

MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

PORT OF SAN DIEGO
BOARD ROOM, FIRST FLOOR
3165 PACIFIC HIGHWAY
SAN DIEGO, CALIFORNIA

THURSDAY, DECEMBER 8, 2005

10: 00 A.M.

ORIGINAL

Michael Mac Iver
Shorthand Reporter

APPEARANCES

Cruz Bustamante, Chairperson, represented by Lorena Gonzalez

Director of Finance Tom Campbell, represented by John Lloyd

Steve Westly, State Controller, represented by Cindy
Aronberg

STAFF

Paul Thayer, Executive Officer

Jack Rump, Chief Counsel

ALSO PRESENT

Alan Hager, Deputy Attorney General

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1 item. So that is not being abstained by any Commissioner,
2 but we're just trying to abide by the letter of the law.

3 Is that a correct estimation, Mr. Thayer?

4 EXECUTIVE OFFICER THAYER: Absolutely. The
5 statutes prohibit more than one representative from the
6 constitutional officers voting or participating.

7 ACTING CHAIRPERSON GONZALEZ: Okay. The next
8 order of business is the Executive Officer's report.

9 Paul.

10 EXECUTIVE OFFICER THAYER: Thank you, Madam Chair.

11 There are several different items to discuss. The
12 Lieutenant Governor's office asked for updates regarding a
13 couple matters in the San Diego area, since we are having
14 this meeting in San Diego. And I should note that this
15 continues the trend of this Commission in spreading its
16 Commission meetings out throughout the state to give the
17 public an opportunity to participate in the Commission
18 business.

19 And I would also like to note that once again the
20 Port of San Diego has been very kind to allow us to use
21 their auditorium and a wonderful auditorium. I think Dan
22 Wilkens who is representing the Port of San Diego is in the
23 back of the room. We certainly do appreciate his help in
24 this meeting, as well as a lot of different matters. We
25 have a very good relationship with both Dan and the Port.

1 But I know the other Commissioners are also
2 interested in these matters that also deal with the subjects
3 that have been raised to the Commission in some of the
4 public comment periods during the previous years that we've
5 been down here.

6 The first one I wanted to talk about is the Chula
7 Vista bayfront planning process. This has been underway for
8 several years now and I wanted to bring the Commission up to
9 date on where we were and what the Commission's involvement
10 might be ultimately in implementing that plan.

11 The purpose of this plan is to develop the
12 waterfront for business and better amenities for Chula
13 Vista, for their residents, and for visitors from out of the
14 area, and also to improve the public trust uses along the
15 waterfront. Some of the area under consideration in this
16 plan is privately owned and is open space right now, and
17 that land could be very useful for open space waterfront
18 oriented public trust uses. Conversely, the Port owns some
19 previously developed land from land that was filled that is
20 now part of the waterfront and in all likelihood is no
21 longer useful to the public trust. So a swap is central to
22 the uses that are contemplated here in this plan and it's
23 generally supported by environmentalists, the City, and the
24 property owners and the Port.

25 Procedurally, the Port does not have the authority

1 to conduct that swap and will need to quitclaim the public
2 trust land back to the State Lands Commission and then the
3 Commission after a public hearing would decide whether or
4 not to approve the exchange.

5 The three main factors that the Commission would
6 consider. The first is to ensure that the public is going
7 to get at least equal value for the public trust land, the
8 present public trust land. The second consideration is that
9 the land from which the trust is going to be lifted is no
10 longer necessary or needed or useful for public trust uses.
11 And the third consideration is whether the plan would
12 provide for public trust appropriate uses in the new land
13 that will come into the trust. Staff has provided early
14 input on these issues to all of those concerned with
15 devising this plan, the City, the residents, and the Port.
16 And the preliminary indications are that we will be able to
17 work out that exchange that staff can recommend and the
18 Commission approve.

19 In terms of timing, the Draft Environmental Impact
20 Report is due out early next year and we'll know about what
21 the final proposals are going to be once that comes out.
22 And we would imagine the exchange would come to the
23 Commission sometime thereafter, sometime next year.

24 There was a potential glitch though because the
25 statute that the Commission has relied on for years and

1 years to authorize these exchanges was the subject of an
2 appeals court decision earlier this year and in that
3 decision the appeals court determined that the Commission
4 was too expansively reading that statute and authorizing
5 exchanges pursuant to that statute which weren't really
6 within the language.

7 We worked with a number of different entities to
8 develop language and with the Commission's approval sought
9 out an author, Senator Ducheny from this area, who
10 introduced SB-365 that basically restores to the Commission
11 the same authority we thought we had before and also
12 incorporates all the guidelines that have been developed in
13 court cases which again we had to follow before, but weren't
14 in the statute. Without that authorization, we probably
15 would have some difficulty bringing this proposed exchange
16 to the Commission. And we should also note that both the
17 Port and Chula Vista were among the supporters who worked
18 with us to get this legislation passed.

19 So it appears to be all coming together and there
20 will be more on this next year when the EIR is done and the
21 final terms of the exchange have been worked out.

22 So that concludes staff presentation on that. Are
23 there any questions?

24 ACTING CHAIRPERSON GONZALEZ: No questions. I
25 just want to express the gratitude of the Lieutenant

1 Governor for Senator Ducheny carrying that legislation. I
2 know that we encouraged her to carry it at a late date and
3 tried to help her along the way, but she definitely provided
4 leadership to make that happen.

5 EXECUTIVE OFFICER THAYER: She was the perfect
6 author and provided that leadership. But, you know, it was
7 supported by both sides of the aisle, and it was a unanimous
8 vote except for one from the Senate. So it worked out very
9 well and she was very helpful.

10 The second issue that I want to discuss is that of
11 copper-based paint. Several years ago one member of the
12 public or one of the environmental groups here in San Diego
13 asked the Commission to direct to the staff to look into
14 copper-based paints, the paints that are used on the hulls
15 of boats. Copper is used in these paints because it's toxic
16 to plants and animals that have a tendency to cling to the
17 hulls and so it prevents the hulls from being fouled.

18 However, the paint exfoliates out and falls off or
19 chips off or it's removed and falls into the water during
20 hull cleaning. And just as the copper is toxic to the
21 plants and animals that might cling to the hull, but also
22 the copper has a potential once it reaches the bottom of the
23 bay to adversely affect environmental values and affect
24 plants and animals in the bay.

25 This particular issue is not very generally within

1 the expertise of the State Lands Commission staff, we just
2 don't work on this. There are a couple of agencies that do.
3 They include, of course, the Regional or State Water Boards
4 and the Department of Pesticide Regulation. But we
5 discussed these matters with them and others and reported
6 back to the Commission I think last year that work is being
7 done on alternatives, but to date there wasn't a paint that
8 didn't use copper -- they were more expensive and they
9 didn't last very long to keep the hulls from being fouled.

10 Nonetheless, the San Diego Regional Water Quality
11 Control Board did find that there were increasing
12 contamination levels from copper in San Diego Bay, and in
13 particular, at the Shelter Island Yacht Basin. And it's
14 been in the process of developing and implementing Total
15 Maximum Daily Load requirements or TMDLs for copper at this
16 yacht basin. The standard would require that the input from
17 copper into this basin be decreased by 76 percent and the
18 deadline for this limitation is about 17 years out. This
19 proposed TMDL has been approved by the State Board and is
20 undergoing the final review and approval of the regulations.
21 So that gives a lot of time to comply with it.

22 The Port is generally interested in resolving
23 these issues and, in fact, has experimentally used noncopper
24 paint on some of its own vessels to see how they work, and
25 the results are so far not very satisfactory, the boat hulls

1 have to be cleaned much more often and it's expensive and
2 that sort of thing. But with 17 years to go, I think the
3 hope here is that it's going to drive industry into doing
4 some serious work on developing alternative paints or
5 alternative technologies.

6 The concern of the Port has been that even though
7 2,000 boats are potentially involved here, that's the number
8 of boats that use this basin, that that still might not be
9 enough of an incentive or drive to think about these
10 alternative technologies that are being developed.

11 The State Board recognized that issue and as part
12 of its motion to approve the TMDL for this particular basin,
13 urged the Department of Pesticide Regulation to come up with
14 statewide standards and work with this on a statewide basis.
15 And the resolution adopted by the Water Board stated that if
16 DPR did not adopt that or dealt with that issue
17 comprehensibly in two years, then the State Water Board
18 would move on that and try to develop statewide standards.
19 And I think the Port believes and probably others that if
20 these standards are put in place for California throughout
21 the state, it will create even better incentive for
22 developing alternatives.

23 So that's where we stand right now. The final
24 solution hasn't been developed yet, but it seems as though
25 the Port, the Regional Board, and hopefully the Department

1 of Pesticide Regulation are moving in the direction of
2 trying to address this issue more comprehensively.

3 So unless there's questions, that concludes staff
4 presentation on that and the Executive Officer's report.

5 ACTING CHAIRPERSON GONZALEZ: Thank you, Paul.

6 The next order of business will be the adoption of
7 the consent calendar.

8 Are there any items that have been pulled from the
9 consent calendar?

10 EXECUTIVE OFFICER THAYER: Yes, ma'am. Item 62
11 has been removed and will be heard at a future meeting.

12 ACTING CHAIRPERSON GONZALEZ: Is there anyone in
13 the audience who wishes to speak on an item still on the
14 consent calendar? I have received no speaker slips.

15 And for the remainder of the consent items, it
16 will now be taken up as a single vote.

17 ACTING COMMISSIONER ARONBERG: I move adoption of
18 the consent calendar.

19 ACTING COMMISSIONER LLOYD: I will second it.

20 ACTING CHAIRPERSON GONZALEZ: Thank you.

21 Let the record indicate that it's been moved and
22 seconded, a unanimous adoption of the consent calendar.

23 Now, moving on the Item 77. We have the
24 consideration of a report to the legislature on performance
25 standards for the discharge of ballast water.

1 Do we have a staff presentation.

2 EXECUTIVE OFFICER THAYER: Thank you. Maurya
3 Falkner who heads up the Commission's Ballast Water Program
4 will give the presentation for this issue.

5 MS. FALKNER: Good morning. I would like to talk
6 today about the report and recommendations that staff has
7 brought forward today for your approval.

8 Just a little background information. As you're
9 well aware, nonindigenous species are a problem in
10 California and worldwide. I've got some pretty pictures of
11 some of the representative species that are kind of the
12 posterkids. Nonindigenous species impact fisheries,
13 aquaculture, ecology, human health, municipalities, et
14 cetera. Some of the organisms that are listed here, for
15 example the Asian Clam, is pretty much a monoculture there.
16 It's located in the San Francisco Bay Area. It has an
17 incredible filtration ability cleaning out the algae within
18 the water, making the water nice and clear, but impacting
19 they believe some of the native fishes that also live in
20 that area.

21 The Chinese Mitten Crab was introduced actually as
22 a food source by folks in the Bay Area. It exploded, its
23 population numbers exploded, and it burrows. That lowest
24 figure there shows burrows into the levees and actually
25 weakens the levees. It's also been found to carry a human

1 parasite, the Oriental Lung Fluke. So it's a potential
2 problem.

3 The Caulerpataxifolia is an algae that in the
4 Mediterranean at least has caused tremendous impact to their
5 ecosystem. It's 90 percent of the biomass and crowds out
6 other native species or plants and animals, and it cost
7 about \$4 million to control in California. And the Atlantic
8 Jelly is one of our exports, we shipped it off to the Black
9 Sea. It consumes fish eggs, fish young, plankton, and it
10 results in about \$350 million worth of impacts, economic
11 impacts in the last 18 years. So just some examples.

12 So, again, the problem is the cost to eradicate
13 it. It's much more cost effective to prevent these
14 organisms from coming in. The most recent report that came
15 out, it's actually in press right now, indicates or itemizes
16 that about \$120 million is spent annually to control
17 nonindigenous species nationwide. And that includes both --
18 excuse me, that should be billion. And that includes both
19 terrestrial and aquatic species. So it's a huge impact on
20 our US economy.

21 Nationwide, nonindigenous species are introduced
22 through a variety of vectors, and though shipping is
23 considered the primary vector for aquatic systems.

24 The shipping industry manages their ballast water
25 in two primary ways right now, either ballast water

1 retention or mid ocean exchange. And there are severe
2 limitations with mid ocean exchange and most vessels can't
3 on a regular basis or many vessels can't on a regular basis
4 hold their ballast water, they have to take on ballast when
5 they off load cargo, et cetera.

6 The efficiency of ballast water exchange, it
7 ranges widely, from 50 to 95 percent, and it just depends on
8 the ship design and what the inside of the ballast actually
9 looks like, and the exchange locations. And the impact of
10 nonindigenous species, the limitations of mid ocean
11 exchange, and the desire by the maritime industry and
12 technology developers to set a benchmark has moved the whole
13 idea of performance standards forward.

14 The legislature in '99 and then reauthorized in
15 2003 with the Noninvasive Species Act recognized the
16 limitations of current management practices and recommended
17 that the Commission put forward specific performance
18 standards that considered vessel age and type and drafts, et
19 cetera.

20 In developing our report and recommendations, we
21 were to consult with the State Water Resources Control Board
22 and convened an advisory panel, and consider those Panel
23 recommendations. We were also required to consider best
24 available technology, economic achievability of those
25 technologies, and the beneficial uses to protect those. So

1 during our deliberations we looked at those criteria.

2 In developing the Advisory Panel itself, we sent
3 out invitations to over 25 different stakeholders from
4 local, state and federal agencies, shipping companies,
5 nongovernmental organizations, active commissions and other
6 scientific organizations. And again about 20 stakeholders
7 agreed to participate in the Advisory Panel meetings and we
8 had five meetings that ran between March and August. During
9 those meetings, we considered available biological,
10 technological, operational, and economic data. We
11 considered other proposed and adopted performance standards
12 at both the international and federal levels. And we
13 considered an implementation schedule, so once standards
14 were established, how soon would they go into effect.

15 Considering the wide range of stakeholders at
16 these meetings, there was an incredible amount of consensus
17 that we achieved throughout the meetings, because there was,
18 as you can probably imagine, some pretty wide ranging
19 opinions on things. And yet overall, it was a great working
20 group. They all agreed that the standards should be
21 significantly better than the current management option of
22 exchange, that ideally you should move toward a zero
23 discharge standard, that that should be the ultimate goal in
24 the state of California and worldwide. And that they all
25 recognized, as we did, that due to the infancy of the

1 technologies and the timetables that we were talking about,
2 periodic review and kind of an evaluation of where we stood
3 as these deadlines came up was vital for success of the
4 program.

5 The Panel actually ended up, although there was
6 this level of consensus throughout most of the meetings,
7 when push came to shove at the end, we ended up with two
8 Panel reports. The majority of the Panel submitted their
9 report to us on October 5th. The minority Panel, which was
10 primarily made up of, actually exclusively made up of, the
11 maritime industry folks submitted their report to us a week
12 later. We also got a minority position letter from the
13 Ocean Conservancy. And all of that information is in the
14 report that you have in front of you.

15 As I said, we looked at several approaches. You
16 know, it would have been great to have been able to say
17 here's the number, the number, we know that if we allow this
18 much discharge, we're not going to get any invasions. And
19 aside from zero, there's no certainty. We know we don't
20 want ballast water exchange and zero is the ultimate goal,
21 but in terms of technological availability, we know you
22 couldn't get there yet, at least not for all size classes.

23 So we looked at a wider variety of approaches to
24 kind of help us make this decision. Unfortunately, none of
25 the approaches provided certainty with the numbers that

1 finally we were going to choose. These are just some
2 graphics of, for example, the efficacy or the effectiveness
3 of ballast water exchange. The red boxes are actual
4 measured concentration of organisms in those three size
5 classes, from smallest, less than ten microns, those are
6 like bacteria and virus-like particles, to the largest size
7 classes, the greater than 50 microns, and those are larva
8 forms of say zebra muscle, things like that. And in between
9 are more of the algae, those organisms.

10 But you can see that in a cubic meter of ballast
11 water, you have a very high concentration of all of these
12 organisms. And even after an appropriate legal exchange has
13 been conducted, you still have a very high number of
14 organisms that are ultimately discharged.

15 So again, this reinforced the consensus by the
16 group that ballast water exchange, we had to do
17 significantly better than exchange.

18 Again, trying to find the golden arrow that would
19 point us to the right number. And this graph represents
20 kind of this theoretical relationship between the number of
21 organisms that you dump into a system and the probability
22 that a certain number will lead to an invasion. And as
23 these lines indicate, depending on which curve fit, whether
24 it is the whole nonindigenous species or individual
25 organisms, wherever the concentration of organisms would lie

1 would change your probability of invasion. So if it's
2 linear versus something else. So unfortunately the dose
3 response curves didn't help us at all.

4 We looked at technology and economic data. And
5 this is kind of a compilation slide that identifies the
6 technology that we've been working with most closely here in
7 California and the cost of those technologies. There are
8 maybe a dozen vessels worldwide that have operational
9 systems on board and some of the pictures along the trailer
10 of this table show you those kind of treatment systems.

11 The equipment cost in and of itself, and
12 understand these are all R&D based costs, so they're likely
13 higher than what you would expect under commercial
14 application once they start getting cranked out and you can
15 actually call up Company A and say I have a 20,000 gross ton
16 vessel that I need to put on a ballast water treatment
17 system. So we expect the cost of these things to go down.

18 The labor cost is really variable and it depends
19 primarily on where the installations are done. If they are
20 done here in the states, they are significantly higher than
21 if they are done in the yards in Asia. And also most of the
22 stuff that's been done here in California has been while the
23 vessel was still operating. So they are kind of running in
24 and trying to put these systems on board, versus putting
25 them into a dry dock scenario where they are being laid up

1 for a variety of reasons anyway.

2 So the technology is in its infancy, none of these
3 systems have been shown to consistently meet any standard
4 out there, but they show a great deal of promise. The
5 economic data, as is indicated here, is really sparse as
6 well. So it's hard to say what the economic achievability,
7 you know, to point to that as a guide for picking a
8 standard.

9 EXECUTIVE OFFICER THAYER: And if I could add, the
10 previous one of those were in thousands of dollars?

11 MS. FALKNER: Yes, I'm sorry, those are in
12 thousands of dollars.

13 We also, as I mentioned, looked at other
14 performance standards that have either been adopted or been
15 proposed. And this table shows you in the first blue column
16 on your right is the concentration of organisms in unmanaged
17 ballast water and then you have a concentration that is
18 expected in a properly exchanged tank. The IMO,
19 International Maritime Organization, adopted the standards
20 you see there in column 3. Those were also the recommended
21 standards that the minority Advisory Panel members put
22 forward. The US position, and then the majority Advisory
23 Panel and the State Lands Commission staff position on this.

24 As you can see from the far-left column, the
25 standards being proposed in this report and supported by the

1 majority Advisory Panel are the strictest anywhere in the
2 world, they are approaching the zero discharge standard that
3 everybody has agreed we should try to achieve. They are in
4 line with the professional judgment of scientific experts
5 that worked at the International Maritime Organization
6 convention, so they are not that far off, and that's
7 reflected especially in the middle column where the IMO
8 position at the IMO, the US position at the IMO, and the
9 majority Panel's position are the same for that intermediate
10 size class.

11 For the largest size class, a zero detect standard
12 is being recommended, and we believe that in a relatively
13 short timeframe technology will be available to meet that
14 standard. It's not there yet, but we believe it's coming
15 along.

16 For the smallest size class, it's probably the
17 biggest variation from any of the other standards proposed.
18 The Panel agreed that it needed to put in a human health
19 standard, which is the e.coli and the cholera standards in
20 there, but also because of the beneficial uses provision in
21 the law, they also wanted to include discharge standards for
22 bacteria and viruses, and so that's what those numbers are
23 there. And that's unique to the state program, no other
24 program has done that.

25 So the proposed standards are significantly

1 better, the ballast water exchange. They are in line with
2 the experts' professional judgment. They do approach that
3 protective zero discharge standard, and importantly, they
4 are technology forcing. So they are going to hopefully move
5 this whole field forward to protect beneficial uses of
6 California waters.

7 There are some really significant issues that need
8 to be addressed and we tried to incorporate those in the
9 report. And primarily right now there are no commercially
10 available technologies that meet any of the standards, and
11 as a result of that, there's also no sampling and
12 verification methods that are consistently being applied.
13 They are being worked on now by the Coast Guard and other
14 international organizations, but there's nothing in hand
15 that can be used today. And the feasibility of zero
16 detection for the large organisms is uncertain.

17 Due to these uncertainties, staff recommends
18 strongly that the legislature incorporate in any changes in
19 the law a periodic review and evaluation of existing and
20 future technologies and the timetables that are being
21 proposed, and if those timetables don't look like they are
22 going to be met, either adjust those or adjust the
23 standards, but to incorporate that into the law.

24 The recommended implementation schedule, which is
25 shown in this table, it basically accounts for vessel

1 operations and dry dock availability. In California alone
2 there are over 4,000 vessels that will have to meet a
3 discharge standard by 2016, they are the largest vessel
4 class, and dry dock availability is limited. Most of these
5 vessels that belong to any reputable registry go into dry
6 dock every five years and do a variety of things to their
7 vessels, and so this schedule considers that five-year plan
8 and also considers the current status of technology. Again,
9 the status of technology really requires a periodic review
10 and evaluation by the legislature.

11 This next slide is just some examples of some of
12 the realities of putting on treatment systems, the few that
13 are available. And there are four treatment systems shown
14 in this slide. And you can see there's not a lot of room
15 for these systems, to have them in these engine spaces. And
16 amazingly enough, the picture on the upper right there is a
17 Madsen vessel, and she's retrofitting this system, we're
18 assisting her with that. They actually cut a hole in the
19 side of the vessel to get the system in, which to me was
20 shocking when I first saw it, I was just plain ignorant of
21 that. I was like, you're putting a hole in that, wait a
22 minute. But it was pretty interesting actually.

23 But that's the realities of trying to retrofit a
24 vessel and having to do that on the fly. So it ends up
25 being quite expensive. And it's also important I guess for

1 folks to keep in mind that the technologies we're looking at
2 here are precompartmentalized. Some of the technologies
3 that have been proposed are much, much larger, and so the
4 thought of trying to get those into these confined engine
5 spaces is pretty amazing, and again the dry docking is
6 probably going to be necessary.

7 So this is just a final list. I've already gone
8 through the first three. And, again, the third item of
9 reviewing technology and management practices is very
10 important.

11 Grandfather vessels. There are several vessels
12 that we have dealt with specifically here in California that
13 have installed experimental treatment technologies that
14 we're working with and getting a lot of information on what
15 systems can and can't do and the operational constraints.
16 Those vessels, because of the significant financial outlay
17 should be given a grandfathering clause and allowed a little
18 more time to bring their systems up and running.

19 The status of testing and evaluations center.
20 Right now there is only one center in the United States,
21 it's in the Florida Keys operated by the Coast Guard, and
22 the Coast Guard would love to see another center established
23 on the west coast, of course I'm biased and would like it to
24 be in the California area, but that would assist in checking
25 out prototype systems and getting those systems faster.

1 To assess the program's success, biological
2 surveys are going to have to continue and if we really want
3 to move toward that zero discharge goal, we're going to have
4 to provide incentives or promote a technology, it is widely
5 known that is substandard and people need it and then it's
6 difficult to get anybody to move beyond that. So these
7 incentives should be considered.

8 And then, of course, all of this stuff happens
9 about a year before the current program is due to sunset.
10 So removing the sunset date would be incumbent upon the
11 program's success.

12 And I will take any questions that you may have.
13 That's a lot of information.

14 ACTING CHAIRPERSON GONZALEZ: Do the Commissioners
15 have any comments?

16 ACTING COMMISSIONER LLOYD: I think my only
17 comment is besides the fact that I think the report was
18 very, very well written and I appreciate the ease with which
19 I was able to read it, my probably main concern and comment
20 here is that in setting the standards in statute that down
21 the road we have to revise those standards, we have to go
22 through the legislative process again and that's not always
23 an easy cast. Is there any alternative to putting it
24 actually in the legislation itself? Delegating the standard
25 development to the Commission?

1 MS. FALKNER: I have been a big proponent of
2 avoiding putting standards in legislation until we really
3 started walking through all of these issues. One of the
4 biggest problems in talking to my colleagues at the federal
5 level is that the lack of really hardcore scientific data
6 showing the zero discharge standard makes it difficult under
7 CEQA. You may not get it through a system over a short
8 amount of timeframe where we actually start meeting this
9 implementation date.

10 But, yes, you're right, that's also one of the
11 arguments for setting the standard at such a high level is
12 that you won't have to come back. There were some initial
13 concerns or initial comments about well let's set it at the
14 IMO standard and then come back. And you're correct, trying
15 to come back and change things legislatively is very
16 difficult. So we're hoping that this is going to be there
17 for quite a while.

18 EXECUTIVE OFFICER THAYER: If I could elaborate a
19 little bit further on that. Everything that Maurya is
20 saying is true and it's important in our considerations in
21 deciding how to go on this. Ultimately, of course, we were
22 required by the legislation to develop these standards, and
23 although we have really good indications that the author of
24 the legislation in 2003, Assembly Member Nation, is likely
25 to introduce legislation this next year to implement the

1 standards that are contained in this report, the report
2 really doesn't recommend one way or the other whether the
3 legislature should implement these or not. These are the
4 standards that we think could be done if they wanted to do
5 it, but it's up to them to decide how they want to carry
6 this out. And if the legislature chose instead to have us
7 adopt regulations to develop standards, there is still that
8 possibility.

9 But we were kind of set on a certain pathway by
10 the legislation, we think it's a good response to that. The
11 report, and as you can see from the presentation, we're not
12 hiding anything here in terms of both the program and the
13 industry, the environmentalists and the legislature, that
14 these technologies do not exist and there's some inherent
15 problems with moving forward with some standards at this
16 point. And we think the report was very clear on that. So
17 the legislature needs to understand that in deciding whether
18 or not to go back to the statute.

19 ACTING CHAIRPERSON GONZALEZ: Do we have Ed Kimura
20 with the Sierra Club?

21 MR. KIMURA: Thank you, Madam Chair and Members of
22 the Commission. My name is Ed Kimura and I'm here speaking
23 on behalf of the San Diego chapter of the Sierra Club.

24 I really need to thank you right now for providing
25 the opportunity to provide comments. Because this is a

1 critical issue here in San Diego as well. The
2 Caulerpataxifolia is a prime example that happened just at
3 the open, and the it only takes just a minuscule amount of
4 that seaweed to actually propagate it. And the same thing
5 holds true with the noninvasive species that we're talking
6 about. So that's why we're really in favor of some very,
7 very strict standards.

8 To draw a slightly different parallel on this, I
9 currently serve on the State Water Resources Control Board
10 to establish sediment quality objectives. And in this case,
11 this is for the enclosed space, and the objectives are
12 primarily focusing on animals, but in order to have a
13 healthy biological system, you need to address both the
14 chemical contamination, as well as the invasive species.
15 Because if you don't, you're going to wipe out the community
16 with the invasive species, even though you have a healthy
17 habitat. And so that's why we are -- you know, these are
18 two stressors that you're talking about. There are other
19 multiple stressors on the system, but we at least have to
20 have control. And both are very difficult to handle once
21 you have the contamination. It would be just -- as is
22 pointed out the invasive species. And so it's really
23 imperative to have source control.

24 Now we do have some concerns in terms of the
25 numbers that are being used here. We're dealing with live

1 creatures and consequently they can multiply. I'm very
2 familiar with TMDL process of bacteria and one of the things
3 that are in the modeling is a regrowth. You can have
4 bacteria, and you can say that means so many colonies for a
5 low figure, but once it gets into the system if there are
6 favorable conditions, they can multiply. And we have seen
7 that the nonindigenous species get very aggressive and if
8 the environment is conducive, they will just multiply like
9 crazy. We've seen colonies of invasive species in just a
10 small sample that are in the thousands. So this gives you
11 an idea of how rapidly these creatures can multiply. They
12 have very short life cycles. Within a couple of years they
13 reach maturity and they reproduce. So it's not as if these
14 are ten-year life cycles where you can wait that long to see
15 how they propagate. So it's really critical that we are
16 looking for that.

17 We are really in favor of the Ocean Conservancy to
18 target as the majority report indicates the zero discharge.
19 And in order to achieve that, we think there should be
20 benchmarks that are signals to get to the core. Now, one
21 other point that comes up is the question of monitoring. At
22 our Advisory Committee meeting that we had last week, there
23 was concern being expressed about the need for additional
24 taxonomist. The fact that most of the experts in the state
25 right now are going to be retiring, there are not many

1 replacements that are coming into place. So here you have a
2 real critical issue of when they're trying to determine
3 what's in the water and you don't have the experts to
4 identify those, then it's really difficult to try and set
5 some standard and hopefully that those standards will not
6 cause future problems. But that's why from a risk
7 standpoint, we feel that at this time we really should be
8 striving towards zero discharge, because we don't know
9 what's going to be coming from the Pacific Ocean. And the
10 marine biologists do not know very much about the
11 pollutants.

12 So thank you very much for this opportunity.

13 ACTING CHAIRPERSON GONZALEZ: Thank you, Ed.

14 I do have a question, because I receive the Ocean
15 Conservancy letter, and it seems as if you're telling us
16 that it's moving to a zero discharge. But they do come out
17 that that is just something that will be evaluated at a
18 future date and it's not a true standard. Am I reading
19 their concerns wrong or do we have benchmarks set in?

20 MS. FALKNER: Well, we have the largest size class
21 there is already a zero detectable. For the two smaller
22 size classes, again the report recommends that we have the
23 first review done by 2008 so that if there is any action
24 that needs to be done it can be, and then every three years
25 after that and as technologies come and we're looking at not

1 just current, but future promising technologies. Again,
2 providing incentives, some way to move the industry, the
3 technology forward, so that we can get that zero discharge
4 standard is the goal.

5 So right now there are timeframes in there every
6 three years to reevaluate and see what the industry is
7 doing. If we feel that the industry is not making a good
8 faith effort or if we feel that more incentives need to be
9 put out there, you know, that's what we're recommending to
10 move the technology forward. So is there a 2025 deadline
11 for a zero discharge standard, no. There is let's continue
12 to monitor what the technology is doing and capable of.
13 Right now we don't have technology that can meet the
14 existing standards. And so that was a long winded answer to
15 your question.

16 ACTING CHAIRPERSON GONZALEZ: So, no, you don't
17 have a date.

18 MS. FALKNER: No.

19 EXECUTIVE OFFICER THAYER: We don't have a date,
20 but as Maurya points out, the whole point of these periodic
21 reviews is to provide feedback to everyone, particularly the
22 legislature, about these standards. And in the beginning,
23 we imagined the focus for the 2008 report would be on
24 whether or not the technology was being developed that could
25 meet the standards that we recommended. But as the

1 technology is being developed, the recommendations state
2 that these reports should also look at whether or not the
3 technology can be tightened or the standards can be
4 tightened further as technology is occurring.

5 So we will be on an ongoing basis looking at
6 whether or not the zero standard can be met. And if that
7 can happen, then that's going to be in a report that will
8 come to the Commission as well as the legislature. So it's
9 not an issue that we're saying, oh, we're going to adopt
10 these standards and then we're done, it's more a long line
11 of okay. It's going to be very forcing to adopt these
12 technology portions, to adopt these standards as they are
13 now and difficult to meet, well we're not going to stop
14 there and the reports would be looking at whether or not we
15 can tighten the standard further.

16 ACTING CHAIRPERSON GONZALEZ: My concern is
17 invasive species has been one of the things that we have I
18 think with the Commissioners really focused on in the last
19 few years, and so you have very engaged Commissioners in
20 this proposal. And I know we're not supposed to be looking
21 ahead at what the Commission may look at, but you will
22 definitely be losing two of those Commissioners after next
23 year, so by the time that there is a review of these
24 standards, you may not have the same interest level or the
25 same commitment to the invasive species.

1 So I was just curious to know how difficult it
2 would be to set a date, a true goal date, for the zero
3 discharge and to set a benchmark and recommendation and to
4 have something that we're moving towards, rather than just
5 reevaluating under a new Commission where surely you're
6 going to have to go through -- I mean I don't even know how
7 many times I've seen the report. I mean that's my point,
8 it's one of my favorite things to hear about, to find that
9 we're actually on the cusp of something here, we're really
10 leading the way and even if it's nominal in helping push us
11 to leading the way worldwide really. But if we don't set
12 those benchmarks now and we don't set a date now, is there a
13 possibility that that is never set and instead we are not
14 forcing the technology to come online and we're just
15 allowing basically to move along and to have some far out
16 date in the future that we have a goal for?

17 MS. FALKNER: I think if we -- the concern for
18 everybody is if you set the date and then we can't reach it.
19 We don't put it in there. Personally for my credibility and
20 for the program and the industry and everybody, we didn't
21 want to get into a situation where we had a date that was
22 set, we can't meet it, so we keep pushing back the date.
23 But I know that there are --

24 ACTING CHAIRPERSON GONZALEZ: But in a way isn't
25 that what we're doing?

1 MS. FALKNER: We'll, actually we're setting -- no,
2 hopefully not. We'll see how it goes in 2008 when the
3 report comes out to the legislature and where we are with
4 the technology and such, but assuming that the legislature
5 decides to take this on and everything. So we would study
6 and we could incorporate the same kind of language we're
7 recommending setting a date, incorporating the same kind of
8 review and evaluation and stress that reaching that zero is
9 going to be tough.

10 I think it's really important for everybody to
11 recognize that there are vessels that are already getting
12 that. There are already commercial container vessels, et
13 cetera, that are redesigned so that they have permanent
14 ballast, they never change their ballast. It's completely
15 sealed. Those are going to be coming more and more on line,
16 especially because we've got the IMO resolution, California
17 moving forward.

18 So there is an incentive on the container vessels
19 and other vessels to deal with this and they don't want to
20 have to worry about the standard changing and they're doing
21 a permanent ballast that never gets changed out, it's
22 completely sealed. So we can set a date, we can recommend a
23 date being set going along with what the Ocean Conservancy,
24 and I can't remember if they had 2020 or 2016 in there or
25 something like that. You know, that was the date that got

1 tossed around during the meetings, and the concern was again
2 that we might not get there.

3 EXECUTIVE OFFICER THAYER: To elaborate a little
4 bit further on that. Well, first it's in terms of whether
5 or not any more work could be done on resetting the dates.
6 I think if this Commission's composition changed, the
7 members who were interested in pursuing, the same outside
8 groups that really got the legislature to adopt the original
9 ballast water program, which came from groups like the Water
10 Network and Ocean Conservancy, they're still going to be
11 hard at work. So the result of when a standard is going to
12 be adopted won't be determined just by this Commission.

13 But to flip over the other way, I think there is
14 some perhaps advantage to perhaps as part of the
15 recommendations suggest that the legislature adopt a state
16 policy that zero discharge is the purpose of this program.
17 If the Commission really did want to set a date, you know,
18 you could set a 2025 or 2030 or something. There would be
19 absolutely no science to that.

20 But I think the larger issue here is whether by
21 being silent on this we're accepting these standards as
22 being the end. The report suggested no. They are clearly
23 saying that zero is the best standard, but to address that
24 issue rather than making up some date, and it would all be
25 totally made up, I think the concept that the legislature

1 should adopt a policy that the goal of this state should be
2 zero discharge might meet the same sort of -- establish that
3 ultimate goal. It might meet the same sort of thing that
4 you're talking about.

5 ACTING CHAIRPERSON GONZALEZ: Ed.

6 MR. KIMURA: Yes.

7 ACTING CHAIRPERSON GONZALEZ: And I hate to put
8 you on the spot, because I know in some ways you're speaking
9 for a group of people who were involved that are not
10 necessarily here today. But do you know if a date would be
11 hypothetical, we would be just picking one out of the air,
12 or --

13 MR. KIMURA: Well, I saw the number they had was
14 2016. But I think to be realistic or I can't really speak
15 to that, I was not involved in the Panel at all, but I think
16 we are seeing similar effects that we have on other TFLs and
17 it's the same question of how you meet and achieve given
18 today's technology. And to that extent, I think the sole
19 question of benchmarks makes a lot more sense. You set some
20 standards and then as you move along and you're trying to
21 achieve that and then you have feedback and then you can
22 force the technology accordingly.

23 But if you do the same thing with the Clean Air
24 Act, exactly where you were trying to come up with new
25 technologies to address the pollution of the air, and as

1 time goes on, you learn more about the biology of the system
2 and everything else. And that's one of the things that we
3 might even -- there is still a lot more to do and
4 consequently it's taking the phased approach. We don't like
5 it, but that's the reality of this administration, and I
6 think the same parallels apply here.

7 ACTING CHAIRPERSON GONZALEZ: And there's no
8 benchmarks then inside there; is that correct?

9 MS. FALKNER: No, there are benchmarks. We have
10 dates that the standard must be met by and there are dates
11 for reevaluating the technology to see if those standards
12 can be adjusted. So by 2009, new vessels must meet the
13 standard in a certain size class, and the ultimate end date
14 is 2016 by which the vessels must meet the proposed
15 standards that are identified in the report. There is also
16 language that says by 2016 perhaps we should at that time
17 see if a zero detectible is possible for all, for the other
18 two size classes.

19 MR. KIMURA: If I can comment on that. The
20 concern that I will have is in terms of those benchmarks,
21 because that's why it's important to have a good monitoring
22 plan. You can't really say they're meeting a benchmark when
23 you find out that if you go off and do an analysis of our
24 survey and you have a lot more invasive species. So that's
25 got to be a very important part of the program.

1 EXECUTIVE OFFICER THAYER: We agree. And the
2 recommendations provide for that kind of monitoring.

3 MR. KIMURA: Right. And I just wanted to bring it
4 to a point though is that you've got to also make incentives
5 to get a lot more taxonomists in there. We're running short
6 of them right now.

7 EXECUTIVE OFFICER THAYER: We agree, it's a big
8 problem.

9 ACTING CHAIRPERSON GONZALEZ: It is a big problem.
10 Unfortunately, maybe if the incentives can't come to the
11 State Lands Commission, that is also our problem. We can
12 make a lot of recommendations, but I don't know how much --

13 ACTING COMMISSIONER ARONBERG: I have a question.
14 What is the life expectancy of these vessels and
15 when will the technology come on line with the vessels?

16 MR. FALKNER: Well, we're expecting that a fair
17 number of vessels in the large size class that we're seeing
18 right now will be out of service by the time the 2016 date
19 comes along. It really depends, we have some very ancient
20 vessels, I was really surprised. There is definitely a
21 group the dominant age is probably 12 years old. We have
22 some new guys coming on. There are over 700 container
23 vessels being built right now in the Asian yards. We should
24 expect to see about half of those in California in the next
25 couple years. So there is a new influx, an influx of new

1 vessels. Some of the older guys are dropping out and we
2 expect a large number of those older vessels, real old
3 vessels to be gone.

4 But, Gary, do you have a --

5 MR. GREGORY: Major carriers design their vessels
6 for a 20-year life cycle. They may then be moved down to
7 lower level carriers. But the type of vessels we're talking
8 about here, particularly large container ships, we're
9 looking at a 20-year life cycle and they will be gone.

10 EXECUTIVE OFFICER THAYER: We should be clear on
11 the implementation schedule, it provides for initially new
12 vessels to comply with the standards, but by 2016 all the
13 old ones should have to be retrofitted.

14 ACTING COMMISSIONER ARONBERG: And all new vessels
15 that are being made within the industry are moving to
16 permanent ballast?

17 MS. FALKNER: No. But there are key, there should
18 be companies, MERSK is one, and some of the other shipping
19 companies are looking at putting on permanent ballast, which
20 means they may lose a bit in terms of cargo capacity, but
21 just to them it's becoming much more evident that having a
22 permanent ballast, and we expect to see more and more of
23 those. One of the issues right now is a lot of vessels that
24 are coming out of the yards, there weren't any standards in
25 place anywhere, IMO had not even passed their convention

1 yet, so these vessels were designed not necessarily with
2 ballast water in mind, so those are still going to have to
3 be dealt with. But more and more of the vessel companies
4 are talking about permanent ballast and not having to deal
5 with that whole issue.

6 ACTING CHAIRPERSON GONZALEZ: Do you think if we
7 had a date that maybe all of the vessels would start to --

8 MS. FALKNER: A zero date?

9 ACTING CHAIRPERSON GONZALEZ: A zero date, yes.

10 EXECUTIVE OFFICER THAYER: It less has to do with
11 whether they would but whether they can, whether we have the
12 technology in place, and we don't have the technology for
13 even these standards and the technology for zero detectable
14 is further off. It's just that much harder to do. So I
15 don't think 2016 works as a date for zero detectible. I
16 mean this Panel which was very eager to see as protective
17 policies as possible wouldn't go there except for one of the
18 three size categories.

19 And I think we would just be making up a date, say
20 ten years further out and saying, well, after another ten
21 years we can get it together. And the point of the date
22 would be to focus people's attention on it, not necessary
23 with any expectation it would be done in ten years. It
24 could be done in five years after 2016. It's more likely to
25 be more like 15 or 20 years though, so the point of the date

1 would be fairly symbolic.

2 ACTING COMMISSIONER ARONBERG: Maybe that is the
3 case if they start not necessarily choosing their dates on
4 expensive research, and if the new vessels have more of an
5 incentive to permanent ballast, I mean that's not a
6 technology that's being developed?

7 EXECUTIVE OFFICER THAYER: I'm sorry, we were
8 talking about permanent ballast. I think we were talking
9 about onboard ballast treatment facilities, weren't we?

10 MS. FALKNER: No. There are actually several
11 vessels that we're now seeing in California that have
12 permanent sealed ballast tanks. They may load it with fresh
13 water and put an anticorrosive in it, they may load it with
14 salt water and put an anticorrosive in it. Every six months
15 they go out to the mid ocean and with the proper permits
16 discharge that stuff, put on new, and it's sealed. I mean
17 you can't even get in to sample those tanks because they are
18 completely sealed.

19 EXECUTIVE OFFICER THAYER: Right. I misunderstood
20 the question.

21 ACTING COMMISSIONER ARONBERG: But it's doable
22 now?

23 EXECUTIVE OFFICER THAYER: It's doable with some
24 types of ships.

25 ACTING COMMISSIONER ARONBERG: Right.

1 EXECUTIVE OFFICER THAYER: And there's where --
2 for example, tankers, it would be very, very hard, because
3 the weight of the cargo and the design of the ship is so
4 huge. I'm talking about something Gary should really be
5 talking about, because he's a former Coast Guard.

6 MR. GREGORY: There are many types of ships that
7 will always need to have ballast water on board. You need
8 to move the ballast water both to take on cargo and to move
9 cargo around on the vessel and to go through certain
10 navigable waters where the water is shallow or they have to
11 lower down to go under bridges.

12 Large container ships these days, the newer
13 designs, have fixed ballast systems so they can move the
14 ship side to side and fore and aft to keep them square under
15 the container frames, but they have developed these vessels
16 and they carry a very limited amount of fuel, just enough to
17 get from port to port so that it doesn't change the draft of
18 the vessel very much. So those are on container ships. And
19 while those are a large portion of the population of vessels
20 coming to California, the bulk carriers and the oil tankers
21 and chemical carriers will always need to have ballast on
22 board and will always need to be able to move that ballast
23 around while they are operating.

24 EXECUTIVE OFFICER THAYER: So which leads to
25 treatment technology then?

1 MR. GREGORY: Correct.

2 EXECUTIVE OFFICER THAYER: You're getting into the
3 exact sort of issues that the study and the Panel and Maurya
4 have been working on. You know, shoreside treatment is
5 another one that people have considered as well and
6 questioned whether that would be feasible or not. There are
7 different options and I think what we're doing here is sort
8 of recapitulating the problems that we see insofar it's been
9 difficult to decide this particular technology or this
10 particular methodology will work, and there's some thought
11 that perhaps at the end of the day there won't be one, there
12 will be different technologies and procedures for different
13 vessels.

14 ACTING CHAIRPERSON GONZALEZ: I, of course, need a
15 motion, but I would be more comfortable with a date that
16 we're trying to achieve a zero discharge standard, even if
17 we admit to a certain extent that it's an arbitrary date. I
18 think I would be more comfortable in having to change that
19 date at some future time than trying to establish that date
20 at some future time. But otherwise I'm very supportive of
21 the recommendations.

22 ACTING COMMISSIONER ARONBERG: I would make the
23 motion, and what would be the date? What was the date
24 recommended?

25 ACTING CHAIRPERSON GONZALEZ: Do you know what the

1 date was? I think they only noted that 2016 was a date for
2 evaluation, but I don't think they were suggesting that that
3 would be the date to achieve this goal.

4 MS. FALKNER: Exactly.

5 ACTING CHAIRPERSON GONZALEZ: Having not
6 participated in any public, you probably have a better sense
7 of what date that was.

8 MS. FALKNER: Well, the majority Panel, they said
9 by 2016 an evaluation of the technology needs to be put
10 forward to see if we can go to zero. And they didn't really
11 have, for all the reasons that we've discussed here, what
12 that final date was going to be. You know, at one point
13 2026 -- Suzanne, do you remember? Actually Suzanne was the
14 lead for this project throughout most of it. So 2026 was
15 the date by which a zero standard had gotten tossed out
16 there would be established at that. And then similar to the
17 discussion we just had here, everybody was like what if we
18 can't reach that, let's evaluate at 2016 and see if that
19 2026 date can be achieved.

20 ACTING COMMISSIONER LLOYD: And I personally think
21 it would be much harder to follow that approach. I think
22 even 2016 is ambitious for defining the technology and
23 developing the technology to do this. But once we have more
24 information, then it would be appropriate to set the
25 ultimate date.

1 EXECUTIVE OFFICER THAYER: I don't know whether,
2 Maurya, if you have any ideas about what an appropriate date
3 would be given the uncertainty?

4 MS. FALKNER: I don't. It would really just be a
5 guess. Things could really snowball in terms of
6 technological development. We could see some pretty major
7 advances. And not only because some of the big guys, the
8 big companies are getting involved now, the reason the
9 International Maritime Organization's performance standards
10 which are still pretty weak. So more and more big players
11 are getting involved, whereas, you know, we've had primarily
12 the small entrepreneurs that have been trying to advance
13 this whole issue. So it's really hard to say. Things could
14 just snowball and suddenly we have four or five different
15 technologies that can work and meet the standard.

16 EXECUTIVE OFFICER THAYER: So we don't really
17 know.

18 ACTING COMMISSIONER ARONBERG: You never know
19 where it's going to come from, the little guy or the big
20 guy, whatever.

21 MS. FALKNER: Exactly. And the industry is now,
22 because they're getting right into the middle of it, it's a
23 reality now. And they wanted this for all along, I mean
24 since '99 they have been calling for a standard. So, you
25 know, be careful of what you ask for.

1 ACTING COMMISSIONER ARONBERG: I'm comfortable
2 making a motion for 2026, but with the caveat that it would
3 have to be moved by a future Board --

4 ACTING CHAIRPERSON GONZALEZ: It will be in the
5 legislature at that point.

6 EXECUTIVE OFFICER THAYER: I should say before we
7 reach a final motion, we did receive a letter late yesterday
8 from the State Water Resources Control Board that generally
9 supported what we were doing. I don't know, I don't think
10 they're here to testify, but to present that letter to the
11 Commission. They were concerned some of these technologies
12 involve chemical treatment of the water, the ballast water,
13 before discharge. And the Water Board wanted language
14 inserted in the report, just a few clauses in three
15 different places that establish the principle that whatever
16 treatment technology is eventually approved or whatever
17 technologies they use should minimize or prevent impairment
18 of water quality conditions. But I would suggest that we
19 just adopt the changes, staff could review them and just
20 make that part of the report when we make those changes.

21 ACTING CHAIRPERSON GONZALEZ: When does this need
22 to be approved by? I know there's a report that's due to
23 the legislature.

24 EXECUTIVE OFFICER THAYER: January. I can
25 circulate this. When I first heard about this I thought it

1 was big changes, but they're fairly minor.

2 ACTING CHAIRPERSON GONZALEZ: And when is our next
3 Commission meeting set for?

4 EXECUTIVE OFFICER THAYER: It's not set because we
5 haven't heard back from all the Commissioners' offices, but
6 we're looking at the first or second week in February.

7 ACTING CHAIRPERSON GONZALEZ: Can we do a
8 special -- if we put this off today to just resolve the
9 question of the date, also because it sounded like we're not
10 going to get a second on a motion and given the unique
11 circumstances of having both Cindy and I voting today.

12 ACTING COMMISSIONER ARONBERG: It seems like the
13 focus is really the Water Control Board. Someone else can
14 come in and make some comment on it, you know.

15 EXECUTIVE OFFICER THAYER: Well, no, the Water
16 Board letter contains the exact language that they are
17 recommending. About the date. About the date for zero
18 discharge.

19 MS. FALKNER: They were on the Panel. They were
20 represented on the Panel and we did consult with them
21 outside of the Panel as the law requires us to. They did
22 not have a date that they put forward on that, but we did
23 meet with them. You know, we could --

24 EXECUTIVE OFFICER THAYER: But obviously for
25 whatever reason if the Commission wanted to have a special

1 meeting, we could consult with the offices and try to set up
2 something.

3 ACTING CHAIRPERSON GONZALEZ: Well, procedurally,
4 what else could we do given the -- maybe I should ask Jack.

5 CHIEF COUNSEL RUMP: I think your assessment is
6 correct where you are today.

7 ACTING CHAIRPERSON GONZALEZ: And I'm assuming you
8 weren't intending to enter a motion?

9 (Laughter.)

10 ACTING CHAIRPERSON GONZALEZ: And having heard the
11 loud silence.

12 EXECUTIVE OFFICER THAYER: So in terms of
13 scheduling another meeting, we could easily do a special
14 meeting or we could chat with the author's office and ask
15 them if we met in the first week or two of February whether
16 that would be sufficient time for his purposes.

17 ACTING COMMISSIONER GONZALEZ: Maybe we could
18 achieve a date. We just wanted your timeliness with the
19 legislature in submitting reports on time. We are proud of
20 the fact that you have been pushing to do that.

21 EXECUTIVE OFFICER THAYER: And there was some
22 concern about whether we had sufficient time to prepare this
23 report. I think it turned out very well. But we did chat
24 with the author's office whether or not we could get more
25 time. His staff expressed some concerns over having a

1 timely submittal to the Commission so that it could shape
2 his legislation.

3 ACTING COMMISSIONER GONZALEZ: But this is a
4 recommendation. What we decide to recommend, of course,
5 could be changed by the author as well.

6 EXECUTIVE OFFICER THAYER: Yes. And as it moves
7 through the legislature, there may be changes on the federal
8 level in terms of standards that are adopted. So there
9 could be a variety of reasons those standards are changed.
10 But what I was trying to get at is the author's office, when
11 we talked to them potentially several months ago about the
12 date, their primary concern was they didn't know when we
13 were meeting. If we were going to be meeting in late
14 February, they had concerns. Whereas, I was getting some
15 feedback that if we were going to miss the date by a week or
16 two they weren't going to be so concerned. So I'm just
17 saying there are a variety of possibilities here and it may
18 be that we can hear this at the next regularly scheduled
19 meeting.

20 ACTING CHAIRPERSON GONZALEZ: Well, I think Cindy
21 and I are both committed to bringing it back and talking to
22 the principal Commissioners to see if we can get a date when
23 we can bring it back and maybe we can do a special meeting
24 and work very diligently on getting a date by phone so we
25 can have an appropriate amount of people to make a motion

1 and make a decision on the recommendation of the date.

2 ACTING COMMISSIONER ARONBERG: What did you say
3 that date -- what did you say, January 25th?

4 EXECUTIVE OFFICER THAYER: The 31st. So that's
5 why it's so close.

6 ACTING COMMISSIONER ARONBERG: I am confident that
7 we can have a meeting, and do you need more than a couple
8 days then? How much time would you need to prepare it?

9 ACTING COMMISSIONER GONZALEZ: I mean the report
10 is substantially prepared, it would just be inserting?

11 EXECUTIVE OFFICER THAYER: Yes. If you inserted a
12 date, we would do that in a day.

13 ACTING COMMISSIONER GONZALEZ: So we need a motion
14 then to continue this item, Jack? There is a motion hanging
15 out there. Does that require a motion or no?

16 MR. HAGER: No.

17 CHIEF COUNSEL RUMP: No.

18 ACTING COMMISSIONER GONZALEZ: So I guess we will
19 defer this action until a time when we can set a special
20 meeting prior to January 31st?

21 EXECUTIVE OFFICER THAYER: Again, I'm happy to do
22 that, but I'm just suggesting that rather than fix that in
23 stone, that if the author sees no reason why we shouldn't be
24 able to meet on the 6th, we should leave the possibility
25 open. And we'll just talk with the Commissioners' offices

1 about what we're --

2 ACTING COMMISSIONER GONZALEZ: Okay. So we'll
3 just wait until whatever date is set prior to the second
4 week of February. I think it's probably our office what
5 hasn't given you a date, right?

6 EXECUTIVE OFFICER THAYER: So I think it can be
7 set in consultation with the author's office, the
8 legislature and the Commissioners' office. We'll talk.

9 ACTING COMMISSIONER GONZALEZ: Okay. Moving onto
10 Item Number 78, which I'm confident is going to go much
11 smoother, consider transfer of public access easement in
12 Malibu to Access for All.

13 Can we have a staff presentation, please.

14 EXECUTIVE OFFICER THAYER: Mike Valentine will
15 give the presentation. He's the Chief of our Land
16 Management.

17 MR. VALENTINE: Good morning, Madam Chair and
18 Commissioners. I will be very brief, Paul has set me on a
19 very strict time limit here.

20 We have a consideration of a staff recommendation
21 to accept a previously accepted public access easement in
22 Malibu we're proposing to assign to Access for All, it's a
23 public interest group that has public access as its focus.
24 The Offer to Dedicate was accepted by the Commission in '02,
25 and the assignment was on your agenda for the last meeting,

1 but a letter was received from an attorney representing the
2 upland land owners who objected to the assignment. The
3 basis of his objection was that Access for All lacks the
4 monetary assets as he put it to take on the responsibility
5 for liability.

6 And in light of those objections, these developers
7 asked staff to take a look. We have done so. We believe
8 that the homeowner overstates the extent to which the holder
9 of the easement will have that liability and responsibility.
10 And secondly, Access for All has full capacity to manage and
11 to assume whatever liabilities that would be associated with
12 the assignment.

13 We have really reviewed the capacity, Access for
14 All's capacity, and we believe they are fully adequate. I
15 could go into further detail if you would like to hear that.
16 And Steve Hoye of Access for All is here to respond to
17 questions should you have any.

18 But the short version is we recommend that the
19 assignment be approved. If you would like to hear the
20 longer version, I have one.

21 ACTING COMMISSIONER GONZALEZ: We have Steve Hoye.

22 MR. HOYE: Morning Madam Chair, Commissioners. My
23 name is Steve Hoye and I'm Executive Director of Access for
24 All. We were formed in the year 2000 specifically to
25 facilitate coastal access in the state of California.

1 We currently own 20 easements, 16 of them are
2 lateral easements just like this one. We opened this summer
3 the Carbon Beach accessway adjacent to Mr. Geffen's. You
4 may have heard a little bit about that. And we actually had
5 5,000 members of the public come down that accessway this
6 summer. We have a staff of four, but we were basically
7 meeting and greeting folks making sure they understood
8 exactly where the public areas were and where the private
9 areas were.

10 And the only problem we had this summer was
11 basically with several homeowners who actually were roaming
12 the beach in little vans spitting and actually shouting
13 because they actually felt that hopefully nobody would
14 actually come down this easement and use this beach and it
15 would actually remain as in their opinion private. Well,
16 that's not the case.

17 This is a wonderful opportunity this particular
18 easement and we really relish the opportunity to actually
19 work with you to actually take it on and do it. It's a
20 promontory, it's a bluff which actually sticks out into the
21 water between two state park beaches, 25 feet high and the
22 easement itself goes up and over the actual promontory and
23 the two staircases we were actually promised as part of this
24 agreement by the homeowner at the time when this particular
25 deal was cut.

1 Actually what did happen was the prior staircase
2 was actually put in and the promontory of the bluff itself
3 actually had grass put on to it and an irrigation system put
4 underneath. So it was pretty egregious in terms of the
5 actual situation of ignoring the permitted conditions. We
6 would like to rectify that, so would the California Coastal
7 Commission. A cease and desist has actually been issued on
8 this particular property to actually bring it into
9 compliance. The reason this particular letter I think was
10 sent to you was quite frankly because their attorney is
11 looking for a way out of actual compliance.

12 It seems to me that there's a new word that's
13 actually in the lexicon with regard to this particular
14 situation. I think we're talking about a Geffen being tried
15 here. It's a situation where you have a particular
16 homeowner who wants to have their cake and eat it too. They
17 basically get the benefits of the program without actually
18 paying the agreed upon deal price.

19 I look forward to working with this particular
20 homeowner, getting them to actually cough up the money to
21 actually prepare two staircases to go on either side of this
22 which will be 100 percent public safe. It's a lateral
23 easement. It will be open 24 hours a day and I can
24 guarantee you we will actually have 5,000 people going up
25 and down these staircases as soon as we can get them built.

1 ACTING COMMISSIONER GONZALEZ: Thank you.

2 ACTING COMMISSIONER ARONBERG: I'm happy, very
3 happy to make a motion to approve this, and thanks to Steve
4 Hoye for his continued persistence to public access. Great
5 job, and I'm delighted to make the motion to approve.

6 ACTING COMMISSIONER LLOYD: And I will second.

7 ACTING CHAIRPERSON GONZALEZ: Let the record
8 indicate that it was passed unanimously.

9 And that concludes regular calendar for today.

10 Are there speakers that wish to address the
11 Commission during the public comment period? I think I had
12 one comment card.

13 Bruce Resnick with San Diego Coast Keeper.

14 MR. RESNICK: Good morning, my name is Bruce
15 Resnick, Executive Director of San Diego Coast Keeper. And
16 I am here on behalf of the Bay Council Alliance, which
17 includes Sierra Club, Surf Rider, Environmental Health
18 Coalition, and Audibon. And first I just want to thank you
19 for this opportunity to speak. Thank you for holding
20 hearings continually down here in San Diego. Thank your
21 executive office for the report.

22 As you know, we've been here to speak before on
23 various issues and asked for reports back and we appreciate
24 hearing some of the progress made. And I just wanted to
25 highlight some of the updates on issues that we brought up

1 before, where they are and where they may be headed.

2 And the first is to address the bayfront. Mr.
3 Thayer spoke extensively about that. I just want to say
4 that as he indicated we do support the land swap which helps
5 to provide for comprehensive bayfront planning. We're
6 looking to cap the residential units and make sure we
7 protect wildlife quarters there. And we have seen State
8 Lands continue to play a key role in that and when the EIR
9 comes out next year to make sure that we have adequately to
10 protect wildlife and water quality and create good jobs and
11 public access for the residents of Chula Vista and San
12 Diego. So that's the first issue.

13 Second is also on the copper paint. Again, as was
14 indicated, we do have a TMDL now for Shelter Island and more
15 and more water bodies are being listed for copper
16 impairments in San Diego Bay around the marinas. And while
17 we were supportive and engaged in that process, we do
18 appreciate an effort to create a baywide solution, and
19 really a statewide solution to promote nontoxic
20 alternatives. And we're looking forward to working with
21 State Lands Commission to support those regional and
22 statewide solutions and to make sure that the tenants, the
23 poor tenants of these marinas do continue to operate their
24 facilities and comply. We do think you can hold those
25 accountable, and those tenants accountable to play an active

1 role in that. So hopefully we're looking to prevent
2 pollution rather than clean it up which is where TMDLs come
3 in.

4 Which also brings up the third issue, the San
5 Diego Bay cleanup, the southern cleanup. Since the last
6 time you were here, the Regional Water Board staff has
7 issued a draft cleanup and abatement order for Southwestern
8 shipyards which will require the restoration of 885,000
9 cubic yards of contaminated sediments with metals, with
10 PCBs, PAHs, and other pollutants, at a cost of \$96 million.
11 We actually would even go beyond the cleanup and abatement
12 order, but we are supportive of what the Regional Water
13 Board is doing. They are moving ahead with a quasi-
14 adjudicative process so a decision won't happen until next
15 year. The State Lands Commission has been supportive of an
16 aggressive protective cleanup plan for San Diego Bay and we
17 hope that you continue to be engaged in the process and make
18 your voice heard to ensure that a timely protective cleanup
19 of the bay.

20 And the last issue I want to talk about is the
21 South Bay Power Plant owned and operated by Duke Energy.
22 Since I think we last spoke, we have a new permit for that
23 plant which is more protective. The Bay Council groups
24 continue to work with the poor and with Duke and the City of
25 Chula Vista and other interested parties to try to get that

1 plant repowered and moved. And as you know, Duke has put
2 that plant on the auction block, one of many in the state of
3 California.

4 So we are urging State Lands Commission to take
5 two chances. One is we want to make sure you guys take an
6 aggressive role to make sure that current power plant is
7 removed or replaced with something that does not use once-
8 through cooling, preferably that uses dry cooling
9 technologies. And second is we ask the State Lands
10 Commission to play an active role in looking at the State
11 Water Board and statewide policy on once-through cooling. A
12 lot of agencies are now looking at that, including the State
13 Water Board, the Ocean Protection Council, the California
14 Energy Commission has a recent report that outlines many of
15 the significant environmental impacts, and we're just
16 looking for State Lands Commission to play an active role
17 and statewide so that we can eventually phase out these
18 highly polluting power plants.

19 So thank you very much and I look forward to the
20 next time you're down here in San Diego.

21 ACTING CHAIRPERSON GONZALEZ: Thank you. And on
22 the once-through cooling, I think the Chair of the State
23 Lands Commission of course sits on the Ocean Protection
24 Council and has been engaged in that discussion as well.
25 And I'm sure he will continue to be. And, of course,

1 speaking only for the Chair, I know he will be happy to
2 continue to be aggressive in the role of trying to ensure
3 that the Duke power plant is eradicated like the invasive
4 species. So he will continue to push on that. Of course,
5 we're still in limbo on figuring out exactly what Duke's
6 plans are given their stated public plans and what they are
7 planning to do here locally. And I'm sure that we can get a
8 report on that as soon as we have any kind of answer,
9 correct?

10 EXECUTIVE OFFICER THAYER: Absolutely. I was
11 speaking about this with Dan Wilkens from the Port earlier
12 before the meeting and I think everyone -- he believes that
13 the Port and everyone else is moving in the direction of
14 having a replacement power plant and all that further south
15 on the waterfront that would not be once-through cooling, it
16 would be dry or some other technology that would prevent
17 those problems from occurring. But there is also some
18 thought that the must run status, it's not going be lifted
19 and so rather than the plant just going away it will
20 probably be a new plant that would address a lot of the
21 concerns that the Commissioners and the members of the
22 community have had. But I think it's in flux until the
23 ownership issue is resolved, it's kind of hard to say. It
24 seems these exterior limitations or requirements in terms of
25 the must run status will govern no matter who applies for

1 that.

2 ACTING CHAIRPERSON GONZALEZ: How convenient.

3 Okay, if there is no other public speakers, I
4 think that concludes the open meeting portion. And we have
5 no closed meeting portion today, so that adjourns the
6 meeting. Thank you.

7 (Thereupon the meeting of the State
8 Lands Commission was concluded at 11:36
9 a.m. on December 8, 2005.)

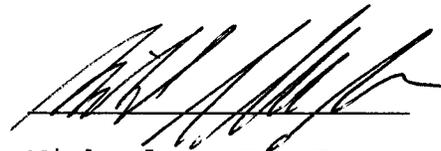
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1 CERTIFICATE OF SHORTHAND REPORTER

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

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

11 IN WITNESS WHEREOF, I have hereunto set my hand
12 this 27th day of December 2005.

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18 Michael J. Mac Iver

19 Shorthand Reporter
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