

MEETING  
STATE OF CALIFORNIA  
LANDS COMMISSION

LEGISLATIVE OFFICE BUILDING  
1020 N STREET, ROOM 100  
SACRAMENTO, CALIFORNIA

FRIDAY, FEBRUARY 21, 2003  
10:00 A.M.

Michael Mac Iver  
Shorthand Reporter

ORIGINAL

APPEARANCES

Cruz Bustamante, Chairperson

Steve Peace, Director of Finance, represented by David Takashima

Steve Wesley, State Controller, represented by Cindy Aronberg

STAFF

Paul Thayer, Executive Officer

Jack Rump, Chief Counsel

Maurya Falkner, Environmental Planner

ALSO PRESENT

Alan Hagar, Deputy Attorney General

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PROCEEDINGS

CHAIRPERSON BUSTAMANTE: Why don't we go ahead and start and call the meeting to order. And we'll have Mr. Takashima join us I'm sure very shortly.

Is Cindy with us?

EXECUTIVE OFFICER THAYER: Yes, she's coming up.

CHAIRPERSON BUSTAMANTE: Just to do a little preliminary. The State Lands Commission is the entity that provides management over all state lands. And it is about, what, four million acres now?

EXECUTIVE OFFICER THAYER: Yes, sir, four and a half.

CHAIRPERSON BUSTAMANTE: Also along all tidelands and riverways and lakebeds and marinas and coastal areas. What else?

EXECUTIVE OFFICER THAYER: If it's wet, we're interested.

(Laughter.)

CHAIRPERSON BUSTAMANTE: If it's wet, we're interested, for the record.

And joining me today is Cindy Aronberg, who is representing Controller Steve Wesley. David Takashima, when he comes before us, he will be representing Steve Peace with the Department of Finance.

At this point I guess we can just start with the

1 first item of business, which is to approve the minutes of  
2 the last meeting.

3 ACTING COMMISSIONER ARONBERG: I move approval.

4 CHAIRPERSON BUSTAMANTE: And I'll second it. And  
5 we'll assume it's unanimous, unless Takashima objects, and  
6 then we'll record it as a two-to-one vote.

7 (Laughter.)

8 CHAIRPERSON BUSTAMANTE: Mr. Thayer, do you have  
9 an executive report?

10 EXECUTIVE OFFICER THAYER: Yes, Mr. Chair, I have  
11 three items I wanted to mention, or four items to mention.

12 First, playing newsman here for a moment, I just  
13 wanted to report and you'll probably see it on the news, if  
14 you haven't already seen it, that there was an explosion and  
15 fire at a marine oil terminal back east, Staten Island near  
16 New York City. The preliminary indication we have is that  
17 it was a barge that was involved. The barge is in pieces,  
18 according to our staff, at this point. The fire is mostly  
19 under control, there is some left at the manifold, but it's  
20 not causing greater damage.

21 The preliminary report I saw indicated that the  
22 FBI was going to investigate, but they had no indication at  
23 this point that terrorism was involved. And, of course, our  
24 staff will be reviewing whatever information comes out of  
25 the investigation there to see if there are any, you know,

1 what the causative factor was, what made this happen, and to  
2 make sure that we're looking to see that the same thing  
3 can't happen in California.

4 CHAIRPERSON BUSTAMANTE: And who was the company  
5 who was involved?

6 EXECUTIVE OFFICER THAYER: I believe it was  
7 ExxonMobil.

8 CHAIRPERSON BUSTAMANTE: Well, maybe we can --  
9 welcome David, in a coat and tie.

10 (Laughter.)

11 CHAIRPERSON BUSTAMANTE: So will we also be  
12 checking with ExxonMobil to make sure that we get their  
13 side?

14 EXECUTIVE OFFICER THAYER: That's a good point,  
15 and we'll do that. Of course, we want to do everything we  
16 can to prevent it from happening in California.

17 CHAIRPERSON BUSTAMANTE: Of course.

18 EXECUTIVE OFFICER THAYER: But we'll check into it  
19 because there may be lessons there for us.

20 The second item I wanted to note was that in  
21 response to the Commission's direction last year, Commission  
22 staff has met with George Vinson, California's Security  
23 Chief. It was a very fruitful conversation. I think he's  
24 up to his eyeballs in so many different aspects of security  
25 for California that he's very grateful that we've offered to

1 work with him on determining what role the State Lands  
2 Commission can undertake to assist in meeting California's  
3 security needs with respect to ports and other lands under  
4 our jurisdiction.

5 CHAIRPERSON BUSTAMANTE: There was quite a report  
6 on that, I think it was MSNBC just a few days ago.

7 EXECUTIVE OFFICER THAYER: I might have missed  
8 that.

9 CHAIRPERSON BUSTAMANTE: On new technology and  
10 what's guarding the nation's ports.

11 EXECUTIVE OFFICER THAYER: Uh-huh.

12 CHAIRPERSON BUSTAMANTE: I can get my staff to  
13 give you a copy, if you'd like. We can get you a copy of  
14 that.

15 EXECUTIVE OFFICER THAYER: I'd very much  
16 appreciate that.

17 CHAIRPERSON BUSTAMANTE: We also had a bill last  
18 year and both as the Chair of the Economic Development  
19 Commission, as well as a member of State Lands, we had a  
20 bill last year that would have provided somewhere in the  
21 neighborhood of around \$1.1 billion dollars for ports and  
22 communities, and the impact that ports have on residents of  
23 communities around them. Everything from air pollution to  
24 traffic patterns to any toxicity issues, but also the major  
25 issue was that instead of being in a situation where we were

1 going to have to review only 2 percent of the containers  
2 coming into California ports, we're going to have to  
3 probably review 98 percent, and how do you do that with  
4 existing technology.

5           And one of the things that we talked about in that  
6 bill that failed on the last night of the legislative  
7 session was making sure that we have the appropriate camera  
8 and other types of new technology for these purposes, things  
9 that can look right through containers and view what's in  
10 those containers, live or not, and to be able to identify  
11 different kinds of explosives just by reviewing containers  
12 from the outside, without having to go through the labor-  
13 intensive process of opening them up.

14           There was a concern that defeated the bill that  
15 night, which is something you probably should take under  
16 advisement, the issue of providing the various security  
17 personnel, whether it's law enforcement at a city or port  
18 security, the issuance of new technology in which the State  
19 has not actually established any protocols for. It was a  
20 tremendous concern by Members of the Legislature, in fact  
21 that it was enough of a concern, three votes to be exact,  
22 that defeated that bill on that last night. It also didn't  
23 receive any Republican votes that night, not to be partisan,  
24 but we didn't receive any votes that night which also hurt  
25 our chances to get that bill out.



1           Again, those three Democratic votes were concerned  
2 about the establishment of protocols. We have a new privacy  
3 issue when we introduce the new technology and so we might  
4 want to consider engaging with either law enforcement,  
5 security, other ports, maybe even some of the civil rights  
6 organizations to try to identify ahead of time the kinds of  
7 concerns that they're going to be interested in so that we  
8 might be able to establish some kind of reasonable protocol  
9 that would give us the opportunity of doing our business,  
10 and yet being able to do what we can to preserve the rights  
11 of individuals and privacy.

12           So I believe that that bill will come up again  
13 this year and we'll -- I believe it was around 1.1 billion  
14 for this purpose. It was very flexible money. It was going  
15 to the ports and to the various communities and regions  
16 around the state for not only water ports, but airports and  
17 other kinds of ports of entry activity.

18           EXECUTIVE OFFICER THAYER: We'll see. That's a  
19 great idea and we'll see how we can be involved in that and  
20 trying to determine specifically what those concerns were of  
21 the members that didn't vote for it.

22           CHAIRPERSON BUSTAMANTE: And I would like to  
23 welcome for the first time a new member. Cindy's an old  
24 member.

25           (Laughter.)

1           CHAIRPERSON BUSTAMANTE: But we have an old guy  
2 with a new boss, David Takashima. Welcome.

3           Go ahead.

4           ACTING COMMISSIONER TAKASHIMA: Thank you, Mr.  
5 Bustamante.

6           Also I would like to just comment that last night  
7 the Director and I were having a conversation about this  
8 issue, and I think we would like to assist your office on  
9 your legislation and investigate what options are available,  
10 because it is a concern that we all have in trying to deal  
11 with security issues.

12           And we would like to participate. And a member of  
13 our staff we talked briefly about that and how we can try to  
14 find a funding source available. And I don't know the  
15 history, whether there was a relationship, and I want to try  
16 to look at ways of being creative. Because at this point we  
17 need to do something and do it now, rather than wait for a  
18 problem, just because the example of the strike we had last  
19 year at the port up in Oakland, the impact that had on the  
20 California economy, any kind of activity or problems we have  
21 at the Port of Oakland impacts California at a time we  
22 cannot have that problem.

23           CHAIRPERSON BUSTAMANTE: Well, we should be able  
24 to have the votes this year, it's not an election year.

25           (Laughter.)

1           CHAIRPERSON BUSTAMANTE: And there were partisan  
2 concerns of assisting me in my efforts, and so that should  
3 fall by the wayside. But we may have to narrow the bill  
4 just because of the fiscal issues that are now involved, and  
5 not trying to put too many bond bills on the ballot at the  
6 same time, et cetera. Those should be primary focused for  
7 economic development, economic stimulus, and infrastructure  
8 activities. And so hopefully we'll have a better  
9 opportunity and a nonpartisan or a nonpolitical, not as  
10 political year.

11           Is there anything else, Mr. Takashima?

12           ACTING COMMISSIONER TAKASHIMA: One thing that I  
13 think I want to get clear is that at present the bond  
14 capacity that we have and concerns about where we're at  
15 today and in the next few years. I would rather see a  
16 funding source, not bonds, and that would be immediate. So  
17 I want to be very creative and get our department to  
18 investigate the real opportunity to address this problem as  
19 soon as possible.

20           CHAIRPERSON BUSTAMANTE: If you find the dough,  
21 we'll be a go.

22           (Laughter.)

23           CHAIRPERSON BUSTAMANTE: Go ahead.

24           ACTING COMMISSIONER ARONBERG: I just wanted to  
25 let you both know that if there's anything that the

1     Controller's office can do, if there is any way to be of  
2     assistance.

3             CHAIRPERSON BUSTAMANTE:   Great.

4             ACTING COMMISSIONER TAKASHIMA:   You can sign the  
5     check.

6             (Laughter.)

7             CHAIRPERSON BUSTAMANTE:   Okay, anything else, Mr.  
8     Thayer?

9             EXECUTIVE OFFICER THAYER:   A couple other minor  
10    items.   You may recall that at our last meeting in December,  
11    a John Williams addressed the Commission during the public  
12    comment period concerning the Yuba gold fields.   And we  
13    indicated we would come back to the Commission with some  
14    additional information.

15            We met with Mr. Williams in the last few weeks and  
16    we are further researching this matter.   The Commission has  
17    been involved for about 20 years and there are a variety of  
18    local, state, and federal agencies, as well as this mining  
19    company, involved, so it's pretty complex.   But we'll be  
20    coming back to you at the next meeting with more information  
21    about that item.

22            And then finally I wanted to mention that in fact  
23    our next meeting, we plan on having it in April, we're that  
24    close to a date, and I think it's probably going to work  
25    out, and we're expecting to meet in San Diego.

1 CHAIRPERSON BUSTAMANTE: Okay.

2 EXECUTIVE OFFICER THAYER: And that concludes the  
3 Executive Officer's report.

4 CHAIRPERSON BUSTAMANTE: I would like to make sure  
5 we add one other item for review, and that is that in all  
6 the work that we do in trying to process various projects, I  
7 want to make sure that in this difficult time in our economy  
8 that we are fast tracking and, for the lack of a better  
9 term, we should establish some red team activity to ensure  
10 that projects aren't -- not that they would ever be left on  
11 the desk without the attention, especially on one of your  
12 staff's desks. But just to make sure, if we could review  
13 the process by which projects are brought in, projects that  
14 are ready to go, that are financed and funded, they don't  
15 have the legal or environmental or other kinds of issues.

16 If there's a way of being able to push those out  
17 the door, we deal with quite a few projects, and a lot of  
18 small projects and a few large ones, it helps to stimulate  
19 the economy. And so anything that we can do here to be able  
20 to assist that effort, I'd like to see us move in that  
21 direction. And if you could by the next meeting come back  
22 to us with some type of a plan or tell us what you're doing  
23 and how we might be able to expedite more projects.

24 EXECUTIVE OFFICER THAYER: Certainly. And I think  
25 actually that direction is really timely, in light of the

1 budget cuts and the staff losses that we're incurring, that  
2 we're going to need to go back and see how we're focusing  
3 the resources we have left. And I think this concept of  
4 looking to see which projects have the greatest bang for the  
5 buck for the state will be useful in terms of how we're  
6 dealing with that impact to the staff as well. So we will  
7 be back at the next meeting with something on that.

8 CHAIRPERSON BUSTAMANTE: I think we're at the  
9 point of adopting the consent calendar. Is there any  
10 concerns by the Commissioners regarding the consent  
11 calendar?

12 Mr. Thayer, is there any consent items that have  
13 been taken off this?

14 EXECUTIVE OFFICER THAYER: Item 51 has been  
15 removed and will be heard at a subsequent meeting.

16 CHAIRPERSON BUSTAMANTE: At a subsequent meeting,  
17 it will not be heard today?

18 EXECUTIVE OFFICER THAYER: Correct.

19 CHAIRPERSON BUSTAMANTE: At the next meeting or  
20 subsequent?

21 EXECUTIVE OFFICER THAYER: Subsequent, maybe.

22 CHAIRPERSON BUSTAMANTE: Just in case there's  
23 anybody here who's interested.

24 If there's no other concerns, I would entertain a  
25 motion for accepting the consent calendar.

1           ACTING COMMISSIONER ARONBERG: Move adoption of  
2 the calendar.

3           ACTING COMMISSIONER TAKASHIMA: I second it.

4           CHAIRPERSON BUSTAMANTE: Okay. Let the record  
5 show that it was unanimously agreed.

6           I should have asked if there was anybody in the  
7 audience who wanted to speak on any of the issues that were  
8 on the consent? Seeing none, then we will go ahead and move  
9 the -- so that the record shows that it was passed  
10 unanimously.

11           The item on the regular calendar, we have only  
12 one?

13           EXECUTIVE OFFICER THAYER: Yes, sir.

14           CHAIRPERSON BUSTAMANTE: And this is Item Number  
15 52?

16           EXECUTIVE OFFICER THAYER: That's it. This has to  
17 do with the Ballast Water Program. The legislation which  
18 established that program required that the Commission report  
19 back so that the Legislature could decide whether or not to  
20 extend it. That staff report has been on the web and is in  
21 your binders.

22           Making the staff presentation is Maurya Falkner,  
23 Senior Biologist or Environmental Planner.

24           CHAIRPERSON BUSTAMANTE: Glad we were able to  
25 help, everybody.

1 (Laughter.)

2 EXECUTIVE OFFICER THAYER: Sometimes I wish I had  
3 a mirror so I could see what's going on.

4 So Maurya Falkner, a Senior Environmental Planner  
5 with our staff and in the Marine Facilities Division where  
6 our Ballast Water Program has been carried out will make the  
7 presentation today.

8 MS. FALKNER: Good morning.

9 CHAIRPERSON BUSTAMANTE: Good morning.

10 MS. FALKNER: As Mr. Thayer mentioned, I'm here  
11 this morning to talk about the legislative report regarding  
12 the California Ballast Water Management and Control Program.

13 Since we have one new Commissioner, I thought I  
14 would briefly step back and give some background information  
15 on ballast water itself and nonindigenous aquatic species,  
16 and then go on to briefly discuss the agencies that are  
17 responsible under the law, that have responsibilities under  
18 the law, and summarize the last two and a half years of the  
19 program, and then briefly present the recommendations.

20 So as we are all probably aware, vessels and  
21 maritime commerce is very important to the economy of the  
22 United States and California. With the recent shutdown of  
23 the ports, billions of dollars were lost during that time.  
24 And vessels, by design, require ballast water for their  
25 normal ship's operations. Ballast water helps reduce stress



1 on the hull and provides stability and aids propulsion and  
2 maneuverability.

3 Vessels generally take on ballast water when they  
4 unload cargo or when they're utilizing use of that fuel and  
5 water, and they generally discharge that ballast water when  
6 they load cargo at another port. Ballast water volumes on  
7 vessels can range from 700,000 gallons on a small passenger  
8 vessel, up to 5 to 6 million gallons on a tanker or bulk  
9 vessel. So there's huge volumes of water that are necessary  
10 for the operations of a vessel.

11 Ballast water is obtained from all over the world.  
12 Wherever vessels go, they're picking up ballast water and  
13 discharging ballast water. And when they pick up that  
14 ballast water within a port, they also pick up any organisms  
15 that might reside in that port, anything small enough to get  
16 through the screens, which in some cases are small fish. If  
17 they survive the ballast pumps themselves, then they're in a  
18 nice little microcosm, a little system going on in the  
19 ballast tank.

20 Ballast water introductions have become more and  
21 more apparent with the size of the vessels that we're  
22 talking about and the speed of transportation. An organism  
23 is more likely to survive in a ballast tank over a two-week  
24 voyage than over the old historic six month or four month or  
25 whatever type of voyage it was. So we have organisms being

1 transported around the world wherever ports are located.

2           Some examples. Some prime examples of  
3 nonindigenous aquatic species, and nonindigenous aquatic  
4 species can be defined as anything that's not native,  
5 exotic. We prefer not to use exotic, because it gives it  
6 kind of this nice flavor and they're not. So one example,  
7 this is kind of a poster child of nonindigenous aquatic  
8 species, the zebra mussel. It came in in ballast in the  
9 1980s. It's now spread to at least 20 states and two  
10 Canadian provinces, and it's also a risk for here in  
11 California. Vessels are checked and fresh water systems  
12 when they come into the state for this organism. They spend  
13 tens of millions of dollars annually just to control this  
14 species because as you can see it's tiny, it fills up pipes,  
15 clogs intakes, things like that. And unfortunately, once  
16 it's established in a community, so far it's been impossible  
17 to eradicate it. So control is the only option, which means  
18 that to reduce further problems, we want to prevent it from  
19 getting into other systems.

20           A California example is the Chinese mitten crab.  
21 And those of you who were around in the mid to late '90s  
22 might remember this organism. It came in, I believe, in  
23 1992, and there's been some discussion as to whether it came  
24 in in ballast or in live bait material. But in any case, it  
25 came in in the early '90s.

1           In 1998, due to its life cycle, it exploded and  
2 just became incredibly prevalent in the Bay Area. It closed  
3 down water facilities in municipalities for about four days,  
4 and that was unfortunately right directly on the Chinook  
5 winter-run salmon. So it impacted that organism, and it  
6 also disrupted water supplies throughout the state, or  
7 throughout the northern part of the state. It's also  
8 subsequently been found to like to burrow into levees and  
9 that's very problematic, as you can imagine. So this is our  
10 poster child in California.

11           In addition to plants and animals that are coming  
12 in in ballast water, pathogens are also being brought in and  
13 transported around the world in ballast water. In 1991, a  
14 strain of cholera was brought into Mobile, Alabama in the  
15 ballast of a vessel coming up from South America. They had  
16 just experienced a bad epidemic and outbreak of cholera and  
17 lots of people died and millions of people were sick. It  
18 was subsequently found in the shellfish farms in Mobile and  
19 they shut those farms down. So it severely impacted the  
20 economy of that area for that season. And recent studies  
21 that the Smithsonian Environmental Research Center has been  
22 conducting, they have looked at ballast water coming in on  
23 vessels on the Chesapeake Bay, every vessel that they looked  
24 at had cholera in the ballast.

25           So nonindigenous species and pathogens are of

1 great concern and recognizing that threat, the Legislature  
2 created Assembly Bill 703 in an attempt to reduce the amount  
3 of foreign ballast water and nonindigenous species  
4 introductions in the State of California. The bill was  
5 signed by the Governor in October of '99 and it went into  
6 effect January 1st of 2000. The bill has a sunset clause in  
7 it. It sunsets January 1st of 2004. The primary reason for  
8 the sunset was the uncertainty surrounding the development  
9 and effect of the Ballast Water Program. The Legislature,  
10 you know, we're pretty much the first out there. We're in  
11 the forefront establishing this program and nobody was quite  
12 sure as to how effective it was going to be, so they put in  
13 a sunset date basically to require and force the Legislature  
14 to readdress this issue.

15 The act is a mandatory statewide program. It  
16 applies to all vessels entering the state waters after  
17 operating outside the U.S.E.Z. It's similar to the Coast  
18 Guard program, except that everything under the Coast Guard  
19 program says it's voluntary, we make it mandatory. And we  
20 also have a fee collection program to fund the program, and  
21 stiffer criminal or civil penalties involved. The first  
22 four years was dedicated a lot to research and data  
23 collection, and as I said, to allow the Legislature an  
24 opportunity to craft a better bill.

25 There are four agencies that were identified with

1 responsibilities. The Board of Equalization is responsible  
2 for collecting the fee, and it's a per-voyage fee. The  
3 California Department of Fish and Game conducted a baseline  
4 biological inventory to kind of give us an idea of where we  
5 were in California waters with regard to nonindigenous  
6 species. The State Water Board was responsible for  
7 evaluating alternatives. And the State Lands Commission was  
8 responsible for, in addition to setting the fee, basically  
9 in developing and implementing an inspection and monitoring  
10 program.

11 All the agencies are required to report to the  
12 Legislature in advance of the sunset date, and again, the  
13 idea behind this was to provide the lawmakers with the best  
14 available information in order to craft new legislation.

15 Here it's a little bit more detailed on the State  
16 Lands Commission's responsibilities. We are responsible for  
17 setting the fee amount, and currently the fee amount is \$200  
18 per voyage. At the recommendation of the Commission, in  
19 January of 2000, we established a technical advisory group  
20 made up of industry and regulatory representatives and came  
21 up with a per voyage amount that's based on the budget and  
22 the estimated number of voyages and compliance rate. So of  
23 all the data gathering and compilation, vessel inspections.

24 Research. In the model we were asked to conduct  
25 research as necessary and we've gotten probably more

1 involved in it than we had initially anticipated, and it's  
2 been quite rewarding. Outreach, education and collaboration  
3 is a big goal that we've been playing, and then of course  
4 the report which I will now start to go into.

5 As you all know, the State of California, our port  
6 zones that we deal with, as you can see, are spread out  
7 across the state. And the majority of vessels, foreign  
8 vessels that are coming into California ports are arriving  
9 at the Long Beach/Los Angeles complex. It's 73 percent of  
10 those vessels. Oakland receives about eight and a half  
11 percent of the foreign arrivals annually.

12 The majority of the vessels that come into the  
13 state of California are container vessels, with a smattering  
14 of a little bit of everything else. It's kind of important  
15 to keep these numbers in mind. Container vessels. We see  
16 50 percent of the vessels are container vessels, and a  
17 little bit later, that kind of becomes important because of  
18 the number of containers involves us as well.

19 This is some of the statistics that we pulled  
20 together over the last two and a half years. With regards  
21 to ballast water reporting, 92 percent of the vessels, the  
22 qualifying voyages that are coming in, have supplied a  
23 Ballast Water Report Form. And based on this form, 96  
24 percent of those vessels complied with the mandatory  
25 requirements. Which about 73 percent of the vessels

1 retained their ballast on board, 23 percent discharging.

2 The number of vessels that are discharging  
3 unexchanged ballast water, although it's a small number,  
4 only about 4 percent of the overall total, that number has  
5 been increasing slightly over the last two and a half years.  
6 The pattern is kind of complex, it's hard to determine.  
7 Some ports are showing vessels with less discharge and  
8 exchanged ballast water and others more and others have  
9 remained fairly stable. So it's kind of difficult to tease  
10 out what the pattern is and why we're seeing an increase, a  
11 slight increase, from 4 to 6 percent over the last two and a  
12 half years. It is a bit concerning though.

13 For example, Martinez, they saw a decrease in  
14 ballast water that was discharged that hadn't been exchanged  
15 from 14 percent to 5 percent, and Oakland remained about the  
16 same and San Diego increased, 10 percent of the water wasn't  
17 exchanged and now it's 30 percent. So there's a little bit  
18 of variability that we're still trying to tease out.

19 CHAIRPERSON BUSTAMANTE: No percentage shifts of  
20 the kinds of containers or the kinds of ships going in and  
21 out of the harbor?

22 MS. FALKNER: Not that we can see, although San  
23 Diego gets a large number of bulk vessels coming up from  
24 Rosarito.

25 CHAIRPERSON BUSTAMANTE: I notice there's a 30

1 percent increase. Was there some kind of a pattern change?

2 MS. FALKNER: Not that I have been able to tease  
3 out thus far. It's pretty complex. Because the numbers of  
4 vessels discharging remained pretty constant, the numbers of  
5 proportionate vessels coming in has remained fairly  
6 constant.

7 So although we have pretty good, we had very  
8 good --

9 CHAIRPERSON BUSTAMANTE: Let me ask you one  
10 question.

11 MS. FALKNER: Sure.

12 CHAIRPERSON BUSTAMANTE: Is there any pattern in  
13 terms of the increase in what types of vessels we're  
14 finding, not just in terms of how many vessels are coming  
15 in, but also where we're finding this pattern is 50 percent.  
16 There has to be a pattern.

17 MS. FALKNER: I have been looking at that and it  
18 appears that -- a little bit later you'll see that one of  
19 the biggest dischargers of ballast water is the bulk  
20 vessels. Even though they only make up 14 percent or 12  
21 percent of the population overall. So it's a small number  
22 of vessels that are contributing a large degree to the  
23 discharges. And one or two big vessels discharging, you  
24 know, five million gallons of water can skew the numbers.  
25 So I'm working through that as well, but I'm suspecting that



1 it's more the case that we're having one or two big  
2 discharges, rather than a big shift in vessel type.

3 So we're getting a fairly good compliance with  
4 submitting the form, although it should be noted that we  
5 have 10 percent of the forms that we're receiving, or 10  
6 percent of the vessels are not filling out forms at all on  
7 the average. Ten to 20 percent of the forms are being  
8 submitted late. The number 10 to 20 percent depends on if  
9 you were to use five days late or two weeks late, but we're  
10 still having problems with late forms coming in. And that's  
11 in spite of our monthly notification, the system that we  
12 started in July of 2001 where we contact the agents every  
13 month and we're still having forms that are being late.  
14 We're still having forms that are not being submitted at  
15 all. And we have --

16 CHAIRPERSON BUSTAMANTE: It actually a piece of  
17 paper or can they do this on the internet?

18 MS. FALKNER: Yes, both. They can submit the form  
19 to us electronically via e-mail as an attachment. We're  
20 working with the Coast Guard in trying to get -- also as you  
21 file your taxes, you enter in this stuff and it just dumps  
22 it into a database directly. We're working with the Coast  
23 Guard on that process. Or they can submit it by fax or  
24 regular mail.

25 CHAIRPERSON BUSTAMANTE: Are the forms very long?

1 MS. FALKNER: The forms are very complex and that  
2 is a big problem that we consider, it's a continuous  
3 problem. We're working again with the Coast Guard and the  
4 industry to try to develop some training materials that are  
5 applicable to this huge variety of vessels and crews. I  
6 mean we have every different nationality that you can  
7 imagine that we deal with on a regular basis. It's a highly  
8 developed training sheet that shows people how to file forms  
9 and do all that.

10 But we're working on that with the Coast Guard and  
11 field staff is going out and working with the shipping  
12 industry and trying to get a better form to try to improve  
13 compliance and filling out the form and those kinds of  
14 things. So we are working on that. It's just it's going to  
15 be a continuous process, we can't -- as much as the  
16 inspectors would like or any of us would like to go on board  
17 a vessel and go, okay, here you go, here's all your stuff  
18 that you need to do this, to fill out this form, to comply  
19 with the law, a month later you get a new crew that comes in  
20 and so you have to start the process all over again. So  
21 it's a very intensive outreach and education.

22 The next slide is just a little bit more detailed  
23 information on discharges, and the far left column is just  
24 the port zones. And this is a compilation of two and a half  
25 years' worth of data, to break it down again into annual,

1 you see some slight changes. There is more discharges in  
2 some ports now than there was a year and a half ago and  
3 vice-versa. But this gives you an idea of the volumes that  
4 we're dealing with of ballast water and this is likely an  
5 underestimate. We're just, again, because of the confusion  
6 or the difficulty and the complexity of the form.

7 This is another example. This kind of gets a  
8 little bit more at your question about the types of vessels.  
9 You can see bulk vessels, they're only 12 percent of the  
10 vessels that come into the state, but they discharge the  
11 vast majority of the ballast water, and if you add any  
12 vessels in there, it brings it up even higher. So they're  
13 contributing 46 percent of the water being discharged,  
14 although they only make up 12 percent of the vessels.

15 So just to kind of continue on. Vessel  
16 inspections. Our inspectors have been aboard, have  
17 conducted over 3,800 vessel inspections on over 2,000  
18 different vessels. We've noted 532 --

19 CHAIRPERSON BUSTAMANTE: This is over how long a  
20 period of time?

21 MS. FALKNER: This is two and a half years.

22 We have been targeting, attempting to do about 25  
23 percent of the qualifying voyages that come in, and that is  
24 stratified by vessel type and by port. Last year we  
25 implemented a new database that allows us to do a little bit

1 more targeted inspections. So if a vessel has never been  
2 in, it's a high priority. If the vessel had a violation the  
3 last time it was in and it wasn't corrected on the spot,  
4 then it's a high-priority inspection.

5 Five hundred and thirty two violations. Some  
6 vessels have more than one violation. Some vessels may not  
7 have the paperwork necessary to comply with the law or they  
8 may have an operational violation. An operational violation  
9 is basically they didn't manage the ballast water per the  
10 law, and so it's higher, we consider it a higher risk type  
11 of a violation than simply not having a nice book for their  
12 ballast water measurements.

13 CHAIRPERSON BUSTAMANTE: What's the potential  
14 penalty?

15 MS. FALKNER: The potential penalty is for not  
16 having paperwork and things like that, it's \$500 per  
17 violation. For violating the ballast water management  
18 requirements, it's a potentially \$5,000 violation. We have  
19 not moved forward on any violations enforcing any of that at  
20 this point, primarily because --

21 CHAIRPERSON BUSTAMANTE: Why not?

22 MS. FALKNER: Primarily because we have viewed  
23 this first four years as a data gathering and public  
24 outreach and education for the maritime industry. So we're  
25 trying to work with the maritime industry to correct these

1 problems rather than put up a big hammer. Now, we have sent  
2 out some letters and, in fact, we just recently sent out  
3 letters last week, in fact, regarding the late or delayed  
4 forms. And it was a first step. You are put on notice on  
5 the next day, if you do not comply, we will start with  
6 enforcement actions. So that seems to have worked fairly  
7 well in the past, and we're hoping it works well in the  
8 future so that we don't have to go through a big enforcement  
9 action.

10 CHAIRPERSON BUSTAMANTE: When do you anticipate  
11 having these kinds of major penalties in place?

12 MS. FALKNER: Depending on what the new  
13 legislation looks like. We made an assumption that the law  
14 is going to move forward relatively intact as it is now.

15 CHAIRPERSON BUSTAMANTE: You have a company that  
16 has had several violations having to do with ballast water.  
17 I'm assuming you have that type of a company, multiple  
18 companies?

19 MS. FALKNER: A few.

20 CHAIRPERSON BUSTAMANTE: And you're going to allow  
21 them another two years?

22 MS. FALKNER: Yes.

23 CHAIRPERSON BUSTAMANTE: Okay. Maybe you can tell  
24 me under what --

25 MS. FALKNER: Well, I think that we've been

1 talking about beginning when the new law goes into effect,  
2 which would be January 1st, 2004.

3 CHAIRPERSON BUSTAMANTE: Well, it just seems a  
4 little unfair. You have a bunch of people who are complying  
5 and they're busting their tails to do all the paperwork,  
6 they've taken the time to do all the reports, doing all the  
7 things that they're supposed to do, and yet you have a few  
8 people who are out there who are messing everything up for  
9 everyone else. And so what we're going to have to end up  
10 doing is cracking down on the entire industry because of a  
11 few people, and we're going to allow them to continue to  
12 just go ahead and do whatever they want to do. And we give  
13 them excuses because of language, we give them excuses  
14 because of distance, we give them all kinds of other  
15 excuses, and we don't deal with it.

16 And then what happens is that as the legislators  
17 begin to look at all the problems that take place, they'll  
18 take the worst case scenarios and then they'll build in  
19 those scenarios into legislation and they'll create even  
20 more problems for those folks who have been trying to  
21 comply. So either we deal with those folks now that are  
22 having problems and we either show them how to deal with it,  
23 or we begin to do the penalty phase quickly so that the rest  
24 of the industry isn't going to be in a difficult situation  
25 when the legislation comes up.

1 I know what's going to take place. I know as a  
2 legislator what I'd do. I know as a part of leadership what  
3 I would do. And I mean sitting down with the industry and  
4 then having to listen to all the potential stories about  
5 other kinds of organisms and having to explain to my  
6 constituents, especially if I'm a representative along the  
7 coast, explain to my constituents why these folks are still  
8 bringing in pathogens. And it's not a difficult position  
9 for a legislator along the coast to take, especially when  
10 there is going to be a new bill that's coming up.

11 So instead of putting the industry and those  
12 legislators at that point, you have an opportunity here.  
13 Don't you have the ability under the current statute to  
14 begin that process?

15 EXECUTIVE OFFICER THAYER: The current statute  
16 does give us some enforcement authority. It's a little bit  
17 awkward because we have to work through the Oil Spill  
18 Administrator who is involved with a different program other  
19 than us. Although there are some other actions where we can  
20 bring them more directly using the Attorney General's  
21 office.

22 CHAIRPERSON BUSTAMANTE: But, Paul, what we're  
23 doing is that we're building a case against the industry.

24 EXECUTIVE OFFICER THAYER: I hear what you're  
25 saying.

1 CHAIRPERSON BUSTAMANTE: Why would we want to do  
2 that?

3 EXECUTIVE OFFICER THAYER: I hear what you're  
4 saying, but so far --

5 CHAIRPERSON BUSTAMANTE: We should build a case  
6 against those companies that are not doing a good job.

7 EXECUTIVE OFFICER THAYER: I agree.

8 CHAIRPERSON BUSTAMANTE: And let's go after them.

9 EXECUTIVE OFFICER THAYER: Sure.

10 CHAIRPERSON BUSTAMANTE: You're going allow a few  
11 people to create a panic, and they are going to take it out  
12 on the entire industry.

13 EXECUTIVE OFFICER THAYER: So far what we've done  
14 is worked very closely with the industry groups in enforcing  
15 and bringing about compliance here. And actually, they've  
16 been as useful as any enforcement mechanism in terms of  
17 going to their own members and using the exact same argument  
18 you just gave, which is don't screw it up for the rest of  
19 us. But there's always going to be some shippers that  
20 perhaps don't see it that way and that's what these  
21 enforcement mechanisms are going to be involved with. And  
22 you're absolutely right. And these letters that recently  
23 have gone out, in the past we've had problems with the  
24 cruise lines and we have sent out several letters which  
25 brought greater cooperation in their reports.



1 CHAIRPERSON BUSTAMANTE: I can understand a period  
2 of time.

3 EXECUTIVE OFFICER THAYER: That's right.

4 CHAIRPERSON BUSTAMANTE: I can understand a period  
5 of time that people need to be made aware of the process.  
6 That's only fair. And if you're going to begin the process  
7 of enforcing certain kinds of codes and laws, you have to be  
8 able to give people the information.

9 EXECUTIVE OFFICER THAYER: Right.

10 CHAIRPERSON BUSTAMANTE: But at some point,  
11 especially if we're coming up on the sunset and the  
12 reissuance, what you're doing is that you're just building a  
13 case against the industry.

14 EXECUTIVE OFFICER THAYER: That's right, and --

15 CHAIRPERSON BUSTAMANTE: And there are people in  
16 those committees who are only going to look at the worse  
17 case scenario. So we ought to allow the environmental  
18 concerns to be extremely important in how we deal with this  
19 issue. But why would we want to put the industry at a  
20 disadvantage in this timeframe, instead of saying that,  
21 well, we were able to identify a certain percentage of those  
22 folks who were not in compliance on a regular basis, some  
23 who were at the extreme end of noncompliance, and we went  
24 after them, and the process worked. We were able to bring  
25 them back into compliance within this period of time. And

1 so if you're looking at this proposal, the industry and the  
2 environmental community can then see a real good snapshot, a  
3 moving snapshot, over a period of time how the existing law  
4 could work. Right now, you're not allowing it to work,  
5 because we're not enforcing.

6 EXECUTIVE OFFICER THAYER: I would say that we are  
7 enforcing, but you're right, we're not going to court with  
8 somebody at this point. Where in the past we've gotten  
9 better compliance when we have paid attention to people who  
10 have been a problem. But that's not to say we're not going  
11 to take the next step, and as Maurya indicated, we're in the  
12 process, we have sent letters out.

13 CHAIRPERSON BUSTAMANTE: The way I look at is  
14 tactically.

15 EXECUTIVE OFFICER THAYER: Sure.

16 CHAIRPERSON BUSTAMANTE: I look at it  
17 strategically, and if we're going to be strategic in this  
18 process, we're going to have to make sure that we can  
19 demonstrate that we have the capability of managing this  
20 entire law in the first place.

21 EXECUTIVE OFFICER THAYER: Right.

22 CHAIRPERSON BUSTAMANTE: And if we never take it  
23 to the next step and somebody's a bad actor, then we haven't  
24 demonstrated our own ability first of all.

25 EXECUTIVE OFFICER THAYER: Right.

1           CHAIRPERSON BUSTAMANTE: Second of all, we have  
2 not allowed the legislation to fully implement and so  
3 there's no real review. So what are you going to do, have  
4 another two or three or four-year period after that to try  
5 to figure out the best way of dealing with the poorest  
6 actors? But in the meantime what we're going to do is add a  
7 whole lot more restrictions and paperwork requirements on  
8 the entire industry. Are we going to move the increases of  
9 the costs up to \$400 so that we can add even more monitors  
10 and more paperwork and then in the meantime we're still not  
11 dealing with the -- I understand that strategically.

12           I think we need to be able to go through that  
13 process all the way through to be able to see if in the  
14 event that we do have bad actors, that we, in fact, bring  
15 them either into compliance or move them out, and what kind  
16 of effect does that have on our ports, what kind of effect  
17 does it have on our economy, what kind of effect does it  
18 have on the industry, what kind of effect does it have on et  
19 cetera, et cetera, et cetera.

20           EXECUTIVE OFFICER THAYER: Right.

21           CHAIRPERSON BUSTAMANTE: In the meantime, it could  
22 be certain parts of the industry, certain groups of vessels  
23 that in fact have a much easier time of compliance and  
24 they're having to bear the burden of the increased  
25 requirements. And so I really think strategically we need

1 to move through this process. Nobody wants to go after an  
2 industry group just to go after them. Nobody wants to.  
3 We're supposed to be basing all this information on good  
4 science.

5 EXECUTIVE OFFICER THAYER: Correct.

6 CHAIRPERSON BUSTAMANTE: I'm assuming that's what  
7 we are still doing.

8 EXECUTIVE OFFICER THAYER: Certainly.

9 CHAIRPERSON BUSTAMANTE: Okay. So then what we  
10 should probably do is that we should figure out and I'm  
11 hoping that in the next week or so that we'll have an  
12 opportunity to hear a report as to how we're in fact taking  
13 it to the next step. I would hope that you would be  
14 clearly, or already have been, working with the industry  
15 representatives, as well as the environmental  
16 representatives. I'm hoping that you keep doing that so  
17 that we can make sure that strategically we make this thing  
18 work or provide examples of how there needs to be changes.

19 EXECUTIVE OFFICER THAYER: Certainly. And I think  
20 that the report recognizes a lot of the issues that we've  
21 developed so far along those lines and makes changes which  
22 aren't pejorative because of problems, but recognize better  
23 ways to implement. But as part of that program, we entirely  
24 agree with you that enforcement is ultimately going to be  
25 needed.

1           CHAIRPERSON BUSTAMANTE: Is there a way of posting  
2 the results or reviews and evaluations?

3           EXECUTIVE OFFICER THAYER: Of individual ships?

4           CHAIRPERSON BUSTAMANTE: Of individual ships or  
5 companies.

6           EXECUTIVE OFFICER THAYER: I presume we could,  
7 yes.

8           CHAIRPERSON BUSTAMANTE: You might want to talk  
9 about that with the industry folks, that maybe we should  
10 post all of our results on the internet.

11          EXECUTIVE OFFICER THAYER: We'll look into that.

12          CHAIRPERSON BUSTAMANTE: Maybe we should just go  
13 ahead and post how many have had problems with ballast, and  
14 just paperwork problems, who have been the bad actors.  
15 Maybe we should just kind of like open up the process and  
16 let the clean water shine in.

17               (Laughter.)

18          EXECUTIVE OFFICER THAYER: It sounds like a good  
19 idea.

20          CHAIRPERSON BUSTAMANTE: But we should take it to  
21 the next point.

22          EXECUTIVE OFFICER THAYER: And we're in that  
23 process. We agree.

24          CHAIRPERSON BUSTAMANTE: Do you have any more? Go  
25 ahead.

1 MS. FALKNER: Okay.

2 CHAIRPERSON BUSTAMANTE: You have about five more  
3 minutes.

4 MS. FALKNER: Okay, good. The fee submission has  
5 been outstanding. We originally set up our fee amount based  
6 on an estimated 75 percent compliance, that's what the  
7 industry was kind of talking about, and it is now over 95  
8 percent. We are still having some problems, as well as with  
9 getting some of the fees submitted to them, but overall the  
10 fee submission has been great, and in large part, that's  
11 because of the technical advice we've provided. We sat down  
12 and discussed the problems and discussed what the possible  
13 solutions are, and it's much -- it's a peer group pretty  
14 much and they have decided that, for example, they didn't  
15 want to establish all of these complex fee schedules but  
16 rather a flat fee per voyage was the best way to go. It was  
17 the fair way across the board, and that helps when you have  
18 peer pressure like that. The VOA's implemented self-  
19 reporting program has assisted the larger carriers so they  
20 are not getting 30 pieces of paper, but rather they self-  
21 report and that's been beneficial.

22 I'll just speed this up. These are just  
23 inspection violations.

24 Research that we are involved with. The State  
25 Lands Commission lead on the West Coast Demonstration

1 Project, which I talked about last year briefly at a  
2 Commission meeting, that's still ongoing. We have one  
3 vessel that's completed and we're waiting on a final report  
4 from the research team, and the other vessel we will  
5 hopefully be doing evaluations on.

6 We're working with the Coast Guard to advance the  
7 approval process by the evaluation of technologies on  
8 vessels, and taking technologies and trying to motivate and  
9 stimulate things so they put them on their vessels and find  
10 alternatives to ballast water exchange. And we're also  
11 participating in several other studies, primarily working to  
12 facilitating access to vessels and collection of samples and  
13 things such as that. So we're moving along in those areas.

14 Several partnerships that we're involved with.  
15 The West Coast Outreach Project, we work with them pretty  
16 intimately and we've co-hosted several workshops and  
17 conferences. The Ballast Water Group just recently had a  
18 meeting in January in Oakland talking about coastline vessel  
19 traffic and how to deal with those vessels that are coming  
20 up from Mexico or down from Canada or often between the west  
21 coast ports and, you know, come up with a regional plan that  
22 will minimize the confusion and improve the protective  
23 regulatory process that we're doing.

24 We're also looking at a regional database right  
25 now. We're working with Oregon and British Columbia in

1 trying to develop a regional database where our database is  
2 combined and it would be web-based. They can enter their  
3 data. We're doing a funded project on the west coast so  
4 they can combine somehow with their programs and we can  
5 provide outside sources to get that web-based system up and  
6 running with better ballast water management on the west  
7 coast.

8 When we get into the recommendations, some of the  
9 things that we already talked about. Because of the  
10 program's success, it is successful especially when you  
11 compare it to the national program where you have 30 percent  
12 compliance on the national level, and we're looking at over  
13 90 percent compliance. It's a local program and we have a  
14 system in place and the state's program, because of the  
15 success, we continue.

16 As I mentioned, we were working on the coastwise  
17 traffic issue. Vessels moving from San Francisco up to  
18 Oregon or vessels moving down from Seattle are often just  
19 the right way to transport organisms that are established in  
20 those ports into our ports or vice-versa. Oregon and  
21 Washington already have legislation on the books that  
22 regulate vessels that come out of California. Before they  
23 go into their waters, they are required to do certain  
24 things. We don't have the language in our existing bill,  
25 and I think everybody recognizes that it's an important



1 component of invasions and we need to regulate that.

2 Again, regulating or including reporting for all  
3 ports of call. Right now we have gaps. If a vessel comes  
4 into LA and it goes up to San Francisco, they're only  
5 required to submit a ballast water report form in LA.  
6 They're supposed to identify their estimated discharges in  
7 San Francisco. And what we have found is, and the federal  
8 program has found this as well, as has Oregon and  
9 Washington, that frequently additional reports are not being  
10 submitted and many of the reports aren't being submitted.

11 Okay. Continue a fee-based program. Everybody,  
12 national and the other states, have commented on the success  
13 of our program is because it's a fee-based program. Because  
14 we can afford to do the job well.

15 Proof of compliance and enforcement. I think that  
16 the other recommendations, the previous recommendations will  
17 help compliance, but that we do need to have a strong  
18 enforcement of compliance.

19 Coordinated research, continued biological  
20 surveys.

21 That completes my presentation, and I guess I  
22 would like to request that Commission direct the staff to  
23 submit the report to the Legislature, as per section 71212  
24 of the Public Resources Code. And I'd be happy to answer  
25 any additional questions you might have.

1 CHAIRPERSON BUSTAMANTE: Any questions from the  
2 Commissioners?

3 We have several members of the audience that would  
4 like to come to speak. Where are we going to speak from?

5 EXECUTIVE OFFICER THAYER: Right here where Maurya  
6 is.

7 CHAIRPERSON BUSTAMANTE: Okay. The first person I  
8 have on my list is Michael Sowby.

9 MR. SOWBY: Sowby.

10 CHAIRPERSON BUSTAMANTE: Sowby. Environmental  
11 Program Manager with the Department of Fish and Game.  
12 Please come up.

13 After Michael is Linda Sheehan with the Ocean  
14 Conservancy, you're on deck. And Tim Eichenberg from  
15 Oceana, you're in the hole.

16 MR. SOWBY: Thank you, Commissioners. My name is  
17 Michael Sowby. I'm with the California Department of Fish  
18 and Game. And I'd like to thank you for the opportunity to  
19 speak this morning on the report that was just presented, as  
20 I have worked on the Ballast Water Program for the  
21 Department of Fish and Game for over the past 10 years. As  
22 part of a team that was designed and implemented for  
23 biological survey, which Maurya talked about, and the survey  
24 was to determine the nature and extent of the problem of  
25 nonindigenous species introductions in coastal waters of the

1 state. Our survey has ended up identifying about 760 plus  
2 species of nonindigenous species in the coastal bays and  
3 estuaries of the state of California.

4 The biological surveys, as Maurya had indicated,  
5 were required under the Ballast Water Management Act of 1999  
6 and was undertaken to establish a baseline inventory of  
7 nonindigenous species in our state waters. The baseline was  
8 intended to be used to measure the effectiveness of ballast  
9 control, measures that were put in place by the act that  
10 we're working with right now, as well as any other  
11 legislation that may be implemented in the future.

12 I am here today to speak to Recommendation Number  
13 11, of the report, which calls for the continued monitoring  
14 of coastal waters for the introduction of a range of  
15 existing nonindigenous species populations. The Department  
16 wholeheartedly supports this recommendation and, in fact,  
17 has made a similar recommendation in our report which was  
18 submitted to the Legislature.

19 The Department, as you know, is a trustee for fish  
20 and wildlife resources in the state of California and  
21 believes that the introduction of nonnative species is  
22 vitally important to both the environmental and economic  
23 health of coastal habitats and communities. To ensure that  
24 nonnative species and pathogens are not transported to  
25 California or moved between our ports, a strong ballast

1 control program in essential and monitoring is an important  
2 element to ensure the success of any program that is  
3 instituted.

4 And the results of future biological surveys will  
5 be compared to the baseline that we've developed and used to  
6 determine where and possibly how many introductions are  
7 occurring. This information can be used to develop more  
8 effective control procedures to target hot spot areas or  
9 problem areas. Focusing resources where they're most needed  
10 will help keep the program cost effective and it will  
11 provide important environmental protection.

12 Again, I want to thank you for the opportunity to  
13 comment and the Department looks forward to continuing its  
14 partnership with the State Lands Commission staff and the  
15 Ballast Water Control Program in the ongoing biological  
16 health of the environment.

17 CHAIRPERSON BUSTAMANTE: As the members come up to  
18 speak, it would be helpful if you have a specific concern  
19 about the report or any portion of the report, a number of  
20 the recommendation, suggested changes, recommended language,  
21 anything along that line which you submitted for  
22 consideration before we make a decision to submit or not to  
23 submit the report. It would be very helpful if you have  
24 something in your hand that you can pass out to people. And  
25 you were talking about your support of Recommendation Number

1 11.

2 MR. SOWBY: Right.

3 CHAIRPERSON BUSTAMANTE: Okay. Very good. Thank  
4 you.

5 MR. SOWBY: Thank you very much.

6 CHAIRPERSON BUSTAMANTE: Linda. Tim, you're on  
7 deck.

8 MS. SHEEHAN: Good morning everybody.

9 Commissioners, I'm Linda Sheehan. I'm the Director of the  
10 Pacific regional office for the Ocean Conservancy. And the  
11 Ocean Conservancy, we're the cosponsors of the original bill  
12 AB 703 and we're working with Assembly Member Nation on the  
13 new phase of the Ballast Water Management Program.

14 I'd first like to commend the staff, especially  
15 Maurya, for all of their dedication to this program.  
16 They've really worked hard. California, as Maurya  
17 mentioned, was the first state to have a state ballast water  
18 law, so we were really working in uncharted ground. And  
19 California has really led the nation, the United States, on  
20 the President's National Invasive Species Advisory Committee  
21 and working on the new federal National Invasive Species  
22 Act. And the problem with those federal folks, I can see  
23 how much influence California has had at the national level.  
24 Other states in the nation, they're really looking to us for  
25 leadership on this issue, they're looking to our program in

1 terms of how to mold their programs as well, and in the  
2 process, California is likely preventing many new invasions.  
3 And I'd like to thank the State Lands Commission for that.

4 Because California's original law was limited to  
5 the existing federal statute, we were limited to making it  
6 mandatory, not voluntary, basically. This new phase of the  
7 Ballast Water Program provided by the sunset, this is a real  
8 key opportunity to make changes and improvements in the  
9 program that will help us in correcting some gaps that were  
10 evident from the first time around that we're seeing as we  
11 moved forward, and it's a really good opportunity.

12 And I think the report before you, the  
13 recommendations in there, made some very important points as  
14 to what needs to be in the legislation. And I would support  
15 all of the recommendations in the report and the report as  
16 well, in particular reauthorizing the program, the  
17 continuing fee program, and continuing in making the  
18 enforcement powers more clear as it's described in the  
19 report. Because we were basing the law on the federal law,  
20 the enforcement powers of State Lands weren't as clear I  
21 think as they could be, and I think the report made some  
22 good recommendations about making that more clear.

23 And I'd like to thank you, Commissioner  
24 Bustamante, for your remarks with respect to making it clear  
25 about enforcement violations, so the public knows where

1 those problems are. And I would like to say that in my  
2 experience, most of the shipping industry has been working  
3 very hard to try and comply with this new law, this new  
4 program, and I think that addressing some of the problems  
5 will make that program even better. It's very important to  
6 try to get full compliance with this particular issue,  
7 because it's like chemical pollution, once these forbidden  
8 species have taken hold, it can be very difficult, if not  
9 impossible, to get rid of them. So full compliance is very  
10 important.

11 A couple of other recommendations we do support is  
12 developing ballast water treatment performance standards,  
13 developing coastline monitoring programs so we can really  
14 see the impact that this important program is having. And  
15 then also our organization is working on Prop 51, funding  
16 for various initiatives, and one of those is a ballast water  
17 testing evaluation center to test out the new pilot projects  
18 in one place so you're on a level playing field when you're  
19 trying to see what works and what doesn't. That's something  
20 our organization is trying to advocate for and we're hoping  
21 that State Lands will be supportive in that project as well.

22 So in conclusion, the Ocean Conservancy strongly  
23 supports the report and its recommendation, and we ask that  
24 you send it to the Legislature with your approval. Thank  
25 you.

1 CHAIRPERSON BUSTAMANTE: Thank you.

2 Tim Eichenberg with Oceana. And on deck is Jane  
3 DeLai, with Save Our Shores.

4 MR. EICHENBERG: Thank you very much. My name is  
5 Tim Eichenberg, I'm with Oceana. We're an international  
6 environmental organization. We have offices in San  
7 Francisco.

8 We're concerned obviously with the quality of the  
9 marine environment. And ballast water is a major vector for  
10 the introduction of invasive species and we're very  
11 concerned about ballast water, particularly from large  
12 vessels, and including cruise ships, which is not perhaps in  
13 terms of quantity a major impact, a major discharger of  
14 ballast water, but in terms of quality, it may be a very  
15 important vector.

16 The rate of introductions has increased a lot over  
17 the last 200 years and the state and federal ballast water  
18 regulations are really inadequate to deal with them, except  
19 for the state of California, which has developed this  
20 landmark law which has been uniquely implemented by the  
21 State Lands Commission.

22 CHAIRPERSON BUSTAMANTE: The cruise ships, is that  
23 more ballast water, or is that more sewage or other kinds of  
24 discharge?

25 MR. EICHENBERG: There's a big problem with sewage



1 and gray water, which is completely unregulated. But  
2 ballast water is sort of a less known, but just as important  
3 impact from cruise vessels, because they go into some very  
4 sensitive areas around the world. Particularly they like to  
5 take their passengers into pristine areas to show them  
6 whales and like Glacier Bay and places like that, Monterey  
7 Bay. They're coming in greater quantities into these  
8 pristine areas and when they discharge their ballast water  
9 into those areas, they can have a very devastating impact.

10 And the reason that we're here to support the  
11 staff's recommendations and the staff's report and urge that  
12 you do submit these to the State Legislature with their  
13 recommendations. We are particularly supportive of  
14 Recommendation Number 1, which is to continue the State's  
15 mandatory program through reauthorization of AB 703.

16 We're also especially supportive of Recommendation  
17 Number 2, to broaden the State's program to phase in  
18 exchange and treatment for coastwise traffic, for the same  
19 reasons that I just spoke to you about. That it's not so  
20 much the quantity, but the quality of a lot of the  
21 discharges that are important. And there are many ships  
22 that go along the coast that discharge ballast water into  
23 areas that need to also be addressed, where they have not  
24 been addressed to date. So that's one improvement that we  
25 would like to see in the law when it's reauthorized.

1           And the third recommendation that we're especially  
2     supportive of is Recommendation Number 9, and we urge you to  
3     work with the State Water Resources Control Board to  
4     establish interim ballast water treatment standards. Right  
5     now, the majority of the technology is in ballast water  
6     exchange, but as the report notes and many other reports,  
7     including this report by the Clean Oceans Commission, that  
8     ballast water exchange is an imperfect way of treating  
9     ballast water and really the best way to do it is through  
10    these new treatment technologies that your staff is doing  
11    some groundbreaking work on which is reported in there in  
12    the report that you're making to the State Legislature.

13           And to ensure that ballast water doesn't contain  
14    metal and harmful marine species, but also toxic substances  
15    and chemicals, pathogens and viruses and bacteria as we saw  
16    in the report, fecal coliform bacteria, we really need to  
17    develop a treatment program for ballast water. And  
18    secondly, the state program, a mandatory program, is  
19    necessary to drive the development funding and installation  
20    and use of the alternative technologies. So without these  
21    standards there would be no method to really drive the  
22    installation of new treatment systems.

23           So we applaud the work that the Commission and  
24    staff have done and we urge you to submit your report and  
25    the recommendations to the State Legislature. Thank you.

1           CHAIRPERSON BUSTAMANTE: Thank you.

2           Jane. We have John Berg of the Pacific Merchant  
3 Shipping Association on deck.

4           MS. DELAI: Good morning. I'm Jane DeLai from  
5 Save Our Shores. I'm the Marine Policy Coordinator for the  
6 organization. And I want to thank you for welcoming us here  
7 this morning and for the opportunity to speak in support of  
8 this program.

9           I want to commend the State Lands Commission and  
10 their staff for their review of this important program and  
11 for the set of recommendations presented in the report that  
12 we believe to be both useable and achievable.

13           Save Our Shores urges the State Lands  
14 Commissioners to adopt the report with its recommendations  
15 to provide the greatest possible protection for the coastal  
16 resources of the state. The state of California has a very  
17 real threat from nonindigenous aquatic species. The  
18 international maritime community recognizes the introduction  
19 of nonindigenous aquatic species as one of the four greatest  
20 threats to the world's oceans.

21           Save Our Shores also wants to commend those  
22 members of the shipping industry whose compliance and  
23 cooperation with the development and implementation of the  
24 California Ballast Water Management Program have  
25 demonstrated that important management measures such as this

1 can be successful in protecting marine resources. Save Our  
2 Shores supports all of the recommendations presented in the  
3 State Lands Commission report.

4 We urge the Commissioners approve that  
5 recommendations and we want to continue the State's  
6 mandatory ballast water exchange program through legislative  
7 reauthorization of AB 703.

8 And in view that the shipping industry transports  
9 over 80 percent of the world's commodities, transferring  
10 from 3 to 5 billion tons of ballast water throughout the  
11 world, we all recognize that the exchange of ballast water  
12 is an essential to the safe operation of modern ships.

13 Without an effective managed ballast water exchange program  
14 such as the one implemented by the State of California,  
15 ballast water poses a serious ecological, economic, and  
16 health threat to coastal communities worldwide.

17 Save Our Shores also strongly supports  
18 Recommendation Number 2, to broaden the State's program to  
19 include coastwise traffic. As stated by colleagues earlier,  
20 once aquatic invasive species are established, they are  
21 virtually impossible to eradicate and often spread from one  
22 region to another. For example, San Francisco Bay and the  
23 San Joaquin River delta are some of the most heavily invaded  
24 waterways in the world. And obviously a ship taking on  
25 ballast water in San Francisco, would likely transport that

1 to another area of the state while transporting up and down  
2 the coast. An appropriate ballast water exchange program is  
3 the best defense.

4 Number three, we urge the Commission to approve  
5 Recommendation Number 4, to remove the selected exceptions  
6 listed on section 71202. The efficacy of the Ballast Water  
7 Exchange Program protecting California resources is weakened  
8 by the number of types of ships exempt from compliance with  
9 this measure.

10 Save Our Shores not only supports Recommendation  
11 Number 6 to continue the fee-based program to fund the State  
12 Exotic Species Control Project. The fund has been an  
13 invaluable source of income to support the work of  
14 enforcement capacity of the program, without which the  
15 successful compliance and the communication of the  
16 stakeholders would not have been successful.

17 And finally, Save Our Shores endorses  
18 Recommendation Number 11 to continue the biological surveys  
19 to monitor the success of the program. In addition, we  
20 request that the State Water Resources Control Board also  
21 monitor the ballast water for evidence of fecal, chemical,  
22 and other pollutants and pathogens that would indicate  
23 ballast water intake near sewage outfalls or cross  
24 contamination of the shipping systems.

25 In conclusion, Save Our Shores reiterates our

1 support for the work of the State Lands Commission and it's  
2 development and implementation of this important program,  
3 and we commend the State Legislature for increasing the  
4 national programs and protecting the coastal resources of  
5 California. And we urge the Commission to adopt the report  
6 and send it with your approval to the State Legislature.  
7 Thank you for your consideration and for having us here this  
8 morning.

9 CHAIRPERSON BUSTAMANTE: Thank you. John Berg.  
10 Teri Shore will be on deck.

11 MR. BERG: Thank you, Commissioners, for allowing  
12 me to speak before you today. My name is John Berg and I am  
13 the vice president of the Pacific Merchant Shipping  
14 Association, a trade association which represents carriers  
15 going to all of California's ports.

16 I'm not here to speak directly to any particular  
17 items in the report, but generally just to give a few  
18 comments and speak in support of the work that State Lands  
19 has done with the California Ballast Water Program.

20 Invasive species introduction is one of the most  
21 important issues facing our industry today, and we see this.  
22 First of all, the shipping industry operates in an  
23 international arena and we see this as a problem of  
24 international scope. So consequently, it is receiving  
25 attention at that level through the International Maritime

1 Association.

2 We feel strongly that the ultimate solution to  
3 this problem rests in the development of international  
4 ballast water management and treatment standards. These are  
5 best facilitated by uniform standards administered  
6 nationally and enforced by port and state control agencies,  
7 such as the U.S. Coast Guard. The Coast Guard is currently  
8 working towards developing such a mandatory program and we  
9 hope to see it well established within the next few years.

10 Until such time, we understand the need for  
11 California to move ahead with a separate program to protect  
12 our ports and estuaries. The California program in place  
13 since 2000 has helped to move the ball down the field. The  
14 State Lands has done an admirable job of administering this  
15 program, and the maritime industry has enjoyed an excellent  
16 working relationship with them.

17 Our industry is proud of the high levels of  
18 compliance demonstrated in both the data and payment of fees  
19 over the last few years. This has largely been facilitated  
20 by the type of work done by the State Lands' staff in  
21 reaching out and educating the many members of our industry.  
22 In addition, we enjoy good communications and an open  
23 dialogue with State Lands through the Ballast Water  
24 Technical Advisory Group. This has allowed candid and frank  
25 discussions sometimes lacking in other agencies.

1           So in conclusion, our industry does look forward  
2 to working closely with Senator Joe Nation and the State  
3 Lands' staff and Commission in the development of new  
4 ballast water legislation to extend the current program and  
5 to continue to promote environmental benefits to the waters  
6 of our state. Thank you.

7           CHAIRPERSON BUSTAMANTE: Thank you. Teri Shore.

8           MS. SHORE: Good morning. My name is Teri Shore  
9 from Blue Water Network. We're a national environmental  
10 advocacy group based in San Francisco. And our Clean  
11 Vessels Campaign is focused on reducing air and water  
12 pollution from various cruise ships and personal vessels.

13           We strongly support the reauthorization of the  
14 State's Ballast Water Management Program and we urge the  
15 Commission to forward this excellent report to the  
16 Legislature. We specifically support the following elements  
17 and recommendations. The Ship Board Demonstration Project,  
18 the building of a test and violations center, new reporting  
19 requirements, the need for treatment standards, and the need  
20 for coastwise standards.

21           We would also urge that the State Lands Commission  
22 give a greater emphasis in the new bill to no discharge of  
23 ballast water. Because 73 percent of reported vessels  
24 already do not discharge ballast water into state waters, it  
25 is clear that this is a reasonable goal. In particular, we



1 would ask for creation of no ballast water discharge zones  
2 in sensitive waterways and in bays and estuaries. We would  
3 also call for a plan for coastal ballast water management  
4 that also emphasizes no discharge zones as part of the  
5 program. We would also like to see a strong consideration  
6 of the construction of a prototype shoreside ballast water  
7 treatment facility in San Francisco Bay or somewhere along  
8 the coast that could be funded in partnership with industry,  
9 port, federal agencies, and private foundations.

10 A couple of other items we'd like to go on record  
11 with. We'd like to see consideration of some sort of  
12 disincentive for the industry to build more integrated tug  
13 barges. As I understand, these particular types of vessels  
14 which are engaged in coastwise traffic are unable to conduct  
15 ballast water exchange because of their design, and they  
16 also are not able to hold the ballast water. And because  
17 there are more and more of these vessels being built, I  
18 think there's a risk of it being a potential problem. So we  
19 would like the industry to look at alternatives with regard  
20 to how they design and perhaps the State Lands Commission  
21 can provide incentives to go in a different way.

22 We would urge extreme caution in the use of  
23 biocides and other methods for treating ballast water that  
24 could potentially introduce new toxins in the coastal  
25 waters. We very much would like to support Commissioner

1 Bustamante's comments about actually imposing penalties and  
2 fines on violators and we love the idea of posting them up  
3 on the website for the public to see. I think that's a  
4 really good incentive for the bad actors to comply.

5 I thought you might also be interested, just as a  
6 point of information, that Blue Water Network is engaged in  
7 litigation against a number of cruise lines for violating  
8 the State Ballast Water Law. And yesterday, a superior  
9 court judge in Los Angeles ruled in our favor over the  
10 particular fact that Carnival Cruise Lines continues to  
11 violate our state ballast water law without any real  
12 penalties. And the next stage of this lawsuit will be a  
13 trial on March 25th, and at that point we hope the judge  
14 will provide some injunctive relief or some other penalty  
15 for this particular bad actor.

16 So that is all I can offer today. Again, I would  
17 urge you to forward this report to the Legislature with our  
18 support. Thank you very much.

19 CHAIRPERSON BUSTAMANTE: Thank you, Teri.

20 Tim.

21 MR. SCHOTT: Commissioners, thank you for the  
22 opportunity to speak to you today. My name is Tim Schott  
23 and I represent the California Association of Port  
24 Authorities, which is an association comprised of the  
25 state's 11 commercial publicly-owned ports.

1           First, we want to just commend the State Lands  
2 Commission for handling the program as a model, not only in  
3 terms of the actual process of managing ballast water, but  
4 in terms of outreach and bringing the industry into the  
5 fold, working with industry and the environmental community  
6 to try to craft a better solution. The maritime industry  
7 recognizes this as a serious problem and we are doing our  
8 best to address it.

9           We would like you to just keep three things in  
10 mind as we move forward. We are working with Senator  
11 Nation's office and we are most interested with the  
12 environmental community as we go forward and hopefully  
13 reauthorize a strong ballast water management program. We  
14 ask everybody to consider coordinating as much as possible  
15 at the national and international levels, with the Coast  
16 Guard. Again, ultimately this is a problem much larger than  
17 the state of California. We recognize that the state of  
18 California is leading the way, and it's probably appropriate  
19 to the extent that we can coordinate our efforts.

20           As research moves forward we will do more research  
21 as neccessary and we would emphasize that using supply  
22 technology research is probably where we should spend the  
23 bulk of our time, energy and resources, as opposed to  
24 academic or life sciences. We know what the problem is, we  
25 have to figure out how to address the ballast water itself.

1           We would throw a little bit of caution to  
2   development of standards, only because the current  
3   technology does not exist to properly cleanse water to the  
4   extent we need to. So we would simply make sure that as we  
5   develop standards, we do it in a way that isn't detrimental  
6   to our economy and doesn't cause cargo to move out of the  
7   state because California is too far ahead of the national  
8   regulations.

9           And we would also urge everybody involved to  
10   pursue funding for that research through programs like  
11   Proposition 50 and those that might be out there where we  
12   can find some money to address this very real problem.

13           That's all I have today. Thank you very much.

14           CHAIRPERSON BUSTAMANTE: Very good. Thank you.

15           ACTING COMMISSIONER TAKASHIMA: I have a question.

16           CHAIRPERSON BUSTAMANTE: What is it?

17           ACTING COMMISSIONER TAKASHIMA: The recommendation  
18   in Item 9 reads, "establish interim and final ballast water  
19   treatment technology performance standards." Would it be  
20   your recommendation that that would be revised in your  
21   report, that final standard?

22           MR. SCHOTT: It seems to me as though the lines  
23   are just crafted fairly carefully. I forget how it actually  
24   reads, but pardon --

25           ACTING COMMISSIONER TAKASHIMA: It says establish

1 interim and final ballast water treatment technology  
2 performance standards.

3 MR. SCHOTT: The last line we would suggest is an  
4 important piece of that. A timeline for the development of  
5 regulations on the treatment technology standards, I think,  
6 is perhaps a very important reading to that. CAPA has  
7 recognized that. I don't think anybody right now would  
8 suggest that we're at a point where we could actually  
9 develop final standards this year, unless it was to say no  
10 discharge. And with even that, I think we would have  
11 problems of determining whether it was true or not and we've  
12 had other possible contaminants that aren't living organisms  
13 that we've had to take control. I think it's in a timeframe  
14 we believe it might be manageable. We would ask you to look  
15 at the Washington model where they have developed standards,  
16 I believe on more than one occasion, and failed to meet  
17 those standards and had to go back to the Legislature  
18 because the standard couldn't be met. And we would just  
19 like to remember that as we try to develop those standards.

20 CHAIRPERSON BUSTAMANTE: The Washington standards,  
21 when was Washington standards?

22 MR. SCHOTT: In '95.

23 MS. FALKNER: Yeah. By July of 2002, all vessels  
24 were supposed to meet X standard, none of them could, and  
25 the technology is not available. So they're back up to

1 2004, and it's very likely that they will not be able to  
2 reach that date either, simply because the technology is not  
3 available at this time.

4 MR. SCHOTT: Again, this is why we need to do  
5 research and to focus our department on finding technologies  
6 and trying to establish this. We have a little bit of a  
7 Catch-22 in that shippers don't want to put technology on  
8 their ships that can't be a standard and then have to go  
9 reinvest in additional technologies to meet that standard.  
10 Until we can establish the technology perhaps, we're going  
11 to have to work together with that standard technology.

12 ACTING COMMISSIONER TAKASHIMA: As written, the  
13 status report to the Legislature as we propose, the reports,  
14 you would recommend for the Commission adoption?

15 MR. SCHOTT: I'm afraid I don't have authorization  
16 from our membership to speak directly to that. So I'd like  
17 to pass on it and just throw in that caution. As I  
18 understand, the timeframe phrase was a key ingredient to  
19 that recommendation.

20 ACTING COMMISSIONER TAKASHIMA: But the report in  
21 its entirety, what's the view of the ports?

22 MR. SCHOTT: I believe we are in general in  
23 support of the report as written.

24 ACTING COMMISSIONER TAKASHIMA: All right. Thank  
25 you.

1           CHAIRPERSON BUSTAMANTE: Any other questions?

2           ACTING COMMISSIONER ARONBERG: I have two  
3 questions of staff. I'll ask you about the reauthorizing  
4 legislation, if it's going to be tacked on or expanded to  
5 cover the various items mentioned by Ocean Conservancy,  
6 Oceana, Blue Water Networks, with respect to the discharges  
7 in pristine waters, which sounds pretty serious, by the  
8 cruise ships, treatment rather than exchange as an option?  
9 I guess the question is whether the technology exists for  
10 that at this this point? Someone mentioned water resources  
11 and monitoring for pathogens, and what about discharge  
12 zones?

13           EXECUTIVE OFFICER THAYER: Some of these issues  
14 and those discharge zones I'm not as familiar with. We're  
15 working with Assembly Member Nation. Of course, he's the  
16 one who ultimately will decide as the author what sort of  
17 abilities are going to carry forward, and I think his report  
18 provides the basis for a lot of the provisions that are  
19 going to be in the bill.

20           I should note for the information of those who  
21 want to follow this that Bill Morrison, our legislative  
22 staff, who points out that bill number 8433 has already  
23 being introduced for us to track. So I expect as this bill  
24 moves through and I think you can tell from some of the  
25 comments of industry that there is going to be ongoing

1 discussions about what the exact provisions are. And I  
2 think the input from this report, as well as the people who  
3 have spoke here today, are going to help shape that.

4 But we're going to stay involved, because a lot of  
5 the recommendations deal with kind of our implementation of  
6 the enforcement issue that the Lieutenant Governor  
7 particularly focused on. If one of the recommendations in  
8 the report is to try and come up with a better enforcement  
9 mechanism, that kind of thing.

10 So I guess the short answer is all of those issues  
11 are going to be coming to the author and we're going to be  
12 pushing a lot of that, and our report is to be comprehensive  
13 in terms of looking at all that. We don't talk specifically  
14 about no-discharge zones, but I think that's an issue that's  
15 on the table and everything's going to be reviewed.

16 ACTING COMMISSIONER ARONBERG: The Controller  
17 would wholeheartedly support any efforts to chain bad actors  
18 into compliance such as those stated and anything else that  
19 can be created to get compliance and any enforcement  
20 mechanism that is within the law for us to undertake.

21 EXECUTIVE OFFICER THAYER: Sure.

22 CHAIRPERSON BUSTAMANTE: Is there a motion, or a  
23 question?

24 ACTING COMMISSIONER TAKASHIMA: I have a couple of  
25 questions, since I'm the rookie here.



1           When you say reauthorization which is a term of  
2 art, I just wondered what do you mean by reauthorization?  
3 Are you going to try to do another four year sunset bill or  
4 are you going lift the cap on the Sunset Committee  
5 permanently? That's one question.

6           EXECUTIVE OFFICER THAYER: I think the author is  
7 sponsored by several of the groups that were here today, but  
8 I think the answer is that it's going to become a permanent  
9 program as the result of this reauthorization with regards  
10 to that.

11          MS. FALKNER: I think that that issue is up for  
12 discussion.

13          ACTING COMMISSIONER TAKASHIMA: Okay. And then  
14 the second question I have is, there's a recommendation in  
15 the report about lifting different exemptions. And based on  
16 that, I guess my question would be whether or not that  
17 there's been some hearings about lifting of those exemptions  
18 by anybody or any discussions with those parties that would  
19 now be coming within the purview of this legislation?

20          EXECUTIVE OFFICER THAYER: I guess I would give a  
21 couple different responses to that. First, the basis for  
22 that recommendation is the science and our experience, which  
23 is that these ships have the potential of bringing in some  
24 of the same ballast water that other ships are being  
25 regulated on. So as the Lieutenant Governor pointed out,

1 out of an interest of fairness and also trying to make sure  
2 that we're comprehensively dealing with the problem, that  
3 was the basis for that recommendation. We haven't had  
4 particular hearings. We tried to make this report available  
5 in advance on the internet, but I expect that as with the  
6 other issues that Cindy was talking about, this will be the  
7 basis of some of the discussion before the Legislature.

8 ACTING COMMISSIONER TAKASHIMA: I just would  
9 suggest really outreaching to those other folks who are not  
10 here who now you are suggesting would be included in  
11 discussions, and I just think that we should try to do that.  
12 And I think the final issue would be then the cost, do when  
13 then lift and remove something with the exemption, include  
14 more people in this legislation and activity, whether or not  
15 from the fees that we're going to have, is it going to cover  
16 sufficiently and will we have enough staff to do the work  
17 that we're trying to achieve? And that's a question I guess  
18 from a finance view of today's budget. And that's just a  
19 concern that I just want to make sure people put in as  
20 something that needs to be addressed and looked at  
21 seriously.

22 EXECUTIVE OFFICER THAYER: I'm very much  
23 sympathetic to that view, because we're really concerned  
24 about having the resources to do a good job on this. We  
25 don't want to be assigned something and not be able to do

1 it. But I think that will be discussed as the bill goes  
2 forward in terms of whether or not there are any other caps  
3 on the fee. I believe the fee under the present legislation  
4 is capped at a thousand dollars, and we start at one level  
5 and kept moving down because we found compliance by industry  
6 has been good enough that we can lower it, we're getting  
7 enough ships that are paying. But the new program, I  
8 understand, it is everyone's intent that it will be fee  
9 based and that that will take care of the financing  
10 necessary. But we'll keep track of this.

11 CHAIRPERSON BUSTAMANTE: Any other questions?

12 ACTING COMMISSIONER ARONBERG: I'd make a motion.

13 CHAIRPERSON BUSTAMANTE: A motion.

14 ACTING COMMISSIONER ARONBERG: Move to adopt  
15 staff's recommendation to submit the report.

16 ACTING COMMISSIONER TAKASHIMA: And I second it.

17 CHAIRPERSON BUSTAMANTE: I'd like to say to staff  
18 thank you for the report. Clearly you've been able to put  
19 together a report that has included both environmental and  
20 industry issues. There was obviously some concerns by both  
21 groups. I think the staff report clearly demonstrated that  
22 it is a very complicated issue. The important piece of this  
23 is that the port system is an extremely delicate part of  
24 California's legacy. It's also a very strong part of our  
25 economic engine. Hundreds of thousands of jobs are related

1 to it, it is the gateway for services and goods across the  
2 nation from the Pacific rim. It is an important piece of  
3 the nation's infrastructure, and, therefore, we must and we  
4 try to glean California's demand for both.

5 We want it all. We want the great port system, we  
6 want to be efficient, we want to be business friendly, but  
7 we also want it to fit into all of the ecological needs of  
8 having as pristine a legacy for the environment as possible.  
9 We do want it all and we're going to try to work to get it  
10 all. And if that conflicts, which is natural, hopefully  
11 we'll find an opportunity to be able to do all that we can  
12 toward both those main goals.

13 And I would support the moving of the report to  
14 the Legislature. The record should show it's unanimous by  
15 the Commission.

16 And thank you for the report and thank you for the  
17 work, it's very well done.

18 EXECUTIVE OFFICER THAYER: Thank you.

19 CHAIRPERSON BUSTAMANTE: I think that's the last  
20 item we have on the agenda. And so we'll just call this --  
21 is there any comment?

22 ACTING COMMISSIONER TAKASHIMA: One thing, and  
23 sorry I was late coming here, I would like at some point  
24 that this Commission, and I know the staff has already been  
25 talking to Mr. Vinson, George Vinson. I'd like to have a

1 discussion by the Commissioners on the strategy of what is  
2 happening at the ports.

3 I would like to invite the different port  
4 representatives and Mr. Vinson and my staff together to  
5 discuss Mr. Bustamante's legislation and how we can  
6 implement that really now, and try to find -- I would like  
7 to volunteer our staff at Finance to find money to look at  
8 that and to have some kind of plan, because I'm very  
9 concerned that we need to deal with it today. And I don't  
10 know what we can do, I want to explore that and pursue all  
11 basis available.

12 CHAIRPERSON BUSTAMANTE: Thank you. I will take  
13 you up on that offer, especially the money part.

14 (Laughter.)

15 CHAIRPERSON BUSTAMANTE: We also on March 17th  
16 have a tour, and that's planned to go to the Port of  
17 Oakland. It's basically an educational opportunity for  
18 legislators and people who are interested to go and look at  
19 the port as a symbol of all the ports of California. It's  
20 an educational opportunity for legislators to have visuals,  
21 to have some general understanding, and whether we're  
22 talking about Oakland or San Diego or Long Beach or LA or  
23 wherever in the state of California, hopefully we'll be able  
24 to educate members more about this very important  
25 infrastructure that we have here in California and the need

1 to pay attention to this type of infrastructure. It's in  
2 their own best interest and if they know a little about it,  
3 hopefully we'll have an opportunity to give them more  
4 information.

5 The Chairman of the Select Committee, Alan Oswald,  
6 has already agreed to be there and is going to be  
7 encouraging several of the Members. If there's somebody  
8 from staff who would like to attend, I think that could  
9 probably be arranged. If the Commissioners would like to  
10 attend that, I think that can also be arranged. Anybody in  
11 the audience who might be interested, we'd recommend --  
12 who'd be the person to call?

13 MS. GONZALEZ: Call our office.

14 CHAIRPERSON BUSTAMANTE: You?

15 MS. GONZALEZ: No.

16 (Laughter.)

17 CHAIRPERSON BUSTAMANTE: The phone number at our  
18 office, the person who is putting together the tour is  
19 Adrianna Ochoa, and her phone number is (916) 445-8994, if  
20 there's any interest.

21 It will start around 2:00 o'clock in the  
22 afternoon, and after the brief tour of the port and a  
23 working dinner in San Francisco, we should be back around  
24 10:00, 10:30 in the evening.

25 Okay. Otherwise, all done, all through?

1 EXECUTIVE OFFICER THAYER: Yes, sir.

2 CHAIRPERSON BUSTAMANTE: All right. Meeting  
3 adjourned.

4 (Thereupon the meeting of the State  
5 Lands Commission was concluded at 11:45  
6 a.m. on February 21, 2003.)

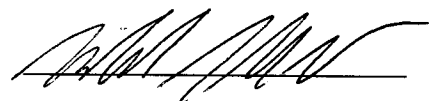
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## CERTIFICATE OF SHORTHAND REPORTER

I, MICHAEL J. MAC IVER, a Shorthand Reporter, do hereby certify that I am a disinterested person herein; that I reported the foregoing State Lands Commission proceedings in shorthand writing; that I thereafter caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said State Lands Commission proceedings, or in any way interested in the outcome of said State Lands Commission proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of March 2003.



Michael J. Mac Iver

Shorthand Reporter