in the RFP are these cash saving incentives  
18 permitted. If other RFP respondents had the chance to submit  
19 a bid taking these cost-saving opportunities into account,  
20 they would have been able to propose a more desirable  
21 contract. The RFP clearly stated that the terms of the lease  
22 were fixed and any proposal submitted with unauthorized  
23 conditions, limitations or provisions should be a cause for  
24 rejection.

25           The above three items plainly fall into the category

1 of unauthorized conditions. Yet this lease, which now  
2 contains significant cost advantages via the inclusion of  
3 unauthorized conditions, was accepted by the Port District  
4 staff and approved by the Commissioners of the Port of San  
5 Diego.

6 Finally, there is probably no one who would argue  
7 the fact that our bay is San Diego's greatest asset. Public  
8 access to that asset must be preserved. If this lease is  
9 approved, not only will public access to the boating  
10 community be restricted by the private marinas, but it will  
11 also constitute a public giveaway, public asset giveaway.

12 I fail to see how this would ever be in the  
13 interests of the State of California or its citizens.

14 Thank you.

15 CHAIRPERSON CONNELL: Thank you. Well, you've  
16 certainly raised a number of questions, CiCi. And I guess I  
17 would like to direct -- I don't know who can answer these  
18 questions. The Port of San Diego should have publicly  
19 audited statements. Is the Port of San Diego here?

20 MR. COLLINS: Yes, ma'am.

21 CHAIRPERSON CONNELL: Tell me what your financial  
22 statements indicate about the need for raising the rents as  
23 high as they apparently have been raised. What was the  
24 number, CiCi?

25 MS. SAYER: 240 percent over the 1993 rate.

1           CHAIRPERSON CONNELL: Right.

2           MR. COLLINS: Madam Chair, First of all, I'm Martin  
3 Collins. I'm the Senior Director of Maritime Services for  
4 the Port of San Diego and have the responsibility for these  
5 moorings.

6           The moorings started out at \$1 and were raised to \$2  
7 and then raised, as CiCi said, to \$3. We have presented, at  
8 various times to the mooring tenants and to the public, a  
9 breakdown of those costs, breaking it down to maintenance,  
10 administration, payment to the State Lands Commission other  
11 allocations that a public agency puts to all the different  
12 areas within the departments and added those up and made  
13 presentations.

14           And the records of those have shown basically \$3.48  
15 per day per mooring cost of which the maintenance itself is  
16 cyclic. It varies. It depends on how often a chain is  
17 replaced and as to what other maintenance is, but can range  
18 anywhere from a third of that amount to a half to two-thirds  
19 of that amount, but that documentation has been presented to  
20 the tenants. It was available during the RFP process. It  
21 was presented to the Board at various occasions historically  
22 going back as far as we had the records for.

23           CHAIRPERSON CONNELL: Did you want to ask a  
24 question?

25           COMMISSIONER BUSTAMANTE: Have you compared the

1 rates for mooring in your facility or what you're  
2 anticipating the rates in this facility to be compared to  
3 other facilities that are similar?

4 MR. COLLINS: Yes, sir. We actually did a  
5 comparison of both public and private. We did private within  
6 our bay because that's all the other items that are there.  
7 We did up the California coast. We did western Canada,  
8 Mexico and I believe we did the east coast.

9 But it is compare -- I can't say that it was the  
10 lowest, but it certainly was not unreasonable.

11 COMMISSIONER BUSTAMANTE: Can you tell me how it  
12 would compare with just the public facilities in California?

13 MR. COLLINS: It fell within -- it was not the  
14 lowest, but it was nowhere near the highest. But I must say  
15 that in many cases there's some apples to oranges comparison  
16 here because of the things that are provided. For instance,  
17 if you go to Catalina Avalon Harbor, there it's significantly  
18 higher. And there's an initial kind of buy-in that has to  
19 happen with it.

20 There are some places that provide additional shower  
21 amenities and things like that that have another cost to it.  
22 So the comparison in all cases is not a perfect comparison,  
23 but we certainly were within the reasonable -- what we felt  
24 were reasonable bounds with the rest of the State.

25 COMMISSIONER BUSTAMANTE: CiCi, do you believe that

1 that information is true?

2 MS. SAYER: No, I don't. I have done probably not  
3 as an extensive study as the Port of San Diego, but I do know  
4 that there are mooring facilities, for instance, up in San  
5 Luis Obispo, which are much cheaper, for want of a better  
6 word. Also, the City of San Diego itself maintains moorings  
7 in Mission Bay at a cost that is much less than what the Port  
8 says it is going to cost them -- that it costs them to  
9 maintain their moorings per mooring.

10 CHAIRPERSON CONNELL: Why would that be?

11 MR. COLLINS: I'm not sure. Barber, are you  
12 familiar with the Mission Bay?

13 MR. ROBERT: Mission Bay you provide your -- we  
14 provide an anchor block in Anchorage A. In Mission Bay  
15 you're required to supply that for yourself. And if they  
16 inspect it and find something wrong with it, you're required  
17 to replace it. Also, they have a dingy rack that they get  
18 like for \$99 a month, which we provide dingy facilities.

19 CHAIRPERSON CONNELL: We can't have responses from  
20 the audience. We're going to conduct this meeting from the  
21 microphones up here. So if you're going to be answering a  
22 question in the future, please come to the microphone.

23 Annette.

24 ACTING COMMISSIONER PORINI: Yes. I just want to  
25 know, what was the process that you used when you increased

1 the rates? Did you have a public hearing process or was  
2 there any --

3 MR. COLLINS: Yes, ma'am. And CiCi alluded or  
4 mentioned it and this goes back actually before my time as  
5 such. But the fees were \$1 a day. And there was a request  
6 to raise the fees to approximately, and I'm thinking, \$3.50  
7 in nineteen --

8 SENIOR STAFF COUNSEL FOSSUM: Nineteen ninety-four.

9 MR. COLLINS: -- ninety-four. Pardon me for  
10 forgetting that. They run together after awhile, 1994. The  
11 Board decided not to make that increase at that time and  
12 increased it to \$2. And that was when -- that was based on a  
13 public hearing. And that was when we were asked to go back  
14 and try to work with the tenants to come to an amiable  
15 solution, which included the Port recovering its cost.

16 One of the things had to occur in order to properly  
17 do that was to bring a number of leases together, State Lands  
18 leases, that were all independent and separate. And they  
19 were brought together and that took some time. And quite  
20 frankly, the Port dragged its feet to a certain extent and  
21 for other reasons that just that there were other things on  
22 the plate.

23 And so back in 1997, we put this committee together  
24 to look at ways to come forward, and that included tenants,  
25 with a recommendation to the Commission for recovering costs,

1 which we did in 1997, not with, of course, the tenant  
2 representatives on that committee, of which CiCi was not, but  
3 Lisa DiMaggio and Alan Schretzmann were members, did not  
4 agree. We finally agreed to disagree and we brought forward  
5 the recommendation for \$3.50 to the Commission.

6 And, at that time, it was decided rather than raise  
7 the fees that we would get together and try to see if there  
8 was another way to do this, like an RFP for privatizing the  
9 moorings or, as the Board asked us to do, to review the  
10 possibility of contracting out the maintenance and  
11 administration, asked us to look at it to cast the net wide  
12 for the best way to do this. And we did that. And, in fact,  
13 the mooring tenants themselves were one of the bidders.  
14 CiCi's group made an actual bid and was one of the losing  
15 bidders in the process.

16 And so when the fees then were not increased again  
17 until last July, as CiCi noted, and that was quite simply  
18 because I did not have anymore budget dollars left, our  
19 fiscal year ran to 1 July, I was covered until then, we had  
20 planned on the lease going into effect by that time. It had  
21 not gone into effect by that time, so I was required to go  
22 back to my board and request dollars to run the moorings for  
23 the coming year. And I requested the fee of what it would  
24 cost us to operate. The actual fee operation was, at that  
25 time, figured out to be \$3.48 for the fiscal year ending in

1 June of last year. And we rounded that off and asked for  
2 \$3.40 and that was approved by the Board in July.

3 CHAIRPERSON CONNELL: So you think this would be a  
4 market rent, is that a fair statement?

5 MR. COLLINS: I think it's actually below market  
6 rent. I think it's the market comparable to public  
7 facilities.

8 CHAIRPERSON CONNELL: I have a question on the RFP  
9 process. Are you the best to answer that?

10 MR. COLLINS: I think so.

11 CHAIRPERSON CONNELL: Why is there such a strong  
12 feeling on the part of CiCi and the previous speaker that the  
13 RFP process was not held as it generally is, at least at the  
14 State, as the basis by which you have to negotiate a  
15 document?

16 In other words, we're not given a lot of latitude  
17 here at the State level. We issue an RFP, then we are  
18 required to negotiate a contract based on the specifications  
19 of that RFP. Should we choose to significantly change the  
20 nature of the contract, then we have a problem, because  
21 that's considered a violation of an RFP process up here.

22 I'm a little surprised that you have such  
23 flexibility. Can you explain that?

24 MR. COLLINS: I didn't consider that we had great  
25 flexibility in it. As far as the substandard portions of the

1 lease, the terms, the amounts and things like that, there  
2 were no changes in the lease. The only thing that really  
3 changed was when the RFP process allowed for the bidders to  
4 go beyond in offering services or to make suggestions to  
5 other things that they wanted to do.

6 The winning bidder in this case did that, things  
7 like reciprocal slip -- excuse me, privileges, bad weather  
8 anchorages, a certain number of free pump outs and things  
9 like that. And so we felt that was the best offer, but we  
10 held some discussions with them to work out the numbers and  
11 try to get a maximum amount of those for the tenants as we  
12 could.

13 Additionally, during that hearing when we went to  
14 our board, public hearing for the winning bidder, based on  
15 tenant comments and based on board comments, the issue of the  
16 condition of the moorings was raised. And, Madam Chair, I  
17 will disagree that the moorings are in bad condition. I  
18 think they are in more than adequate condition to be turned  
19 over.

20 But based on those comments that were there, one of  
21 the thought processes that came up, and CiCi mentioned it,  
22 although her connotation on it is much different than ours,  
23 is this \$40,000, what I would call, an insurance policy.  
24 That because the tenants were fearful that there was a --  
25 that the moorings were not safe or that in reality the new

1 bidder would go in, take a look at it, he would find, in  
2 their minds, bad conditions and then he would charge -- he  
3 would increase the rates to do that and that's really a fear  
4 that was on their part.

5           We offered this insurance policy that is solely at  
6 our discretion to the benefit of the Port and to the benefit  
7 of the tenants that said during that first cycle of  
8 inspections, a requirement of inspections for six months, if  
9 you find conditions down there that are not adequate or below  
10 the minimums that are required in the lease, and those  
11 conditions can be traced to the Port prior to the turnover of  
12 this and the Port agrees with you on that, then we will take  
13 out of this \$40,000 fund -- \$40,000 fund of which really  
14 would come out of the purchase price of the moorings, we  
15 would just hold \$40,000 out and then we would cover it out of  
16 that amount.

17           We fully expect none of that to be used because,  
18 quite frankly, we believe the moorings are in adequate  
19 condition. However, it was done for the benefit of the  
20 mooring tenants and the district and it provides no monetary  
21 advantage to the bidder. And quite frankly, it had nothing  
22 to do with the bid process because none of the bidders knew  
23 about that.

24           CHAIRPERSON CONNELL: So you think it's really, as  
25 you say, an enhancement not a variation or modification of

1 the RFP, is that what you're suggesting?

2 MR. COLLINS: I'm not even sure it's an  
3 enhancement.

4 SENIOR STAFF COUNSEL FOSSUM: Madam Chair, what took  
5 place was, at the time that the bid was accepted, the boaters  
6 were still complaining about the chain. And so the  
7 Commissioners, the Port Commissioners, decided in order to  
8 ensure them of the safety of the chain, they would allow a  
9 sum to be paid or the cost of repair if that chain was, in  
10 fact, proven, within a six-month period, to not have been up  
11 to the appropriate standards.

12 So it was based on the boaters' concerns that this  
13 money was made available so that the Port would not turnover  
14 anything that was not adequate at the time of the turnover of  
15 the lease. And that was something that was added because of  
16 boaters' concerns.

17 CHAIRPERSON CONNELL: I believe that Ms. Porini has  
18 a follow-up question.

19 ACTING COMMISSIONER PORINI: Well, on that very  
20 point, I was a little confused in the discussion, perhaps you  
21 could clarify for me. When will a baseline evaluation be  
22 done? Is the Port going to do a baseline evaluation of the  
23 chains and the buoys and the entire mooring system before it  
24 turns over operation to the new company or I think I heard  
25 that that was not going to happen until six months after the

1 company took over, can you clarify that for me?

2 MR. COLLINS: The Port has a six-month inspection  
3 cycle. And the Port, as of last July, and to a certain  
4 extent I will admit in response to the mooring tenants, we  
5 felt our records prior to that were adequate, the mooring  
6 tenants certainly did not. And so we actually took some of  
7 their suggestions and tried to make it even more specific  
8 than what it was.

9 And so for the last -- we've now been through two of  
10 those complete cycles. Those records will be turned over to  
11 the San Diego Mooring Company upon the transfer. In other  
12 words, they've been inspected, any repairs that have been  
13 done on each mooring the condition of the mooring is  
14 documented and those will be provided to the winning bidder.

15 ACTING COMMISSIONER PORINI: Now, Cici is shaking  
16 her head no.

17 MS. SAYER: With all due respect to Mr. Collins, my  
18 mooring, for instance, was replaced in January of 1999. If  
19 there had been two inspections since the RFP was let, we  
20 would have known it. Our mooring chain has not been  
21 inspected, has not been cleaned. It is the same mooring with  
22 the growth. And in that package that I sent to you, there is  
23 a picture of that.

24 Not only is there a picture of that, there is a  
25 picture of another mooring chain with growth that exceeds two

1 years worth of mussels growing on that chain. These moorings  
2 have not been adequately inspected.

3 CHAIRPERSON CONNELL: Response.

4 MR. COLLINS: We would disagree. I did say as of  
5 July of last year, so I must admit that we are in the second  
6 cycle now starting January, and so it was one full cycle not  
7 two full cycles. I misspoke on that.

8 As far as the growth, I believe that's the chain we  
9 also did after CiCi pointed out the growth on that chain. We  
10 did go and clean that chain off specifically to look at -- is  
11 that the chain that we talked about?

12 MS. SAYER: No, this is a different one.

13 MR. COLLINS: All I can say is the records that we  
14 have based on that, they were, in fact, inspected properly.  
15 And I will also mention that even though it was mentioned  
16 early that there were 19 failures there, there is only one  
17 documented failure in the last three years that has anything  
18 to do with the chain itself.

19 CHAIRPERSON CONNELL: I'm going to ask Ms. Porini to  
20 follow up again, then we are going to call on the three  
21 additional speakers in the audience.

22 Annette.

23 ACTING COMMISSIONER PORINI: Yes, I just wanted to  
24 understand the hearing process that the Port has gone  
25 through.

1 MR. COLLINS: Yes, ma'am.

2 ACTING COMMISSIONER PORINI: Now, I believe you  
3 indicated, Mr. Fossum, that there's been a total of six  
4 hearings. But since the RFP was issued, can you tell me what  
5 the hearing process has been at the Port?

6 MR. COLLINS: Yes, ma'am. We went to the Board with  
7 permission to go out with an RFP. So we brought the RFP to  
8 the Board first for their review. We came back to the Board,  
9 in I guess November of '98, with the selection process of who  
10 the winning bidder was.

11 We specifically did not include the fee schedule in  
12 that because we wanted that to be the subject -- each of the  
13 bidders had submitted a fee schedule. And rather than put it  
14 all in the same package, we wanted to have the public to have  
15 an opportunity to comment on that specifically. So a month  
16 later we came back at another board meeting with specifically  
17 the fee schedule that was contained within the winning  
18 bidders. And we presented that to the Board and they  
19 accepted that.

20 After that, we came back again -- I guess the next  
21 time we came back was in --

22 SENIOR STAFF COUNSEL FOSSUM: March.

23 MR. COLLINS: -- March.

24 ACTING COMMISSIONER PORINI: That's 1998?

25 SENIOR STAFF COUNSEL FOSSUM: Ninety-nine.

1 MR. COLLINS: Ninety-nine. Well, March of 1999 they  
2 were completed for the approval of the lease at that time.  
3 And that was also approved by the Board. And then with the  
4 delay in the turnover, we came back again in July of '99 for  
5 the increase in the -- excuse me, yeah, it's July for the  
6 increase in the fees. And all of those were public hearings.

7 SENIOR STAFF COUNSEL FOSSUM: And then November of  
8 this last year they held another public hearing at which time  
9 they had the opportunity to comment.

10 MR. COLLINS: That's correct, at the request of the  
11 State Lands of your staff, we held another public hearing at  
12 that time.

13 ACTING COMMISSIONER PORINI: And were there members  
14 of the public who did testify at that hearing in November?

15 MR. COLLINS: Oh, yes, ma'am. CiCi was there and  
16 other members.

17 CHAIRPERSON CONNELL: Okay. CiCi, I'm going to ask  
18 that you allow your seat to be filled by the next speaker.

19 MS. SAYER: Sure.

20 CHAIRPERSON CONNELL: Thank you for your comments.  
21 Alan, if you'd like to come forward. And then the next  
22 speaker I think they're related, they have the same last name  
23 Dory Schretzmann. And then finally we finish up with Lisa,  
24 unless there are others who want to be recognized.

25 MR. SCHRETZMANN: In an effort to save some time, a

1 lot of issues have been covered here that I think are  
2 important. I believe Lisa DiMaggio is going to cover in  
3 detail the RFP process and some questions about that. But I  
4 would like to just read a brief statement for the record.

5 My name is Alan Schretzmann. I was on the Port  
6 District's outreach panel, but I'm here today as a concerned  
7 citizen that would like to see public access to the San Diego  
8 Bay preserved. The lease submitted today would significantly  
9 change the future use of the affected submerged tide lands  
10 held in the public trust by the Port of San Diego.

11 There is a long well-documented history of  
12 interactions between the Port District and the public  
13 regarding the private vessel mooring operation. The State  
14 Lands Commission's staff summary suggests that the San Diego  
15 Unified Port District has responded to and resolved all the  
16 complaints and concerns that the public has raised.

17 That is not the case or we would not be here today.  
18 The public has made many accusations that deserve a closer  
19 examination. Violations of the public process should be  
20 taken seriously.

21 Just a few of the issues that should be addressed  
22 are, instead of approving a lease document, there should be a  
23 call for an independent audit of the mooring operation.  
24 Instead of validating an RFP that does not match conflicting  
25 wording in ordinances and resolutions endorsed by the Port

1 Commissioners, we should be examining each and every document  
2 for its consistency and accuracy. A full and complete airing  
3 of the issues would not be represented as a consent only vote  
4 by the Port Commissioners without proper public notice.

5           Wording that is in the State Lands Commission staff  
6 summary lease quote, "Lease, sublease provides for the rental  
7 of recreational mooring buoys to the public and the sale by  
8 the Port of mooring ground tackle." The wording in the lease  
9 that should have been removed by Amendments 1 and 2 to the  
10 RFP, "The sale of mooring ground tackle and lines and other  
11 items to the mooring buoy occupants."

12           The implications of that statement would  
13 significantly impact the calculations of the cost of  
14 operating the moorings in the RFP. It also opens up to  
15 interpretation future unknown uses of the moorings. The fact  
16 that these issues remain unresolved and have reached this  
17 level indicates to me there is a problem with the process.

18           If you are not the officials to address these  
19 issues, please let us know who is.

20           Thank you very much for your attention on this  
21 important matter.

22           CHAIRPERSON CONNELL: Thank you, Alan.

23           Dory?

24           MS. SCHRETZMANN: I'm going to go ahead and pass. I  
25 believe that Alan covered a lot of my information, and Lisa

1 will be covering the rest.

2 CHAIRPERSON CONNELL: Thank you very much. We  
3 appreciate that.

4 Lisa DiMaggio.

5 I believe that's the last speaker on this item.

6 MS. DiMAGGIO: I guess that makes me the clean-up  
7 batter as it were.

8 Well, I had a prepared speech here, but I found the  
9 other speakers' statements pretty interesting. My name is  
10 Lisa DiMaggio and I'm here today as a concerned person. I'm  
11 not a mooring tenant. I used to be. I'm a founding member  
12 of an organization that we formed in 1994 when some of the  
13 processes were starting, the fee increases, et cetera.

14 I was a participant in the outreach panel that was  
15 discussed earlier. And probably the most important part of  
16 why I'm here today is I was one of two non-port staff members  
17 who drafted the RFP. I believe I have strong working  
18 knowledge of what I was told the intentions were and what the  
19 public were told the intentions were of the RFP.

20 I've heard a lot of he said, she said, we thought,  
21 they said today. So I really want to talk about the document  
22 you've been asked to approve. I heard comment with respect  
23 to Mr. Collins addressing the meetings and the hearings that  
24 you've talked about before. I brought the ordinances with me  
25 from those meetings. And I can tell you that what really

1 happened and what you're being told here today is not the  
2 same thing.

3 I can also document that. We have tape recorded  
4 meetings of each and every one of these hearings and of all  
5 the outreach meeting panels. The only meetings that weren't  
6 recorded were those for the RFP to give the bidders a chance,  
7 to not tip each other's hands -- rather the RFP drafting, I  
8 should say.

9 So I want to talk about the lease. That's what  
10 you're being asked to approve. And it would appear from the  
11 staff summary that you're being asked to approve an innocent  
12 turnover of the operation and maintenance of existing mooring  
13 facilities and anchorages and dingy docks associated with  
14 them.

15 But what you're really approving today is on page  
16 eight under use, and I might add that's not the only place  
17 where this is ramified. There are other portions within the  
18 lease document. By the way, I got the copy of this lease, I  
19 wanted to make sure I had the lease, not, you know, another  
20 version, I got it from Curt Fossum on Friday. I literally  
21 spent my whole weekend page by page, RFP to the lease, to see  
22 what exactly it is you're being asked to sign today.

23 Under the use provisions of the lease document,  
24 there's a significant difference between the turnover. In  
25 fact, there is nowhere in this document that it says that

1 this lease provides for the operation and maintenance of the  
2 mooring system, blah, blah, blah.

3           It says, "Rental of mooring buoys to recreational  
4 boaters..." and it talks about the sale of mooring ground  
5 tackle and line. I got a letter today, handed to me by Mr.  
6 Fossum, prepared by the Port District on what their  
7 interpretation of the sale of ground tackle is. And it's  
8 well and good, but the problem is it's left for  
9 interpretation.

10           And the way this document is right now, it could  
11 mean, it could mean, now or later, it could be interpreted in  
12 a lot of ways. But one in particular would be we're going to  
13 replace your chain at one of those intervals because it needs  
14 to be replaced and we're going to pass the costs on to you.  
15 That is a substantial significant difference between what our  
16 rents are.

17           So in addition to renting the buoy, that's what CiCi  
18 I think was trying to say, is we may end up bearing that  
19 cost. Well, this document would allow for that to happen.  
20 And in my opinion that's the least of our concerns. Isn't  
21 that funny. I'm not here about the money. I'm here about  
22 telling the truth and providing the proper public forum for  
23 complete airing and discussion.

24           There's been an address about a November of 1999  
25 meeting. Because I've been so involved over all this time, I

1 know the difference now between, it took us awhile to figure  
2 this out, the difference between a public hearing, a public  
3 meeting, a Commissioner's hearing, a workshop, a consent  
4 agenda only item, a for-discussion item that pulled it from  
5 consent and a public hearing item.

6           When the lease was first brought to the State Lands  
7 for approval in May of 1999, what really happened is this,  
8 there should have been a lease signed within three days of  
9 the bidder being selected in November of '98. It didn't  
10 happen. I asked for a copy of the document referenced in  
11 this ordinance and do you know what the clerk told me. It  
12 doesn't exist. It never was a lease.

13           In December they approved a fee schedule and that  
14 fee schedule was what was in the RFP or negotiated therefrom,  
15 but there's no lease. We were told that the lease was  
16 delayed because of State Lands agenda issues, that there  
17 wasn't -- we couldn't get it on the agenda because the State  
18 hadn't met.

19           Well, when you met in February of 1999, they  
20 couldn't say that anymore. They weren't on the agenda,  
21 because there still wasn't a lease. This lease is dated  
22 March 1st, 1999. March 30th the Port of San Diego, boom,  
23 approved this lease. Of course, they did that. They finally  
24 had something to approve, but that's not what they told the  
25 public.

1           The public was told we are approving the lease so  
2 that we can extend the time for your approval from what was  
3 in the original RFP and the original ordinance, which was  
4 December of '98. Now, in the process of doing that, this is  
5 interesting because remember that ground tackle sales and  
6 other things were being struck from the RFP for the first  
7 amendment, but the language slid right back in here. That's  
8 what really happened.

9           Now, what's more important is I read this document  
10 page by page, and a lot of this stuff is old hat, old news,  
11 but this is why this lease should not be approved today. The  
12 intent and content of the RFP have been violated by this  
13 lease. Falsification of Port District records, ordinances,  
14 resolutions have been made in order to accommodate this  
15 lease. False statements have been made by the Port District  
16 to community outreach panelists and the public at workshops,  
17 committee hearings, regarding their true intent and future  
18 operation of the moorings and the true and actual contents of  
19 this lease.

20           Negotiations of more favorable terms to the San  
21 Diego Mooring Company that are outside of the scope of the  
22 RFP and have still not been disclosed to the public were made  
23 between the Port and the San Diego Mooring Company. Please  
24 note that while a few of us here know the exact contents of  
25 this lease, it's because we independently obtained a copy of

1 it, read it and understood it.

2 At no time has the true nature and content of this  
3 lease been made public in any forum whatsoever by the Port  
4 District. In fact, this is speculation, I don't know this  
5 for a fact, but I'm not sure even that SLC staff is fully  
6 aware of some of the changes and nuances of the lease to the  
7 RFP. I don't know that reviewing our RFPs is part of your  
8 process.

9 The \$40,000 reimbursement account that's included in  
10 the lease is to the benefit of the San Diego Mooring Company  
11 that was not extended to the other bidders. It was not made  
12 public by the Port District. It was only admitted to and  
13 explained to the SLC staff after I learned about it and  
14 brought it to the State's attention.

15 Ironically, the \$40,000 is for replacement of any  
16 substandard materials identified as we talked about before.  
17 But the RFP and the Commissioners' statements, which again I  
18 have recordings of, they were adamant that it was as-is  
19 as-is. Now, the interesting thing is the \$256,000 that's  
20 going to be paid for the acquisition of these assets less the  
21 \$40,000 kickback based on the Port District auditor, Bob  
22 Munson's report to us, those assets are now fully depreciated  
23 from the time that figure was set. That 256 is based on the  
24 book value of the assets as of December of 1998. They are  
25 now fully depreciated by that on schedule.

1           And I'm going to segue way here, but it's my  
2 understanding that the Port is possibly going to be audited  
3 in the very future. And I think we'll find that the figures  
4 that are set -- I actually have a document here with me today  
5 if anyone wants to see it, dated 1994, from the Marine  
6 Operations to the Director of the Port District at the time  
7 that talks about what it really costs for them to operate the  
8 moorings and it's \$1.31 a day.

9           There is not a \$200,000 a year loss, and I think  
10 we're going to find that out in the audit. But those figures  
11 were what the benchmark were for the RFP and a lease. The  
12 whole premise of privatization was to recover costs.

13           And this is an interesting thing to me, too. Right  
14 now, because of the fee increase Martin talked about in July  
15 of last year that's now in effect, they are at full cost  
16 recovery according to their figures. So it's kind of curious  
17 why then won't they take the time to really do the public  
18 review. So I want to talk about that hearing.

19           What was supposed to be a hearing in December --  
20 Curt Fossum has been reviewing things that I've sent and that  
21 Martin sent since May of 1999. And this is why. This lease  
22 was not dated until March 1st. It was approved March 30th.  
23 There was one thing in that meeting that caught my attention  
24 more than anything else, and it said the word new lease.

25           They wanted to approve a new lease not extend the

1 time of the one that doesn't exist. So I got a copy of it, I  
2 asked for a copy from the clerk's office and they could  
3 produce this one, but not the first one, because they said it  
4 doesn't exist. Not that it was null and void, not that it  
5 was no longer of record, because this superseded it, but it  
6 doesn't exist.

7           So when I read it and I saw these things, some  
8 things concerned me. And I wrote to Curt and I told him what  
9 they were. I only picked three subjects, and that's what's  
10 been hammered and hashed out since. But the change of use of  
11 the submerged tide lands and the possible interpretation of  
12 the language, that hasn't been brought up before. Neither  
13 has the potential transfer and assignment language that's  
14 included in this lease, that was specifically prohibited in  
15 the RFP.

16           I'm going to conclude real fast. Obviously, I'm  
17 impassioned about the subject, but the bottom line is that  
18 those issues that were brought up to Curt were serious enough  
19 that caused him to keep the lease from being on your agenda  
20 three different meetings that you've held so far, since May  
21 of '99.

22           And he asked that the Port District finally resolve  
23 the issues before bringing it to you so that we wouldn't be  
24 having the debate we're having. The language in the letter  
25 that I have with me today specifically says have a public

1 hearing with all interested parties. Now by government code  
2 that means forward notice of a meeting to interested  
3 parties. What happened were two phone calls four days before  
4 the meeting.

5           It was on as a consent only agenda item. I got a  
6 call and CiCi got a call on Thursday before the Tuesday  
7 meeting being told it was on the agenda. I don't think  
8 that's public process. I don't think it's been hammered  
9 out. And I don't think the document in front of you today is  
10 what you think it is. I would ask respectfully that you not  
11 approve it, and let us take this back to San Diego and duke  
12 it out where it belongs.

13           Thank you.

14           CHAIRPERSON CONNELL: Thank you. I thank all the  
15 speakers here today. I personally am very disconcerted by  
16 the information that has been presented. I don't know how we  
17 are to weigh information that is so startlingly different  
18 from those who have such varied points of view on both the  
19 process and the substance of the contract.

20           I am concerned to a point where I would be willing  
21 to entertain a motion to defer this until our next meeting  
22 and request a more active role, I might add, Paul, of our  
23 staff. I would like to see us do our own investigation of  
24 what we think is the process here, what we think is the  
25 actual necessity for the lease being written the way it is.

1 I'm not comfortable, as a public official, to take action  
2 today on a matter that appears to have so many discrepancies  
3 in testimony.

4 I would like to have that testimony reviewed and I'd  
5 like to have it verified and I'd like to have a sense of how  
6 far off, you know, this process is from where we would like  
7 to see it as a Commission.

8 EXECUTIVE OFFICER THAYER: Okay.

9 CHAIRPERSON CONNELL: I don't know if anyone else  
10 shares that concern with me.

11 Annette.

12 ACTING COMMISSIONER PORINI: I do also have a  
13 concern about the public hearing process and would really  
14 like to have, during whatever interval of time, there be a  
15 public hearing. I think it's very difficult for us in  
16 Sacramento to attempt to micro manage issues that should be  
17 covered at the local level. And I believe that that should  
18 be an open public hearing process.

19 So I recognize that that adds some additional time  
20 constraints, but I believe that's necessary to the process.

21 EXECUTIVE OFFICER THAYER: So I'm to understand from  
22 that that we may request, very well request, in the Board  
23 report to hold an additional public hearing, monitor very  
24 closely the kind of notice that goes into that hearing and  
25 that we wouldn't bring it back to you at the next meeting

1 unless that could be accomplished. We'd bring it back at the  
2 next meeting possibly after that additional board meeting.

3 CHAIRPERSON CONNELL: I think a public hearing would  
4 be appropriate in San Diego not here. That is not our role.  
5 And secondarily, I certainly want to have some explanation of  
6 why there's this kind of discrepancy in testimony. I don't  
7 think I have in my five years on this Commission ever heard  
8 such a record of disagreement on what appeared to be very  
9 simple facts presented.

10 Either somebody has got their factual history wrong  
11 here and it has been misrepresented to this Commission or  
12 everyone is misinterpreting it and fudging a little. But it  
13 is really disconcerting to see such a difference of  
14 perspective. I can't recall, Paul, can you, any other  
15 circumstances where we've had this kind of misunderstanding?

16 EXECUTIVE OFFICER THAYER: I think the two sides are  
17 very passionate on this issue.

18 SENIOR STAFF COUNSEL FOSSUM: Madam Chair, if I  
19 could. We've heard from the opponents but we haven't heard  
20 from either the Port's Counsel on the public notice issue or  
21 from the winning bidder on that. And certainly having spent  
22 over a year, as part of your staff, reviewing this, we have  
23 gone over each and every one of these issues that have been  
24 raised by both sides to try and come to the truth of the  
25 matter.

1           And that is the reason that we asked the Port to  
2 have an additional public hearing on the matter which they  
3 did have. I mean it boils down to the difference of what is  
4 a public hearing, that's what they're arguing over. The fact  
5 that they spoke at the public hearing and that the Board of  
6 Port Commissioners voted unanimously to approve it, they gave  
7 -- and I shouldn't be speaking on behalf of the Port's  
8 counsel, because they can certainly do that themselves, but  
9 the kind of notice that was provided, anybody who had  
10 requested notice of it was given notice.

11           And in addition, they actually called  
12 representatives of the two boating organizations to give them  
13 notice. So on that notice issue that was probably the  
14 primary reason that you have not heard this until now is we  
15 were very concerned as a staff that they had not had an  
16 opportunity. We believe they have now. But if you'd like to  
17 hear from the Port or the mooring tenants, I'm not sure we  
18 can resolve anymore than what's already been done.

19           COMMISSIONER BUSTAMANTE: I would defer to the  
20 Commissioners, but I'd like to have staff, the issues raised  
21 by Mr. Keller I thought were compelling for me. I'd like to  
22 know more about the standards and specifications that were  
23 supposed to have been set. If there is something there that  
24 you could present to me, I'd appreciate it.

25           Clearly, when he makes a point about the different

1 sizes and standards of mooring, one size of boat versus the  
2 other, I think that's a very practical assessment. If there  
3 are no specifications for those kinds of things, I think that  
4 there clearly ought to be.

5           The other issue that he raised, and there seems to  
6 be quite a disagreement, was whether or not the operator has  
7 any experience in this area or not. He says none and you say  
8 21 other operations at this --

9           SENIOR STAFF COUNSEL FOSSUM: 2,100 marina slips  
10 that are operating in California.

11           COMMISSIONER BUSTAMANTE: And so it seems to me that  
12 that could be easily documented, obviously. And I'm going to  
13 assume that, in fact, you've done due diligence on that. But  
14 the other issues of whether or not the chain, the shackles,  
15 and the inspections.

16           And there was one other issue that was raised by  
17 CiCi, I believe, that the change that was done during the  
18 negotiations of the contract from the ability to change the  
19 maintenance and inspection requirements from the RFP process.  
20 I'd like to hear about that, at some point, when we bring  
21 this back.

22           Those are the issues that I'm concerned about.  
23 They're more technical. If the rates are within market and  
24 there's an experienced operator, clearly that sounds like it  
25 was needed, I'm more interested in making sure that you were

1 able to put together an operation that, in fact, with an  
2 experienced operator be able to meet the conditions and  
3 they're going to be getting what they're paying for.

4 CHAIRPERSON CONNELL: Mr. Thayer, it is obviously  
5 the unanimous attitude of the Commission to not take action  
6 today on this. Do we need to have a motion to defer or are  
7 substantive concerns registered to a point where you know  
8 what you need to do and the kind of report that you need to  
9 prepare in putting this on the Commission agenda in April?

10 EXECUTIVE OFFICER THAYER: I'm advised by the legal  
11 counsel that you don't have to take any formal action. We've  
12 certainly received the direction from the Commission. We'll  
13 research the individual items that I've heard from the  
14 Commission today. And, of course, if any other items come to  
15 your attention that you want us to look into, please let me  
16 know.

17 I do think, though, that as I said earlier, the  
18 differences between these two groups are intense and while we  
19 will do our best to reconcile those differences, I'm  
20 concerned that there's a difference of interest between these  
21 two groups.

22 CHAIRPERSON CONNELL: I don't have a problem with a  
23 difference of interest. I don't have a problem with a  
24 difference of passion or perspective. I am concerned, as an  
25 elected official, about the difference that appears to exist

1 in the way the facts have been presented.

2           And let me clarify that, that is my concern. We  
3 have many heated issues, as you know, before this Commission.  
4 Certainly the oil platforms off the coast of southern  
5 California being among them, where there are extraordinarily  
6 heated divisions and we will never be able to have a common  
7 understanding of what we are about in that environment.  
8 That's quite different. Even in those hearings, we've never  
9 had this kind of discrepancy of fact or at least alleged  
10 discrepancy of fact. And that is what concerns me.

11           I want to make sure that we have a consistent  
12 understanding as a Commission of what the facts are before we  
13 take action or at least that's my request. I want to make  
14 sure that the process has been appropriate at the local  
15 level, that there has not been any misuse of the RFP  
16 activity, that the hearing process has been in tact. I think  
17 it is very vital that we have some assurance that all of the  
18 allegations raised today, indeed, have been addressed by this  
19 commission prior to it. I think that's the sense of my  
20 fellow Commissioners.

21           So we will just move forward on deferring this item  
22 then. I did not mean, in any way, to neglect the opportunity  
23 of others to speak. Is there anyone else who wishes to speak  
24 on this matter?

25           If not, then we have completed item 53.

1           Again, thank you for your extended testimony on this  
2 item.

3           We will now move to item 54. And I believe we also  
4 have some individuals who wish to address us on 54. Mr.  
5 Thayer, if you'd like to give your staff presentation first.

6           EXECUTIVE OFFICER THAYER: Yes. Item 54 has to do  
7 with the setting of the fee in the emergency regulations for  
8 the ballast water program. We heard this in December, but we  
9 have a revision proposed at this meeting. And that  
10 presentation will be made by Marya Faulkner from our marine  
11 facilities division.

12           MS. FAULKNER: Good morning, Commissioners.

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

15           MS. FAULKNER: Can you see this? No.

16           CHAIRPERSON CONNELL: I'm going to request that the  
17 lights be -- is that a little better?

18           COMMISSIONER BUSTAMANTE: Can we turn that light off  
19 right up there.

20           CHAIRPERSON CONNELL: I'm sorry for the  
21 interruption. Please continue on.

22           MS. FAULKNER: That's okay. Good morning. And this  
23 morning we're going to ask you to approve an emergency  
24 regulation to reset or reestablish the fee for the ballast  
25 water management program.

1           As you remember in December, you approved a fee of  
2 \$600 per voyage. And that was based on information we got  
3 from the industry. And, at that time, you also asked us to  
4 get together with the industry and sit down and basically get  
5 their input and so we did that.

6                               --o0o--

7           MS. FAULKNER: And in January we formed a technical  
8 advisory group that was comprised of these individuals that  
9 we invited these people to attend. The technical advisory  
10 group set the fee schedule. As you can see, we have  
11 individuals from a wide variety of the industry there. Our  
12 objective was to evaluate and adopt an appropriate fee  
13 schedule.

14                              --o0o--

15           MS. FAULKNER: We started off with the understanding  
16 that we're kind of working on one fixed target here. We have  
17 a set fee for the program that's been tentatively approved  
18 through the Department of Finance. We have an annual cost or  
19 a cost through 2002 for those agencies. And the overall cost  
20 of the whole program spread between four agencies is 6.67  
21 million for 40 years. So we started with that understanding  
22 that we had to be able to hit that target. And the technical  
23 advisory group met.

24                              --o0o--

25           MS. FAULKNER: We evaluated three different options.

1 One was a flat fee that would apply a fee equally across all  
2 voyages, qualifying voyages, that came in. One was a tiered  
3 system which would take good players or a certain subset of  
4 voyages. And the third was a maximum cap on a voyage that  
5 was charged. We evaluated these things, hashed them over,  
6 crunched the numbers, played with the computer programs and  
7 stuff.

8 --o0o--

9 MS. FAULKNER: And we came up with a recommendation,  
10 the technical advisory group, was to adopt the flat fee  
11 option. And they set that at \$400. And that was based on  
12 the following parameters, which the first two, if they vary,  
13 we will be coming back to talk to you again reestablishing a  
14 new fee amount.

15 But right now the technical advisory group felt like  
16 we would be seeing 6,000 qualified voyages annually. What we  
17 should expect, we would guarantee is kind of their words, a  
18 75 percent recovery of the fee. And then, again, we have a  
19 fixed cost basically of the program as we understand it.

20 They also recommended that the current fee amount of  
21 \$600 per voyage be maintained through the expiration of the  
22 emergency regulation, which would take it to April 29th of  
23 this year and that we would reconvene this technical advisory  
24 group beginning in July of 2000. And, again, sit down, do we  
25 have more information on the types of voyages we're seeing,

1 things such as that, that we might be able to apply a  
2 different type of fee schedule.

3 --o0o--

4 MS. FAULKNER: So that's what we're putting forward  
5 today. We're asking you to approve an emergency regulation  
6 to set the fee at \$400, that we would reconvene the technical  
7 advisory group in July of 2000. We're also putting forward  
8 emergency -- or excuse me, a permanent rule-making package  
9 that says basically the same thing. And we have public  
10 hearings set up right now in Oakland and in Los Angeles to  
11 get the input from the public. So this is kind of Phase 2.

12 --o0o--

13 CHAIRPERSON CONNELL: Make sure our public hearings  
14 are widely announced. We do not want to have a repetition on  
15 this item when it comes back. I think that this has been an  
16 extended learning lesson for us and the importance of  
17 handling public hearings correctly.

18 MS. FAULKNER: Yes. And that's really it that I  
19 have today. If you have any other questions, I can try to  
20 address those.

21 CHAIRPERSON CONNELL: Well, we do have a person who  
22 wishes to speak on this, if I'm correct. Kenneth Levin.

23 Mr. Levin, do you want to come forward?

24 MR. LEVIN: Where do you want me?

25 CHAIRPERSON CONNELL: Here might be the best place

1 so that we can record your comments.

2 MR. LEVIN: Thank you, Commissioners, for the  
3 opportunity to speak and support the State Lands Commission  
4 proposed emergency regulations. I'm Kenneth Levin. I'm the  
5 vice president of the Pacific Merchant Shipping Association,  
6 Executive Secretary of the Foreign Shippers Owners  
7 Association. And one of our members is also with the  
8 Steamship Association of Southern California. So with the  
9 three of those groups, we cover pretty well every vessel and  
10 every agent in the Pacific.

11 We strongly support lowering the fee to 400. We  
12 think it's equitable. We think it's fair. We think it will  
13 get the job done. And as Ms. Faulkner has pointed out, we  
14 will have to adjust it later on if we get better handles on  
15 traffic.

16 If there's any questions, I'd be glad to address  
17 them.

18 CHAIRPERSON CONNELL: Are there any questions by the  
19 Commissioners?

20 COMMISSIONER BUSTAMANTE: Just that I think that  
21 this is the kind of work that I was hoping that we would get,  
22 Paul. I think that working with industry in trying to figure  
23 out how to best deal with the issue, we clearly have a  
24 mission to accomplish here. And being able to get to the  
25 right mountain was an important one. And working with the

1 industry to get that done in the way that you've done it here  
2 today, I think it shows good staff work.

3 So thank you.

4 CHAIRPERSON CONNELL: And I might add it was a  
5 pleasant comparison with what we saw before, not on our  
6 staff's part, but on the importance of having advisory groups  
7 from the district. It's a technique that we use in all of  
8 our commissions, as Annette and I will soon be leaving from  
9 here to go to another commission, where we use these kinds of  
10 advisory groups. And it makes a big difference in the  
11 quality of the public dialogue and a better sense of support  
12 as you bring items before the Commission. So I thank you for  
13 your willingness to participate.

14 I will take a motion, if I may, from my fellow  
15 Commissioners on this.

16 COMMISSIONER BUSTAMANTE: Move.

17 ACTING COMMISSIONER PORINI: Second.

18 CHAIRPERSON CONNELL: It's been moved and seconded.  
19 And it is a unanimous vote to approve that item. I thank  
20 staff on this as well.

21 Item 55 is off the calendar. Now, that would  
22 conclude the regular calendar, but I don't want to forget, is  
23 it Lester Denevan? Lester, I don't know where you wanted to  
24 come forward.

25 MR. DENEVAN: Is this fine?

1           CHAIRPERSON CONNELL: Yes, please. But you don't  
2 have a number here. You just say public comment, so I hope I  
3 haven't neglected you earlier, Lester.

4           MR. DENEVAN: My name is Lester Denevan,  
5 D-e-n-e-v-a-n. I'm a resident of the City of Long Beach. I  
6 was a member of the local coastal program committee that  
7 prepared the plan. By the way, next week the Coastal  
8 Commission will be hearing about a project from the downtown  
9 shoreline. This is in the tide land area south of the  
10 Chapter 138 line, a former beach and park area.

11           And the City is proposing to put in 500,000 square  
12 feet of retail use on the former beach and then shoreline  
13 park, a theater complex of 16 theaters plus an IMAX theater  
14 and some other uses. And the proposal includes to subdivide  
15 20 acres into eight parcels of public titled area. This is  
16 the former beach.

17           CHAIRPERSON CONNELL: Is this next to Shoreline  
18 Village? Where is this, Lester?

19           MR. DENEVAN: It's somewhat to the west of Shoreline  
20 Village, and it extends south of Ocean Boulevard, south of  
21 Seaside Way down to the water's edge. And this is a very  
22 large area which has been undergoing development for a number  
23 of years including this area in this application, plus some  
24 of the earlier developments.

25           We have five office buildings on the beach and

1 constant encroachment into the public recreation area. Now,  
2 the tide land grant of 1911 would apply here. And I am  
3 requesting that the Lands Commission hear this at a public  
4 hearing and determine whether some of these uses are  
5 permissible under the tide land grant of 1911 and subsequent  
6 amendments of the tide land grant.

7 CHAIRPERSON CONNELL: Lester, why do you think we  
8 have a nexus to this issue?

9 MR. DENEVAN: Well, for example, the Coastal  
10 Commission report itself says that the State Lands Commission  
11 has not commented on this specific development proposed by  
12 this coast development permit application. Now, I have  
13 appeared before the Lands Commission previously for  
14 development and it was heard by the Lands Commission.  
15 Certainly, there's precedent for public review by the Lands  
16 Commission in the tide land area.

17 CHAIRPERSON CONNELL: Lester, let me ask our General  
18 Counsel. Jack, what would be our prospective role in this?

19 CHIEF COUNSEL RUMP: Since this is the first time  
20 we've heard about this item, we're a bit at a loss to know  
21 exactly what our role would be, whether or not, under the  
22 grant provisions, it would require approval from the  
23 Commission or not.

24 I think we'll need to find out more information here  
25 before we could say that. I don't know. Previously, he's

1 referring to an instance there was a capital expenditure by  
2 the grantee, which would require that approval. If this is a  
3 private development, it may not.

4 Obviously, the grantee would be looking to see  
5 whether or not it's within the terms of the grant. But we  
6 have not been contacted and we didn't know he was coming  
7 today.

8 CHAIRPERSON CONNELL: Well, I appreciate your  
9 interest, Lester. And as you've seen in our earlier dialogue  
10 this morning, we are committed, as a Commission, as  
11 individuals, to having public comment and we appreciate the  
12 effort you made to come up here.

13 I would like to suggest that you work with our staff  
14 here. And perhaps following the closure of our public  
15 session today, you can provide some additional information,  
16 so that if there is the appropriate action that needs to be  
17 taken in the future, we will certainly be happy to work to  
18 get that information on the agenda.

19 MR. DENEVAN: Groundbreaking is only a few months in  
20 advance, so perhaps maybe at the next meeting of the Lands  
21 Commission, if you so desire to put it on the agenda. I have  
22 a copy of the staff report of the Coastal Commission, about  
23 60 pages single spaced, which gives some of the detail.

24 Now, this is from 1999. There is another staff  
25 report from the meeting in San Diego next week of the Coastal

1 Commission. And, at that time, they'll review the plan. And  
2 then in this staff report it says in order for the California  
3 Coastal Commission to find that the proposed use of state  
4 lands is consistent with the city's tide lands grant, the  
5 Commission requires that the city document that the proposed  
6 project is consistent with all tide land grant requirements  
7 imposed on the city with respect to the portion of the  
8 downtown shoreline area.

9           So I'll close on the -- mention just a few of the  
10 uses which are proposed, but they're not in the coastal  
11 permit application. They are simply what I read in the  
12 newspaper.

13           Remember, this is a public beach and they're  
14 proposing these types of uses, the Gap, Warner Brothers  
15 store, Warehouse Records, Cost Plus World Market. So those  
16 are the types of uses that I'm concerned about. Do they or  
17 do they not fall within the tide land grant?

18           CHAIRPERSON CONNELL: You know, I appreciate your  
19 bringing this to our attention. And what I would like to do  
20 is ask that you confer with our staff following the meeting,  
21 so that we can get the necessary information. We always  
22 appreciate the public keeping us informed of issues like  
23 this. I think we have an excellent staff, but it is, of  
24 course, difficult, given the scope of our responsibilities,  
25 to always be aware of all the changes that are occurring.

1 But I want to thank you on behalf of the Commission for  
2 coming here and sharing that with us.

3 I do believe that concludes now the open session of  
4 the Commission. We're now going to adjourn into the closed  
5 session. Do I need to make any announcement regarding closed  
6 session, Mr. Thayer?

7 EXECUTIVE OFFICER THAYER: No, we'll make sure the  
8 room is cleared at this point.

9 CHAIRPERSON CONNELL: Those who are not appropriate  
10 to stay for the closed session, would you please depart.

11 (Thereupon the Open Session of the State  
12 Lands Commission was adjourned at 12:07 p.m.)

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CERTIFICATE OF REPORTER

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing California State Lands Commission hearing was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of February, 2000.



JAMES F. PETERS, CSR, RPR  
Certified Shorthand Reporter  
License No. 10063