

STATE OF CALIFORNIA  
STATE LANDS COMMISSION

STATE CAPITOL  
ROOM 447  
SACRAMENTO, CALIFORNIA

MONDAY, FEBRUARY 5, 2001  
10:00 A.M.

ORIGINAL

JAMES F. PETERS, CSR, RPR  
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APPEARANCES

COMMISSIONERS

Cruz M. Bustamante, Chairperson

B. Timothy Gage, Director of Finance, represented by  
Annette Porini

Kathleen Connell, State Controller, represented by  
Cindy Aronberg

STAFF

Paul Thayer, Executive Director

Jack Rump, Chief Counsel

Kim Korhonen, Executive Secretary

ALSO PRESENT

Matt Rodriquez, representing the Attorney General

Alan Hager, representing the Attorney General

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1 of conservation efforts that we've undertaken in our  
2 various offices, the ones that you've all heard about in  
3 terms of turning out lights, turning off computers when  
4 they're not in use. This kind of thing.

5 CHAIRPERSON BUSTAMANTE: Does that include over  
6 the weekend?

7 EXECUTIVE OFFICER THAYER: Absolutely over the  
8 weekend and as well as during the day. The staff is under  
9 instruction that if they leave their desk for a  
10 significant period of time they should power down their  
11 computers. And most of us are operating in about half  
12 light.

13 We're also looking at a couple other things, too.  
14 We're looking to develop some public information items  
15 that we would send out to members of the public with whom  
16 we have relations. So, for example, our lessees, mailings  
17 of say the Commission's agenda. We're trying to come up  
18 with, sort of, a single sheet slip that would remind all  
19 Californians that we're in this together and we're urging  
20 you to take whatever conservation methods they can.

21 Another way that we're affected by this is we're  
22 beginning to receive some notices from some of our lessees  
23 that are involved in power generation indicating that they  
24 are not receiving payment from large utilities like PG&E.  
25 And primarily this involves generators at the geysers, the

1 Geothermal generation where they generate electricity.  
2 They're not a utility per se. They're just a generator to  
3 sell that on. And the same way PG&E is having trouble  
4 paying their larger suppliers, they're having trouble  
5 paying the smaller suppliers.

6 And so our royalties are going to be affected by  
7 that. Now, if PG&E doesn't go bankrupt, eventually our  
8 generators will be paid and we'll receive the royalties.  
9 But we're reviewing the leases in each situation to  
10 understand more carefully and clearly what the  
11 implications are for us and what our rights and  
12 responsibilities are.

13 And I'll brief the Commission further on that as  
14 we get more information. We've received some of these  
15 notices just in the last week or so, so we're still  
16 analyzing them. They're not huge suppliers of electricity  
17 in comparison with Diablo or something like that. But  
18 nonetheless it's having an impact on our revenue  
19 generation.

20 Then there's, of course, the Long Beach gas item  
21 that we'll be discussing today, and I think I'll save  
22 comments on that until the city has had a chance to  
23 present.

24 The final thing I wanted to mention is that the  
25 Commission about a year and a half ago extended the

1 drilling obligation to maintain the lease that's held by  
2 Benton Molino off of Santa Barbara County. They requested  
3 a one-year extension of their requirement to drill a well.  
4 The Commission granted that. That expired last November.  
5 However, they did apply for an extension prior to the  
6 expiration of that obligation. And as we discussed with  
7 you at our last meeting, it's our intention to bring that  
8 to the Commission, once the county has had a chance to act  
9 on a similar application to extend the lease on the local  
10 level.

11 That we had expected the county -- and I  
12 indicated in our last meeting, that we expected the county  
13 to act by now, and that you'd have this on the agenda for  
14 today. For a variety of reasons, the county has not  
15 acted. We're now told they will, by the end of this  
16 month, and so it would be our intention to bring this item  
17 back at the following meeting.

18 And that concludes the Executive Officer's  
19 report.

20 CHAIRPERSON BUSTAMANTE: Thank you, Mr. Thayer.  
21 The next order of business will be the consent calendar.  
22 Are there any items to be pulled off of the consent  
23 calendar?

24 EXECUTIVE OFFICER THAYER: There are two items,  
25 Mr. Chair. One is C67, which had to do with the Lands

1 Commission financing a new State office building in  
2 Eureka. And the second one is C71 dealing with the Long  
3 Beach gas situation. There are a number of officials here  
4 from the City that want to make a presentation on that.

5 CHAIRPERSON BUSTAMANTE: Is there anybody in the  
6 audience here who would like to speak on the consent  
7 calendar?

8 If not, we're going to move the items in one  
9 group.

10 Seeing none, is there a motion?

11 ACTING COMMISSIONER ARONBERG: Move approval of  
12 the consent calendar.

13 ACTING COMMISSIONER PORINI: Second.

14 CHAIRPERSON BUSTAMANTE: Okay. You're not going  
15 to be speaking a whole lot today.

16 (Laughter.)

17 CHAIRPERSON BUSTAMANTE: Let the record show that  
18 the consent calendar is unanimously adopted, saving C67  
19 and C71.

20 That takes us to our regular item of business.

21 Mr. Thayer.

22 EXECUTIVE OFFICER THAYER: The first item is 73.  
23 This is an application having to do with the disposal of  
24 dredge materials, dredge projects in San Francisco Bay.  
25 It's located at the Montezuma Slough in the northern part

1 of the Bay region. And Dave Plummer from our staff will  
2 give the staff presentation on that.

3 CHAIRPERSON BUSTAMANTE: All right.

4 REGIONAL MANAGER PLUMMER: Mr. Thayer, 67 is  
5 pulled?

6 EXECUTIVE OFFICER THAYER: Yes.

7 CHAIRPERSON BUSTAMANTE: It's not on the calendar  
8 today?

9 EXECUTIVE OFFICER THAYER: It's not on the  
10 calendar for today. We'll bring that back.

11 CHAIRPERSON BUSTAMANTE: So if there is anybody  
12 here regarding item number 67, it will be held over till  
13 the next meeting.

14 REGIONAL MANAGER PLUMMER: Good morning,  
15 Chairman, Commissioners. My name is Dave Plummer. I'm a  
16 regional manager with the Land Management Division. The  
17 item before you this morning is a request for a lease of  
18 sovereign lands in Montezuma Slough and the Sacramento  
19 River in Collinsville, Solano County.

20 The lease is proposed to allow the construction  
21 of a barge off-loading dock, drudge section pipeline,  
22 water lines for water discharge, two small boat ramps and  
23 four levee breaches. These facilities are part of a  
24 larger project, the Montezuma Wetlands Project, that would  
25 store wetlands by placing dredge sediments which have been

1 dredged from the San Francisco Bay Navigation Channels  
2 including the Port of Oakland's deepening project on to  
3 privately owned uplands that lie adjacent to the states  
4 sovereign lands.

5           And the location of the project is right here.  
6 This is sort of the upland hills in the Montezuma Hills  
7 area, Antioch is over on this side of the Bay. This is  
8 the Sacramento River. Montezuma Slough goes on this side  
9 of the project.

10           The entire Montezuma Wetlands Project consists of  
11 approximately 2,400 acres. About 1,800 acres of the site  
12 would be used for the purpose of wetland restoration to  
13 the disposal of dredge materials. Dredge sediments would  
14 be placed on the land that is now diked grazing land,  
15 containing both uplands and some nontidal wetlands.

16           The proposed project would accept about 17  
17 million cubic yards of dredge sediments that would be  
18 placed on the site raising the elevations to a level that  
19 would support marsh plant colonization and would allow the  
20 tides to ebb and flow through levee breaches.

21           In addition to the 1,800 acre restoration area, a  
22 sediment rehandling facility would be constructed within a  
23 165 acre site located in the southeast corner of the  
24 project. The rehandling facility would contain up to 90  
25 acres of sediment fill where sediments would be rinsed of

1 salts and dewatered and would be suitable for on-site  
2 levee maintenance as well as off-site levee stabilization  
3 in the Sacramento/San Joaquin River Delta.

4           And this is the whole project site. The  
5 rehandling area would be this area in here. What we would  
6 be permitting by lease would be the construction of a  
7 barge off-loading dock out in the Sacramento River on this  
8 portion of the property. The dredge suction pipelines  
9 would be here. There would be a small boat ramp up at  
10 this end. And down at this end that would be for  
11 launching boats to do water quality testing levee  
12 monitoring.

13           And, in addition, there would be four levee  
14 breaches. And what is proposed is that this project would  
15 be done in four phases. Phase one is located here. The  
16 sediments would be off loaded here, slurried and  
17 transported by pipeline into the Phase One area. At the  
18 completion of Phase One, when it's built up to the right  
19 elevation and marsh plant colonization has taken place,  
20 there would be a levee breach constructed that would allow  
21 the tides to come in through Montezuma Slough into the  
22 Phase One. And that would continue for the other three  
23 phases and that's the reason for the levee breaches.

24           The Montezuma Wetlands Project is a result of  
25 many years of work by numerous agencies, scientists and

1 engineers on the problem of dealing with materials dredged  
2 from the Bay's navigation channels and using them to  
3 restore wetlands in an environmentally safe and beneficial  
4 manner.

5           An inter-agency group composed of State and  
6 federal agencies with responsibility over dredging was  
7 formed to devise a long-term management strategy for the  
8 safe disposal of dredge materials. The LTMS estimated  
9 that for the next 50 years the annual average dredge in  
10 the Bay area would be between two and five million cubic  
11 yards.

12           The dredge disposal management alternative  
13 selected by the LTMS provides for a reduction of in-bay  
14 disposal to 20 percent of the total volume dredged, 40  
15 percent going to ocean and 40 percent for upland and  
16 wetland reuse.

17           This project would fulfill the goal of upland  
18 wetland reuse through its wetland restoration and  
19 rehandling components. Jim McGrath from the Port of  
20 Oakland and Ellen Johnck, Executive Director of the Bay  
21 Planning Coalition are here today to speak of the  
22 importance of this project to the Bay area and the  
23 dredging communities.

24           This particular project would accept two types of  
25 dredge materials, cover and noncover. I would like to

1 expand on the calendar item discussion of cover versus  
2 noncover sediments. Cover sediments are those that pass  
3 leachate and bio tests, and contain contaminants at  
4 concentrations less than those specified in the regional  
5 boards interim screening period. Noncover sediments,  
6 those that, like cover sediments, have leachate tests, but  
7 have one or more contaminant concentrations that exceed  
8 criteria for cover material.

9           The use of noncover sediments has been evaluated  
10 by the regional board, United States Environmental  
11 Protection Agency, which deemed them suitable for wetlands  
12 creation or restoration, provided that the noncover  
13 material is covered by a minimum of three feet of cover  
14 material.

15           The proposed project would provide for that  
16 minimum of three feet of cover, and will keep all noncover  
17 materials at least 200 feet away from any existing  
18 waterways or constructed channels. Larry Kolb, Assistant  
19 Executive officer the San Francisco Bay Regional Water  
20 Quality Control Board and Brian Ross of the United States  
21 Environmental Protection Agency are here today to address  
22 sediments testing contaminants.

23           The lead agency for this project is the Solano  
24 County. The County certified the Final Environmental  
25 Impact Report in February of 1999 and approved the

1 amendments to the county general plan, the zoning  
2 ordinance and local protection plan amendments. On  
3 October 5th, 2000 the Solano County Planning Commission  
4 approved a use permit and a marsh development permit for  
5 the project.

6 This was followed by an appeal to the Board of  
7 Supervisors to rescind the Planning Commission approval.  
8 The board denied the appeal on November 7th, 2000. The  
9 county has adopted 102 conditions of approval related to  
10 the project, and has approved a mitigation, monitoring and  
11 reporting plan.

12 The San Francisco Bay Conservation Development  
13 Commission has certified Solano County's amendments to  
14 plans and policies that's consistent with the Suisun Marsh  
15 Preservation Act. A lawsuit was filed to overturn the  
16 County Certification of the EIR. The trial court found  
17 the EIR to be adequate.

18 The trial court decision was upheld on appeal to  
19 the District Court of Appeal. A second lawsuit has been  
20 recently filed and is described in the calendar before  
21 you. The proposed lease will incorporate protection for  
22 any historic or cultural resources on State lands. The  
23 lease will adopt all the mitigation measures approved by  
24 the County of Solano and will require that work stop or be  
25 redirected if the historical or cultural resources are

1 found.

2 We will also incorporate standards for historic  
3 preservations that will be developed in consultation with  
4 the federal government throughout a programmatic  
5 agreement. The lease also requires that a marine  
6 archeologist approved by Commission staff be hired.

7 The projecting agency decisions are not without  
8 controversy. Mark Collins, Lesley Emmington Jones, Jim  
9 Levine and others will address you today on several  
10 points, including success of the marsh restoration,  
11 salinity escape and contaminants and quality of the  
12 sediments.

13 Staff has reviewed the key documents of the  
14 agencies that have considered the project. As the agency  
15 representatives will describe, extensive technical  
16 analysis has been done in the formulation of operating  
17 standards and project design to assure that the project  
18 will be successful in the creation of tidal wetlands and  
19 the avoidance of adverse environmental effects.

20 These regulation requirements have been  
21 incorporated into permit conditions and the mitigation  
22 monitoring program plan approved by the county board of  
23 supervisors, the waste discharge requirements of the  
24 regional board and will be reflected in the Corps of  
25 Engineers permit in consultation with the Nation Marine

1 Fisheries Service and the Fish and Wildlife Service.

2 And what you're being asked to approve this  
3 morning is issuance of lease for the docks, for the  
4 moorings, for the sediment off-loading facilities, for  
5 portions of two small boat ramps, and the four levee  
6 breaches as well as making the necessary CEQA findings  
7 enumerated in the calendar item.

8 CHAIRPERSON BUSTAMANTE: Do we have other folks  
9 who are going to speak on this issue?

10 EXECUTIVE OFFICER THAYER: Yes, we have slips in  
11 from about six individuals. And I don't know, we might  
12 want to start with the proponent of the project to explain  
13 the project further and move on to the others. At the  
14 moment, I don't have anything in opposition, but I guess  
15 if there are people coming --

16 CHAIRPERSON BUSTAMANTE: Make sure you bring your  
17 slips forward, please.

18 Welcome.

19 MR. LEVINE: Mr. Chairman, members of the  
20 Commission, good morning. I'm Jim Levine, founder of the  
21 Levine-Fricke family of environmental companies and the  
22 managing partner for the Montezuma project.

23 You may be familiar with our companies through  
24 the hundreds of environmental projects we've done in the  
25 State. Our project, as Mr. Plummer indicated is, to use

1 sediments that have being approved by the state and  
2 federal agencies to restore 1,800 acres of tidal wetlands  
3 on our own property and also to operate a sediment  
4 rehandling facility where we can use those sediments to  
5 restore levees and protect farm lands and protect water  
6 supplies and restore habitat around the Delta.

7 This project is a significant project to  
8 accomplish five or six important State goals, including  
9 providing an efficient solution to the loss of wetlands  
10 and what's due to dredge material.

11 In the late 1980's the federal, state agencies  
12 and environmental groups and political forces came  
13 together and decided that a large portion of sediment  
14 ought to be used beneficially instead of dumping in the  
15 water. And they set standards in the mid nineties for  
16 what sediments were used for what purpose and we are  
17 proposing to follow those standards, and this is a  
18 significant project to implement that.

19 The past nine years, we've being working very  
20 collaboratively with the EPA, the Water Quality Control  
21 Board, BCDC, with your staff, Department of Fish and Game,  
22 California Resources Agency, federal wildlife agencies,  
23 Department of Water Resources, Solano County Mosquito  
24 District, about everybody you can imagine.

25 And to analyze all of the potential environmental

1 impacts, to improve the project, and those collaborations  
2 helped them to improve the project, and to develop the  
3 testing and safeguards that are acceptable to everybody.  
4 And we have done this successfully.

5 I'm confident you understand the kind of analysis  
6 and safeguards that's necessary to get this support of all  
7 those agencies and to receive permits and approvals from  
8 them.

9 Your staff has seen support letters from the  
10 Resources Agency, The Department of Water Resources, Fish  
11 and Game, Water Quality Control Board, EPA, as well as the  
12 operating permits from Solano county and the Water Quality  
13 Board which was just mentioned.

14 The use permits in Solano County, we receive with  
15 unanimous votes at the Planning Commission and the Board  
16 of Supervisors. And we additionally have received our  
17 endangered species consultation, the draft biological  
18 opinion from the Fish and Wildlife Service. They  
19 concluded, Fish and Wildlife Service, that the project  
20 will be a net benefit for the recovery of several  
21 important endangered fish and mammals.

22 And I know based on the range of issues you face  
23 on this commission, I know you understand how good a  
24 project has to be for Fish and Wildlife Service to like  
25 it.

1           Despite the overwhelming agreements among the  
2 regulatory, technical and political communities, there has  
3 been some local opposition, and some of them are here  
4 today, I see. They have appeared at all the hearings in  
5 the past two years. They have claimed that the five-year  
6 environmental impact report was not good enough and the  
7 superior court and court of appeals disagreed with them  
8 and said it was good enough.

9           They have said that we are accepting toxic waste  
10 at the site, when, in fact, we are only proposing to  
11 accept the sediment that the State and federal agencies  
12 have determined is suitable for building wetlands with.  
13 In fact, the sediments we are going to take are the  
14 cleanest two categories of sediments in the Bay.

15           They have claimed that we will harm groundwater  
16 and that we're going to affect salinities, when, in fact,  
17 all the independent technical studies and the agencies  
18 have concurred that we will not, in any way, impact  
19 salinity or groundwater.

20           And they have claimed that the site doesn't need  
21 to be restored, and that we will harm, not help wildlife,  
22 despite the Fish and Game and Fish and Wildlife concluding  
23 that, in fact, this project is important for wildlife.

24           I believe the agency support speaks for itself,  
25 but I'm prepared to answer any questions that you might

1 have based on your review of the material.

2           On the subject of local concentrations of metals  
3 in sediments, it's a complicated issue, but it might be  
4 helpful. I brought a couple of charts --

5           CHAIRPERSON BUSTAMANTE: You might want to spend  
6 a little time on the whole issue of sediments. I think  
7 that that's probably the biggest concern by both the  
8 Commission and, my guess is, any of the opposition,  
9 because I'm going to call them up next, right after you,  
10 so if you could spend a little time on that.

11           MR. LEVINE: Okay, certainly. This graph, I have  
12 two charts here that show kind of standards and the test  
13 results for sediments from the Bay. And as examples we  
14 can look at chromium, lead and nickel. The red bar is  
15 what would be considered as hazardous or toxic. This  
16 orange bar is what you can build residential houses on.  
17 And the other colors relate to the kind of sediments that  
18 we can take compared to the concentrations that are  
19 currently existing in the marsh and the concentrations  
20 that are currently dumped in the ocean and the Bay.

21           And what these charts say and I believe what you  
22 will hear from the EPA and the Water Board here today is  
23 that, in fact, the concentrations that we are proposing to  
24 take are similar to what's in Suisun Marsh now. They're  
25 lower than what is currently put on farmland right

1 adjacent to the site. And they are on the same  
2 concentrations as what is currently dumped right in the  
3 water in the Carquinez Straights and Alcatraz and the  
4 ocean.

5 I believe what you will hear from the Water Board  
6 is that, in fact, using these sediments in wetlands and  
7 anaerobic environment is the safest thing to do with those  
8 sediments. And these sediments are currently of the same  
9 quality that people are using to place on levees directly  
10 open to the environment all over the Bay and the Delta.

11 Additionally, one of the key scientific issues  
12 involved here is that all the sediments that we receive,  
13 cover and noncover, has to be subject to testing before  
14 it's dredged to determine what it's usable for.

15 And all the sediments are tested by leaching  
16 tests, that is running water through the sediments. As an  
17 example, the sediments from the Port of Oakland that we  
18 are going to take, the noncover sediments, the ones that  
19 these folks are calling contaminated, when you run water  
20 through those sediments, the water comes out the other  
21 side cleaner than drinking water.

22 So it's fundamental to the project that we won't  
23 accept any sediments that leach chemicals out of them and  
24 that the concentrations we are taking, and there's a lot  
25 of test results and background that support this in the

1 EIR, indicate that what we are taking is similar to what's  
2 in the marsh now anyhow. As you know, Suisun Marsh sits  
3 at the mouth of the San Joaquin/Sacramento Rivers. And  
4 for centuries there's been runoff of soil and that has  
5 farming byproducts and mining byproducts. And so it's not  
6 a pristine environment to begin with, but we're taking the  
7 same quality that's already up there.

8 CHAIRPERSON BUSTAMANTE: Is there any  
9 information, because I've had experiences here in my short  
10 time as a legislator and public life in the concentrations  
11 of materials. And what that actually means individually  
12 is a piece of, either dirt or water, as it begins to  
13 concentrate in an area, it begins to have different kinds  
14 of effects. Has that been studied?

15 MR. LEVINE: Yes, it has. And, in fact, in this  
16 case, let's take lead, for example. The sediments we're  
17 allowed to take are up to about 100 or 130 parts per  
18 million lead. It's well under what you can take even to  
19 build houses on.

20 Lead, as the other heavy metals in this kind of  
21 environment, stay absorbed to the sediments when they're  
22 deposited. They don't move, and that's an undisputed  
23 technical fact. And so, in fact, as long as the chemicals  
24 don't move, they really can't concentrate and the  
25 industry, the environmental industry, has had 20 years of

1 experience in dealing with the State of heavy metals in  
2 soils and sediments under different kinds of conditions.

3           And so it is the conclusion of all the scientists  
4 and all the regulatory agencies that there will be no  
5 bioaccumulation, there will be no concentrating of the  
6 metals here. I know that there was that problem with  
7 selenium in Kesterton and everybody is familiar with why  
8 that occurred.

9           But the conditions here are totally different.  
10 And the way in which the sediment is being placed, these  
11 sediments are in the Bay right now. Okay, and so they are  
12 available to the environment right now.

13           CHAIRPERSON BUSTAMANTE: Right, but as we know,  
14 we have to concentrate them someplace and then lay them  
15 open for habitats to feed on.

16           MR. LEVINE: But the way these are being handled,  
17 that will not occur. In fact, the sediments that are in  
18 the shallow areas of the Bay, like in the Port of Oakland,  
19 that we are going to be placing underneath other  
20 sediments, will be less bio available. And that is, in  
21 fact, the conclusion off all the scientists in the  
22 agencies.

23           Furthermore, the most contaminated sediments  
24 aren't even going to the site. The criteria is very  
25 strict. We're only allowed to take certain sediments.

1 CHAIRPERSON BUSTAMANTE: Where are those others  
2 going?

3 MR. LEVINE: They go uplands when they dredge the  
4 Port. For instance, when they make a new birth next to  
5 the Port, that's where the material goes that is not good  
6 enough to use in wetlands creation. And so the agencies,  
7 the EPA, and Water Quality Board and Fish and Game, they  
8 spent years analyzing what quality of sediments can be  
9 safely used for creating wetlands.

10 We're not asking for any variances. The public  
11 has spent a lot of money to have these things studied.  
12 And we are just trying to implement a project that uses  
13 those criteria.

14 CHAIRPERSON BUSTAMANTE: Any other questions?

15 MR. LEVINE: So I'll just stand by if you have  
16 any questions later.

17 CHAIRPERSON BUSTAMANTE: We have some folks here  
18 who are in opposition. Would the three members please  
19 come up. You have Lesley Jones. I believe these are in  
20 opposition, correct me if I'm wrong. Jonathan Wisnom and  
21 Tule West.

22 CHAIRPERSON BUSTAMANTE: Grab a seat. And why  
23 don't you go ahead and just sit there and speak.

24 MS. JONES: Chairman Bustamante, my name as  
25 mentioned earlier, I'm Lesley Jones. And I'm hoping I

1 might have more than three minutes. I'm representing  
2 Friends For Suisun Marsh.

3 CHAIRPERSON BUSTAMANTE: Are you going to speak  
4 for all three?

5 MS. JONES: Well, we prepared a letter that had  
6 some substance with some questions. And I'm hoping we  
7 might -- I'm going to try to cut out --

8 CHAIRPERSON BUSTAMANTE: Have those been  
9 submitted? Do we have a copy?

10 EXECUTIVE OFFICER THAYER: I don't think so.

11 MS. JONES: We just are submitting it now,  
12 including to you.

13 CHAIRPERSON BUSTAMANTE: It would be good to have  
14 that information ahead of time so that we can read it.

15 MS. JONES: I understand. I think I gave you --  
16 well, it's important for the staff to have a complete --

17 EXECUTIVE OFFICER THAYER: Sure.

18 CHAIRPERSON BUSTAMANTE: Is this noticed some  
19 time back in terms of this item being on the agenda?

20 EXECUTIVE OFFICER THAYER: We sent it out, I  
21 think, about 13 or 14 days ago.

22 CHAIRPERSON BUSTAMANTE: Have you known about  
23 this, I mean, for some time. This wasn't --

24 MS. JONES: Well, we're citizens with ourselves  
25 as staff, and we're trying to --

1           CHAIRPERSON BUSTAMANTE: I understand, but you're  
2 submitting a lot of --

3           MS. JONES: Yes.

4           CHAIRPERSON BUSTAMANTE: You're submitting a lot  
5 of language.

6           MS. JONES: We tried to be as thorough as we  
7 could be for the subject. And I won't read the whole  
8 letter. I'll be happy --

9           CHAIRPERSON BUSTAMANTE: Don't read the letter.  
10 We can read it. Just go ahead, why don't you.

11           MS. JONES: Well, one point in the letter that I  
12 wanted to bring to your attention, if I can verbalize it  
13 as effectively as it reads. There is an alternative site  
14 for this material, and it's just being developed right  
15 now. And your staff is aware of this project proposal.

16           And your questions about contaminated materials  
17 and concentration in the site they're going at is entirely  
18 appropriate. The alternative project that's coming on  
19 line, and will be ready in time for the Port of Oakland  
20 urgency is at Mare Island.

21           It's a very interesting project. It's using  
22 seven of the ten pawns that were part of the Navy  
23 rehandling facility. And all piping is there. The docks  
24 are there, and we don't have to alter a site that's a  
25 tidal wetlands at this point.

1           So I wanted to bring that to your attention and  
2 you might want to explore it with the staff.

3           CHAIRPERSON BUSTAMANTE: So you're not opposed to  
4 the actual moving of the materials?

5           MS. JONES: We understand.

6           CHAIRPERSON BUSTAMANTE: You don't have any  
7 problem with the materials and what's in the -- what is  
8 being called toxics or contaminants. You're not concerned  
9 with the formula that's being used to move material from  
10 one place to the other. You just have a preference as to  
11 when it should go.

12           MS. JONES: Well, yes, because the Suisun Marsh  
13 is one of our resources of the State, if not the continent  
14 for a very fragile wildlife. And if we can -- the second  
15 point I wanted to make to you is that we would like you to  
16 refer -- this particular site, this exact site we are at  
17 least being asked to -- the general lease application is  
18 focused on, we would like you to refer it to CALFED.

19           CALFED is just beginning to be up and running.  
20 And the Delta-Bay Program for CALFED is looking at the  
21 kind of questions you asked. They have a team of  
22 scientific -- for instance, the Mercury issue is a very  
23 important issue. And I'm just trying to be very quick,  
24 but I think I referenced this in a response -- I know  
25 CALFED earlier supported this site, but I think, at this

1 point, we're at a juncture where we don't have to have the  
2 Montezuma site.

3 It's a site that could be a clean development  
4 site contributing to the clean water that we're trying to  
5 protect within the Bay program, precisely because we have  
6 to look at the whole State.

7 We --

8 CHAIRPERSON BUSTAMANTE: Does CALFED no longer  
9 support it?

10 MS. JONES: Well, we're asking you -- there's a  
11 lot of these going in a momentum. We're asking you,  
12 maybe, to pull back and maybe ask for CALFED --

13 CHAIRPERSON BUSTAMANTE: I'm just asking you a  
14 question. You said that CALFED earlier supported the  
15 project, which sounds as if it no longer supports the  
16 project. Does it still support the project?

17 MS. JONES: I cannot say whether it does fully  
18 support or it fully wouldn't support it.

19 CHAIRPERSON BUSTAMANTE: Does staff know?

20 EXECUTIVE OFFICER THAYER: Mr. Chairman, I don't  
21 know off the top of my head. However, the gentleman here,  
22 Larry Kolb, from the Regional Water Quality Control Board  
23 who probably knows the answer to that question.

24 CHAIRPERSON BUSTAMANTE: We'll ask him when he  
25 gets up here.

1 MS. JONES: But that's something I'd like to put  
2 on the table.

3 Then we have some specific questions. And I  
4 guess I'll just read them, because they're very specific.

5 CHAIRPERSON BUSTAMANTE: Where are these  
6 questions?

7 MS. JONES: They're on the page, 1, 2 through 8.

8 CHAIRPERSON BUSTAMANTE: You're not going to read  
9 those questions. What we're going --

10 MS. JONES: They have to do with the lease.

11 CHAIRPERSON BUSTAMANTE: I understand. You  
12 submitted the information for the record. That  
13 information is on the record. Okay, we're not going to  
14 sit here and read through all the different questions. I  
15 think that if you have a question that you'd like to ask,  
16 I think, you should go ahead and make that question.

17 MS. JONES: Well, we'd like to urge you to be  
18 aware of your Mare Island. We'd like to urge you to talk  
19 with the new CALFED director and staff. It's a new  
20 program staff. And we'd also like you to be aware that  
21 our passion for this area, and its integrity is very  
22 strong. And we concur with the recent questions raised by  
23 Earth Justice at Stanford regarding water and the  
24 discharge of water. And those questions have been  
25 recognized as valid enough to actually have the project

1 changed.

2           And your applicant's application does not reflect  
3 those changes fully. And we also want you to know that  
4 we're going to pursue the endangered species Salt Marsh  
5 Harvest Mouse issue. We're just here and we are not  
6 afraid of litigation, because we feel it's really vital on  
7 behalf of the State that this project doesn't have to  
8 happen.

9           CHAIRPERSON BUSTAMANTE: Some of the ecosystems  
10 along the coast are extremely fragile. You're absolutely  
11 right, and we should make sure that we're clearly looking  
12 at ensuring that ecosystem. You're absolutely right.  
13 What I'm trying to do is I'm trying to get through the  
14 rhetoric and into what we know and what we don't know.

15           MS. JONES: Thank you very much.

16           MS. WEST: Hi, I'm Tule West. Granted, we are  
17 here as members of Friends of the Suisun Marsh, local  
18 people from the area who have started this group out of  
19 concern for protection of Suisun Marsh, but I'd also like  
20 to note that the Bay Keepers, Save the Bay, Earth's  
21 Justice, and Stop the Montezuma Project are also  
22 organizations that have formed in opposition to this  
23 project.

24           Going to read --

25           CHAIRPERSON BUSTAMANTE: Do we have any letters

1 or do we have anything that says that?

2 MS. WEST: You have documentation from Earth's  
3 Justice of Stanford Environmental Law Clinic as well as  
4 Stop the Montezuma Project. I don't know if these were  
5 submitted earlier to you or not.

6 CHAIRPERSON BUSTAMANTE: Do you have these?

7 EXECUTIVE OFFICER THAYER: We had just gotten the  
8 Earth's Justice one today. I think actually their letter  
9 that I'm looking at was a response for the State Water  
10 Resources Control Board appeal process, looks to be a  
11 letter to --

12 MS. WEST: There's a new one.

13 EXECUTIVE DIRECTOR THAYER: There's an additional  
14 one?

15 MS. WEST: I think we could confirm by the dates  
16 on the letter.

17 EXECUTIVE OFFICER THAYER: I'm looking at one  
18 date January 19th.

19 MS. WEST: Okay.

20 CHAIRPERSON BUSTAMANTE: So this is all the  
21 information that's been reviewed previously, have you seen  
22 this?

23 EXECUTIVE OFFICER THAYER: I think we've seen --  
24 this is in the form it looks like of a pleading before  
25 Solano county, and it's dated -- I can't quite read it.

1 MS. WEST: She.

2 MS. JONES: She has not seen the cover. He has  
3 not seen it.

4 EXECUTIVE OFFICER THAYER: We haven't seen that.  
5 This one is addressed to the State Water Resources Control  
6 Board. That hasn't being submitted to us before, I don't  
7 believe.

8 MS. JONES: That's the letter he has not seen.

9 CHAIRPERSON BUSTAMANTE: Okay. The cover page.

10 EXECUTIVE DIRECTOR THAYER: Yes, we do.

11 SENIOR STAFF COUNSEL STEVENSON: I'll speak just  
12 momentarily. I'm Blake Stevenson, Senior Staff Counsel  
13 for the Commission working on this project. One of the  
14 documents produced here is a copy of the complaint from  
15 the most recently filed lawsuit and we have seen and  
16 reviewed that.

17 CHAIRPERSON BUSTAMANTE: Go ahead and make your  
18 testimony. Sorry to interrupt.

19 MS. WEST: This State lands throughout the entire  
20 Suisun Marsh area, including the Montezuma Slough and all  
21 the tide lines of the entire marsh. The marsh is a unit.  
22 Even though it's put together in a diked area and may not  
23 be officially State lands, it has the potential of  
24 affecting the rest of the marsh by the nature of this  
25 project.

1 State Lands has a vital interest in the design  
2 and nature of this project in ensuring that it maintains  
3 the integrity of the marsh. I don't think this  
4 experimental project does that. It is a very bad policy  
5 to convert an uncontaminated area into a contaminated  
6 waste area. By the acceptance of this noncover material,  
7 not suitable for product disposal, it is not at all the  
8 same as allowing dumping in an already contaminated site  
9 or creating wetlands with green cover dredge. It should  
10 give you great pause to be advocating and facilitating the  
11 creation of a contaminated waste dump in a clean wetlands  
12 area.

13 Most importantly, it is very bad policy to turn  
14 the State's largest wetland refuge, to allow this to occur  
15 on an entrepreneurial basis without any larger policy  
16 decisions made about whether the State wishes to site  
17 contaminated dumps in wildlife areas or not.

18 The State Lands has jurisdiction on more than  
19 just these levees and piers. You have concern by virtue  
20 of your lands throughout the entire Suisun Marsh and its  
21 89,000 acres.

22 This project has the potential, by virtue of the  
23 applicant's own EIR, for running the risk of damaging the  
24 resources here. This risk should not be taken in the  
25 first place without much more consideration from State

1 lands and State policy by virtue of the unique and very  
2 sensitive nature of the Suisun Marsh.

3 Thank you for your time.

4 CHAIRPERSON BUSTAMANTE: What's the difference  
5 between clean cover dredge and what they're talking about  
6 putting on.

7 MS. WEST: The noncover material, it's a new  
8 category that's been developed. It's not suitable for  
9 aquatic disposal. It's too contaminated to dump  
10 unconfined out in the ocean. It needs to be buried under  
11 three feet of mud, so that's the cover that goes on top of  
12 it.

13 The problems that occur are when they bring this  
14 noncover contaminated material to the site, it remains  
15 exposed during migratory periods, so the animals can  
16 actually get into it there. So there's a concern for  
17 burrowing, for instance the red swamp cray fish, which can  
18 burrow deeper than three feet, and the answer has always  
19 been we've got elaborate monitoring and mitigation  
20 programs set up to watch for it, but it is a valid  
21 concern. That is experimental. It hasn't being proven  
22 effective with this noncover material being buried here  
23 and that's what our big problem is.

24 CHAIRPERSON BUSTAMANTE: And does staff have  
25 response to this or is it going to be covered by one of

1 the other folks?

2 EXECUTIVE OFFICER THAYER: I think it's going to  
3 be covered by one of the other speakers, but I do want to  
4 say that Ms. West's concerns are ours. I mean, these are  
5 the reasons that we've reviewed very carefully this  
6 project and sought the advice of all the wildlife  
7 agencies, knowing that they had more expertise in this  
8 than we did and more biologists had worked in these  
9 fields, as well as dealing with the environmental hazard  
10 that comes from these different contaminants.

11 So I just want to respond by saying that these  
12 are the exact same kind of conversations and issues that  
13 we've had internally as we were reviewing this project and  
14 the reason we've gone out to all these different agencies.

15 CHAIRPERSON BUSTAMANTE: What about the specific  
16 species that she talked about and whether or not these --

17 EXECUTIVE OFFICER THAYER: I don't personally  
18 know about the crayfish, but I think the gentleman from  
19 EPA may be able to respond to that.

20 CHAIRPERSON BUSTAMANTE: Make sure that that is  
21 noted so that can be responded to. Is there any other  
22 species that you mentioned.

23 MS. WEST: There's quite a few endangered species  
24 on the site. We have lots of concerns, for instance, the  
25 final biological opinion has not been released from the

1 official wildlife service.

2           There is a huge concern about the taking of the  
3 Salt Marsh Harvest Mouse endangered species and habitat  
4 when initially this project was done and I noted about the  
5 Salt Marsh harvest in '91. It was after a long drought  
6 and it was his habitat.

7           The records since 2000 have come forward that  
8 State that habitat, the salt water marsh is actually much  
9 improved, and they are going to flood this area and  
10 eliminate the habitat in the hopes of recreating a higher  
11 volume habitat. That's not proven. It's still an issue  
12 of concern. It's a concern of ours, that is the taking of  
13 this species.

14           CHAIRPERSON BUSTAMANTE: That will also be  
15 addressed, I hope, by Fish and Wildlife.

16           Sir.

17           MR. WISNOM: My name is Jonathan Wisnom with  
18 Friend's of the Suisun Marsh. I want to bring to the  
19 attention of the Commission and staff that this project  
20 has changed from its original description, and as it was  
21 described in the Environmental Impact Report. It was  
22 changed within the past few months to eliminate subdrains  
23 to take the water from the holding ponds or from the  
24 sediment cells back to the holding ponds.

25           Because there is such a shallow water table, you

1 can't dig trenches for the return water to flow, as it's  
2 subject to tide. Now, in the changing of the project, the  
3 applicant has suggested that the reuse of this water be  
4 taken advantage of. I don't understand the math, and it's  
5 not -- it's not described.

6 To operate the project, it's going to take  
7 between three and five million gallons of shallow  
8 groundwater daily to mix and force this dredge into these  
9 cells as far as three miles away from the off-loading  
10 facility.

11 As this water works its way back to the sediment  
12 pond, it just seems scientifically fundamental that there  
13 is going to be additional accumulation of chemicals that  
14 are hazardous sitting in a 90-acre pond at the point of  
15 the off-loading facility. There hasn't being suitable  
16 analysis for the accumulation of these chemicals over a  
17 period of time to approve this project.

18 There's an awful lot of emphasis on the  
19 restoration of the marsh, but, in fact, this is a two-fold  
20 operation project, the rehandling facility, which is going  
21 to, for up to another hundred years, resell this treated  
22 material. It's the beginning of a new industry on the  
23 Sacramento River at Collinsville on the edge of the Suisun  
24 Marsh. I think it's irresponsible of the State to use its  
25 lands to encourage a business such as that.

1           CHAIRPERSON BUSTAMANTE:   Okay.   Thank you.

2           MR. WISNOM:   I might add, no one has ever  
3 addressed, in all these meetings that I've been to, the  
4 accumulation of heavy metals in the existing levees.  As I  
5 understand, these levees that were built in the 1880s from  
6 the indigenous material there at the confluence of the  
7 rivers is loaded with heavy metals.  And no analysis has  
8 been done of the deposits that are there wasting their way  
9 through the Montezuma Slough and the Suisun Marsh when the  
10 levees are breached.

11           There is thousands -- hundreds of thousands of  
12 cubic yards of material that hasn't being analyzed.  I'd  
13 like to know these answers, so I could feel good about  
14 this project and having them as neighbors, but I'm very,  
15 very skeptical.

16           CHAIRPERSON BUSTAMANTE:   All right.  Thank you.  
17 You wanted to add something.

18           MS. JONES:   I did.

19           CHAIRPERSON BUSTAMANTE:   As long as it's a short  
20 something.

21           MS. JONES:   Okay.  The science doesn't have to be  
22 too scientific.  It's really -- there are so many  
23 questions to ask, that any of us in this room could ask  
24 about this project, and we talked about the noncover and  
25 the covered, and the cover is three feet.  And I just want

1 you to understand even in your own garden or whatever, the  
2 cover of three feet, there's questions like, does it  
3 always need to be three feet? Does it compact?

4 I mean, it might start out three feet. Does it  
5 stay three feet? And if you've got noncover that has to  
6 be separated from bodies of water by 200 feet, and then  
7 you have a little cover on top of it, that's three feet,  
8 and what about the tidal action, what about the erosion?  
9 I mean, this is not so secure and it's being covered from  
10 the elements so that it contributes bad things that we're  
11 trying in our world in America not to have occur in  
12 different cities and towns and waterways and so forth.

13 So we're appealing to State Lands, and those of  
14 you voting, to get kind of up to speed on what this really  
15 is and that there are alternatives, not stop shipping, but  
16 to add to the -- that LTMS has been trying to talk about.  
17 We just want to carry it one step further.

18 CHAIRPERSON BUSTAMANTE: Thank you. The comments  
19 were very thoughtful. Is there anybody else here who is  
20 in support of the project? I'm not talking about staff  
21 reports, or department reports that we're going to hear  
22 from, but is there anybody else here in support of the  
23 project?

24 EXECUTIVE OFFICER THAYER: Ellen Johnck from the  
25 Bay Planning Coalition.

1           CHAIRPERSON BUSTAMANTE: Please state your name  
2 for the record.

3           MS. JOHNSON: Yes. Good morning. I'll Ellen  
4 Johnson, Executive Director of the San Francisco Bay  
5 Planning Coalition.

6           The coalition is a nonprofit organization  
7 representing a couple hundred users in San Francisco Bay,  
8 the Maritime industry, local government and shoreline  
9 business all devoted to a sensible and balanced permit  
10 process.

11           We strongly recommend that the State Lands  
12 Commission endorse this flagship project. And, frankly,  
13 we think that this is really a metaphor for the work and  
14 the mission of the State Lands Commission. This project  
15 represents a significant innovation in the use of dredge  
16 material as a resource. It serves the economic objective  
17 of the maritime industry and the interests of the State  
18 and successful trade and shipping, because we need our  
19 channels dredged in order to accommodate the latest in  
20 shipping size and draft.

21           It also achieves our State's environmental goal  
22 for using our resources in an environmentally protective  
23 way. The theme is environmental ports and environmental  
24 dredging. I just came back from a three-day workshop  
25 where ports and industries all over the nation, all over

1 the seaboards, are utilizing and working on beneficial  
2 reuse projects. We have some fantastic innovations in  
3 setting up parks and wetland restoration in Baltimore and  
4 Houston, for example, and in Florida using dredge material  
5 with the theme of beneficial reuse.

6 Montezuma is really the springboard for this  
7 concept that we started almost ten years ago with a  
8 project known as the Long-term Management Strategy, for  
9 dredge material disposal. The State Lands Commission has  
10 been an active party to this program where we have  
11 identified 40 percent of the material dredged in San  
12 Francisco Bay will be devoted to beneficial reuse.

13 We can't get to beneficial reuse without  
14 innovative and environmental engineering expertise, which  
15 Levine-Fricke Corporation represents, capital infusion and  
16 public/private partnerships. This is a team effort with  
17 private industry and the federal government and the local  
18 project sponsor all moving together to create an  
19 environmental flagship project.

20 CHAIRPERSON BUSTAMANTE: Excuse me, did you say  
21 that this similar kind of project has been done before?

22 MS. JOHNCK: Yes.

23 CHAIRPERSON BUSTAMANTE: You said Baltimore,  
24 Miami?

25 MS. JOHNCK: Yes. Baltimore, Florida and Houston

1 are some significant examples. New England is moving on  
2 this too. It's really being done all over the United  
3 States right now, and it's really the way we are headed.  
4 It's very exciting.

5 CHAIRPERSON BUSTAMANTE: Projects like this or  
6 identical to this, so I mean the same kinds of --

7 MS. JOHNCK: Projects like this, both rehandling  
8 and wetland restoration and park establishment.

9 CHAIRPERSON BUSTAMANTE: How long ago have these  
10 projects --

11 MS. JOHNCK: We've been working on this for ten  
12 years. Actually beneficial use has been around for about  
13 20 years.

14 CHAIRPERSON BUSTAMANTE: Which is your longest  
15 existing project?

16 MS. JOHNCK: Well, Hart-Miller -- Jim, would you  
17 say Hart-Miller is about -- well, 12 years in the making  
18 now. That's all completed now.

19 MR. McGRATH: Fourteen or 15 years.

20 MS. JOHNCK: Fourteen or 15 years. That's off of  
21 Baltimore Harbor.

22 CHAIRPERSON BUSTAMANTE: Go ahead.

23 MS. JOHNCK: That's a really good example. So I  
24 think the other aspect here you've raised, okay what about  
25 the environment and what about the sediments? I've been

1 working with resource agencies and the maritime business  
2 for 25, 30 years now, and we are thoroughly indoctrinated  
3 and have established quite a rigorous testing program for  
4 sediments.

5 Sediments can be managed, depending on what's in  
6 them. You are very well scrutinized and spend millions of  
7 dollars on testing to ensure that you're placing sediment  
8 for what its constituents contain in the proper place.

9 The EPA, the Water Board has -- and the Army  
10 Corps which has a marvelous facility in Vicksburg,  
11 Mississippi for analyzing sediments, have all passed on  
12 this project for being the most appropriate  
13 environmentally managed project. So I think you ought to  
14 listen to both EPA and the Water Board and what they have  
15 to say.

16 Overall, again, we encourage your support for  
17 this project. We think it matches your mission  
18 succinctly.

19 Thank you.

20 CHAIRPERSON BUSTAMANTE: Thank you.

21 MR. McGRATH: Commissioners, Jim McGrath. I'm an  
22 Environmental Manager at the Port of Oakland. I've being  
23 at the Port of Oakland for about 11 years and before that  
24 I came from the Coastal Commission and before that I came  
25 from the Environmental Protect Agency. I've worked on

1 water quality issues now for about 29 years.

2           And you have a tough issue before you. You have  
3 some very tough trust issues that are affecting people's  
4 perspectives. And I'll try to bring some information to  
5 that, but I think we need to acknowledge upfront that  
6 there's a great degree of trust issue with the government  
7 here. And you have before you both representatives from  
8 the Environmental Protection Agency and the Regional Water  
9 Quality Control Board who are looking directly at these.

10           To start with, this, I think, is a very important  
11 project to the Port of Oakland. We're considered one of  
12 the driving wheels in the Bay Area's economy. What is  
13 imported to California generally comes -- or northern  
14 California, generally comes through the Port of Oakland.

15           And although we do have alternatives, we believe  
16 this is a very essential element of the Port's project.  
17 But let me provide a little perspective. The dredging  
18 project that we're talking about has 12 million cubic  
19 yards of essentially geologically deposited material. It  
20 has not being disturbed in any way and is about as squeaky  
21 clean as Mother Nature made it back then.

22           There is about a million cubic yards of material  
23 that must be managed in some way. And of that, 400,000  
24 cubic yards is proposed to be taken here. It's called  
25 wetland noncover and then covered with 2.6 million cubic

1 yards of material. So it's covered by about six times as  
2 much material as placed in the first place.

3 I believe it's being appropriately managed. And  
4 I'm here to express, I think, a more difficult and subtle  
5 concern, and I hope I can do it, about how overregulating  
6 this material can actually backfire in the environmental  
7 arena.

8 Each category of sediments from the very cleanest  
9 to the very dirtiest needs an appropriate and protective  
10 set of standards to guide its disposal and its reuse.  
11 You've asked a number of questions that indicate you've  
12 put a lot of thought into that.

13 Let's start with the very dirtiest material which  
14 is hazardous material, which must go to a special quality  
15 of landfill. Then there's material that's cleaner than  
16 that, but still a substantial concern. That material  
17 needs to be sequestered and landfilled. Then there's  
18 material, as you step towards cleaner, that can be reused  
19 in construction, provided it has the right kind of  
20 physical characteristics. Then there's the category  
21 called wetland noncover and then there's a category of  
22 wetland cover.

23 Now, let's look at two of the metals that are of  
24 concern, and certainly very valid concerns, both lead and  
25 mercury are accumulated in the food chain, and they must

1 be appropriately managed. One of the things that I  
2 learned at EPA is that material needs to be reused at  
3 levels where it is effectively managed. And one of the  
4 programs that's come out of that from the EPA is reusing  
5 biosolids or sewage sludge, where it has value.

6 Now, let's look at the level of material of lead  
7 that is proposed to be buried under three feet of  
8 material. It's 1/20th of the standard that EPA has  
9 established for lead for the surface of Suisun Marsh. So  
10 I think that's one indication that the protective  
11 standards here are very substantial.

12 Let's look at an even more critical concern,  
13 mercury, which is a great concern, both acutely, because  
14 it's an acute toxic and through the food chain. Again,  
15 the levels that are proposed to be buried under three feet  
16 here are -- so that's nearly two orders of magnitude  
17 below the biosolids level that are actively tilled into  
18 the surface.

19 Now, I'm not trying to tell you that reusing  
20 biosolids in the Suisun Marsh represents any substantial  
21 risk. I'm telling you that's appropriately managed, and  
22 I'm trying to give you some idea of protectiveness of the  
23 standards here.

24 We have some experience with managing  
25 contaminated material. We took a million cubic yards of

1 the worst material in the port. When we dredged from 35  
2 feet down to 42 feet, we put it to cap a landfill at the  
3 Galbraith Golf Course. We're now rebuilding the golf  
4 course on top of that.

5 Part of our program was to test it in discharge,  
6 and to test it in situ to make sure that there weren't any  
7 levels that were hazardous materials. That material is  
8 substantially more contaminated than the relatively clean  
9 material here. Again, I think the issues about hazardous  
10 levels, and indeed about toxicity, are not well taken.

11 I rechecked our toxicity tests about the material  
12 that we're proposing to take here on Friday, and I brought  
13 them with me today. There are 15 samples that they  
14 received the full suite of toxicity tests.

15 None of those failed the sublethal test. All the  
16 waste passed all toxicity tests and can go to the ocean.  
17 So the idea that his material is grossly contaminated, I  
18 think, represents substantial fears and substantial levels  
19 of trust, but it is indeed not borne out.

20 Now, let me, if I have just a minute, make a  
21 tough point.

22 CHAIRPERSON BUSTAMANTE: You have one minute.

23 (Laughter.)

24 MR. McGRATH: There is a lot of material that  
25 settles into navigational channels, but essentially the

1 same material settles everywhere in the estuary where the  
2 currents are very low. And if we try to -- if we create  
3 really expensive solutions for this material, which is  
4 very mildly contaminated, those solutions may end up  
5 precluding proper management of the other areas within the  
6 estuary, where you might want to do something to reduce  
7 the risk of that sediment.

8 Now, the best thing we all need to do is keep the  
9 material out of the water in the first place. But  
10 throughout the estuary there are areas that have very low  
11 levels of contamination and very low levels of risk. And  
12 managing those sediments is in many of the regulatory  
13 programs tied to cost effectiveness. If you keep driving  
14 the price of all management solutions up, regardless of  
15 the relatively low risk, then you actually tie the hands  
16 of people to do things in management at the low-level  
17 risking estuary that properly should be done.

18 So I think what we need to do is not only look at  
19 things that are well regulated and protected, but things  
20 that help provide cost effective solutions, so that we can  
21 manage our estuaries so that ecological risk goes down  
22 over the long term, rather than go up.

23 Thank you.

24 CHAIRPERSON BUSTAMANTE: Okay. Thank you, both.

25 We have folks from water quality and US EPA.

1 Would you please come up and make your presentations.  
2 Make sure you state your names for the record, please.

3 MR. KOLB: My name is Larry Kolb --

4 CHAIRPERSON BUSTAMANTE: Turn your microphone on,  
5 please.

6 MR. KOLB: My name is Larry Kolb and I'm  
7 Assistant Executive Officer with the San Francisco Bay  
8 Regional Water Quality Control Board in Oakland.

9 The Regional Board adopted an order essentially  
10 approving this project in July. That order reflected the  
11 Board's existing policies. It is the best available  
12 science on this subject.

13 Let me say here that the science on this subject,  
14 as has been noted earlier, is much better than it was,  
15 say, ten years ago. We think we understand sediments a  
16 lot better than we used to.

17 The Regional Board strongly endorses the concept  
18 of steadily reducing the amount of sediments that we dump  
19 in San Francisco Bay. This is what's called, in the long  
20 term, management strategies for dredging in the Bay.

21 This will help achieve that objective and even  
22 better it carries the additional advantage of helping to  
23 restore what were historically tidal wetlands and makes  
24 them tidal wetlands again. As you probably know, what  
25 happened is these lands were diked off from the Bay, maybe

1 100 years ago, but the site for the soils behind them are  
2 not very good. They're low valley agricultural soils.  
3 The soils subsided similar to what's happened in the Delta  
4 islands although losing different mechanisms because it's  
5 different soil conditions.

6           And some of these are maybe ten feet below sea  
7 level right now. To restore these to tidal action would  
8 require fill. And the use of dredge material to achieve  
9 this environmental purpose is very attractive if it can be  
10 done safely.

11           The Regional Board believes that the order  
12 adopted by the Board in July will protect the Bay and  
13 organisms that live in it. Certainly, this is vastly  
14 superior to dumping this same material into the Bay. This  
15 project has undergone unusually thorough environmental  
16 review by the applicant, by our staff, by the staffs of  
17 the other --

18           CHAIRPERSON BUSTAMANTE: Without all the  
19 rhetoric, can we get right to the meat of what you're here  
20 to say.

21           MR. KOLB: We think it's safe.

22           (Laughter.)

23           CHAIRPERSON BUSTAMANTE: There were several  
24 questions that were asked by people who were opposed. Are  
25 you going to be answering any of those questions?

1           MR. KOLB: The one on the burrowing cray fish I  
2 cannot answer. The reference to Vallejo, I think that  
3 that project has not being proposed to the Board and is  
4 nowhere near approval. I think the Vallejo project would  
5 be like this project would have been several years ago,  
6 you can't just say why don't we take it here, absent an  
7 EIR or absent the kind of elaborate environmental studies  
8 that have been done for this project and then say well, we  
9 can do it by Tuesday. It doesn't work that way.

10           CHAIRPERSON BUSTAMANTE: Okay. So you couldn't  
11 answer -- is there anybody going to answer these other  
12 questions? I thought we had staff that could.

13           EXECUTIVE OFFICER THAYER: The one other --

14           CHAIRPERSON BUSTAMANTE: You want to do that in  
15 your close, Mr. Levine. Did you want to say something?

16           MR. PLUMMER: Well, I can answer some of the  
17 questions. I don't know if you want to give Brian Ross a  
18 chance.

19           CHAIRPERSON BUSTAMANTE: Are you going to be  
20 coming up then?

21           MR. PLUMMER: Yes.

22           CHAIRPERSON BUSTAMANTE: All right. Go ahead.

23           EXECUTIVE OFFICER THAYER: The one other question  
24 that came up had to do with the relationship to this  
25 project with CALFED, one of the opponents. And I wonder

1 if Mr. Kolb had any knowledge of that.

2 MR. KOLB: I'm not aware of the position of  
3 CALFED. I could comment to the agencies that are a part  
4 of CALFED, though, that are relevant to this that have  
5 endorsed this project.

6 CHAIRPERSON BUSTAMANTE: Those agencies are?

7 MR. KOLB: Department of Water Resources, the  
8 State regional boards acting through my regional board,  
9 federal agencies through the federal Environmental  
10 Protection Agency and the US Department of -- or the  
11 Department of Fish and Wildlife.

12 CHAIRPERSON BUSTAMANTE: Okay.

13 MR. KOLB: That's all I have.

14 CHAIRPERSON BUSTAMANTE: Thank you.

15 MR. ROSS: Thank you, Commissioners. I'm Brian  
16 Ross with the Environmental Protection Agency and the  
17 Region 9 office in San Francisco. I've been in the  
18 sediment quality business for about 20 years now myself.

19 Thank you for the opportunity to be here today.  
20 Obviously, we need to move things along. I have about a  
21 two and a half page statement that I was going to say, but  
22 I've provided a copy to your staff. So it sounds like  
23 maybe I should say a couple of very much quicker things to  
24 you.

25 First, we certainly, EPA, concurs with what the

1 Regional Board has said. We do think the project is one  
2 that can be very beneficial to the region, both in terms  
3 of our long-term plans under LTMS, which we have been very  
4 very active in, and in terms of the environmental benefits  
5 that they can bring to the region, if the project is done  
6 correctly. And that's what I want to underline, our role  
7 as the regulatory agency, the Regional Board's role as a  
8 regulatory agency and the Corps of Engineers in  
9 particular, sort of, our job now, since the EIS and EIRs  
10 have all been out, is to make sure that those potential  
11 benefits are maximized while the potential risks are  
12 minimized. And that's exactly what we're doing through  
13 the detailed permitting process as we're going through it.

14 Right now, we're working closely with the Corps  
15 of Engineers on all the specific details that would go  
16 into Corps permits that will, in some cases, supplement a  
17 lot of the things that are already in the State and local  
18 requirements for the project.

19 I think there were a couple other questions that  
20 I might put just a small bit of additional light on.  
21 CALFED, as Larry said, is composed of many of the various  
22 same agencies that the LTMS is comprised of. But beyond  
23 that, in fact one of my bosses, Karen Schwinn is the EPA  
24 point person for CALFED. And a lot of discussion with the  
25 EPA and I think within CALFED and between LTMS and CALFED

1 has gone on over the years.

2           And to a large extent, CALFED looks to LTMS for  
3 the policies needed to manage dredge material properly,  
4 including potentially contaminated dredge material. Where  
5 they're taking up the ball from there, as to coordinating  
6 which projects they want to have done in an overall  
7 ecological sense for the region and for the Delta, and how  
8 we can mesh those two, is a source of active conversation.

9           I think the other question had to do with cray  
10 fish. I'm also not an expert on the cray fish, but I can  
11 attest that that issue was brought up and rightly brought  
12 up by some of these in opposition. And it was forwarded  
13 along by us and others to be evaluated as appropriate in  
14 the EIS process. We weren't the lead agency for the EIS,  
15 but there has been attention paid to it.

16           I can also say that confined aquatic disposal,  
17 which is being done around the country, you heard Ellen  
18 Johnck, I think, mentioned some other cases. Burrowing  
19 organisms are the classic thing to worry about. An issue  
20 to keep in mind, though, is that, in general, you're not  
21 going to eliminate all exposure to every organism. What  
22 you're doing is minimizing the amount of exposure to the  
23 most organisms that are the most sensitive that can be  
24 done and is necessary to do for a particular sediment at a  
25 particular site.

1           The three-foot minimum thickness which is, in  
2 fact, going to be met on this project, and I think in  
3 several cases exceeded on this project, takes into account  
4 not only the chemical isolation of the contaminants and  
5 the sediment that are buried in noncovered sediment in  
6 this case, but it also does include buffers specifically  
7 for burrowing organisms.

8           It happens that the cray fish is one that can  
9 burrow about as deep as anything. And that's why I think  
10 there was a monitoring program component added was to help  
11 determine the degree to which there is any problem. And  
12 which, at that point, that would be one of the kinds of  
13 criteria that all of our various permits would look at and  
14 determine whether there's any kinds of contingency  
15 measures that need to be taken, once an evaluation is  
16 made, even if there's a significant impact or a risk at  
17 that point.

18           Having said all that, and I promised to keep it  
19 quick, I'll just say, again, EPA is generally supportive  
20 of the project and we look forward to continuing to work  
21 with the other agencies and the Commission to make sure  
22 those impacts are, in fact, minimized and benefits  
23 maximized.

24           CHAIRPERSON BUSTAMANTE: Do either of you  
25 gentlemen deal with the endangered species or the taking

1 of those issues or --

2 All right.

3 EXECUTIVE OFFICER THAYER: He's commission staff.

4 MR. ROSS: We do deal with it within projects --  
5 that this being a project --

6 CHAIRPERSON BUSTAMANTE: Because the Post raised  
7 several questions about -- you'll deal with that.

8 Gentlemen.

9 ACTING COMMISSIONER PORINI: I just have two  
10 quick questions. I don't know if our staff is appropriate  
11 to deal with it or others. One of the opponents mentioned  
12 that the Fish and Wildlife final report hadn't been issued  
13 yet. Is that the case, do you know?

14 MR. ROSS: That I know. The biological opinion  
15 from the National Marine Fisheries Service has been  
16 finalized. As you know, there's the SA coordination with  
17 Fish and Wildlife and NIMFA at the federal level. And I  
18 think that's probably reflected in the materials you have.

19 The draft opinion from Fish and Wildlife was also  
20 issued. And I'm aware of through discussions with the EIS  
21 Coordinator for the Corps that some minor points are still  
22 in discussion, but that, again, in general Fish and  
23 Wildlife has come out and that opinion is positive about  
24 the project.

25 ACTING COMMISSIONER PORINI: Another question.

1 How many other federal permits have to be issued? I think  
2 you mentioned the Army Corps had not issued a permit.

3 MR. ROSS: That's typically one of the final  
4 steps on the federal level. And all of this is  
5 preparatory in the Corps' view to that and they make sure  
6 that all the appropriate state and local authorizations  
7 and requirements are reflected. I think beyond that,  
8 probably the applicant could tell you if there's any more.  
9 I think that's about it though.

10 CHAIRPERSON BUSTAMANTE: Thank you.

11 ACTING COMMISSIONER PORINI: Thank you.

12 CHAIRPERSON BUSTAMANTE: Thank you, gentlemen.

13 ACTING COMMISSIONER ARONBERG: You mentioned the  
14 burrowing organism issue. Do you know when that will be  
15 finalized?

16 MR. ROSS: As far as I know, it is finalized to  
17 the extent that the -- except to the extent that the  
18 process isn't finalized because the Corps hasn't finalized  
19 all the details of its permit yet, I think, the aspects of  
20 monitoring that have been included, based on the analysis  
21 that was done, subsequent to the EIS, have been included  
22 in the applicant's -- excuse me if I get the acronym  
23 wrong, the NMRP, the Monitoring and Reporting Plan that  
24 they have that has being adopted by the county.

25 All the relevant aspects will also be adopted by

1 the federal permit. I don't know that there's additional  
2 analysis going on is what I'm trying to say. I think the  
3 analysis is done.

4 ACTING COMMISSIONER ARONBERG: What was the  
5 outcome? Is this organism part of the food chain and what  
6 does that mean?

7 MR. ROSS: Well, certainly it's an organism  
8 that's up in the area. And like a lot of others the issue  
9 is could it be adversely affected if it burrows through  
10 deeply enough to be exposed to noncover sediments.

11 There are a lot of aspects about whether that  
12 exposure, if it happens, will be adverse. And as I say I  
13 think that the outcome and the analysis was that it was  
14 made as particular -- included late because the issue came  
15 up late, specifically as part of the monitoring program,  
16 to keep an eye on just that, and see whether it is  
17 burrowing deeply enough, and to determine whether, if that  
18 happens, it's suffering any exposure that's adverse.

19 ACTING COMMISSIONER ARONBERG: If it is suffering  
20 exposure up the food chain, what would be affected?

21 MR. ROSS: Well, it's not necessarily up the food  
22 chain yet either. The issue of bioaccumulation of  
23 contaminants up the food chain is an important one, but  
24 it's not the only aspect of whether there could be an  
25 adverse effect or any toxicity to the organism. There

1 could be an effect.

2 I don't recall off the top of my head exactly  
3 what is in the monitoring program at the sort of first  
4 stage. But all the permits have, and certainly more can  
5 have more contingency measures for things that may show up  
6 in the monitoring program. That's very, very typical for  
7 any kind -- we have success criteria, for example, before  
8 the project can move from one phase to the next to the  
9 next to specifically make sure that the concern that was  
10 expressed, and we shared it from day one on this project,  
11 that we not initially wipe out a lot of the existing  
12 wetland habitat there before we know that the earlier  
13 phases are successful and that those replace that, and  
14 that you can then move on to the next phase and it's  
15 already being mitigated in a sense.

16 And from there on out you're in a net plus  
17 situation. We have those in the permits and in the MMRP  
18 right now.

19 ACTING COMMISSIONER ARONBERG: There were  
20 mentioned alternatives, at least a couple of the prior  
21 speakers, can you speak to alternatives, this Mare Island  
22 alternative or others?

23 MR. ROSS: I can speak real briefly. I think  
24 that the problematic answer for us and LTMS is that we  
25 need many alternatives. This project will not suffice for

1 the sediments that we have to manage, especially some of  
2 the more contaminated sediments over time. The capacity  
3 in this project for the noncover sediments has actually  
4 been cut back quite a bit from what was originally  
5 proposed and what frankly EPA thinks the site could safely  
6 manage.

7           If anything, this site could handle a lot more  
8 contaminant than it's been designed for in our view. My  
9 point being that not only do we need other wetland  
10 restoration sites, independent of noncover issues -- for  
11 example, the Hamilton Wetlands Project that's being worked  
12 on very actively right now will also be very important to  
13 the region both from the beneficial reuse of dredge  
14 materials standpoint, clean and nonforming cover.

15           And also, from the standpoint of wetland habitat  
16 restoration in the Bay, Mare Island, as I understand it,  
17 if it's what I know about, which has to do with their old  
18 dredge material disposal ponds, that the Navy used for  
19 years, some of which has some ugly stuff in them, would  
20 not be primarily for any kind of habitat enhancement, but  
21 rather an option or an alternative just for disposal of  
22 contaminated sediment. In other words, what we'd call  
23 confined disposal facility, not a habitat facility.  
24 That's needed as well.

25           We also need regional rehandling facilities, in

1 general, is something that LTMS has identified for a long  
2 time is just very important to the region. Montezuma  
3 Wetlands is one major step toward our goal, but it is by  
4 no means enough for the management of dredge material in  
5 the region, especially not for contaminated sediments.

6 CHAIRPERSON BUSTAMANTE: Any additional  
7 questions.

8 EXECUTIVE OFFICER THAYER: Commissioner Aronberg,  
9 I think Mr. Kolb's reference to the Vallejo site was the  
10 Mare Island site. It's the same site where he indicated  
11 it wouldn't be available for several more years.

12 MR. KOLB: I would like to echo what was said,  
13 that we'd like to see more projects like this.

14 CHAIRPERSON BUSTAMANTE: Any additional  
15 questions?

16 Thank you, gentlemen.

17 You're batting cleanup.

18 REGIONAL MANAGER PLUMMER: I'll try to keep it  
19 real short here.

20 Regarding Mare Island, much has already been  
21 said, I'm the staff person directly working on that Mare  
22 Island Project. It's at the very beginning stages.  
23 They're just now scoping out what issues will be covered  
24 in the environmental process. They haven't gone to the  
25 regional board. Many of the issues that were issues on

1 this project will undoubtedly be issues at Mare Island as  
2 to what to do with the water, you know, how you keep it  
3 clean.

4 So I think that we can see that Mare Island  
5 potentially has some time before it will be permitted, you  
6 know.

7 CHAIRPERSON BUSTAMANTE: How much time?

8 REGIONAL MANAGER PLUMMER: It could be anywhere  
9 from a year to a couple years, maybe -- I don't know. It  
10 depends on what kind of comments happen through the  
11 environmental process. Maybe because of this project, it  
12 will be speeded up because much more has been learned.  
13 The proposal will come in with many mitigations that are  
14 proposed here and placed on that that may speed up that  
15 process. But I don't think anybody knows, at this point,  
16 how long that will be.

17 CHAIRPERSON BUSTAMANTE: Okay. There were  
18 several questions that were asked about everything from  
19 the burrowing organisms to the marsh mouse species.

20 MR. PLUMMER: I think the CALFED issue you  
21 probably heard about. The same comment I was going to  
22 make. It's really the same agencies. We participate.  
23 All the other agencies participate.

24 CHAIRPERSON BUSTAMANTE: We got that.

25 MR. PLUMMER: As far as the cray fish, I am also

1 no expert on the cray fish. But from what I've been able  
2 to learn about it, they do burrow three feet, but you have  
3 to realize what the starting point is. And the cray fish  
4 really want to stay up around the high water and below  
5 that to some extent.

6 But where this noncover material is going to be  
7 is going in an anaerobic condition, in other words there's  
8 no oxygen. And it's unlikely that the cray fish is going  
9 to want to burrow down into the anaerobic conditions that  
10 are going to be there. At least that's what I've been  
11 able to find out so far.

12 As far as the taking of the Salt Harvest Mouse,  
13 we've been in consultation with the Department of Fish and  
14 Game. Our lease has contemplated that there will be an  
15 MOU between Fish and Game and the project proponent that  
16 will address incidental taking of the Harvest Mouse.

17 The project is designed by phases, so that the  
18 existing mouse habitat, that will be the last phase to be  
19 touched. New habitat for the mouse will be created before  
20 the existing habitat is destroyed.

21 As far as project changes, there have been a few  
22 project changes. You've heard of this elimination of the  
23 subdrains. If subdrains always were a condition of the  
24 geotechnical reports, they could have been in, they could  
25 have been out. They were covered by the environmental

1 analysis. Now, we're hearing that because they're  
2 eliminated, that's a change to the project.

3           You know, that was brought up to the County. The  
4 County certified the document. We think that the CEQA  
5 process has enough flexibility into it to have minor  
6 project changes like that to not significantly alter the  
7 project. Those changes have no impacts on what was  
8 applied to the State Lands Commission for lease.

9           As far as reselling -- one of the issues that was  
10 brought up is should we allow resell of treated material?  
11 Department of Water Resources is very supportive of this  
12 project. They would like to see reuse material available  
13 in the general vicinity of the Delta for levee  
14 maintenance. And as far as -- you know, there will be  
15 monitoring at the levee breaches for any metals or any  
16 contaminants that would pass through the levee breaches.

17           In our lease, we require that the applicant  
18 provide funding in place upfront to cover things like if  
19 we need to go in there and do any remediation work, we're  
20 able to tap that bond ourselves as an agency and contract  
21 out to have that work done.

22           During the life of the project the applicant will  
23 create another fund for us that will cover the expense of  
24 closing those levee breaches, if that's ever deemed to be  
25 necessary. So I think, you know, we know about these

1 issues. We've worked hard with the agencies and the  
2 applicant to address these issues in our lease.

3 CHAIRPERSON BUSTAMANTE: The accumulation of  
4 chemicals over a period of time has been raised several  
5 times. Can you tell us anything about that?

6 REGIONAL MANAGER PLUMMER: I think Brian and  
7 Larry Kolb probably could address it far better than I.  
8 It is the fact that the contaminants aren't going to drain  
9 to the bottom and somehow accumulate in a cesspool of  
10 contaminants. They are bound to the clays and the  
11 sediments, you know, that are there. And when you keep  
12 them in an anaerobic condition, where they're not exposed  
13 to air, and they're not exposed to wind, they stay bound  
14 to those sediments, and they're not available for release.

15 The sediments they come in on is where they stay,  
16 and that's proven by the leachate tests, where they take  
17 the sediment, they put it in water, and then they leave it  
18 sit for four hours and then they check that water and see  
19 if any of those chemicals leached out.

20 And all these have to pass those leachate tests  
21 showing that those chemicals have not leached out of the  
22 sediments.

23 CHAIRPERSON BUSTAMANTE: Okay. And the issue of  
24 whether three feet is three feet or three feet is  
25 compacted or not or higher in some areas or lower in

1 others.

2 REGIONAL MANAGER PLUMMER: These sediments will  
3 be put in place by a series of layers. In other words,  
4 it's not going to instantly be three feet put on top of it  
5 and then somehow that's going to settle out. There will  
6 be a layer of sediment that's put on, and there's going to  
7 be a time frame that will allow those sediments, the water  
8 will decant off and they'll be consolidated and then  
9 another layer will be put on.

10 So essentially we'll start with a consolidated  
11 three-foot layer of sediment prior to the levee breaches  
12 and also there will be marsh vegetation forming before the  
13 levee breaches to hold those soils in place.

14 And it's typical with most marshes in the San  
15 Francisco/Suisun Bay region they actually collect  
16 sediments. The sediment level in the waters that will  
17 come in on these on a daily basis, twice daily by the  
18 tides and they actually deposit a sediment load there. So  
19 we're going to start with three feet and we may gain up to  
20 another half a foot through the deposit sediments on a  
21 natural process.

22 CHAIRPERSON BUSTAMANTE: And the folks from the  
23 Port indicated that Baltimore Harbor has a project 12 to  
24 15 years that's identical to this.

25 MR. PLUMMER: I'm not aware of that project. I

1 don't know, I'd have to defer that to somebody else.

2 CHAIRPERSON BUSTAMANTE: Well, in the staff  
3 review of this project, were there any other projects that  
4 were looked at that were similar to this?

5 REGIONAL MANAGER PLUMMER: We didn't look at any  
6 projects similar to this. I've worked the San Francisco  
7 Bay Area for 25 years for State Lands Commission. They  
8 weren't designed to do this, but there were areas where  
9 dredge sediments were taken out of the Bay long before  
10 there was any testing of them, so they probably included  
11 cover, noncover, and over time those have become marsh,  
12 and Moosey Marsh is one of them, and it's a thriving marsh  
13 today.

14 And there's been any problems, at least that I  
15 know of, that anybody's ever raised about contamination of  
16 those sediments. But, you know, 25 years ago people were  
17 dredging stuff out of the Bay. And if they didn't dump it  
18 right back into the Bay, some of it was being put up on  
19 the uplands and today there is a marsh there.

20 CHAIRPERSON BUSTAMANTE: A good marsh?

21 MR. PLUMMER: Yes, it is a good marsh. It's  
22 actually cited by a number of environmental groups as a  
23 good marsh.

24 CHAIRPERSON BUSTAMANTE: We were lucky?

25 (Laughter.)

1 REGIONAL MANAGER PLUMMER: What's that?

2 CHAIRPERSON BUSTAMANTE: We were lucky?

3 REGIONAL MANAGER PLUMMER: Maybe.

4 CHAIRPERSON BUSTAMANTE: There was one other  
5 thing, the levee breaches is the last question I had, if  
6 there was any other questions. The concern was whether or  
7 not there would be heavy metals or other kinds of  
8 contaminants inside those levees. Are there Core samples  
9 that are taken prior to any kind of breach taking place?

10 REGIONAL MANAGER PLUMMER: You know, I don't know  
11 if the core samples were taken, and I might want to defer  
12 that to the project applicant. But the Commission could  
13 clearly instruct the staff to write a paragraph into that  
14 lease that would require core samples prior to the levee  
15 briefing.

16 CHAIRPERSON BUSTAMANTE: Consider that done.

17 (Laughter.)

18 CHAIRPERSON BUSTAMANTE: If there's somebody who  
19 can speak on that issue, is there somebody here?

20 All right, is that it?

21 REGIONAL MANAGER PLUMMER: Any other questions?

22 CHAIRPERSON BUSTAMANTE: Mr. Levine, you wanted  
23 to come up.

24 REGIONAL MANAGER PLUMMER: I note. I may have  
25 misspoke. I need to make one slight correction, that the

1 MOU with Fish and Game is to avoid any take, not  
2 incidental take.

3 CHAIRPERSON BUSTAMANTE: To avoid?

4 REGIONAL MANAGER PLUMMER: To avoid any take  
5 rather than incidental take.

6 CHAIRPERSON BUSTAMANTE: Do you have questions  
7 that you wanted to ask?

8 Go ahead and ask whatever you want to ask.

9 ACTING COMMISSIONER ARONBERG: I'm not sure who  
10 is the appropriate person to ask this.

11 CHAIRPERSON BUSTAMANTE: Ask the questions and  
12 we'll hear them.

13 ACTING COMMISSIONER ARONBERG: The Baltimore  
14 project, if it's been in operation for all these years,  
15 has anyone looked into like any scientific evidence about  
16 what the results of that project are, what happens to  
17 sediments in this whole --

18 CHAIRPERSON BUSTAMANTE: Didn't the Port of  
19 Oakland raise the issue that there were other projects  
20 that were like this?

21 MR. McGRATH: Jim McGrath, again, for the record.  
22 The Hart-Miller Island -- Baltimore is a long way from the  
23 ocean and they don't put any of their dredging material in  
24 the ocean. They put it in a series of islands.

25 Hart-Miller Island is one of two dredge disposal

1 sites that they use to recreate shallow flats and islands  
2 that actually were there about the turn of the century.  
3 The standards for Hart-Miller Island, we actually  
4 evaluated Hart-Miller Island when we built the Galbraith  
5 Golf Course. And it's a less protective structure. It's  
6 a confined aquatic disposal. So it builds up from mudflat  
7 up creating at the top levels both a marsh and a beach,  
8 and it's so used by recreational boaters. It's now nearly  
9 complete. They put --

10 CHAIRPERSON BUSTAMANTE: How is it different than  
11 this project?

12 MR. McGRATH: It accepts sediment of  
13 substantially lower quality. And one of the issues that  
14 they have there is the quality of the runoff from that as  
15 it dries and the material oxidizes, they have some  
16 problems with the sediment quality and the runoff quality.  
17 So they actually do leach some sediment out of it.

18 As I said, they accept substantially lower  
19 quality of sediment, so it's a less protective example in  
20 that sense. They have to manage the runoff from it very  
21 carefully.

22 CHAIRPERSON BUSTAMANTE: So we can't really use  
23 that as some kind of a benchmark.

24 MR. McGRATH: Well, I think you take all of those  
25 things and you learn from them. In that case you have

1 to -- I think one of the lessons that was taken from that  
2 is you need to be perhaps more protective of a site where  
3 you're going to have runoff from the site in restricting  
4 material more. That's certainly the take home message  
5 that we took from it.

6 CHAIRPERSON BUSTAMANTE: You believe this project  
7 does that?

8 MR. McGRATH: Yes, it's substantially more  
9 protective. We take the material that is of lesser  
10 quality in the Port and we dry some of it and take it to  
11 landfills.

12 CHAIRPERSON BUSTAMANTE: Thank you. Did you want  
13 to follow up?

14 ACTING COMMISSIONER ARONBERG: That's actually  
15 what I wanted, thanks.

16 Ms. West, I believe, earlier mentioned some group  
17 opposition to the project, about San Francisco Bay Keeper,  
18 is there -- I have no documents in front of me. Staff, if  
19 you have documents showing some opposition or any other --  
20 does Sierra Club take an opposition stand on this project?  
21 I mean what are other groups?

22 EXECUTIVE OFFICER THAYER: Some of those groups  
23 participated in the county process. The county was the  
24 lead agency for the Environmental Impact Report prepared  
25 for CEQA compliance. None of those groups have contacted

1 us in our process, so we don't have any letters of  
2 opposition or concern from any of those groups.

3 CHAIRPERSON BUSTAMANTE: No, bay area  
4 conservation group?

5 EXECUTIVE OFFICER THAYER: There is Save the Bay,  
6 is probably the preeminent one. We haven't heard from  
7 them. I spoke actually with Mark Holmes, who on this  
8 particular project has worked with some of the people who  
9 spoke today, but he used to work with Save The Bay and he  
10 said that they were familiar with the project. He  
11 wasn't -- he, frankly, said he wasn't sure they were going  
12 to come up for this meeting, but they --

13 ACTING COMMISSIONER ARONBERG: As far --

14 MS. WEST: Mark Holmes and I had a lengthy  
15 conversation last night and most of the material that I  
16 presented today was direct input from Mark.

17 CHAIRPERSON BUSTAMANTE: From whom?

18 EXECUTIVE OFFICER THAYER: Mark Holmes, who used  
19 to work for Save The Bay but now is an independent  
20 consultant.

21 CHAIRPERSON BUSTAMANTE: So we still have nothing  
22 in writing. You're saying that he has -- there's no  
23 organizational endorsement or opposition or anything at  
24 this point?

25 MS. WEST: The opposition, at this point, is that

1 what you're asking?

2 CHAIRPERSON BUSTAMANTE: Yes.

3 MS. WEST: Well, Earth's Justice has opposition  
4 to this. Save The Bay is involved in litigation that is  
5 being appealed.

6 CHAIRPERSON BUSTAMANTE: So they're opposed as  
7 well as Save The Bay is opposed officially?

8 MS. WEST: Yes.

9 CHAIRPERSON BUSTAMANTE: There is a  
10 contradiction?

11 MR. LEVINE: Yes. The appeal they were involved  
12 with has been decided. The court of appeals ruled in our  
13 favor. And this new lawsuit they are not a party to, Save  
14 The Bay dropped out. Originally, the Sierra Club  
15 supported this project when the legislation was passed in  
16 Washington that allows the Corps of Engineers to help pay  
17 for a plan disposal. And the Solano County guy from the  
18 Sierra Club is basically being cool with it.

19 CHAIRPERSON BUSTAMANTE: But there is no  
20 position, at this point, by Sierra Club?

21 REGIONAL MANAGER PLUMMER: What I did do is in  
22 the environmental document there were comment letters, and  
23 while it's in 1994, because that's when the draft EIR was  
24 circulated, the letter by the Sierra Club Solano Group,  
25 Redwood Chapter said that their major concern involves the

1 potential growth inducing effects of this project. Will  
2 this project increase the likelihood of development of the  
3 Collinsville area? They weren't addressing contaminant  
4 issues in those areas.

5 CHAIRPERSON BUSTAMANTE: And those items were  
6 addressed?

7 REGIONAL MANAGER PLUMMER: Those were addressed  
8 in the EIR.

9 CHAIRPERSON BUSTAMANTE: Okay. Any other  
10 questions.

11 Why don't you go ahead and sum up.

12 MR. LEVINE: I'll also say the California Water  
13 Foul Association has been very supportive of the project  
14 also. And I think you have a letter from them, the  
15 California Water Foul.

16 On the -- you asked about the burrowing --

17 CHAIRPERSON BUSTAMANTE: Do we have a letter, I  
18 haven't seen it?

19 EXECUTIVE OFFICER THAYER: I have not seen a  
20 letter.

21 MR. LEVINE: We sent that up.

22 REGIONAL MANAGER PLUMMER: That was with letters  
23 that were included in the environmental document.

24 MR. LEVINE: Right, a 1994 letter, from the  
25 California Water Foul Association. And we met with them

1 and a lot of the duck club owners there in designing the  
2 project and so forth.

3           The question was raised about the burrowing cray  
4 fish. This is not an open item. This issue was raised a  
5 few years ago and we had conversations -- we did some  
6 analysis and contacted the scientists at Louisiana State  
7 where, you know, 90 percent of the world's cray fish live,  
8 down there in Louisiana. And they basically confirmed  
9 that the cray fish, while they burrow, they will not  
10 burrow below the mean tide line into areas with no oxygen.  
11 They'll suffocate.

12           So they don't burrow into the anaerobic areas of  
13 the site. And this was confirmed. We then discussed this  
14 with US Fish and Wildlife, Wayne Wright, up here in  
15 Sacramento and he confirmed that's accurate. And that's  
16 why when Fish and Wildlife Service gave us -- gave the  
17 Corps their draft biological opinion, they did not raise  
18 this as an issue. In fact, I know several of the speakers  
19 are acting like endangered species have never been looked  
20 at.

21           There's been eight years of studies by  
22 independent biologists about endangered species. And I'll  
23 just read, if you don't mind, Mr. Chairman, two sentences  
24 from the Fish and Wildlife letter, if you want.

25           CHAIRPERSON BUSTAMANTE: Okay, if it's two

1 sentences.

2 MR. LEVINE: That's all it is. "It's the  
3 Services biological opinion that the Montezuma Wetlands  
4 Project, as proposed, will result in a net benefit to the  
5 tidal marsh ecosystem and will likely represent a benefit  
6 to the Salt Marsh Harvest Mouse, California Clapper Rail,  
7 Delta Smelt and Sacramento Split Tail.

8 "The Montezuma Wetlands Project is not likely to  
9 jeopardize a continued existence of the Salt Marsh Harvest  
10 Mouse, California Clapper Rail, Vernal Pool Fairy Shrimp,  
11 Vernal Pool Tadpole Shrimp, Delta Smelt and Split Tail."

12 So they looked at these organisms with these  
13 folks they are talking about, and they have concluded it  
14 will net --

15 CHAIRPERSON BUSTAMANTE: When was that done?

16 MR. LEVINE: October 2000, October 25th.

17 CHAIRPERSON BUSTAMANTE: Anything else?

18 MR. LEVINE: Yes.

19 CHAIRPERSON BUSTAMANTE: No more reading.

20 MR. LEVINE: No more reading.

21 (Laughter.)

22 MR. LEVINE: It was alleged in that  
23 approximate -- in fact, all the sediments that anybody is  
24 concerned about are well below the water table. In a very  
25 flat area of 2000 acres of tidal marsh, there is no

1 erosion there. There is none. And that was all looked at  
2 in the EIR. Geotechnical engineers looked at it and  
3 that's what they concluded. The agencies concurred with  
4 that.

5           And as Mr. Plummer indicated, once the site is  
6 open at the tides, the site will continue to settle as all  
7 marshes do, and new sediment will be placed naturally on  
8 top of it. So the three feet will end up being three and  
9 a half feet and maybe four feet over time.

10           And, you know, they built the levees throughout  
11 the entire Sacramento and Delta and Suisun Marsh out of  
12 whatever material they have. And some of that material  
13 has got contaminants, and most of it is much higher in  
14 contaminants than anything we're going to bring on the  
15 site.

16           We have no problem with testing the levees before  
17 we breach them, but recognize that those levees are in  
18 contact all around the Bay and marsh right now. And so  
19 whatever we do is not going to increase any kind of  
20 exposure. The sediments we bring in are going to minimize  
21 any exposure.

22           CHAIRPERSON BUSTAMANTE: But if you hit a hot  
23 spot, you're not going to breach it there, right?

24           MR. LEVINE: No, obviously. We'll test it  
25 beforehand. But it's the same thing all the duck clubs

1 face right now. You know, they breach levees and bring  
2 water in and put pipelines in all the time, but we will  
3 commit to whatever testing program makes sense.

4 So we've got no problem with that. We've already  
5 committed to several hundred thousand dollars a year worth  
6 of monitoring to make sure everything goes okay.

7 CHAIRPERSON BUSTAMANTE: Why don't you prepare  
8 some kind of a statement that would be included?

9 EXECUTIVE OFFICER THAYER: We'll make sure that  
10 that goes into the conditions of the lease then.

11 CHAIRPERSON BUSTAMANTE: Any other questions by  
12 the Commissioners?

13 What's your pleasure?

14 ACTING COMMISSIONER PORINI: I would move  
15 approval of staff's recommendation.

16 ACTING COMMISSIONER ARONBERG: The Controller  
17 came into this very concerned about the environmental  
18 safety, but it really does seem all to have been  
19 addressed, so I'm going to go ahead and second.

20 CHAIRPERSON BUSTAMANTE: There's a motion and a  
21 second. Let the record show that the staff recommendation  
22 passes unanimously.

23 And we'll go on to the next item.

24 We're going to take a five-minute break.

25 (Thereupon a recess was taken.)

1           CHAIRPERSON BUSTAMANTE: Let's go ahead and start  
2 this meeting up again. The next item is item number 74.  
3           Staff.

4           EXECUTIVE OFFICER THAYER: Mr. Chair, Item 74 is  
5 a request by the Controller for a staff audit of the City  
6 of Long Beach's Granted Lands activities. I'm not sure if  
7 Ms. Aronberg wanted to speak to this or if I should just  
8 give some background to it.

9           CHAIRPERSON BUSTAMANTE: Why don't you go ahead  
10 and give us the background.

11           EXECUTIVE OFFICER THAYER: Okay. Briefly then,  
12 the Commission heard from a Mr. Denevan, a concerned  
13 citizen from Long Beach at the first or second meeting  
14 last year asking questions about -- or questioning the  
15 City's management of tides and submerged lands,  
16 particularly with respect to the proposed Queensway Bay  
17 Project.

18           At a succeeding meeting in April, several other  
19 residents came to the Commission meeting and spoke during  
20 the public comment period expressing similar concerns.  
21 The Commission directed staff to hold a workshop last  
22 summer in Long Beach to determine the range and scope of  
23 concerns about Long Beach's management.

24           We had such a workshop and about 42 people showed  
25 up, and about a third of those were in favor of what was

1 happening in Queensway Bay, and the others opposed the  
2 Queensway Bay Project, and some of them had more general  
3 comments about Long Beach's management of the tide and  
4 submerged lands.

5           Since then staff has prepared a draft staff  
6 report that would respond to all of the issues raised,  
7 both at the workshop and at the earlier meetings last year  
8 before the Commission. That draft staff report is at the  
9 Attorney General's office for review.

10           I want to add that that procedure is somewhat  
11 standard for us in dealing with public trust issues. It  
12 doesn't mean that we've uncovered something particularly  
13 alarming or anything. We generally do turn to the  
14 Attorney General's office for advice on these matters.

15           One of the issues raised, both at the April  
16 meeting before the Commission as well as in the workshop,  
17 was a request by several individuals for the Commission to  
18 do an audit of the Long Beach management. And, of course,  
19 an audit can be -- there can be several kinds of audits.  
20 One would be of the management, whether or not the uses  
21 were appropriate and consistent with the legislative grant  
22 as well as the public trust doctrine.

23           Another kind of audit would be more fiscal. We  
24 believe -- you know, it's our intent to respond to those  
25 requests as to whether or not -- and to make

1 recommendations to the Commission as to whether or not an  
2 audit needs to be done in the staff report. In talking  
3 with the Attorney General's office, we believe that their  
4 review of any revisions we need to make is likely to be  
5 done within the next month, and that will provide  
6 background information to the Commission that may be  
7 useful in considering the Controller's requests.

8 CHAIRPERSON BUSTAMANTE: Is there a time frame in  
9 which the staff report is going to be done?

10 EXECUTIVE OFFICER THAYER: We believe it will be  
11 done within the next month.

12 CHAIRPERSON BUSTAMANTE: Has it been completed?

13 EXECUTIVE OFFICER THAYER: The staff draft is  
14 done. It's completed. It underwent several revisions  
15 in-house, and it's the Attorney General's office now.  
16 We're meeting with them, actually, this afternoon when the  
17 Commission meeting is done on this.

18 CHAIRPERSON BUSTAMANTE: Okay. Commissioner  
19 Porini.

20 ACTING COMMISSIONER PORINI: Well, I think that  
21 in view of the fact that we haven't seen the staff report  
22 yet, I'd like to put off action on this item. It just  
23 seems kind of premature since we don't know the scope of  
24 what we might be looking at. It doesn't make any sense to  
25 move forward right now, if that's acceptable to the

1 Controller?

2 ACTING COMMISSIONER ARONBERG: That makes sense.

3 CHAIRPERSON BUSTAMANTE: Why don't we go ahead  
4 and then by unanimous consent postpone the audit until  
5 such time as we've had a chance to review the staff  
6 report.

7 EXECUTIVE OFFICER THAYER: Certainly. And we  
8 will keep the --

9 CHAIRPERSON BUSTAMANTE: Most of the issues are  
10 discussed in the staff report, it may not be necessary for  
11 an audit. We'll review the report and then see where the  
12 Controller would like to go from there.

13 EXECUTIVE OFFICER THAYER: Certainly. I would  
14 like to point out that there's several people who wanted  
15 to speak. And I don't know whether you want to take the  
16 discussion?

17 Some of these people, I know, were Mr. Denevan is  
18 here as well as Colette McLaughlin. Both of those  
19 individuals, I believe, spoke at the workshop and we could  
20 take additional testimony.

21 CHAIRPERSON BUSTAMANTE: We have the Mayor here.  
22 Would you like to make a comment before we close this item  
23 out?

24 MAYOR O'NEILL: Actually, if it is going to be  
25 postponed, no, I was just going to make a quick statement

1 that since 1992 we have had every step of the way approval  
2 by the State Lands. So it would be redundant, but I think  
3 in light of the report --

4 CHAIRPERSON BUSTAMANTE: And Lester Denevan,  
5 would you like to make comments, sir?

6 MR. DENEVAN: Lester Denevan, resident of Long  
7 Beach. If there is a staff report, some of the people in  
8 Long Beach would like to see that as soon as possible,  
9 perhaps before next month's meeting or whenever so we can  
10 respond to that.

11 Just briefly today, I wanted to synopsize just a  
12 couple of the problems with the tidelands property in Long  
13 Beach, and what I ascertained to be mismanagement of the  
14 Long Beach tidelands.

15 You know, looking back over 30 years, there's a  
16 number of cases which could be cited of mismanagement of  
17 the Long Beach tidelands. The Queen Mary is a good  
18 example, where the City of Long Beach was actually sued by  
19 the State Attorney General. And the City was found to be  
20 culpable in the misexpenditure of millions of dollars on  
21 the Queen Mary.

22 I want to mention also that the former planning  
23 director was sent up to state prison for two years in  
24 connection with the projects in the State tidelands. Now,  
25 you might think, well, that's history.

1           However, the point is that the City staff,  
2 planning commission and council went along with some of  
3 these projects, which were approved in violation of the  
4 State Planning and Zoning law. So I think the City should  
5 be watched very carefully when they proceed with these  
6 projects.

7           Another example would be the Hyatt Hotel, which  
8 received \$24 million in free rent from the City. It was  
9 built in Rainbow Lagoon, which cost the taxpayers  
10 \$768,000, 40 years ago to build.

11           I think in connection with the Queensway Bay  
12 Project, that you should look carefully at that proposed  
13 shopping mall. And when you're reviewing the request for  
14 the audit, look into the matter of the commerce navigation  
15 and fisheries on the Long Beach tidelands. I think that  
16 if you look in the history of tideland grant, you'll see  
17 that commerce is permitted in the tidelands but not any  
18 commerce, not any business.

19           This would be in terms of fisheries. It would be  
20 in terms of ocean-going trade. And there's a question  
21 that I think the Lands Commission would want to look into  
22 more carefully is just what is commerce, and which  
23 commercial uses are permitted. Is the barber shop  
24 permitted or some of these other non-ocean related uses?

25           Then, finally, concerning the site of the

1 Queensway Bay project, it is built on a landfill in the  
2 Long Beach tidelands. And that occurred way back in 1964.  
3 There's 113 acres of landfill created in the downtown  
4 tidelands, that fills the Pacific Ocean. The Lands  
5 Commission reviewed that in October 1964. Eleven million  
6 dollars was approved by the Lands Commission to build this  
7 landfill.

8           That's worth \$40 million today, if you wanted to  
9 repeat that project, say up and down the coast. Say that  
10 the City of Santa Monica or Oxnard or whatever said we  
11 want to build a landfill that's spent \$40 million worth of  
12 taxpayer's money for a shopping mall.

13           How ready would the Lands Commission be to  
14 appropriate that kind of money for a use which is not  
15 really even in -- it's not even permitted under the  
16 tideland grant.

17           So, finally, I'd like to mention that the Lands  
18 Commission has been more or less ignored by the City of  
19 Long Beach. The City has never applied to the Lands  
20 Commission for permission for this \$100 million project in  
21 Queensway Bay. It's really strange that the Commission  
22 hasn't taken any look at this project. Well, the city  
23 hasn't asked.

24           There was the MJ Broch project in the 1970s. It  
25 was a hotel. It went to the Lands Commission for review.

1 The Hyatt Hotel, about 20 years ago, it went to the Lands  
2 Commission for review. The Queen Mary --

3 CHAIRPERSON BUSTAMANTE: If you have a list of  
4 the items, we can give it to staff so they can review  
5 them, instead of reading off all of this.

6 MR. DENEVAN: So that would be my conclusion  
7 that, I think, that the Lands Commission should look very  
8 carefully into this and review the pattern of  
9 mismanagement over many years. I have a handout, one copy  
10 of which the Members of the Commission have received on  
11 earlier occasions in the mail, but here's a copy.

12 CHAIRPERSON BUSTAMANTE: If you could give it to  
13 staff.

14 MR. DENEVAN: I'll give this to the staff. This  
15 is a compendium of what I intend to be issues and projects  
16 which were in contradiction of the tideland grant and  
17 would represent mismanagement of the Long Beach tidelands.

18 CHAIRPERSON BUSTAMANTE: Thank you. They'll  
19 consider those in the final staff report.

20 MR. DENEVAN: Thank you.

21 CHAIRPERSON BUSTAMANTE: We also have in our  
22 audience Senator Betty Karnette, would you like to say  
23 anything? I mean are you here for this.

24 SENATOR KARNETTE: Well I, always like to hear  
25 what's going on in my district, you know, Long Beach. I

1 live in Long Beach. By the way, I enjoy downtown Long  
2 Beach. I've been in Long Beach since 1952 and I've  
3 watched it change and this mayor I'm very supportive of.

4 CHAIRPERSON BUSTAMANTE: All right. Okay, so  
5 we're onto the next item.

6 EXECUTIVE OFFICER THAYER: Yes, sir.

7 CHAIRPERSON BUSTAMANTE: Hold on.

8 MS. McLAUGHLIN: I'm one of the people, could I  
9 speak, please.

10 CHAIRPERSON BUSTAMANTE: You're one of the  
11 people?

12 MS. McLAUGHLIN: That was on the list they read  
13 off.

14 CHAIRPERSON BUSTAMANTE: Yes, if you'd like to --  
15 what is your name?

16 MS. McLAUGHLIN: Colette McLaughlin.

17 CHAIRPERSON BUSTAMANTE: Please come up.

18 Does Jim McCabe also want to speak at this point?

19 MR. McCABE: Mr. Chair, I'm Deputy City Attorney  
20 Jim McCabe for the City of Long Beach. Considering the  
21 expected action that won't be necessary.

22 MS. McLAUGHLIN: Colette Marie McLaughlin, and I  
23 greatly appreciate you letting me speak, because this came  
24 out of my children's college fund, because I believe your  
25 decision on this audit is needed to protect my children's

1 future. And I hope that you seriously read all the  
2 evidence that Lester Denevan, and he works for both the  
3 City of Long Beach and the LA City, has put in decades of  
4 research trying to protect my children's and all of our  
5 children's future resources.

6 I also am a planner for a school district in  
7 southern California. I'm finishing up my Ph.D research on  
8 redevelopment in Long Beach. And I know that Kathleen  
9 Connell reads her audits of the redevelopment agency, and  
10 has helped redevelopment not misuse our children's funds  
11 and our public resources.

12 I could speak about a lot of concerns I have. I  
13 know that our mayor cares about our city. But the  
14 evidence that Lester Denevan -- I can't say his name,  
15 Denevan, that he has produced is not just his own  
16 evidence. It's been in the LA Times. We've had headlines  
17 for the last few months about questionable lawsuits on the  
18 Queen Mary, about questionable uses of the aquarium that  
19 was supposed to benefit the public that now is in severe  
20 financial --

21 CHAIRPERSON BUSTAMANTE: Also, if you have a list  
22 of things that --

23 MS. McLAUGHLIN: He has those. The last thing I  
24 will say is that, as I presented it before, is UCLA's  
25 research on banking on blight showed Long Beach as a very

1 questionable user of our public resources, which include  
2 what you're monitoring.

3           And thank you for letting me speak, because this  
4 was a big investment for me. I also had to take the day  
5 off of work.

6           CHAIRPERSON BUSTAMANTE: Thank you very much.  
7 Thank you for coming.

8           I believe that there was a motion and a second to  
9 postpone the request for an audit until such time as the  
10 staff report is made available. The staff report is  
11 expected in approximately a month, so it should be in time  
12 for our next meeting.

13           EXECUTIVE OFFICER THAYER: Absolutely.

14           CHAIRPERSON BUSTAMANTE: And you'll make sure  
15 that the Controller's office and the Commissioners have  
16 copies of the report so that we can review it thoroughly  
17 before that next meeting.

18           EXECUTIVE OFFICER THAYER: Absolutely and a  
19 transcript of the workshop will be appended to that so  
20 that you'll be able to review the comments that were made  
21 directly on that to members of the public.

22           CHAIRPERSON BUSTAMANTE: Okay.

23           EXECUTIVE OFFICER THAYER: The last agenda item  
24 is Item 71, which was pulled from the consent calendar.  
25 This has to do with the Long Beach gas situation. And I

1 believe that the Mayor has a presentation that she wanted  
2 to make.

3 CHAIRPERSON BUSTAMANTE: Great.

4 Welcome, Mayor.

5 MAYOR O'NEILL: Thank you very much. I  
6 appreciate being here. I've not been here to testify  
7 before you.

8 Good morning, Mr. Chairman. Thank you very much  
9 and members of the Commission. My name is Beverly O'Neill  
10 and I'm the Mayor of the City of Long Beach. And we  
11 appreciate the opportunity today to talk to you about  
12 something that is very near and dear to our hearts. And  
13 we're certain that once you understand the problem, that  
14 it can be rectified.

15 Our most pressing issue is, of course, the  
16 State's most pressing issue and that's the State's energy  
17 crisis and it's connection with the drastically increased  
18 gas -- natural gas prices in our community. As you may  
19 know, with a population of about 500,000, we're the 5th  
20 largest city in California, the second in Los Angeles  
21 County.

22 And we have the unfortunate distinction of having  
23 the highest natural gas prices in the nation. Over the  
24 past month, we've been bombarded with calls and visits  
25 from the victims, our residents, because their prices have

1 gone up, and they ask the same question, why, and we are  
2 asking the same question.

3           The City's natural gas utility, known as Long  
4 Beach Energy, purchases all of the State-owned natural gas  
5 that is produced in Long Beach. And that's part of the  
6 State's tidelands oil operation, except for the gas that's  
7 used in the oil production itself. The gas is accepted  
8 into the City's natural gas pipeline, and then delivered  
9 and resold to the City residents.

10           The price paid, since 1992, by the City to the  
11 State is equal to 110 percent of the price paid by Long  
12 Beach to other gas suppliers at the California border.  
13 And this pricing mechanism, actually in place since '92,  
14 worked well until the recent California energy crisis.

15           While the price of natural gas has increased  
16 nationwide this winter, the price of natural gas at the  
17 California border has skyrocketed to historical heights.  
18 And the prices at the border have generally stayed within  
19 the \$2 to \$3 level per decatherm for the past 10 to 15  
20 years, but the border price since early December has been  
21 well over \$12.

22           Oddly, while Long Beach has paid these incredibly  
23 high prices to the State, Southern California Gas has been  
24 able to purchase its gas supply for the customers at a  
25 much lower rate, about one-third the price that we are

1 paying to the State.

2           The next result has been that during the last two  
3 months, the citizens and businesses of Long Beach have had  
4 to pay double or triple prices than what virtually all  
5 other customers in southern California have paid and more  
6 than any other that are paid in the nation.

7           Now, we appreciate what the State Lands is doing  
8 to investigate this pricing disparity, but we believe that  
9 the proposed solution falls far short of treating the City  
10 and its residents in a fair manner, and would provide  
11 virtually no immediate relief to the citizens and  
12 businesses of Long Beach from the tremendous cost they now  
13 bear, largely because of the price that we must pay the  
14 State.

15           The City has proposed price revision, which Chris  
16 Garner, Director of Long Beach Energy will discuss with  
17 you in detail, would allow the City to pass through the  
18 cost of the State's gas to our customers at a price that's  
19 competitive and comparable with the rest of the southern  
20 California area.

21           And I want to emphasize that this reduction would  
22 go directly to the people of Long Beach. The very thing  
23 that all of us in California have abhorred in this energy  
24 crisis is the companies that take advantage of situations  
25 by spiking their prices. That very practice of spiking is

1 what it looks like the State of California is doing to  
2 Long Beach. And we have always prided ourselves in being  
3 a partner with our city.

4 This is an unconscionable practice, I think we  
5 all agree. It does not cost the State one more penny than  
6 before, but we are paying triple prices. The State is  
7 making money at the expense of the people of Long Beach.

8 So I want to thank you for the opportunity to  
9 present this to you today. And we know that when you  
10 really understand the situation that you will provide the  
11 appropriate assistance that will go directly to our rate  
12 payers. And I'd like to introduce you to Chris Garner who  
13 is the Director of Long Beach Energy, who has a Powerpoint  
14 presentation that he would like to present to you today.

15 Chris.

16 CHAIRPERSON BUSTAMANTE: Does staff have any  
17 initial thoughts on that?

18 EXECUTIVE OFFICER THAYER: I can respond, if the  
19 Chair wishes, to the points raised by the Mayor now or  
20 wait until the end, whatever you prefer.

21 MAYOR O'NEILL: I brought the problem forward, he  
22 has the answers.

23 CHAIRPERSON BUSTAMANTE: Go with the  
24 presentation, go ahead. Mr. Garner, you're on.

25 MR. GARNER: Thank you, Actually, what I think I

1 will do is bypass the Powerpoint presentation since the  
2 Mayor did such an excellent job in summarizing the  
3 personal part of it, and I'll try and get into the  
4 technical aspects of it.

5           Each of you have this packet, I believe, in front  
6 of you. What I'd like to do is just give a little  
7 background on what the intent of the parties have been  
8 since 1998. What we were trying to do was come up with a  
9 fair market price for the gas that we purchased from the  
10 State.

11           And what was used, since the Southern California  
12 Gas Company represents probably about 97 percent of the LA  
13 basin area and we're supposed to be using an LA basin  
14 price, it was deemed that the SoCal gas non-Corps WACOG,  
15 and WACOG stands for Weighted Average Cost Of Gas, it's  
16 the average portfolio, would represent a fair market  
17 price.

18           And we paid that price from 1988 through 1991.  
19 And in 1991 SoCal gas stopped publishing that price, and  
20 so we were looking for a mechanism to replace that. And  
21 because historically the Long Beach border price and SoCal  
22 gas price basically mirrored themselves, it was deemed  
23 that would be a sufficient replacement.

24           And so in 1992, we went retroactive about 13  
25 months and started paying from that point forward, the

1 Long Beach border price.

2           And since then in 1992 that price has worked  
3 very, very well. If you look in your package at tab  
4 number one, the cost of gas comparison chart, you'll see  
5 that the price that we paid to the State of California  
6 basically matched the SoCal gas weighted average cost of  
7 gas during that same time period to their customers.

8           And then also when we get to 19 -- or November of  
9 last year 2000, and you see that the red line goes up to  
10 where the normal price for the last 10, 15 years, was  
11 around 20 cents to 30 cents, it jumped up to \$1 at the  
12 California border and then jumped up in December to a  
13 \$1.60 and then in January it jumped even higher than that,  
14 and February is following suit.

15           And what's happened is there's now a large  
16 discrepancy between the price that the City of Long Beach  
17 pays for its gas at the California border and what  
18 Southern California Gas Company is able to purchase their  
19 gas supplies.

20           CHAIRPERSON BUSTAMANTE: Is that for a portion of  
21 the gas or is that for all the gas is a constant \$1.60?

22           MR. GARNER: That represents our average cost of  
23 gas for all our supplies. And what we do is we mark it up  
24 by ten percent and pay that price to the State.

25           So what's happened is you go to the next page,

1 you'll see that in the beginning of last year, 2000, we're  
2 paying the State of California a price around -- a total  
3 price of about \$600,000 to \$700,000 a month for the gas  
4 supply. Well, then we hit the summer and the energy  
5 crisis really accelerated and the price started going up,  
6 but it was still not acceptable to us in the sense that  
7 that was still in the ballpark of what Southern California  
8 Gas Company was paying for its gas.

9           But then we hit November and our cost to the  
10 State, our price that we paid to the State went from the  
11 \$600,000 level up to 2.7 million. In December it jumped  
12 even greater to 4.1 million and it's expected in January  
13 to be 4.2 million.

14           If you look at the column next to that, if we had  
15 paid a price equal to the price -- or the average price  
16 that Southern California Gas company pays for its gas  
17 supplies, it would be far significantly lower than what we  
18 absolutely paid to the State.

19           Just for those three months alone, it's about a  
20 \$6 million difference to the City of Long Beach and its  
21 customers. If you go to the next page, we did the  
22 comparison of our price that we paid to the State versus  
23 the Southern California Gas Company weighted average cost,  
24 and it was all relatively stable, a little over 100  
25 percent for January through the summer.

1           But then you hit, again, November, December,  
2 January and all of a sudden the Long Beach price is 181  
3 percent, 243 percent and 274 percent of the SoCal Gas  
4 price.

5           What that has done is if you look at tab number  
6 3, this chart right here, it shows what the commodity cost  
7 and what the impact has on a residential customer in Long  
8 Beach. The blue part represents the price that we  
9 currently pay to the State of California for gas supplies.  
10 The red bar is the price that would be used if we paid our  
11 recommended solution to this problem, which is based on  
12 the Southern California gas company cost.

13           The green bar represents the solution recommended  
14 by the State Lands staff. As you can see, the blue bar  
15 compared against the red bar, there's quite a significant  
16 impact upon customers in Long Beach. Seventy-five therms  
17 is basically an average residential usage for winter  
18 months.

19           So if you look at, say, for December, you have a  
20 Long Beach customer paying \$120 for its gas commodity  
21 versus a Southern California Gas Company customer paying  
22 \$50. What that means is three percent of the LA basin  
23 area is paying \$120 and the other 97 percent is paying  
24 \$50. So you can understand why this represents such a  
25 crisis for the City of Long Beach and this probably

1 continues into January.

2           So what we're asking or recommending as a  
3 solution is that going retroactive as we had in 1992,  
4 adjust the price to equal the Southern California Gas  
5 Company Core WACOG, and on top of that add a 50 percent  
6 split of the interstate transportation charges that the  
7 city would pay for gas supplies at the border, so that the  
8 State would share in that cost savings to the city. And  
9 that would be our recommendation and we would ask that  
10 this be done immediately.

11           The problem that we have is we have over 1,000  
12 customers calling daily complaining about their gas  
13 prices. And what they're doing is they're comparing it  
14 against neighbors in Lakewood and other surrounding  
15 communities where we're really at quite a disadvantage  
16 right now, because we're just passing through the cost of  
17 gas.

18           And what we'd recommend, if you accept our  
19 recommendation, is we're going to be passing through  
20 whatever savings that the State agrees to pass through to  
21 us, we would in turn pass through 100 percent back to our  
22 customers.

23           CHAIRPERSON BUSTAMANTE: One hundred percent?

24           MR. GARNER: One hundred percent.

25           CHAIRPERSON BUSTAMANTE: That was going to be my

1 first question.

2 MR. GARNER: Yes.

3 CHAIRPERSON BUSTAMANTE: Anything else, sir?

4 MR. GARNER: That concludes the presentation.

5 CHAIRPERSON BUSTAMANTE: Any questions?

6 We have, let's see, Carol Shaw.

7 MS. SHAW: Good morning. I'm a Deputy City  
8 Attorney with the City of Long Beach. And the Mayor and  
9 Chris Garner have done such an excellent job there's not a  
10 whole lot left for me to tell you except that I don't know  
11 if you're aware of the abundance of lawsuits that have  
12 been filed in the State of California at both the gas  
13 level and at the electric level alleging that there is  
14 substantial price fixing and price manipulation.

15 Part of that price manipulation has occurred at  
16 the California border and been reason for this extreme  
17 difference in the cost of gas in Texas as compared to the  
18 cost of gas in California.

19 It is alleged that none of this inflated gas and  
20 electric prices is really connected to true and real  
21 supply and demand in a competitive market. It is all a  
22 manipulated fixed price.

23 We do not feel that it is fair that the City of  
24 Long Beach standing alone as compared to all of the other  
25 gas customers in the southern and the Los Angeles basin

1 should bare the brunt of that result and pay over this  
2 money to the state when the State itself is suffering from  
3 a very similar crisis in electric energy. This is related  
4 to the same problem.

5 As far as going retroactive, a retroactive  
6 correction of price is not unusual as between the State  
7 and the city. At the request of the State in 1992 our  
8 agreement went back for a period of over 13 months to  
9 provide for price parity in that agreement. The attempt  
10 always over 30 plus years in five different agreements  
11 between the State and the city has always looked at the  
12 price of Southern California Gas Company and what it paid  
13 for its gas to decide what Long Beach should pay the State  
14 for its gas.

15 That's all, if people would like to ask  
16 questions.

17 CHAIRPERSON BUSTAMANTE: Any questions from the  
18 Commissioners?

19 Thank you.

20 Paul.

21 EXECUTIVE OFFICER THAYER: I guess I would. Paul  
22 Mount is here who is in charge of our Long Beach office.  
23 He may want to supplement what I have to say because I'm  
24 mostly repeating things that I've learned from him.

25 CHAIRPERSON BUSTAMANTE: Why don't you have him

1 come up then and take a seat there and you guys can do it  
2 candidly.

3 EXECUTIVE OFFICER THAYER: But I'd guess I'd  
4 start out by saying I think we agree with almost  
5 everything the City has said in terms of the history of  
6 this. What I would point out is that the '92 agreement  
7 that established the benchmark where it is now, which is  
8 based on how much the City pays for the rest of the gas  
9 that it needs to sell to its customers, the State's share,  
10 I think, constitutes about a quarter to a third of the gas  
11 needs of the City, and then the City goes out and buys gas  
12 from other sources.

13 And we set our price to equal what they pay for a  
14 majority of their gas. So I don't think the City's  
15 alleged, but I want to be clear, that the State is not out  
16 there trying to make the maximum buck off the City. This  
17 was an agreement that both sides entered into willingly  
18 when the Southern California Gas price no longer became  
19 available to use as a benchmark in '92. We looked around,  
20 said what's a good price. Well, it's what the City pays  
21 for the rest of its gas. We all agreed to that.

22 CHAIRPERSON BUSTAMANTE: I don't think that they  
23 made such an allegation. I do think, though, whether you  
24 do something by default or by design, the effect remains  
25 the same. And in this particular case, it looks like we

1 were on autopilot in an emergency situation, and it looks  
2 like we did exactly the same thing that we're accusing  
3 other folks of doing.

4 EXECUTIVE OFFICER THAYER: But actually the  
5 contract was set up to deal with this very situation.  
6 There's a provision in here, number four, and five, I  
7 guess number four in particular, which said if the price  
8 ever got out of whack with what's predominantly paid, and  
9 I think mostly it's the SoCal gas price, by more than 15  
10 percent, the City was overpaying by more than 15 percent  
11 for three months in a row, that they could make a demand  
12 to us in writing and we were required to negotiate.

13 And, in fact, if we're not able to reach a  
14 solution within 30 days, and we go to court, it's  
15 retroactive to when they first made their demand. So  
16 there's a --

17 CHAIRPERSON BUSTAMANTE: This is that point?

18 EXECUTIVE OFFICER THAYER: This is that point.  
19 And, in effect, at least my understanding is, that there's  
20 two sides to this problem. One is the correct  
21 transportation costs. And the City sent us a letter in  
22 December that focused on that issue. And I think we and  
23 the City, I think, are in agreement on a solution to that,  
24 which is basically, to say instead of ten percent extra  
25 for transportation costs we'll say half of whatever the

1 savings is, because we're delivering the gas with no  
2 transportation costs, half the city gets, half we get and  
3 I think they're happy with that.

4 But this latest issue, in terms of wanting to set  
5 it to the SoCal gas benchmark is something that was only  
6 raised to us, to my knowledge, a week ago. And, in fact,  
7 the City's presentation here at the bottom talks about the  
8 prices -- the excessive prices being paid for the last  
9 three years, just as is required by the agreement in the  
10 contract that there be three months of bad differentials.

11 Now, I look at their other stats and it's clear  
12 that the differentials exceeded 115 percent or the extra  
13 15 percent for a longer period of time than is listed on  
14 the bottom here, so they could have sent us a demand  
15 letter earlier on.

16 But I don't think we're resistant at all as a  
17 staff to negotiate an appropriate deal here. We've done  
18 it several times over the last 30 years, as the City has  
19 said. We try and work cooperatively with the City. And I  
20 think, you know, they make a good point.

21 I think what we're recommending, as a staff, is  
22 since we've reached agreement on one of the two factors,  
23 which is the transportation costs, let's go ahead and  
24 approve that right now, and that's what our recommendation  
25 is to the Commission, and that we negotiate on this other

1 point and bring it back to the Commission and they can  
2 have it retroactive back to this last Monday.

3           Although the agreement actually provides that for  
4 retroactivity back to 30 days after their demand, but  
5 still as they point out, we're both partners in this  
6 contract, and any two parties and any contract can agree  
7 to terms that are different from the contract. And if the  
8 Commission wants to make it retroactive for a longer  
9 period of time, certainly the Commission is legally able  
10 to do that.

11           So the staff's recommendation, as I say, is to go  
12 ahead and approve the change in the transportation costs  
13 formula and then direct staff to go off and negotiate a  
14 revised contract with the understanding that it may very  
15 well be retroactive and bring it back to the next meeting.

16           CHAIRPERSON BUSTAMANTE: Well, let's -- I  
17 understand the recommendation. Let's back up just a  
18 little bit though.

19           Let's go back to the point that we talked about  
20 when the same sort of move beyond -- I mean, I'm assuming  
21 that you agree, at least somewhat, with this graph that  
22 shows the cost increases that took place at least, in  
23 general.

24           EXECUTIVE OFFICER THAYER: Paul, do we have any  
25 reason to doubt that?

1 MR. MOUNT: No, we agree with that.

2 CHAIRPERSON BUSTAMANTE: And so I think that we  
3 need to look fundamentally at how we've designed this  
4 formula. We're not in the business of making money. We  
5 obviously are trying to raise revenues wherever we can.  
6 You and I have had that discussion the very first year I  
7 got here, how can we raise revenues for, not only for the  
8 State, but also within those areas that we have, and how  
9 do we do it in a reasonable fashion.

10 I think we may have put something in autopilot  
11 here that began to careen out of control. And I think  
12 there needs to be, fundamentally, a look at how we've  
13 developed this particular formula.

14 So what I'd like to do is I'd like to have staff  
15 for the next meeting bring us back a report, despite  
16 whatever we do on this issue that says -- that is  
17 thoughtful about how this particular -- this is not going  
18 to go away. We're going -- this summertime, I think we're  
19 going to see even more fluctuations. I think we clearly  
20 need to figure how to get a control on this thing now. We  
21 are in, I don't if you'd call it a state of emergency, but  
22 it's pretty damn close.

23 And so what we need to do is we need to resolve  
24 this particular issue so that this doesn't happen again in  
25 a way that meets both whatever the costs are involved and

1 how we're going to have to reasonably deal with this  
2 particular issue.

3           Second, with respect to the retroactivity, I'd  
4 like for staff to give me a thought on what exactly that  
5 means, how far back can we actually go, regardless of what  
6 is -- what the deal is. Can you tell me -- give me some  
7 thoughts on retroactivity.

8           EXECUTIVE OFFICER THAYER: Well, when I look at  
9 the same chart you're referring to, it seems like things  
10 really departed about maybe October or November this last  
11 fall, and Alan Hager, who's representing the Attorney  
12 General's office, who has actually done most of the oil  
13 work for the Long Beach units for the State Lands  
14 Commission over a long period of time, can stop me if I've  
15 got this wrong, but it seems that a mutual agreement, we  
16 could decide to go back to any date we want to.

17           ASSISTANT ATTORNEY GENERAL HAGER: We've agreed  
18 on a retroactivity matter in the 1992 agreement, but we  
19 both agreed. And if we both agreed to do something  
20 differently, we could do something differently. Yes, we  
21 could go back.

22           CHAIRPERSON BUSTAMANTE: And so applying the '92  
23 agreement to this situation, what would that mean?

24           ASSISTANT ATTORNEY GENERAL HAGER: We could go  
25 back to the November 1st, 2000 if that were the

1 Commission's --

2 EXECUTIVE OFFICER THAYER: Although, that --

3 CHAIRPERSON BUSTAMANTE: Under the agreement?

4 ASSISTANT ATTORNEY GENERAL HAGER: We could --  
5 no, not under the agreement.

6 CHAIRPERSON BUSTAMANTE: What would be under the  
7 agreement?

8 ASSISTANT ATTORNEY GENERAL HAGER: Thirty days  
9 from the date that they gave notice of their desire to  
10 renegotiate the price.

11 CHAIRPERSON BUSTAMANTE: What would that date be?

12 ASSISTANT ATTORNEY GENERAL HAGER: When they  
13 brought this issue up, it was a week ago. When they gave  
14 a notice to renegotiate the transportation matter, that  
15 was December 19th.

16 CHAIRPERSON BUSTAMANTE: What is the date then?

17 ASSISTANT ATTORNEY GENERAL HAGER: The date would  
18 be 30 days --

19 CHAIRPERSON BUSTAMANTE: We don't have the date?

20 ASSISTANT ATTORNEY GENERAL HAGER: -- from today.  
21 30 days approximately -- 20 days from today.

22 CHAIRPERSON BUSTAMANTE: So we don't have that  
23 date?

24 EXECUTIVE OFFICER THAYER: Well, 20 days from  
25 today, the 25th of February. If we take that they've made

1 the demand as required by the contract, it would be  
2 retroactive to 20 days from today or the 25th of February,  
3 but we could agree to do whichever retroactivity -- or the  
4 commission could, excuse me, as it cares to.

5 CHAIRPERSON BUSTAMANTE: Okay. And we have --  
6 so then we have the original date, based on the contract,  
7 is February 25th, but we have flexibility on the date?

8 EXECUTIVE OFFICER THAYER: Yes. And if we acted  
9 after that point, of course, the Commission could direct  
10 retroactivity.

11 CHAIRPERSON BUSTAMANTE: Now, if we were to act  
12 on the flexibility and go back a period of time, how does  
13 that work? Where do you get the money from? I mean, I'm  
14 assuming things have been paid? Is there some account  
15 that then you would take money out of and -- is there some  
16 report as to how much that would be and --

17 MR. MOUNT: You would defer payment. In other  
18 words, We continue to get our gas revenues and we would  
19 just not get paid for some period of time till they were  
20 paid back.

21 CHAIRPERSON BUSTAMANTE: Okay. Are there  
22 problems in the interruption of revenues on a monthly  
23 basis or is there.

24 MR. MOUNT: It just reduces our revenues.

25 CHAIRPERSON BUSTAMANTE: I mean, I have certain

1 bills that I have to pay every month. And I don't pay  
2 them six months in advance. I mean, you're going to be --  
3 do you have an account that becomes depleted, and as a  
4 result you have other bills that you have to pay?

5 MR. MOUNT: This money goes to the General Fund.

6 CHAIRPERSON BUSTAMANTE: General Fund.

7 EXECUTIVE OFFICER THAYER: And it is used for  
8 some specific purposes.

9 CHAIRPERSON BUSTAMANTE: I think we have a little  
10 money there.

11 EXECUTIVE OFFICER THAYER: Right. And I believe  
12 the amount of money appropriated from this source for the  
13 fiscal year we're in now was less than the amount of  
14 revenue we expect to be making.

15 In other words, last year, at this time, the  
16 Legislature and the Governor was putting together the  
17 budget, gas prices were very low, and so they only  
18 anticipated a certain amount of revenue. We're exceeding  
19 that revenue this year.

20 So in terms of, you know, we're putting revenue  
21 into the State budget. Did it anticipate money at a  
22 certain level, yes, that level was much lower, though,  
23 than we're making this year.

24 So I guess this goes by way of saying that if we  
25 ended up deciding to reduce our revenue intake in order to

1 pay retroactively to the City, it probably would not  
2 adversely affect State budgetary matters, but we can check  
3 into that further.

4           ACTING COMMISSIONER PORINI: I should probably  
5 try and chime in and protect the General Fund, but under  
6 the circumstances, I think that the process that the  
7 budget uses allows for those adjustments in the form of  
8 the May Revision, so I'm certain that we would have  
9 negotiated some sort of contract by mailing for it to be  
10 perfectly timed to make that adjustment.

11           EXECUTIVE OFFICER THAYER: And we would certainly  
12 look into that issue before we brought it back to the  
13 Commission.

14           MS. SHAW: May I bring to your attention that the  
15 General Fund only made \$8 million off Long Beach last year  
16 in its entirety. And if you look at the contribution that  
17 the City of Long Beach is making to the General Fund, if  
18 it were SoCal, they would have only paid \$14 million.  
19 Last year we paid eight million for 1999. I'm sorry, not  
20 last year, 1999. We paid \$8 million into the General  
21 Fund.

22           This year, if you look at these figures, the  
23 expectation is totally exorbitant compared to prior years  
24 of what --

25           CHAIRPERSON BUSTAMANTE: Do you have an amount?

1 MS. SHAW: -- Long Beach has contributed.

2 CHAIRPERSON BUSTAMANTE: Do you have an amount?

3 MS. SHAW: Well, if you look in Exhibit 1, the  
4 schedule --

5 CHAIRPERSON BUSTAMANTE: Can you say it?

6 MS. SHAW: -- what Long Beach has contributed, it  
7 should have been 15 million if it were paid by SoCal gas.  
8 The same amount if it is being paid at these rates by Long  
9 Beach, we're talking about \$22 million. In 1999 --

10 CHAIRPERSON BUSTAMANTE: So your concern is  
11 minimally the seven?

12 MS. SHAW: Yes. In 1999, this same amount to the  
13 General Fund for these same volumes was 8 million.

14 CHAIRPERSON BUSTAMANTE: We've got it.  
15 Thank you.

16 MS. SHAW: But I would like to address some of  
17 these other issues also.

18 CHAIRPERSON BUSTAMANTE: What other issues?

19 MS. SHAW: This three month expectation of price  
20 and the recomputation, that did not anticipate issues,  
21 what I would call, force majeure, things beyond our  
22 control totally, things unanticipated, just like the  
23 electric prices. My goodness, if we could have  
24 anticipated this, don't you think we would have absolutely  
25 done something to correct it?

1 CHAIRPERSON BUSTAMANTE: My goodness, don't you  
2 think we would have too.

3 MS. SHAW: Yes, that's right. And so to try and  
4 say well, yes, you should have known about this three  
5 months ago and you should have anticipated it and you  
6 should have planned for long-term gas contracts, that this  
7 would never happen --

8 CHAIRPERSON BUSTAMANTE: I don't think anybody's  
9 disagreeing with you.

10 MS. SHAW: Well, the fact that then to hold us to  
11 a level --

12 CHAIRPERSON BUSTAMANTE: I don't think anybody is  
13 talking about -- saying that, at this point. I think  
14 you're arguing against yourself at this point.

15 MAYOR O'NEILL: One thing that I'm hearing is  
16 retroactivity and I think that's wonderful and I  
17 appreciate that. We have a crisis today and to wait two  
18 months for this decision is what's -- is what our city  
19 cannot stand.

20 CHAIRPERSON BUSTAMANTE: Is the city paying  
21 each and every month, is that the way it works?

22 MAYOR O'NEILL: Yes. And we have to pay -- and  
23 then we transfer that to our rate payers in two more  
24 months.

25 CHAIRPERSON BUSTAMANTE: When does the payment

1 actually take place?

2 MR. GARNER: Say for the month of January for gas  
3 supplies in January be at the end of February.

4 CHAIRPERSON BUSTAMANTE: At the end of February.  
5 So did you just pay for December?

6 MR. GARNER: We just paid for December.

7 CHAIRPERSON BUSTAMANTE: Have we actually sent  
8 the check?

9 MR. GARNER: Yes.

10 CHAIRPERSON BUSTAMANTE: Have we deposited it?

11 MR. MOUNT: It's cashed.

12 (Laughter.)

13 CHAIRPERSON BUSTAMANTE: You guys made sure of  
14 that.

15 (Laughter.)

16 ACTING COMMISSIONER PORINI: Yes.

17 MR. MOUNT: I'd like to point out --

18 CHAIRPERSON BUSTAMANTE: Well, maybe, at this  
19 point, we could make an amendment. I would be open to an  
20 amendment, staff, you could comment on the deferral of the  
21 payment for January taking the staff recommendation,  
22 deferring this until such time that we come up with an  
23 appropriate contract. Is that --

24 MS. SHAW: Excuse me, that won't do it for Long  
25 Beach. And it won't do it for Long Beach, because we

1 can't pass through our cost-of-gas savings until we have  
2 them. So for the next two or three months then, the  
3 citizens of Long Beach would have to pay absolutely  
4 exorbitant rates --

5 CHAIRPERSON BUSTAMANTE: This is not a courtroom,  
6 ma'am, and you don't have to make, you know, a dramatic  
7 case. Why don't you tell us -- for example if you make  
8 the case, you make the statement that you have to have  
9 savings before you can pass it on, it's a legitimate  
10 statement, you would have to realize the savings then.

11 By not paying or by deferring, you don't have  
12 savings, is that what you're trying to tell us?

13 MS. SHAW: Well, I'm saying it's still an issue.  
14 You're not saying you're going to absolutely cut this  
15 price back. You're saying you're going to reconsider it,  
16 not that you're absolutely going to agree with the SoCal  
17 price or reduce it to that amount.

18 CHAIRPERSON BUSTAMANTE: Right. You're right,  
19 because I don't think the staff has had time to take a  
20 look at it. It's an interesting problem.

21 I think that the consensus is, I don't know if  
22 I'm reading the Board correctly, but I think the consensus  
23 is to try to find a way of absolutely lowering the costs  
24 here. I think in conversations with staff I've made it  
25 clear that we need to, in fact, find a way of being able

1 to do that.

2 As to what the formula is, I think it's only fair  
3 to have staff sit down and to try to deal with that issue.

4 Well, how long would it take you?

5 EXECUTIVE OFFICER THAYER: I've discussed that  
6 issue with Mr. Mount over the weekend, and we believe --

7 CHAIRPERSON BUSTAMANTE: Maybe what we need to do  
8 is have an emergency meeting between now and the next  
9 meeting, I don't know, a week, ten days, whatever it  
10 takes, to make this thing happen.

11 EXECUTIVE OFFICER THAYER: We could do it in --  
12 we think we'd have the information together and analyzed,  
13 we believe, in about two weeks. Now, as another  
14 alternative that I was just discussing with the Attorney  
15 General and our Chief Counsel to see if this would work  
16 and if the City is agreeable to this, perhaps what the  
17 Commission could do today is reset the figure at the SoCal  
18 gas figure, which is what I think what the City would like  
19 it to be until we next met, and then we would make --  
20 instead of putting some sort of potentially artificial  
21 deadline on how quickly to get the information together,  
22 that would give us two months.

23 And then with the agreement that whatever the  
24 Commission did in two months at its next regular meeting  
25 would be applied retroactively. So if the final formula

1 gave a little bit more to the State, then the City would  
2 pay that little bit more. If the city did better, then we  
3 would --

4 CHAIRPERSON BUSTAMANTE: That way you would  
5 realize savings?

6 MS. SHAW: Would this go back to November 1st  
7 then, is that what you were proposing?

8 EXECUTIVE OFFICER THAYER: No. We're not  
9 proposing that, because that money has mostly been paid  
10 already and already charged to the consumers and so  
11 there's no real immediate need for that. But to deal with  
12 the issue that was raised that, you know, they can't lower  
13 the amount that they're charging to their consumers until  
14 the Commission actually makes a change, if we acted today  
15 to reduce it to SoCal Gas price, then they'd have that two  
16 months of grace at the lower level. And then we would  
17 deal with the retroactive issue that the attorney raises  
18 at the next meeting.

19 CHAIRPERSON BUSTAMANTE: What is the City's  
20 position?

21 MAYOR O'NEILL: I think that if they started  
22 today with the Southern California Gas, and there is  
23 precedent for that in the pricing directive that the price  
24 should reflect the reasonable wholesale market value of  
25 dry gas, purchased for consumption in the LA basin, and if

1 you went with the Southern California Gas, that would give  
2 us relief until you meet to work this out.

3 I just don't think the State wants to make money  
4 on Long Beach. It's not going to be productive for us to  
5 do this any longer, to even produce this, if this is the  
6 way we're going to go.

7 CHAIRPERSON BUSTAMANTE: You're absolutely right.  
8 The only question that I've had is that we should have  
9 probably done this even earlier and I wish we --

10 MAYOR O'NEILL: Absolutely. That's the way the  
11 State feels about it --

12 CHAIRPERSON BUSTAMANTE: But if that resolves the  
13 issue until we can have a final -- I mean, if it was up to  
14 me we'd adjourn the meeting, go and get the formula done  
15 and then come back and do this thing right away. I know  
16 that this is an emergency situation. But I think that if  
17 we can do this a little bit more methodically and still  
18 meet your need and then come back to figure out what kind  
19 of flexibility on the issue of retroactivity as well as  
20 trying to figure out what the potential cost loss would be  
21 to the State and then listen to what Finance says, et  
22 cetera, I think that we could probably resolve everything  
23 in pretty short time.

24 MAYOR O'NEILL: And if this provides us immediate  
25 relief until it's resolved, I think that we can live with

1 what we have as a resolution. However, we met last  
2 Friday, I was not there, with the staff and the solution  
3 they came up with was not acceptable to us.

4 CHAIRPERSON BUSTAMANTE: Besides, I want to pass  
5 that Orenthal Cardineto called me and said you better  
6 resolve this thing fast.

7 (Laughter.)

8 MAYOR O'NEILL: Thank you.

9 MR. MOUNT: Might I add two things. One is the  
10 reason SoCal gas price is so low is because they let  
11 long-term contracts. Long Beach took the risk of going  
12 with border price.

13 The second thing I want to point out is that our  
14 royalties are being paid on a higher gas price, so on all  
15 our other State leases, we're getting paid at the higher  
16 gas price.

17 CHAIRPERSON BUSTAMANTE: I think all those very  
18 interesting details can be worked out by staff and come to  
19 some kind of an agreement, hopefully by the next meeting.  
20 If not, we'll have to, I guess, resolve it through  
21 Commission action. We'd like to be able to come a  
22 resolution. We don't know the formula at this point.

23 Commissioner Porini, do you have a question?

24 ACTING COMMISSIONER PORINI: I just wanted to add  
25 one thing for staff, maybe -- I apologize, I'm losing my

1 voice again. Maybe you can get together and look at the  
2 renegotiation provisions to see if there's anything that  
3 we can do to speed up the provisions that were in the old  
4 agreement, so that if we do get a similar sort of  
5 situation, at any point in time, the notice can be made a  
6 little more timely to the Commission.

7 EXECUTIVE OFFICER THAYER: I think that's a good  
8 point, and it dovetails with the Chairman's point about  
9 trying to come up with a mechanism that will -- I mean the  
10 last one lasted eight years, but hopefully we can come up  
11 with one with a notice quicker and so we won't have this  
12 same incongruity for a long period of time.

13 CHAIRPERSON BUSTAMANTE: And does staff identify  
14 problems with using the weighted average cost for this  
15 month and the next?

16 EXECUTIVE OFFICER THAYER: That would be SoCal --  
17 the broader LA basin weighted average or the SoCal gas, I  
18 don't think so, and I --

19 MS. SHAW: But everyone else and all of the other  
20 residential customers are paying for the Southern  
21 California Gas Company.

22 CHAIRPERSON BUSTAMANTE: All right. I'm open for  
23 any action by the Commission?

24 ACTING COMMISSIONER PORINI: I move approval of  
25 the short-term changes that we're making pursuant to the

1 Lieutenant Governor's proposal noting that we'll come back  
2 and take final action at our next meeting.

3 ACTING COMMISSIONER ARONBERG: Second.

4 CHAIRPERSON BUSTAMANTE: This will reduce  
5 substantially the cost of gas for the City of Long Beach  
6 immediately and will give us time to work out the details.  
7 Let the record show that has unanimous approval by the  
8 Commission.

9 There's also one other issue that was raised,  
10 Paul, between you and I, and that is how do we expand the  
11 production of gas in that region? Here we have a  
12 facility, it has the ability to expand, we believe. Yet  
13 there's no incentives for expanding the gas production in  
14 that area.

15 And I think that anything that the State Lands  
16 has in terms of its -- within its jurisdiction or its  
17 authority to be able to provide for expansion, obviously  
18 given all of the other requirements of the environment, et  
19 cetera, that we should look into finding ways of how we  
20 might be able to do that. Whether it's a sentence to the  
21 City or to the various contractors, we should come up with  
22 some kind of a plan to ensure that we are, in fact,  
23 producing.

24 Clearly, the State currently has maximum capacity  
25 coming in, and any kind of production, additional

1 production of gas internally will help us in our energy  
2 crisis, so I think we should make sure and pursue that  
3 very aggressively.

4 EXECUTIVE OFFICER THAYER: We'll do that, and I  
5 know that's an issue that the city is very interested in  
6 as well. And I think --

7 CHAIRPERSON BUSTAMANTE: Maybe we can work out  
8 some kind of an arrangement in trying to make sure that we  
9 actually increase. And that way we hopefully will have a  
10 little bit even stronger variance on the price of the rate  
11 payers. And, hopefully, we'll go from 25 to something  
12 greater and be able to give the residents even greater  
13 relief.

14 Okay, any other items on the agenda?

15 None.

16 Any comments from the public? This is the time  
17 that anybody in the public might come up and give us their  
18 60 seconds or whatever you feel is necessary.

19 Seeing none, the business of the Commission is  
20 done for today and we will adjourn.

21 (Thereupon the California State Lands  
22 Commission was adjourned at 12:50 p.m.)

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