

MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

ORIGINAL

EL SEGUNDO CITY HALL
COUNCIL CHAMBERS
350 MAIN STREET
EL SEGUNDO, CALIFORNIA

THURSDAY, AUGUST 24, 2006
10:00 A.M.

Michael Mac Iver
Shorthand Reporter

APPEARANCES

Steve Westly, State Controller, Chairman

Cruz Bustamante, Lieutenant Governor

Director of Finance, represented by Anne Sheehan

STAFF

Paul Thayer, Executive Officer

Jack Rump, Chief Counsel

ALSO PRESENT

Alan Hager, Deputy Attorney General

INDEX

	Page
Call to Order	1
Approval of Minutes	1
Executive Officer's Report	1
Consent Calendar C1-C46, C49-C56	10
Regular Calendar	
Item 48	11
Jeffrey Warren	18
Bill Templeton	23
Item 57	30
Public Comment	
Don May	48
Adjournment	52
Reporter's Certificate	53

PROCEEDINGS

CHAIRMAN WESTLY: I'd like to call this meeting of the State Lands Commission to order, as all the representatives of the Commission I see are present.

I am Steve Westly, State Controller, and I'm joined today by Lieutenant Governor Cruz Bustamante, Anne Sheehan representing the Department of Finance.

For the benefit of those in the audience, the State Lands Commission administers properties owned by the State, as well as its mineral interests. Today we'll hear proposals concerning the leasing and management of these public properties.

The first item of business will be the adoption of minutes from the Commission's last meeting.

May I have a motion to approve the minutes.

COMMISSIONER BUSTAMANTE: So moved.

ACTING COMMISSIONER SHEEHAN: Second.

CHAIRMAN WESTLY: All in favor say aye.

(Ayes.)

CHAIRMAN WESTLY: The minutes are unanimously adopted.

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

Mr. Thayer, may we have your report.

EXECUTIVE OFFICER THAYER: Good morning Members of

1 the Commission.

2 I guess first I would like to acknowledge again
3 the hospitality of the City of El Segundo in allowing us to
4 come back and meet here. It's, as you can see, a wonderful
5 city and the meeting room is quite pleasant, and it's very
6 convenient for all of us that are coming in by airplane. So
7 again I wanted to thank them and we'll of course thank them
8 by letter as well.

9 The second item that I would like to talk about is
10 Bolsa Chica. There was a momentous occasion this morning
11 wherein the final impediment to ocean circulation into the
12 wetlands was removed. The construction project has been
13 ongoing for over a year, but today the final connection
14 between the wetlands and the ocean was made at 5:52 in the
15 morning. There were a number of our staff who were down
16 there who have been actively working on this project, and
17 people from other agencies were there as well, the people
18 who have done all the work. There was no ceremony, it was
19 just a bunch of heavy equipment doing it.

20 We have a couple of pictures here that we will run
21 through that were taken this morning.

22 Jim Trout on the left there with Commission staff
23 has worked on this.

24 Thanks very much.

25 Again, those were taken this morning and shot in

1 the early hours.

2 CHAIRMAN WESTLY: Were you there, Mr. Thayer?

3 EXECUTIVE OFFICER THAYER: I was not there. I was
4 getting ready for this. I know the Controller has been down
5 there.

6 And so now we're looking forward to the effect of
7 this water and the flooding to occur, to new vegetation and
8 the return of a lot of the bird and sea life. It's an
9 important nursery area for ocean species as well. And
10 there's some discussion about having a more formal ceremony
11 a little bit later when some of these effects are more
12 visible and so it's more apparent to the public of all the
13 benefits of this.

14 CHAIRMAN WESTLY: It's really a statement that has
15 affected the staff. As some of you know, restoring the
16 Bolsa Chica Wetlands as one of the largest wetlands west of
17 the Rockies in the United States, staff has worked on this
18 for well over a decade and it is a huge step forward in the
19 environmental movement in this state. So I think every one
20 of us takes some pride in it, and I especially wanted to
21 recognize you, Mr. Thayer, Mr. Rump, and all of the staff
22 for helping us make that a possibility.

23 EXECUTIVE OFFICER THAYER: I will certainly pass
24 along those congratulations to people like Jim Trout who was
25 down there. Ann's here today who was down there as well.

1 And you're right, it's been a very long effort, very
2 rewarding. Ann who was down there said that there were some
3 citizens driving over the new bridge that is part of this
4 and honking their horns. They knew what it was.

5 And that concludes the Executive Officer's report.

6 CHAIRMAN WESTLY: Okay. The next order of
7 business is the adoption of the consent calendar, and I'd
8 like to call the Executive Officer Paul Thayer to indicate
9 which items have been removed from the consent calendar.

10 EXECUTIVE OFFICER THAYER: There are two items,
11 Item 47 will be heard at a future Commission meeting, and at
12 the request of the Chair's office, Item 48 regarding a
13 pipeline managed by DCOR, which at the request of the
14 Chair's office will be taken off and heard today.

15 CHAIRMAN WESTLY: Great. We have a number of
16 people who have asked to speak on that issue and we will
17 come to those in a minute.

18 Is there anyone else in the audience who wishes to
19 speak on an item still on the consent calendar?

20 Okay. No speaker cards on any of the consent
21 items.

22 COMMISSIONER BUSTAMANTE: I had a couple of
23 questions, Mr. Chairman.

24 CHAIRMAN WESTLY: Mr. Bustamante.

25 COMMISSIONER BUSTAMANTE: On Number 18, can you

1 tell me a little bit about the program because to my
2 understanding this is something where we had the briefing
3 that you indicated that this was going to be an issue of
4 someone taking over and managing the property. Could you
5 give us just a little bit about what this is going to be?

6 EXECUTIVE OFFICER THAYER: Certainly. While the
7 State Lands Commission has taken a lead role in the
8 restoration, because the State Lands Commission owns this
9 land and it was purchased because of mitigation requirements
10 on the Port of Los Angeles and Long Beach, there are seven
11 other agencies that are part of the coordinating committee
12 and ultimately we were, and all the agencies were looking
13 for one to take on the ongoing management responsibilities.
14 As you know, State Lands does not have any biologists on our
15 staff and we don't have the managerial either experience or
16 staff available to on the ground management of specific
17 properties such as this one.

18 We were looking primarily at two different
19 agencies to undertake this role. One was the Fish and
20 Wildlife Service and one was Fish and Game, the equivalent
21 agencies on the federal and state level. The Fish and
22 Wildlife has written us a letter declining to be the
23 manager. Fish and Game is already the manager of an
24 adjacent wetland, part of the Bolsa Chica complex, and has
25 managed that successfully as well for probably 20 years.

1 COMMISSIONER BUSTAMANTE: So this will be an
2 extension of that?

3 EXECUTIVE OFFICER THAYER: This will just be in
4 effect crossing over the dike to the other side of the
5 wetlands. So this seemed to be the appropriate agency.

6 COMMISSIONER BUSTAMANTE: How long is the
7 arrangement for?

8 EXECUTIVE OFFICER THAYER: The length of the
9 management arrangement is 33 years, however there is a
10 provision in there which would allow the State Lands
11 Commission for nonperformance to end that arrangement. But
12 the other issue that we're going to have to continue to look
13 at is sufficient funds to pay for management. Wetlands
14 sometimes can be cheap to manage, but this one keeping that
15 ocean entrance open will require occasional dredging which
16 is an expensive proposition.

17 COMMISSIONER BUSTAMANTE: And we have money for
18 how many years right now?

19 EXECUTIVE OFFICER THAYER: I think we've got money
20 for probably close to ten years right now, perhaps longer.
21 We were able to sell some additional credits for that
22 wetland.

23 COMMISSIONER BUSTAMANTE: Great. And C-48 has
24 been pulled from the regular calendar, is that correct?

25 CHAIRMAN WESTLY: Yes, correct.

1 COMMISSIONER BUSTAMANTE: Okay. C-53, we are not
2 approving the desal plant on this, correct?

3 EXECUTIVE OFFICER THAYER: Good point. No, this
4 is the preliminary engineering work and core sampling to see
5 what sort of engineering needs to be done should a discharge
6 pipe be put in there. But the purpose the pipe is
7 contemplated would be the discharge pipeline from a desal
8 facility. This matter would have to come back to the
9 Commission with a formal application for a lease before they
10 could build that and at that time the Commission would have
11 the opportunity to review all the impacts and benefits from
12 that.

13 COMMISSIONER BUSTAMANTE: So essentially we're
14 approving this survey.

15 EXECUTIVE OFFICER THAYER: That's correct.

16 COMMISSIONER BUSTAMANTE: C-54 and the Shell
17 Exploration and Production Company application. This is a
18 part of a maintenance activity that they have to or we have
19 asked them to do? How did this come about?

20 EXECUTIVE OFFICE THAYER: This is on the seafloor
21 off of the Gaviota area in Santa Barbara County, and it's an
22 area where there have been some old existing wells. These
23 had been abandoned in 1983 and 1961. The standards then
24 were not as strong as they are now. As it has turned out,
25 there was some debris left behind. There's a five-foot high

1 vertical pipe that's 48 inches in diameter and several other
2 pieces of debris like that. To some extent, this is
3 material that was there before but wasn't removed because it
4 wasn't required under the standards when they were abandoned
5 40 years ago. Some of this debris is also --

6 COMMISSIONER BUSTAMANTE: Is it our request or did
7 they --

8 EXECUTIVE OFFICER THAYER: Oh, at our
9 instigation --

10 COMMISSIONER BUSTAMANTE: Okay.

11 EXECUTIVE OFFICER THAYER: -- these companies are
12 going back. Sometimes it takes a while to find a
13 responsible party, but in this case it was Shell, and they
14 have agreed to go back and remove this material. And as
15 we've talked about, there are other places up and down the
16 coast where there is debris where we can find a responsible
17 party who is, A, responsible because they were the ones who
18 were involved in putting it there, and, B, they have got the
19 money to remedy the situation, we're active about trying to
20 get that situation remedied. There is also a lot of orphan
21 debris, debris that is left over from operations as long ago
22 as --

23 COMMISSIONER BUSTAMANTE: Piers and pilings,
24 right?

25 EXECUTIVE OFFICER THAYER: Things like that. And

1 in those cases, generally, we can't find any responsible
2 party, they've gone out of business or can't be identified
3 anymore, and as we've discussed, the Commission staff has
4 regularly asked for appropriations to deal with debris like
5 that and other kinds of debris, not just oil debris. We've
6 had some success in getting money and removing some things
7 along the beaches that are hazardous to the public enjoyment
8 of the beaches. But we did a survey back in the '80s that
9 identified \$12 million worth of work that needed to be done,
10 and we've only received a portion of that, and of course
11 there is more work that is necessary now.

12 COMMISSIONER BUSTAMANTE: I would recommend that
13 in the future as these bonds come up, staff work with the
14 legislative staff to insert language so that one of the
15 activities that it is taken care of when these bonds pass.
16 Because there is oftentimes a variety of opportunities in
17 these bonds for this kind of activity. So I would recommend
18 that you put it on there, you know, something that they
19 should deal with and make sure that we get this \$12 million
20 worth of debris off our beaches.

21 EXECUTIVE OFFICER THAYER: Good point.

22 COMMISSIONER BUSTAMANTE: Okay. The last one is
23 C-56. The drilling that is taking place here is geothermal;
24 is that correct?

25 EXECUTIVE OFFICER THAYER: Yes.

1 COMMISSIONER BUSTAMANTE: All right. I just
2 wanted to make sure.

3 EXECUTIVE OFFICER THAYER: This is a -- and by
4 geothermal, of course, we mean it's up at the geysers that
5 exist and the steam deposits underground. These have
6 already been developed in areas adjacent to where these are
7 proposed. That steam is used to generate clean electricity,
8 it has no global warming impacts, and so it's a good thing.
9 And it also under the statutes earning money that goes to
10 the retired teachers for their pensions.

11 COMMISSIONER BUSTAMANTE: And there's no need for
12 mitigation of any other environmental --

13 EXECUTIVE OFFICER THAYER: There are always
14 environmental issues, and so when you drill there's going to
15 be requirements in turn to making sure that the roads are
16 built and don't have erosive runoff and that kind of thing.
17 And there has to be care taken of the discharge of the
18 condensed steam to make sure there is no adverse impacts.

19 COMMISSIONER BUSTAMANTE: All right. Mr.
20 Chairman, I will move the consent calendar.

21 CHAIRMAN WESTLY: Great.

22 ACTING-COMMISSIONER SHEEHAN: I will second.

23 CHAIRMAN WESTLY: All in favor please say aye.

24 (Ayes.)

25 CHAIRMAN WESTLY: The consent calendar is passed

1 unanimously.

2 I have asked for staff to take a look at the
3 length of the lease for Item C-48, the oil pipeline. The
4 applicant DCOR is a newer operator of California offshore
5 oil platforms and is seeking a lease extension for this
6 pipeline.

7 Mr. Thayer, can you provide some background on
8 this item?

9 EXECUTIVE OFFICER THAYER: Certainly. I've asked
10 Susan Young of our staff who wrote the staff report to give
11 us just a couple of minutes of who, what, where, and when on
12 this lease.

13 COMMISSIONER BUSTAMANTE: Could you start with the
14 staff recommendation, please?

15 PUBLIC LANDS MANAGEMENT SPECIALIST YOUNG: Good
16 morning, Commissioners. My name is Susan Young, I'm a
17 Public Lands Management Specialist with the Land Management
18 Division, I'm providing background information regarding
19 Calendar Item 48.

20 Staff is recommending that the Commission approve
21 the amendment to extend the term of lease for a 20-year
22 period, to approve a revision of annual rent, to approve the
23 increase in liability insurance coverage, and to discontinue
24 the use of the gross national product implicit price
25 deflator as a means of adjusting annual rent, as that it is

1 no longer published.

2 In 1981, the Commission originally approved the
3 issuance of a 25-year industrial lease to Union Oil Company.
4 The Commission has subsequently approved a number of
5 assignments of this lease, and the state's current lessee is
6 DCOR, LLC., and they have applied for an amendment to extend
7 the term of the existing offshore industrial pipeline lease
8 which expired March 31st, 2006.

9 The facility covered by the proposed lease
10 consists of two bundled pipeline systems, which is to
11 include crude oil, natural gas, water, and electrical lines
12 which extend from offshore federal oil and gas leases and
13 platforms Gina and Gilda, and that's within the outer
14 continental shelf or OCS. And these lines extend onshore to
15 the Mandalay processing facility in the city of Oxnard in
16 Ventura County.

17 As noted in the calendar item before you, the
18 Commission approved the assignment of this lease to Plains
19 Exploration and Production Company in 2004. In the calendar
20 item we use the acronym PXP, which is Plains Exploration and
21 Production, and you should know that they are a large oil
22 company.

23 In 2005, the Commission approved the assignment of
24 this lease from Plains or PXP to the current lessee, DCOR,
25 LLC. This assignment was in conjunction with the assignment

1 of three other state pipeline right of way leases, also
2 serving offshore federal facilities. DCOR currently holds
3 three state oil and gas leases and their associated three
4 state pipeline right of way leases. This is in addition to
5 four state pipeline right of way leases serving federal OCS
6 platforms.

7 That concludes my remarks.

8 CHAIRMAN WESTLY: Mr. Bustamante.

9 COMMISSIONER BUSTAMANTE: What are all the
10 properties that we have that DCOR has on state lands?

11 PUBLIC LANDS MANAGEMENT SPECIALIST YOUNG: It
12 would be the three oil and gas leases and their associated
13 right of way leases set up. We have six leases here. They
14 have four right of way leases that serve federal OCS
15 facilities.

16 COMMISSIONER BUSTAMANTE: Six state and four
17 federal?

18 PUBLIC LANDS MANAGEMENT SPECIALIST YOUNG: So they
19 have ten in total.

20 EXECUTIVE OFFICER THAYER: There are also leases,
21 Paul, for how many platforms?

22 AUDIENCE MEMBER: Two.

23 EXECUTIVE OFFICER THAYER: Two leases then for
24 platforms in state waters.

25 COMMISSIONER BUSTAMANTE: I'm sorry?

1 EXECUTIVE OFFICER THAYER: In addition to those
2 pipeline leases, there are two leases for platforms, oil
3 production platforms in state waters.

4 PUBLIC LAND MANAGEMENT SPECIALIST YOUNG: The ten
5 includes those two platforms.

6 EXECUTIVE OFFICER THAYER: Oh, thank you.

7 CHAIRMAN WESTLY: Great. Any other questions?

8 ACTING COMMISSIONER SHEEHAN: How long are those
9 other leases?

10 PUBLIC LANDS MANAGEMENT SPECIALIST YOUNG:
11 Generally, those are 25-year leases, and this one just came
12 up expired in March of this year and DCOR did apply in
13 January 2004 for an extension.

14 ACTING COMMISSIONER SHEEHAN: Just for the one?

15 PUBLIC LANDS MANAGEMENT SPECIALIST YOUNG: Right.

16 ACTING COMMISSIONER SHEEHAN: And I guess my
17 question is to the length of the term on these other ones?

18 PUBLIC LANDS MANAGEMENT SPECIALIST YOUNG: I
19 believe them to also be 25 years.

20 EXECUTIVE OFFICER THAYER: Right. They just
21 haven't expired.

22 ACTING COMMISSIONER SHEEHAN: And I'm assuming
23 those are in various stages in those 25 years?

24 EXECUTIVE OFFICER THAYER: Right.

25 ACTING COMMISSIONER SHEEHAN: All right. Do we

1 know what the longest of those is? Does anyone?

2 PUBLIC LANDS MANAGEMENT SPECIALIST YOUNG: There
3 is one at 20 and the other at 2018.

4 ACTING COMMISSIONER SHEEHAN: 2018.

5 CHAIRMAN WESTLY: That's 12 years.

6 ACTING COMMISSIONER SHEEHAN: Okay.

7 EXECUTIVE OFFICER THAYER: And the leases for the
8 federal platforms of course are for the life of the lease,
9 there is not a term on that.

10 CHAIRMAN WESTLY: So at this point I would like to
11 ask the Attorney General's office whether we have any
12 discretion to deny the lease application?

13 MR. HAGER: No.

14 CHAIRMAN WESTLY: Okay. At this point we require
15 the question is what's the appropriate term of the lease.
16 Because we're legally obligated to grant the pipeline lease
17 according to the Attorney General, I would like to propose
18 we grant the lease, but that we do a five-year review of it
19 at the five-year point. This is a newer company. I'm
20 certain DCOR will do an excellent job, but because of our
21 strong standards, to ensure that every operator in the state
22 has the finest track record of environmental safety, I think
23 it would be prudent to approve the term of the lease but to
24 do a review after five years.

25 I'm sure the other commissioners will have some

1 questions and comments on this, so I would like to make a
2 motion for the discussion and then we will take questions
3 from the audience and the public. But I would like to amend
4 the staff's recommendation of a 20-year lease term for this
5 item and propose the 20-year lease be instead a five-year
6 lease with the right for an additional 15-year lease
7 thereafter depending on whether the Commission finds that
8 the applicant has a record of clean and safe operations of
9 its pipeline. We will leave that language to the staff.

10 At this point I would like to ask members of the
11 public to comment, unless, Mr. Thayer, you have any
12 questions?

13 EXECUTIVE OFFICER THAYER: No. I think I
14 understand the Chair's motion. I see there are two slips in
15 front of you.

16 CHAIRMAN WESTLY: Great. What I would like to do
17 is ask Mr. Jeffrey Warren, the Vice-President of DCOR to
18 come forward. And then if Mr. W. N. Templeton could be on
19 deck. If you could come to the microphone and identify
20 yourself.

21 COMMISSIONER BUSTAMANTE: Mr. Chairman, just a
22 point of clarification. Your motion is to approve a 20-year
23 lease with a five-year review?

24 CHAIRMAN WESTLY: Correct.

25 COMMISSIONER BUSTAMANTE: So we're approving a 20-

1 year lease, but in five years we're going to review it, and
2 at that time review the 15-year extension; is that correct?

3 ACTING COMMISSIONER SHEEHAN: I didn't understand
4 the motion that way.

5 EXECUTIVE OFFICER THAYER: Initially I heard the
6 Chair describe it as the Lieutenant Governor repeated it,
7 but it seemed like what you read later talked about having
8 an initial five-year lease with extensions of that lease
9 possible if they meet this criteria for the safe and clean
10 operation, so that the actual term of the lease, as I
11 understood it, the proposed amendment was for five years,
12 with these five year extensions, and possibly up to --

13 COMMISSIONER BUSTAMANTE: My only concern, Mr.
14 Chairman, my only concern would be that if we're going to
15 provide a five-year lease, it could create problems in long-
16 term investment, whether it's for safety issues or a variety
17 of other things when they are trying to get financing. So
18 if we give them a 20-year lease with a five year renewal, it
19 might -- I think because they are a new company, it would
20 give us an opportunity to have some sense of making sure, to
21 answer your concerns, to make sure that they are progressing
22 properly. They have one year so far of experience, correct?

23 EXECUTIVE OFFICER THAYER: On this pipeline.

24 COMMISSIONER BUSTAMANTE: Have we had any problems
25 at all with DCOR in that one year?

1 EXECUTIVE OFFICER THAYER: No.

2 COMMISSIONER BUSTAMANTE: On any of the
3 facilities?

4 EXECUTIVE OFFICER THAYER: No. They've met all --
5 as you know, both staff and the Commission had a great
6 concern because this company is new and we attached a number
7 of conditions to the assignment, and so far they are meeting
8 those requirements.

9 CHAIRMAN WESTLY: Okay. My primary goal is to
10 ensure because this is a relatively newer company and that
11 there be a review process. I am completely open on whether
12 we start with an initial 20-year term if that is more
13 appropriate and represents the views of the Lieutenant
14 Governor and the staff, I'm happy to make that change.

15 At this point, what I would like to do is ask Mr.
16 Warren from DCOR if he would be willing to identify himself
17 and speak on behalf.

18 MR. WARREN: Good morning, Commissioners. My name
19 is Jeffrey Warren, I'm the Vice-President of Land and Legal
20 for DCOR.

21 And a couple things that I wanted to point out and
22 this Commission can recall a year ago in this room you
23 approved an amendment to this lease and three other leases
24 involving pipelines that serve our federal platforms. And
25 within that amendment, and I understand your concerns, and I

1 think my comments here are such that I think that we have
2 already addressed those concerns. Because we amended these
3 particular pipeline agreements and other agreements whereby
4 if the bonding is not considered appropriate by the
5 Commission that at any point in time during the term of the
6 lease agreement that bonding amount can be increased. There
7 are also provisions in the amendments that were approved by
8 the Commission last August whereby if technology and the
9 industry changes, that we are subject to those new
10 requirements, new regulations. So if that is the concern in
11 this instance, what I'm suggesting is is that we may already
12 have addressed that through our amendment.

13 Secondly, is that if we're in violation of any of
14 the provisions of these leases, be it even rental payment or
15 failure to satisfy the regulations involving pipeline
16 maintenance or things of that nature, we can be immediately
17 put in default at any point in time. It can happen
18 tomorrow, it can happen ten years from now, and if we do not
19 satisfy or cure that breach, we lose the lease. And that's
20 still a right that is retained by the Commission.

21 Lastly, and I think Commissioner Bustamante made a
22 very good point, we are currently in the process of
23 investing a considerable amount of money on some development
24 projects and existing wells in our offshore Platform Gilda
25 and it does, if we do have a pipeline or any kind of a

1 contingency or item of uncertainty, it does affect our
2 decisions as to where we invest this money. Secondly, it
3 does have an impact on our financing and things of that
4 nature. So there is a direct effect if we shorten or reduce
5 the term of this particular lease to five years. We're
6 hoping that you would consider something longer than that.

7 So those are my comments. I will answer your
8 questions.

9 COMMISSIONER BUSTAMANTE: Just a comment, Mr.
10 Chairman.

11 CHAIRMAN WESTLY: Commissioner Bustamante.

12 COMMISSIONER BUSTAMANTE: First, you're not going
13 to find a lot of sympathy for offshore oil drilling on this
14 Commission.

15 MR. WARREN: I understand.

16 COMMISSIONER BUSTAMANTE: Or in this state. And
17 the fact that we are obligated to provide this lease is an
18 event that is not the will of the majority of this
19 Commission. If there was a way of taking away the lease, we
20 would.

21 MR. WARREN: We understand.

22 COMMISSIONER BUSTAMANTE: So what we're trying to
23 do is we're trying to balance our responsibilities. If we
24 are required to provide a lease, what makes sense. And
25 since you're a new company, we've had situations in the past

1 where a relatively new entity off a particular platform was
2 supposed to have been properly capitalized but found that
3 once something took place, there was a release and a spill
4 that took place, going in they had not provided all the
5 necessary requirements to maintain a safe and appropriate
6 production on that particular platform. We want to make
7 sure.

8 The five years at this point I think allows us to
9 have just a little bit of pressure to make sure that in this
10 first five years you're going to make sure that everything
11 is up to snuff. You've done it for a year. It gives us an
12 opportunity to feel a little bit better about making sure
13 that you're going to be attentive. Yes, we can shut you
14 down, and we shut down that other platform. We can shut you
15 down any time if you are in violation of your contract.

16 But this also in terms of the next five years,
17 hopefully it will guide management for making sure that
18 everything is being done to make sure that as you head
19 toward that five-year renewal it will be appropriately done,
20 there will be attention to it. And so I think a 20-year
21 lease is probably appropriate. The five-year review I think
22 as presented by the Chairman I think is also appropriate.
23 So I would support the motion, Mr. Chairman.

24 CHAIRMAN WESTLY: Mr. Warren, I would like to give
25 you time to make any other comments. I know you may not

1 have had a chance to finish.

2 MR. WARREN: Well, no, the comments I intended to
3 make are complete. But I will say that in management, with
4 management at DCOR, everything that you just stated,
5 Commissioner, goes within our modus operandi. It's very
6 important to us that we're in compliance, but also
7 environmentally safe, and we go through repeated safety and
8 environmental inspections, both on the state level and the
9 federal level, and we have done quite well in that regard.
10 And it's very important to us.

11 COMMISSIONER BUSTAMANTE: That's not a cause for
12 celebration.

13 MR. WARREN: No, it isn't.

14 COMMISSIONER BUSTAMANTE: It's standard. That is
15 what we expect to have happen. And so what we're trying to
16 do is just provide just a little bit of comfort, you're
17 being a new company. And we're hoping that your record with
18 us will be as good as the last year and your record in other
19 states. We look forward to a good relationship.

20 CHAIRMAN WESTLY: Thank you, Mr. Warren.

21 Commissioner Sheehan, do you have any questions
22 for Mr. Warren?

23 ACTING-COMMISSIONER SHEEHAN: No.

24 CHAIRMAN WESTLY: Thank you.

25 And, Mr. Templeton, would you be willing to come

1 to the microphone and identify yourself.

2 MR. TEMPLETON: My name is Bill Templeton and I am
3 the owner of DCOR. I'm not exactly sure what my title is,
4 but I think I can speak for the company.

5 When we first came here we had a slightly
6 different understanding and interpretation of what the
7 Commission's proposal was going to be, and after having
8 heard a clarification, I think DCOR would be in agreement
9 with the proposal. I'm not actually sure what review means
10 because I can assure you that Mr. Mount and Mr. Scott in
11 Long Beach review our operations on a daily, if not hourly,
12 basis. And Mr. Nobles and Mr. Thayer in the Sacramento
13 office do the same thing. So we're not worried about a
14 review process. We have a similar review process with the
15 federal government --

16 COMMISSIONER BUSTAMANTE: We're all in agreement.

17 MR. TEMPLETON: -- on a daily basis. So I think
18 we're in agreement with the proposal. We could hopefully
19 work out with the staff exactly what the terms of that
20 review are. That's a fairly easy request.

21 CHAIRMAN WESTLY: Thank you, Mr. Templeton. And I
22 want to commend your company on its track record over the
23 last year and we hope the next 20 years will reflect that
24 same level of due diligence and care.

25 MR. TEMPLETON: We'll see to it, sir. Thank you.

1 CHAIRMAN WESTLY: Mr. Thayer.

2 EXECUTIVE OFFICER THAYER: I guess I would like to
3 clarify the terms the Commission passed and have some
4 discussion about where it wants to go with this. It is true
5 that we sought additional staff and established a program
6 really following the problem that the Lieutenant Governor
7 identified with Platform Holly, wherein we're conducting
8 regular five-year audits of offshore facilities. It's very
9 extensive, it involves not just inspectors. Inspectors
10 certainly do a great job day to day, but we're also bringing
11 in engineers and making sure the equipment is designed
12 appropriately and improvements work well with old pieces of
13 equipment, that sort of thing, much more in depth.

14 And we could again, trying to figure out the best
15 way to implement what the Chair is thinking of here, one
16 possibility is that as far as a five-year review, we would
17 ensure that the staff audit of pipeline would occur in the
18 year preceding the five-year anniversary of this and then
19 report back to the Commission at that five-year anniversary.
20 And then I'm not quite sure, maybe I'm struggling here to
21 get some legal advice, on what the scope of the review and
22 the discussion of the Commission you would want to receive
23 in that report.

24 And again this is predicated on the notion which I
25 think I'm hearing, and I'm not sure of that, but perhaps the

1 lease term would be 20 years, but it would have this five-
2 year review built in for safe and clean operation.

3 CHAIRMAN WESTLY: That's exactly correct. Again,
4 we simply want a chance to review this and make sure there
5 has been no spills or no other causes for concern, again,
6 affecting our coast, is of paramount concern for all three
7 of us here and a five-year review seems prudent for a new
8 firm.

9 Mr. Rump, do you feel like offering any further
10 thoughts?

11 CHIEF COUNSEL RUMP: Well, I think what we're
12 defining is basically what the Commission's desire is, what
13 sort of action do you want. You specified a 20-year term
14 with a five year checkpoint. Is that a review similar to
15 our safety audits that we have been doing or is that going
16 to be a term which then is going to authorize an additional
17 15. Is it a stop and go or is it a review?

18 EXECUTIVE OFFICER THAYER: And, of course, another
19 way to deal with it, again, we're just thinking out loud
20 here, is if the 20 years is established, maybe it's assumed
21 to be a go, but the Commission has the opportunity to say
22 stop again with that five years. And so if the review shows
23 lack of compliance with the lease, then, of course, the
24 lease will require safe and clean operations, then based on
25 that review, the Commission could order staff to seek

1 termination of the lease.

2 CHAIRMAN WESTLY: This is exactly where I'm going.
3 In other words, the reason we need to break it into two
4 leases, for example a five and 15 year, is the presumption
5 is they're going to operate the same way they have in the
6 last year, there is in my view no need to start from scratch
7 in the review process with a new lease. However, if there
8 has been problems, spills, anything else that would cause us
9 environmental concerns, I believe I, and I think some of the
10 other Commissioners have voiced it today, would certainly
11 like the opportunity to stop it if there are any problems.

12 COMMISSIONER BUSTAMANTE: Perhaps, Mr. Chairman,
13 if it would be appropriate, staff might be able to draft
14 some language for this specific revision and go to the
15 members later so that it's clarified. I think that the
16 intent of the Commission is clear and I think the staff is
17 having some difficulty with creating the language for it.
18 So why don't we go ahead and go with our intent and they can
19 draft some language and get it to you and we can review it.
20 But my guess is is that this would be a new provision that
21 we put into the lease that would say it's a 20-year term,
22 but that at five years there would be a review that would
23 take place, a public review. You would bring your audit,
24 the public would have a chance to speak on it, and the
25 Commission would publicly review the item in five years.

1 CHAIRMAN WESTLY: That's acceptable, with, if you
2 will, the option to discontinue it if there's no problem.
3 But I think we'd like to leave that to you. I would invite
4 you to work with the members of the public who have spoken
5 today so they are aware of this and then we will bring it
6 back.

7 Commissioner Sheehan.

8 ACTING COMMISSIONER SHEEHAN: And I would be
9 supportive of demotion and the five-year review. The only
10 thing that I would want to make sure staff that everyone
11 understands what is it we're reviewing. Because I think in
12 fairness to the public, as well as to the company, we know
13 the guidelines and the standards by which they will be
14 reviewed. I think the audit process is probably one that
15 works, but as I say, I think in fairness to all parties, we
16 know what that review, what the standards of the review are
17 going to be. That's what I'm, and possibly that's what
18 staff is also struggling with.

19 COMMISSIONER BUSTAMANTE: My understanding is that
20 the audit is a fairly extensive audit and it also includes
21 their financial situation; is that correct?

22 EXECUTIVE OFFICER THAYER: Correct. And I think
23 what we would do is to bring back to the Commission the full
24 report, and we've reported back on some of these audits
25 before, which is likely to show some discrepancies. I mean

1 I don't think you can go to any operation without finding
2 something spelled wrong or something like this. So we will
3 not seek to leave anything out, we will put everything in
4 there, and that way the Commission will have a full report
5 and not staff's distillation of what it considers important
6 or not, but everything that we find.

7 CHAIRMAN WESTLY: Great. So we look forward to
8 seeing an audit back from staff in five years. We will
9 understand this is a 20-year lease with an option to
10 discontinue if there are any extraordinary problems as
11 identified in the audit.

12 EXECUTIVE OFFICER THAYER: And let me just make
13 sure we're clear on one other point, and I think
14 Commissioner Sheehan might have been going there, is the
15 audit will be of this particular facility, the pipeline. We
16 would also of course include information about how it has
17 done in other leases, but the audit would be of this
18 facility.

19 COMMISSIONER BUSTAMANTE: And just to make sure
20 it's clear for the audience, we're talking about a pipeline
21 and not a platform?

22 EXECUTIVE OFFICER THAYER: That's correct.

23 ACTING COMMISSIONER SHEEHAN: I guess what I'm
24 trying to say, and I think this is a good way to do it
25 especially for a new one, but I want to make sure we're not

1 holding them to a different standard than we are to our
2 other leases. And the audit would go through that with
3 them, the financials and all of that, that's what I'm --

4 COMMISSIONER BUSTAMANTE: Including the five-year
5 provision, we're not holding them to a different standard.

6 ACTING COMMISSIONER SHEEHAN: Oh, absolutely.

7 COMMISSIONER BUSTAMANTE: That is the different
8 standard.

9 ACTING COMMISSIONER SHEEHAN: Well, but that will
10 come back to us.

11 COMMISSIONER BUSTAMANTE: Yes. Otherwise it would
12 not.

13 ACTING COMMISSIONER SHEEHAN: But something in the
14 -- you know, we're not talking some criterium --

15 EXECUTIVE OFFICER THAYER: I guess the way I would
16 phrase it, and let me say this to make sure I've got the
17 intent of the Commission clear here, is that the process
18 that we're proposing here is different, in other words,
19 we're bringing it back for review. But the standard is
20 probably the same, we want to make sure all operations are
21 safe. The Commission is concerned here with this is a new
22 operator.

23 COMMISSIONER BUSTAMANTE: That's right.

24 CHAIRMAN WESTLY: I would also add that the
25 standards that we're holding all operators to are increasing

1 over time. The standards are higher than they were ten
2 years ago, that's a good thing. Our standards in terms of
3 how frequently we may want to check back in may vary
4 depending on the maturity and the track record. I think
5 what we're doing here is appropriate and we're all in the
6 same place on this point.

7 What I would like to do is ask for a second to --

8 COMMISSIONER BUSTAMANTE: Second.

9 CHAIRMAN WESTLY: Great. All in favor please say
10 aye.

11 (Ayes.)

12 CHAIRMAN WESTLY: The motion carries unanimously.

13 COMMISSIONER BUSTAMANTE: I think you might want
14 to think also, Mr. Chairman, about having staff create a new
15 part or a policy for all leases in the future that would
16 include such a provision.

17 CHAIRMAN WESTLY: Mr. Thayer, would you be able to
18 articulate that at the next meeting and bring something back
19 from the staff.

20 EXECUTIVE OFFICER THAYER: Yes.

21 CHAIRMAN WESTLY: It's an issue of great concern
22 to the public and Commissioner Bustamante is absolutely
23 right.

24 That brings us to Item 57, an informational report
25 on the activities of our Marine Facilities Division

1 regarding the tank ship Probo Elk, and may we have the staff
2 presentation.

3 EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.
4 The Division Chief of the Marine Facilities Division Gary
5 Gregory will make that presentation.

6 DIVISION CHIEF GREGORY: Good morning, Mr.
7 Chairman, Commissioners. I am Gary Gregory, the Chief of
8 the Marine Facilities Division.

9 We will talk about the motor vessel Probo Elk and
10 the oil spill that occurred. We had a very good write up in
11 fact in the informational and the calendar. I want to
12 highlight a few areas and give you sort of a picture view of
13 what happened and a running commentary.

14 The Probo Elk docked at the Kinder Morgan terminal
15 in Los Angeles at the Port of Los Angeles. That's not the
16 Probo Elk but that is the terminal. The terminal was built
17 in 1923, it was rebuilt in 1959. It's a thousand foot long
18 timber structure, it is one of the old facilities that
19 remains in the Port of Los Angeles and Long Beach. Again,
20 this is in the Port of Los Angeles. And as you can see at
21 the top there is some containers, it is sandwiched right
22 between two container terminals, very active terminals, with
23 people and containers and trucks moving all the time.

24 This is the vessel Probo Elk, and interestingly
25 the day the casualty occurred there were probably 15 or 20

1 pictures of her on the internet, yesterday and earlier this
2 week there was one, this one. I should have saved those
3 pictures previously.

4 The Probo Elk is a different kind of vessel. She
5 is not a tank ship, she is what's called an OBO, and ore-
6 bulk-oil carrier. She is designed to carry a cargo in big
7 wide open holds, and that gives her big wide open hatch
8 covers that on this ship are --

9 COMMISSIONER BUSTAMANTE: Single or double hulled?

10 DIVISION CHIEF GREGORY: These ships are double
11 hulled, by nature of their construction.

12 The tank tops are 40 feet by 75 feet. On a normal
13 tank ship a tank top would be the size of a desk, it's
14 something considerably smaller than that. It makes it
15 difficult to maintain the air tight integrity of the tanks
16 on these vessels. And, frankly, most oil companies will not
17 use OBOs to carry oil. This vessel was picked up I believe
18 on a spot market carrying alkaloid and gasoline into the
19 greater Los Angeles area. Again she's about 600 feet long,
20 about 104 feet wide, a draft of about 43 feet, 48,000 dead
21 weight ton, sort of a medium-sized ship bringing in product.

22 She was a Priority One vessel. We have a risk-
23 based algorithm for every ship arrival that we know is
24 coming into California, they are required to give us pre-
25 arrival information. Priority One means we will board her

1 or we will monitor their transfer activities because she's a
2 newcomer, she's had some spills, had some problems,
3 between -- and we also balance that against what we see at
4 particular facilities. So this vessel was a Priority One,
5 we did board her.

6 Ken Rogers who is here with us today in the back
7 was the inspector who boarded her. He immediately noted as
8 he got to the facility that there were some communications
9 problems. The facility was having difficulty communicating
10 with the chief engineer, the man on board the vessel who
11 is -- I'm sorry, the chief mate, the man on board the vessel
12 who is responsible for the transfer operation.

13 He also noticed a strong odor of chemicals, he
14 noticed vapors coming out of the taller stack on the vessel,
15 and there were alarms that were sounding in the cargo
16 control room for both high high-level alarms and the inert
17 gas system. Now, the inert gas system is a system that
18 creates an oxygen deficient atmosphere, they are oxygen
19 deficient gas, to put onto the top of the tank so that as
20 cargo is moved out there is no possibility of oxygen and a
21 possibility of fire and explosion within those tanks. The
22 alarms were sounding for the inert gas system.

23 Ken continued to talk to the master and the chief
24 mate about this and they continued to insist that everything
25 was okay, they were just faulty alarms, and that things

1 would be okay. As they conducted the transfer operation,
2 the ship was increasing pressure to help to move the cargo
3 ashore. They could not get the booster pumps to work ashore
4 and as the pressure was increased, apparently due to a line
5 up on board the ship, they fed cargo from one tank into
6 another tank instead of going ashore, filled that tank up
7 giving it a high high-level alarm meaning the tank was more
8 than 98 percent full, and finally this product alkaloid
9 spilling out of the cargo tank onto the deck of the ship.
10 Approximately 75 barrels of this alkaloid, some of it going
11 through a scupper, which is a drain system in the deck which
12 is supposed to be plugged and blocked and waterproof at that
13 point. It was not plugged and waterproof. Some of it
14 slipped through and went down into the water. It was
15 actually a very small amount.

16 Nevertheless, we had a situation where we have an
17 oil spill occurring and we have other alarms sounding that
18 mean that there is trouble. Ken Rogers contacted his
19 supervisor John Brown and immediately notified the Coast
20 Guard of the spill and said we think we need some assistance
21 out here, this vessel has some issues.

22 The Coast Guard sent some pollution response petty
23 officers who took a look at what was going on and
24 immediately recognized that they were in over their heads
25 and they requested additional backup also from the Coast

1 Guard.

2 Ken was then backed up by our inspector Daryl
3 DeCarr. Daryl is here also in the back. Daryl came on
4 board the ship and saw that things were not well. He
5 continued to work with the chief mate and the master and
6 insisted that there were problems, insisted that they needed
7 to look further. There was again continued insistence by
8 the master of the vessel that things were fine and the
9 alarms were just sounding because there were problems with
10 the alarm system.

11 As the Coast Guard arrived, John Brown, our field
12 office supervisor in LA, worked with our inspectors and
13 worked with the Coast Guard to make sure that we could get a
14 marine chemist down there, a professional who could and an
15 independent third party who would sample the vapors in these
16 tanks to see whether there was in fact a problem with the
17 inert gas system. In fact we found that the inert gas
18 system had failed in four tanks, two of them had essentially
19 atmospheric air within them, and all of them had higher than
20 standard eight percent oxygen, all four of the tanks did,
21 potentially providing, more than potentially, but providing
22 a possibility of fire and explosion. Let me say that while
23 these fires and explosions are rare, they do happen. They
24 are caused by failure of inert gas systems or vessels that
25 don't have inert gas systems. All of them do now.

1 But just as an illustration, this was Los Angeles
2 Harbor in 1976 at Berth 45, and the tank vessel Sansinena
3 exploded at Berth because she had vapors in her tanks that
4 were flammable.

5 As a side note, this was my first day in Southern
6 California in the Coast Guard as a young lieutenant. I
7 showed up at noontime and the tanker exploded at 6:00 that
8 night. I wasn't welcome in the Coast Guard command center
9 after that. I don't quite really understand that.

10 Following the review by the marine chemist that we
11 in fact had an explosive atmosphere, the Coast Guard called
12 for an evacuation of all nonessential personnel from the
13 vessel. We maintained our personnel on board to ensure that
14 this incident was followed up on and continued. And they
15 called for a voluntary evacuation of the container
16 facilities within 600 yards of the ship. Those voluntary
17 evacuations were in fact undertaken, people left, it shut
18 down large parts of those container facilities for the
19 better part of the day due to the situation.

20 The Coast Guard then banned or banished the vessel
21 from port and sent her out with a long list of repair items
22 to take care of. She was moved offshore, about three miles
23 offshore of Huntington Beach, and the crew and contractors
24 made repairs to the vessel. The repairs were made and the
25 vessel was inspected by the Coast Guard. She was given a

1 certificate of compliance with federal regulations. The
2 classification society signed off, the owner's
3 representative signed off, everybody agreed that the vessel
4 was safe at that point, and on the 18th of July she
5 continued with her transferring, she came back to the
6 facility and continued with her transfer operation.

7 Now, what's missing in this picture? This would
8 be sort of the way things would typically go in an oil spill
9 and we would sort of end our review at that point. But
10 this was a very complicated situation. We certainly saw
11 that there were human factors involved in this, human
12 organizational errors occurring, and the day of this
13 incident and discussing it with our folks we decided that we
14 would put together a multidisciplined team that could take a
15 look at this whole incident and get down to a real root
16 cause analysis of this and do it properly.

17 We did put together that multidisciplined team.
18 Assistant Division Chief Kevin Mercier -- try the slide one
19 more time, one more time. Can we get the next slide up?
20 Ah, technology.

21 Well, we put together a multidisciplined team
22 headed up by our Assistant Division Chief Kevin Mercier.
23 Let me just talk through this then. And with our operations
24 supervisor, we gathered together a group of people we
25 thought would be great at this, we got a multidisciplined

1 team. The team itself was headed by Dr. Marc Chaderjian.
2 Mark is a Research Program Specialist of Human Factors. We
3 had our specialist Brendan Geraghty who is with us in the
4 back. Specialist Ravindra Varma who is not with us today,
5 he's on vacation in India. These people went on board the
6 Probo Elk at anchor and did extensive interviews with
7 everybody involved on that vessel, went back to the
8 facility, interviewed folks on the facility, not to assess
9 blame, not to figure out who was responsible, but rather to
10 look at the root causes of this incident.

11 I think this is where we have been trying to get
12 to, we have been trying to reach that spot at the Marine
13 Facilities Division, and this provided us with a real
14 opportunity and this multidisciplined team really came
15 together. I'm very, very proud of the work that they did.
16 They are not done yet, we have more things to do with this
17 team.

18 The initial analysis showed that one of the real
19 issues was the failure of the ship and the terminal to view
20 their operations as part of a system. They look at
21 themselves as we're the terminal, we're the vessel. They
22 need to look at themselves as part of a system.

23 They carry out pretransfer communications. We
24 have found out that, particularly in this case, and we're
25 afraid that maybe in all cases, that this pretransfer

1 communications of perfunctory. Yes, yes, yes. We're
2 attached, yes, yes, yes. In fact, there's very important
3 information being passed and we're afraid that it's not
4 being looked at carefully and properly and not given the
5 appropriate weight. We know that personnel issues were
6 heavy in this case. We had a chief mate who was hesitant,
7 and a chief mate that was not very communicative, was not
8 good in english, a very quiet man, when he needed somebody
9 to be in charge.

10 Should we try this again.

11 Okay, this is our initial analysis. We also know
12 that the pressures of commerce are great and they create
13 stress on the crew and create stress on the facility
14 operators to get the job done. And we need to ensure that
15 incorporated in that is the prevention aspects of what we're
16 doing. But this was a case where it was clear that they
17 were pushing, pushing, pushing, we had to get this done, we
18 have to get out of port, we have to move on.

19 We also noted that the Coast Guard has a program
20 called True Endurance Management Program that's involved
21 with people and vessels and inland waters, and it has to do
22 with how you manage your crew and sleep and things like
23 that. This is a case where we believe that an international
24 system of that type would be a great value to avoid having a
25 chief mate that's greatly fatigued, who isn't very good at

1 communications, who suddenly just sort of slows down and
2 shuts down as all these things were happening around him.

3 So where do we go from here? This is a good
4 question. We need to turn this analysis into solutions, we
5 need to assess our program requirements. Maybe some of our
6 regulations are in fact contributing to this. We need to
7 ensure that they are not and we need to look at that. We
8 need to develop some partnerships with some of the terminal
9 operators and the vessel operators and outreach them and try
10 and find ways to perhaps solve these problems in a
11 nonregulatory way.

12 That really concludes my presentation. I want to
13 tell you how proud I am of the people that were involved in
14 this program. This is some groundbreaking stuff. This was
15 some heavy duty stuff and I'm very proud of them.

16 If you have any questions I would be happy to try
17 to answer them.

18 CHAIRMAN WESTLY: Are there any questions by any
19 of the Commissioners?

20 ACTING COMMISSIONER SHEEHAN: No. Other than to
21 compliment you and staff on how you handled it. What about
22 the communications issue? There was a language issue there,
23 I understand?

24 DIVISION CHIEF GREGORY: Well, they are all
25 required to speak english, that's a federal regulation for

1 these oil transfer operations. The chief mate spoke english
2 haltingly and under pressure it got more and more halting.

3 ACTING COMMISSIONER SHEEHAN: Okay. Just in terms
4 of as you're looking at that, I see that as a place to begin
5 with. What more could be done or how --

6 DIVISION CHIEF GREGORY: Well, that's a very
7 strong aspect of the communications issue, that's sort of
8 right at the very top and there are many things that filter
9 down.

10 ACTING COMMISSIONER SHEEHAN: And it sort of
11 extends from that. So that's one issue in terms of the
12 communication. And on some of the other communications,
13 could you give me a little more understanding of some of the
14 other issues? Was it reluctance to provide information?

15 DIVISION CHIEF GREGORY: Much of it was
16 communications between -- the first thing we saw was
17 communications between the terminal and the vessel. The
18 people in the terminal were having some difficulty with
19 their booster pump, they got on the radio and said chief
20 mate, you need to slow down your pumping operations. No
21 response. Chief mate, you need to slow down your pumping
22 operations. No response. Our inspector was there, Ken
23 Rogers noticed that that was happening, and Ken said I'm
24 going on the ship to find out what is going on. He went up
25 there and the chief mate said, well, I responded. Well, how

1 did you respond, he says, well, I went okay. So they never
2 heard him say okay. So it got all the way down to
3 mechanical communications, a sense of needing to communicate
4 and understand what each other is doing and how.

5 That gets back to the pretransfer communications
6 about understanding the sequence of events that's going to
7 be occurring. They all had it written down, they all knew
8 it, but they weren't really executing it very well, and
9 certainly weren't communicating about what they had
10 communicated. So it's a very, very complex issue. It's a
11 place where really you need leadership, and I think in this
12 particular instance, the chief mate wasn't providing the
13 sort of leadership that was needed and I think Ken Rogers
14 going on board actually sort of -- not took charge of the
15 transfer operation, but took charge of trying to solve some
16 of these problems.

17 I'm sorry for the long answer.

18 CHAIRMAN WESTLY: Commissioner Bustamante.

19 COMMISSIONER BUSTAMANTE: You said that there
20 wasn't a multidisciplined team in order to be able to assess
21 blame or who was responsible, but who was to blame and who
22 was responsible?

23 DIVISION CHIEF GREGORY: Well, that's a very
24 interesting question. The Department of Fish and Game, the
25 Office of Spill Prevention and Response and the Coast Guard

1 both do fault investigations, who was involved, who is going
2 to pay a fine. The vessel was fined, I believe it was
3 \$5,000 for the oil spill and they have additional pending
4 penalties for their inert gas systems and all. We interface
5 with both of those organizations and provide them with
6 information, but we have worked hard to make sure that we're
7 an assessment team that the people in the maritime industry
8 understand that they can talk to us without them being
9 beaten up by us.

10 COMMISSIONER BUSTAMANTE: So who was to blame and
11 who was responsible?

12 DIVISION CHIEF GREGORY: I think that all in all,
13 and again we're still looking at this and the Coast Guard is
14 still looking at it, I would say the vessel is responsible
15 for the issues that were --

16 COMMISSIONER BUSTAMANTE: So will they remain
17 first priority?

18 DIVISION CHIEF GREGORY: This vessel will remain a
19 Priority One for us until we are absolutely satisfied that
20 she's a safe vessel. Frankly, I doubt that we will see her
21 again.

22 COMMISSIONER BUSTAMANTE: I just want to make sure
23 that if we have somebody on a first priority and we find out
24 that there was a problem, especially this extensive, that
25 they are never off the list.

1 DIVISION CHIEF GREGORY: No, sir, they will never
2 be off the list.

3 CHAIRMAN WESTLY: Go ahead, Commissioner Sheehan,
4 and I had a question as well.

5 ACTING COMMISSIONER SHEEHAN: As you said,
6 primarily it was the ship and their -- I guess my question
7 would be following up with the facility folks, the terminal
8 folks, what is the protocol they have if they are not able
9 to -- you know, if they are having these problems and they
10 are not able to communicate, when do they say time out? You
11 know that's the question I'm having.

12 DIVISION CHIEF GREGORY: And that is part of what
13 we need to look forward with. And I believe again some of
14 this gets down to leadership and some of the pressures of
15 commerce here. All of these terminals operate with what's
16 called an operations manual, and it shows a default,
17 basically default actions, if this doesn't happen, here's
18 what you're to do. Now, I do not know Kinder Morgan's
19 operations manual line by line myself, but I suspect that
20 someplace in there it says if you cannot maintain
21 communications with a ship, you will shut down the transfer
22 operation until that communications issue is solved.

23 ACTING COMMISSIONER SHEEHAN: Yes. See that would
24 be mine, so that you have a catch, if you don't have it on
25 this side, you have it on that side, and say, okay, two

1 times I've asked you, you haven't said anything, we're now
2 going to stop.

3 DIVISION CHIEF GREGORY: And this was my hesitancy
4 to answer Commissioner Bustamante's question. There is no
5 one single simple cause here, it was all of these different
6 issues adding up to a significant incident.

7 ACTING COMMISSIONER SHEEHAN: And then one final,
8 and that would be as we go through this process and you
9 continue to do the post-event assessment, then sharing that
10 or continuing to work with our other operators in the state,
11 to learn from this experience. Because it's good for us and
12 you and the company and all, but I think -- and I know I
13 have had this discussion with staff on other types of
14 issues, okay, it's good if we know in this instance, but if
15 were not able to share that experience with the other folks
16 that we have, I'm not saying it's not helpful, but then we
17 continue to sort of raise the level of awareness of the
18 safety concerns that the Commission has with regard to these
19 types of incidents?

20 DIVISION CHIEF GREGORY: Yes, ma'am, we have an
21 extensive outreach program. We hold quarterly meetings
22 within each of our field offices and invite the industry in.
23 In Northern California we get 100 to 125 people at these.
24 We review these sorts of incidents and talk about what
25 happened, and talk about how the future might look, what we

1 might do, and look for feedback there. We do prevention
2 first, our biennial conference also on pollution prevention.
3 And we have technical advisory groups that work together
4 with our staff writing regulations looking at how we can
5 move forward with things that will make a difference to stop
6 these sorts of incidents in the future. So I think we're
7 doing pretty good in terms of outreach and spreading the
8 word. We're trying hard.

9 CHAIRMAN WESTLY: And, Gary, Kinder Morgan owns
10 and manages the terminal. Who owns the vessel?

11 DIVISION CHIEF GREGORY: The vessel is owned by a
12 Greek company, I have the name here, Prime Marine Management
13 in Greece. The vessel actually has a fairly decent history.
14 They are known as a fairly good player. The vessel is
15 classed through DNB which is one of the prime, one of the
16 very good classification societies.

17 CHAIRMAN WESTLY: All right.

18 DIVISION CHIEF GREGORY: Let me say these vessels
19 are issues, OBOs, every OBO that comes into California we
20 will review their transfer operations.

21 CHAIRMAN WESTLY: Well, I hope after your initial
22 day that the last 30 years haven't been too monotonous.

23 (Laughter.)

24 DIVISION CHIEF GREGORY: No, sir.

25 COMMISSIONER BUSTAMANTE: And the staff that you

1 said were, all the inspectors, are they here?

2 DIVISION CHIEF GREGORY: Yes, sir, they are all
3 here.

4 COMMISSIONER BUSTAMANTE: Could they stand so they
5 could be recognized?

6 CHAIRMAN WESTLY: I think we're going to do that
7 right now.

8 Okay, Mr. Thayer.

9 COMMISSIONER BUSTAMANTE: I didn't mean to cut
10 into your ceremony.

11 EXECUTIVE OFFICER THAYER: The State Lands
12 Commission has a peer recognition system and normally these
13 are awards that are made at all staff meetings, but we
14 thought given the significance of this particular incident,
15 we invited them to come today. And so I think the Chair has
16 some certificates to pass out, and I would ask the staff to
17 come up. Ken Rogers, John Brown, Marc Chaderjian, Kevin
18 Mercier, Don Hermanson, Brendan Geraghty, Rondal Litterell,
19 Davindra Varma, I think he's not here today, and Daryl
20 DeCarr.

21 (Thereupon the certificates were handed out.)

22 (Applause.)

23 CHAIRMAN WESTLY: Thank you. Congratulations to
24 all of the staff. We appreciate that.

25 That concludes the regular calendar. Are there

1 any speakers who haven't completed speaker cards who wish to
2 address the Commission during the public comment period? If
3 so, please bring those cards up to Ms. Aronberg.

4 What I would like to do at this point, we do have
5 two members of the public who have asked to speak. The
6 first is Don May. If he could come to the microphone.

7 And then if Mr. David Biggs, the Assistant City
8 Manager for Redondo Beach could come forward.

9 Mr. May, could you please identify yourself.

10 MR. MAY: Mr. Chairman, Commissioners, my name is
11 Don May, California Earth Corps.

12 We're the plaintiff in some litigation over the
13 Pike Project down in Long Beach, and I just wanted to take a
14 couple minutes of your time this morning to remind you that
15 it's coming back in front of you, that we're sorry it's
16 taken so long. We had thought when the appellate court
17 found that the Commission did not have legislative authority
18 to be making land swaps and all of us, most of us, turned
19 our attention at that point to the legislation, the
20 emergency legislation to do that, and I certainly appreciate
21 your staff for including us in the discussions of writing
22 that. It didn't contain the things that we wanted, but it
23 contained some very good things, like provisions for access
24 to the coast we thought were pretty good.

25 But the underlying issues are still there. We'll

1 be coming back to you, we had hoped it would be on today's
2 agenda, and we look forward to -- we have a new mayor, we
3 have a new planning director of Long Beach, we have
4 virtually a new planning commission. The things that gave
5 us heartburn, there are some movie theaters that have
6 largely shown to be not good, they are failing financially,
7 and the ones which are good public trust doctrine uses are
8 prospering.

9 The city finds itself in a dilemma that we don't
10 quite understand, there is on the one hand approving and
11 proceeding and going ahead with a hotel that's on the side
12 of the Imax theater that was required by the Commission in
13 reliance on the MOU, on the other hand that hotel relies on
14 the recision of the land swap. On the other hand the city
15 also appears to be backing a Borders book store which is not
16 a public trust use. So these are issues.

17 Frankly, we had -- I should also say your staff
18 has not participated in a long series of motions that never
19 go anywhere and we appreciate that. So we're looking
20 forward to coming back in front of you and I appreciate your
21 indulgence this morning for a couple of minutes. This is a
22 heads up. We look forward to it, I think this is an issue
23 that people in good faith can sit around and come up with a
24 much better project and we're delighted for the opportunity.

25 Thank you.

1 COMMISSIONER BUSTAMANTE: If I might?

2 CHAIRMAN WESTLY: Commissioner Bustamante.

3 COMMISSIONER BUSTAMANTE: Paul, if this one part
4 of the business failed and we were able to get some land
5 swap and they are going to be doing yet another project, do
6 you think you might be able to leverage it for some
7 additional land, can we swap for some more?

8 EXECUTIVE OFFICER THAYER: I think what could
9 happen is that if the replacement use that goes in is public
10 trust consistent, then I believe that land returns to the
11 trust, and the Commission is kind of obligated pursuant to
12 the terms of the original agreement to return the land that
13 had come into the trust, because we do end up with that.
14 And just by a little way of background, I sent last week or
15 earlier this week a long email to your staffs going over the
16 present situation. But as Mr. May alluded to, there was
17 litigation run at the lower level, lost in the appeals court
18 level. We won additional legislation to reauthorize the
19 Commission's authority to do exchanges like this, we think
20 it helps us to be flexible with real world situations up and
21 down the state.

22 After the appeals court decision, it was remanded
23 to the lower court, the lower court issued an order for us
24 to set aside our earlier approval of the exchange. And we
25 were going to bring it to the meeting today, however, the

1 developer of the Pike Project appealed that decision, the
2 terms of the order, once again to the appeals court. And so
3 the order thus has been stayed, and so we don't have the
4 court order this morning to act. It's our intent to monitor
5 this appeal and the appeals, it's within the right of the
6 developer to do that, it's not an issue though that we're
7 involved in too much.

8 So at a future meeting we're likely -- I suspect
9 that the court will once again order us to overturn our
10 previous exchange approval and then the Commission would be
11 faced with whether or not to approve a new exchange and what
12 the terms of that exchange should be. So there is work yet
13 to be done.

14 I also wanted to note that we have worked with Don
15 May on a variety of issues and often he is goading us one
16 way or the other and it is always with a good heart, and
17 with the public involved. Sometimes we disagree as to what
18 the law would provide or this and that, but we're all on the
19 same side and I think that on a lot of things we are on the
20 same side. I would like to note that he is retiring and
21 moving to Hawaii, and I suspect he won't leave us alone,
22 that it will be a long distance relationship that will
23 continue, but I do want to note that although he sued us on
24 this one, that we're all looking at the same public issues
25 as part of the overall process.

1 MR. MAY: Aloha.

2 (Laughter.)

3 CHAIRMAN WESTLY: Thank you, Mr. May.

4 With that, Mr. Biggs, could you come forward.

5 He's not here, okay.

6 Is there anybody else from the public who would
7 like to comment this morning?

8 Great, that concludes the open meeting.

9 Seeing no other business before us, we will now
10 adjourn.

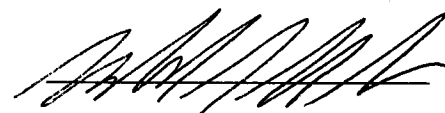
11 (Thereupon the meeting of the State
12 Lands Commission was concluded at 11:10
13 a.m. on August 24, 2006.)
14
15
16
17
18
19
20
21
22
23
24
25

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 8th day of September 2006.

13
14
15
16
17 

18 Michael J. Mac Iver

19 Shorthand Reporter
20
21
22
23
24
25