

MEETING  
STATE OF CALIFORNIA  
LANDS COMMISSION

SECRETARY OF STATE BUILDING  
AUDITORIUM  
1500 11TH STREET  
SACRAMENTO, CALIFORNIA

THURSDAY, MAY 24, 2012  
10:06 A.M.

JAMES F. PETERS, CSR, RPR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 10063

APPEARANCES

COMMISSION MEMBERS

Mr. John Chiang, State Controller, Chairperson,  
represented by Mr. Alan Gordon

Mr. Gavin Newsom, Lieutenant Governor, represented by Mr.  
Chris Garland

Ms. Ana J. Matosantos, Director of Finance, represented by  
Mr. Pedro Reyes

STAFF

Mr. Curtis Fossum, Executive Officer

Ms. Jennifer Lucchesi, Chief Counsel

Mr. Colin Connor, Assistant Chief, Land Management  
Division

Ms. Jennifer DeLeon, Senior Environmental Scientist

Mr. Mark Meier, Assistant Chief Counsel

Dr. Amanda Newsom, Marine Invasive Species Program

Ms. Sheri Pemberton, Chief, External Affairs

Mr. Chris Scianni, Ballast Water and Biofouling Program

Mr. Jim Trout, Retired Annuitant

Ms. Marina Voskanina, Assistant Chief Mineral Resources  
Management Division

ATTORNEY GENERAL

Mr. Joe Rusconi, Deputy Attorney General

ALSO PRESENT

Mr. Kevin Agan, Agan Consulting

Ms. Susie Baumann, Bali Hai Restaurant

APPEARANCES CONTINUED

ALSO PRESENT

Mr. John Berge, Pacific Merchant Shipping Association

Ms. Abigail Blodgett, San Francisco Baykeeper, California Coastkeeper Alliance

Ms. Jan Brisco, Tahoe Lakefront Owners Association

Mr. Braiden Chadwick, Downey Brand

Ms. Sharon Cloward, San Diego Port Tenants Association

Mr. Wayne Darbeau, Port of San Diego

Mr. Bob Duffield, Chinquapin Homeowners' Association

Mr. Jim Eastlack, Oxy

Mr. Shane Gusman, California Teamsters

Mr. David Hansen

Mr. Marc Hayman

Mr. Richard Kern

Mr. Ray Leyba, International Longshore & Warehouse Union

Mr. Gregg Lien

Ms. Karen McDowell, San Francisco Estuary Partnership

Mr. Ed Plant, Harborside Refrigeration

Mr. Tim Schott, California Association of Port Authorities

Mr. Howard Seligman

Mr. Lou Smith, Port of San Diego

Mr. Kevin Tougas, City of Long Beach

Mr. Joel Valenzuela, Port of San Diego

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PROCEEDINGS

1  
2           ACTING CHAIRPERSON GORDON: I'd like to welcome  
3 all of you here to the May meeting of the California State  
4 Lands Commission.

5           I call this meeting to order.

6           All the representatives of the Commission are  
7 present. I'm Deputy Commissioner Alan Gordon here on  
8 behalf of John Chiang. I'm joined today by Lieutenant  
9 Governor Gavin Newsom's Chief of Staff, Chris Garland, to  
10 my right; and Chief Deputy Pedro R. Reyes, a chief deputy  
11 director of the Department of Finance, to my left.

12           For the benefit of those in the audience, the  
13 State Lands Commission manages State property interests in  
14 over five million acres of land, including mineral  
15 interests.

16           Specifically the Commission has jurisdiction in  
17 filled and unfilled tide and submerged lands, navigable  
18 waterways, and school lands.

19           The Commission also has responsibility for the  
20 prevention of oil spills at marine oil terminals and  
21 offshore oil platforms, and for prevention of the  
22 introduction of marine invasive species into California  
23 waters.

24           Today we'll hear requests and presentations  
25 concerning the leasing, management, and regulation of

1 these public sovereign and school land property interests  
2 and the activities occurring thereon.

3 The first item of business before the Commission  
4 will be the adoption of the minutes from the Commission's  
5 special May 14th, 2012, meeting.

6 Can I have a motion, gentlemen?

7 ACTING COMMISSIONER GARLAND: So approve the  
8 minutes.

9 ACTING COMMISSIONER REYES: Second.

10 ACTING CHAIRPERSON GORDON: I have a motion and a  
11 second.

12 Call the roll.

13 I don't think they call the roll in here.

14 We don't. Different commission. Okay.

15 All those in favor?

16 (Ayes.)

17 ACTING CHAIRPERSON GORDON: All those opposed?

18 Minutes are unanimously adopted.

19 The next order of business is the Executive  
20 Officer's Report.

21 Mr. Fossum, can we please have the report, sir.

22 EXECUTIVE OFFICER FOSSUM: Mr. Chair,  
23 Commissioners. We have a number of significant matters to  
24 present to the Commission for your consideration this  
25 morning.

1           As I was saying, we have a number of significant  
2 matters to present to the Commission for your  
3 consideration this morning, and so I'll try to keep my  
4 report short.

5           Following the Commission's request, the staff  
6 held a public workshop in Huntington Beach on April 19th  
7 at the Huntington Beach Public Library. Prior to the  
8 meeting staff mailed out letters to all the property  
9 owners having property adjacent to the Main and Midway  
10 Channels as well as City of Huntington Beach  
11 representatives. These letters notify the owners of the  
12 public meeting including a list of frequently asked  
13 questions concerning the Commission's jurisdiction in  
14 Huntington Harbor.

15           At the meeting staff made its presentation on the  
16 Commission's jurisdiction on leasing practices. There  
17 were comments. Approximately 75 members of the public  
18 attended and we received comments from 16 individuals. We  
19 believe this was a constructive outreach and provided much  
20 needed to the public.

21           On Monday of this week the BLM California  
22 Director, James Kenna, and I signed the MOA between the  
23 Department of the Interior BLM and the Commission to  
24 facilitate the exchange of lands that are from the desert  
25 to renewable energy conservation plan area. This MOA was



1 approved by the Commission at their March meeting in  
2 response to Assemblywoman Skinner's AB 982, which became  
3 law in January.

4           The Commission has over 300,000 acres in the  
5 desert and will continue working towards implementing  
6 former Assemblywoman Pavley's AB 32 greenhouse gas  
7 reductions and Senator Simitian's SB X2 to reach 33  
8 percent renewable energy by 2020. You'll hear more from  
9 staff on the Alternative Energy Program of the Commission  
10 in the presentation on Agenda Item 77.

11           Next month six representatives of the Dubai  
12 Maritime Authority, including their executive director,  
13 will be meeting the staff from Sacramento and Long Beach  
14 to learn more about the Commission's Ballast Water  
15 Management Program.

16           Then, finally, on the revenue generation front,  
17 oil prices have continued to average about a hundred  
18 dollars a barrel. And the projections continue through  
19 June. We hope to be generating over \$520 million in all  
20 our revenues for this fiscal year, of which 450 million  
21 would be deposited in the General Fund. These estimates  
22 are \$80 million over the prior year.

23           I'd also like to acknowledge that we're honored  
24 today to have the Chairman of the Board of Port  
25 Commissioners, Port of San Diego, Lou Smith, here with us

1 today; and the President and CEO also, Wayne Darbeau, from  
2 the Port of San Diego.

3 So thank you for being here, gentlemen.

4 And that ends my presentation.

5 ACTING CHAIRPERSON GORDON: Next order of  
6 business will be the adoption of the Consent Calendar.

7 Mr. Fossum, can you indicate which items, if any,  
8 have been removed from consent please.

9 EXECUTIVE OFFICER FOSSUM: Yes, items 30, 43, 48,  
10 54, and 68. In addition, we had a request by an attorney  
11 for the Vanderbeeks, which is Item 13, to postpone that  
12 item. And at the Commission's discretion, we can do that  
13 as well.

14 We were moving that to the regular agenda, along  
15 with items 67 and 73. However, if the Commission wants to  
16 defer that item, it can be done as well.

17 ACTING CHAIRPERSON GORDON: Thank you, sir.

18 Anyone --

19 ACTING COMMISSIONER GARLAND: I'd move we defer  
20 that item.

21 ACTING CHAIRPERSON GORDON: Is there anybody here  
22 representing the Vanderbeeks today?

23 There is.

24 Sir, are you ready to hear this item or would you  
25 prefer we put it over to another hearing.

1 MR. CHADWICK: No, we'd prefer to postpone it --

2 ACTING CHAIRPERSON GORDON: Postpone it?

3 MR. CHADWICK: -- to the next meeting since my  
4 client can't be here today.

5 ACTING CHAIRPERSON GORDON: Oh, can you identify  
6 yourself, sir?

7 MR. CHADWICK: My name's Braiden Chadwick.

8 ACTING CHAIRPERSON GORDON: Okay. Thank you,  
9 sir.

10 MR. CHADWICK: Thank you.

11 ACTING CHAIRPERSON GORDON: All right.

12 EXECUTIVE OFFICER FOSSUM: So we'll add Item 13  
13 to the --

14 ACTING COMMISSIONER GARLAND: Yeah, I'd make a  
15 motion we remove Item 13 for future consideration at the  
16 July meeting.

17 ACTING COMMISSIONER REYES: Second.

18 All those in favor?

19 (Ayes.)

20 ACTING CHAIRPERSON GORDON: Opposed?

21 So moved.

22 Is there anyone in the audience who wishes to  
23 speak on any item that is on the consent calendar?

24 If not, the remaining group of consent items will  
25 be taken up as a group for a single vote.

1 We'll now proceed with the vote.

2 All those in favor of -- yes, I need a motion.

3 ACTING COMMISSIONER REYES: I move --

4 ACTING CHAIRPERSON GORDON: There's a motion on  
5 the consent calendar.

6 ACTING COMMISSIONER REYES: -- move the consent.

7 ACTING COMMISSIONER GARLAND: Seconded.

8 ACTING CHAIRPERSON GORDON: All those in favor?  
9 (Ayes.)

10 ACTING CHAIRPERSON GORDON: Opposed?

11 Consent calendar is hereby adopted.

12 Item 78 is to consider the acceptance of the  
13 third annual monitoring report for the Bolsa Chica  
14 Lowlands Restoration Project.

15 Could we have the staff report, please?

16 (Thereupon an overhead presentation was  
17 Presented as follows.)

18 MR. TROUT: Good morning. I'm Jim Trout. Been  
19 with the Lands Commission for more years than I care to  
20 remember, I guess.

21 But I've been involved along with the Commission  
22 and the rest of the Commission staff on the restoration --  
23 recovery and restoration of former wetlands to a condition  
24 which is suitable for environmental growth. The bulk of  
25 the project was funded by the ports of Long Beach and Los

1 Angeles as a mitigation for improvement of San Pedro Bay,  
2 basically to provide fill for their multi-modal  
3 facilities.

4 --o0o--

5 MR. TROUT: I have a -- Kim has given you a brief  
6 report. The project was opened in 2006 to allow the ocean  
7 back in. And I have a very brief slide presentation.

8 The Commission has worked with three other State  
9 agencies and a number of -- and four federal agencies to  
10 bring this about. The Commission's been involved with  
11 this since 1970 in one way or another: Acquiring title,  
12 and attempting to prevent residential housing in this  
13 former wetlands, and eventually the restoration.

14 The total cost of the project is about \$150  
15 million, as I said, the bulk coming from the port.

16 This is what it looked like before restoration.  
17 The bulk of the property was in production of oil and gas.

18 --o0o--

19 MR. TROUT: This is what it looked like after the  
20 inlet was opened in 2006. So we're approaching the sixth  
21 anniversary of the opening.

22 --o0o--

23 MR. TROUT: And the further we got from the Corps  
24 of Engineers, the Coastal Commission, and others required  
25 us to monitor the production of the status of the project.

1 And I'm happy to say that the project has I think met and  
2 even exceeded its expectations in meeting goals for the  
3 restoration. The monitoring program comes in a number of  
4 areas.

5 --o0o--

6 MR. TROUT: This is divided into a number of  
7 areas. Outlined in light green is the full tidal area.  
8 The dark green is what we call the muted tidal area. The  
9 yellow is an offset of the flood control channel there and  
10 is another muted tidal area.

11 The orange and blue areas are future full tidal.  
12 And those will be restored once the oil and gas operations  
13 cease to be economical.

14 --o0o--

15 MR. TROUT: And we have to observe a number of  
16 things. One of them is the birds. And we've been  
17 terribly successful in meeting the requirements of those  
18 for the restoration of the project. As you can see, that  
19 we've got lots of birds going. Survey indicated that  
20 there were about 9900 birds per survey, and this is the  
21 third one.

22 --o0o--

23 MR. TROUT: Belding's Savannah Sparrow is an  
24 endangered species. And one of the goals of the project  
25 was to restore habitat -- pickleweed habitat that would

1 allow the restoration of the success for these species.

2 And we've been successful in getting that done too.

3 --o0o--

4 MR. TROUT: Snowy plover is another endangered  
5 species that makes its home at Bolsa Chica. And we've got  
6 a number of new sites and expansion of their nesting  
7 areas.

8 --o0o--

9 MR. TROUT: For fish, 60 species have been  
10 captured and inventoried and released. And just an  
11 example, across the bottom is a flatfish, the turbot, I  
12 think; and found stingray on the upper right and a calico  
13 bass on the lower right.

14 --o0o--

15 MR. TROUT: In the monitoring, you can see that  
16 it was very low to start with. But this -- in July of  
17 19 -- or 2011, we just had a terrific abundance of fish of  
18 all kinds.

19 --o0o--

20 MR. TROUT: And part of it is that we have  
21 restored habitat, and it helps the growth of the immature  
22 fish. Teal grass on the left there. And this is some of  
23 the fish that we've captured. There's a halibut at the  
24 top.

25 --o0o--

1 MR. TROUT: And nearly all the species were  
2 represented by juveniles, which indicates that the adults  
3 are using the site for reproduction.

4 --o0o--

5 MR. TROUT: We're also monitoring vegetation to  
6 see if it's been successful. And we have been successful  
7 in improving.

8 --o0o--

9 MR. TROUT: And mudflats are expanding. The salt  
10 marsh diversity is improving. And we've been going good  
11 with that.

12 --o0o--

13 MR. TROUT: Vegetation. We've transplanted from  
14 upper Newport Bay in the Port of Los Angeles some Eelgrass  
15 and cordgrass that will be helpful to the continuing  
16 expansion of the species that uses the area.

17 --o0o--

18 MR. TROUT: And we also have to monitor such  
19 things as crabs and shrimp and things like sea hairs and  
20 scallops.

21 --o0o--

22 MR. TROUT: And they've found a colony of  
23 burrowing crabs, which was thought to be nearly extinct.  
24 So we found those on the site.

25 --o0o--



1 MR. TROUT: And then we have to monitor the tides  
2 and make sure what's going on there. In the sand bar it  
3 tends to silt up occasionally. And we've dredged it twice  
4 to keep it open. But we're looking for other alternatives  
5 that are less expensive.

6 --o0o--

7 MR. TROUT: And then we monitor the inlet  
8 bathymetry. And you can see on the left there that sand  
9 has accreted. And then we dredged it out and put it on  
10 the beach down coast from the jetty.

11 --o0o--

12 MR. TROUT: And the only part of the project that  
13 has been a little disappointing is how rapidly the area  
14 has silted up.

15 --o0o--

16 MR. TROUT: And we -- as I said, we've dredged  
17 twice. And it's very expensive. We want to find another  
18 way instead of doing that.

19 And then we have to monitor the --

20 --o0o--

21 ACTING COMMISSIONER REYES: How often do you --

22 MR. TROUT: -- width of the beach.

23 I'm sorry.

24 ACTING COMMISSIONER REYES: How often do you  
25 think you'll need to dredge?

1 MR. TROUT: Well, the plan was, in the beginning  
2 we thought we'd have to dredge every other year. And so  
3 far we have done that. We've dredged -- it opened in '06  
4 and we dredged in '09 and we dredged in '11.

5 But it runs about \$4 million a dredging episode.  
6 And we can't -- the project can't sustain that. We've got  
7 to find a better way to do it. So we're working on that  
8 now.

9 --o0o--

10 MR. TROUT: The Coastal Commission and the Corps  
11 of Engineers were concerned about the width of the beach  
12 down coast from the opening. And we've checked the beach  
13 widths monthly and the contours twice a year. And there's  
14 been no problem. When the dredging -- the material we  
15 dredge is put on the beach.

16 --o0o--

17 MR. TROUT: And the conclusion is the site's  
18 performing very well. A high diversity and abundance of  
19 birds, fish, invertebrate. Nesting of the Belding's has  
20 increased. And cordgrass is an appropriate area we want  
21 to restore to bring in California Clapper Rails.

22 --o0o--

23 MR. TROUT: So I think that basically does it.  
24 We won't monitor again. We'll monitor this year, and then  
25 the next time will be year 10.

1                   --o0o--

2           MR. TROUT:  And so we're kind of pleased with the  
3 project and that it's performing as designed.  And I think  
4 it's something that we can all be proud of.

5           Thank you.

6           EXECUTIVE OFFICER FOSSUM:  Jim, if you could  
7 remain at the podium for a minute.

8           I'd like to make an amendment to this item for  
9 the Commission's consideration.  You've just heard a  
10 report on the great success of this restoration project.  
11 And much of that success is owed to James Finley Trout  
12 III, better known as Jim Trout.  He's worked on Bolsa  
13 Chica for over 40 years.

14           Jim began his State service in 1953 in the State  
15 Architect's Office, and in 1961 became a Department of  
16 Finance analyst overseeing capital outlay programs.

17           He joined the Commission staff in 1967 as Chief  
18 of the Land Management Division.  And in 1979 became the  
19 Assistant Executive Officer.

20           No one knows Bolsa Chica quite like Jim, as you  
21 could tell.

22           He was involved with the Commission in the  
23 early -- the Commission's efforts in the early 1970s  
24 involving the planning for restoring the area and involved  
25 in the title settlement agreement in which the Commission

1 obtained hundreds of acres that had previously been sold  
2 by the State in the 1890s without any payment to the  
3 property owner in the settlement.

4           After he retired from the State Lands Commission  
5 in 1995, he came back to chair the Interagency Steering  
6 Committee charged with the planning, designing, and  
7 permitting of this \$150 million wetlands restoration  
8 project and thereby providing mitigation for expansion of  
9 the ports of Los Angeles and Long Beach.

10           It's not an easy task to get four state and  
11 federal agencies to work together on planning  
12 implementation, but he did it. Under Jim's leadership the  
13 steering committee reached consensus on every major  
14 decision. There was also numerous stakeholders  
15 involved - environmental groups, each with their different  
16 opinions, as well as on-site oil companies whose operation  
17 was greatly affected.

18           He carefully shepherded the project through every  
19 obstacle. And as he mentioned, in August 2006 the inlet  
20 was opened. This was the first time in over a hundred  
21 years that fresh water was flowing into Bolsa. Fresh sea  
22 water, that is.

23           Since then Jim has continued his tireless service  
24 to ensure that the project is functioning as planned.

25           It's with great pride that we acknowledge Jim's

1 extraordinary leadership and dedication to this project  
2 and the State of California by proposing the following  
3 amendment to Item 78.

4           The amendment would be Item 3: Name the full  
5 tidal basin at Bolsa Chica in recognition and honor of Jim  
6 Trout's leadership and guidance to the Bolsa Chica  
7 Lowlands Restoration Project as the Jim Trout Full Tidal  
8 Basin.

9           And I believe we have a graphic that we would  
10 have signage for this area.

11           It's upside down.

12           (Laughter.)

13           EXECUTIVE OFFICER FOSSUM: We'll put it  
14 right-side up when we install it.

15           And that's the amended motion.

16           ACTING CHAIRPERSON GORDON: Do I have a motion to  
17 name the basin after Mr. Trout?

18           ACTING COMMISSIONER GARLAND: Actually I have a  
19 motion to adopt all the recommendations including the  
20 amendment.

21           ACTING CHAIRPERSON GORDON: Second?

22           ACTING COMMISSIONER REYES: Second.

23           EXECUTIVE OFFICER FOSSUM: Thank you very much.

24           ACTING CHAIRPERSON GORDON: All those in favor?

25           (Ayes.)

1           ACTING CHAIRPERSON GORDON:   Opposed?

2           (Applause.)

3           EXECUTIVE OFFICER FOSSUM:   That concludes Item  
4 78, Mr. Chair.

5           ACTING CHAIRPERSON GORDON:   Item 79 is to a  
6 consider resolution supporting maritime operations of  
7 California ports.

8           May we have the staff presentation please.

9           Ms. Pemberton.

10          EXECUTIVE OFFICER FOSSUM:   We have our Chief of  
11 the External Affairs Branch, Sheri Pemberton, to present  
12 this item and the next two.

13          EXTERNAL AFFAIRS BRANCH CHIEF PEMBERTON:   Sheri  
14 Pemberton, as Curtis said.

15          Item 79 is a resolution -- proposed resolution by  
16 the California State Lands Commission expressing and  
17 moralizing the Commission's support for maritime  
18 operations and activities at California ports.  These  
19 operations are critical to the State and our national  
20 economies, and they support a vibrant and competitive  
21 international trade industry and hundreds of thousands of  
22 jobs that depend on them.

23          They're also the foundation, these maritime  
24 operations, of California's 11 public ports, which are the  
25 most competitive in the nation.

1           As a snapshot, maritime activities at California  
2 ports employ more than half a million people in California  
3 and generate about \$7 billion in State and local tax  
4 revenues annually. So in a very real sense they're a  
5 significant driver of our economy.

6           And another reason why this is important to the  
7 Commission is that California's five major ports of San  
8 Diego, Long Beach, Los Angeles, Oakland and San Francisco  
9 can all trace their origins back to a statutory trust  
10 grant of State-owned sovereign land and submerged lands.  
11 And by placing them in a statutory trust, the State  
12 intended for these trust lands to be held by the local  
13 trustees for the benefit of all people in California and  
14 to be developed for port purposes.

15           There are, however, ever-increasing proposals to  
16 replace maritime operations with non-water dependent uses.  
17 For example, in San Diego, there was a recent proposal to  
18 develop a billion dollar sports and entertainment complex  
19 on the Tenth Avenue Marine Terminal site in the Port of  
20 San Diego. And that recent proposal is the fourth attempt  
21 I think within the past decade to displace the Tenth  
22 Avenue Marine Terminal or the National City Marine  
23 Terminal within the Port of San Diego with a non-water  
24 dependent use.

25           The Tenth Avenue Marine Terminal is one of the

1 only two naturally deep water harbors in California. And  
2 so losing one of those would potentially weaken  
3 California's port system and reduce its competitiveness.

4           Similar to San Diego, other ports in California  
5 are also experiencing pressure from entities that want to  
6 redevelop industrial water-dependent land into commercial  
7 and service industry businesses.

8           So given the importance of these maritime  
9 facilities and operations within California ports and to  
10 the State and nation, and the fact that they're virtually  
11 irreplaceable, staff recommends that the Commission adopt  
12 a resolution and reaffirm its support of maritime  
13 facilities in California and opposition to converting an  
14 active marine terminal to a non-water dependent use.

15           ACTING CHAIRPERSON GORDON: Any comments from the  
16 Commissioners?

17           EXECUTIVE OFFICER FOSSUM: We have nine speakers  
18 who've asked to speak on this particular item.

19           ACTING COMMISSIONER REYES: Let's hear the  
20 speakers.

21           ACTING CHAIRPERSON GORDON: Oh, sure.

22           Can the speakers come forward, please?

23           Why don't we start with Mr. Valenzuela.

24           After that we will have Mr. Leyba and Mr. Plant.

25           MR. VALENZUELA: Good morning, Commissioners.



1 Joel Valenzuela. I'm the Director of Maritime for the  
2 Port of San Diego.

3 I urge the State Lands Commission to approve the  
4 resolution supporting California ports maritime  
5 operations. And I want to tell you briefly a little bit  
6 about the role of the Port of San Diego in the California  
7 system of ports as well as the national system of ports.

8 The Port of San Diego is the fourth largest of  
9 California's 11 ports and ranks in the top third of the  
10 nation's 360 ports in terms of cargo tonnage. The Port of  
11 San Diego is one of the most diversified ports in  
12 California when you look at cargo mix.

13 The Tenth Avenue Marine Terminal, where the  
14 developer/owners of the San Diego daily newspaper want to  
15 build a stadium development, is an active terminal that  
16 sits on 96 acres and has eight deep water berths at the  
17 depth of up to 42 feet. It is the premier gateway for  
18 alternative energy wind products, perishable products from  
19 the southern hemisphere, steel for shipbuilding and  
20 construction, and jet fuel and bunker fuel for ships and  
21 the San Diego International Airport.

22 We also handle fertilizers, construction  
23 products, specialty containers, and goods vital to our  
24 citizens.

25 Our anchor tenant at Tenth Avenue, Dole Fresh

1 Fruits, imports over 3 billion bananas a year through the  
2 Tenth Avenue terminal and are destined for grocery stores  
3 throughout the U.S. West Coast and into British Columbia.

4 Tenth Avenue Marine Terminal generates good  
5 paying jobs, including longshore workers, truckers, rail  
6 workers, stevedores, ship agents, cargo brokers, and on  
7 and on.

8 Some professions have an annual income that are  
9 as much as triple of the region's median wage.

10 The port's other terminal, the National City  
11 Marine Terminal, sits on 125 acres and handles  
12 automobiles, imported and exported from Asia and Europe,  
13 and lumber from the Pacific northwest.

14 One in ten imported cars in the entire United  
15 States comes through National City Marine Terminal.

16 And together, the two cargo terminals generate  
17 \$1.6 billion in economic impact for our region and is  
18 connected to over 19,000 jobs in the San Diego area.

19 We at the Port of San Diego are anticipating  
20 growth for new and emerging markets in the Pacific Rim,  
21 particularly China, India, and in Latin America. And we  
22 are also cultivating export opportunities with regional  
23 manufacturers in line with president Obama's national  
24 export initiative.

25 Under our current Port Chairman Smith and CEO

1 Wayne Darbeau's leadership, we have begun a modernization  
2 project at Tenth Avenue to make it vital into the future  
3 as a State and national asset.

4 But all this economic vitality and activity is  
5 being threatened by developers who only see an attractive  
6 waterfront locale for a hotel, a stadium and some other  
7 non-maritime use that can be built anywhere.

8 So I urge you to approve the resolution to send a  
9 clear message that the State of California values its  
10 ports above the shortsighted quick-buck designs of those  
11 who don't see the big picture, which is the national and  
12 global importance of the port.

13 Thank you very much.

14 ACTING CHAIRPERSON GORDON: Thank you, Mr.  
15 Valenzuela.

16 Mr. Leyba, followed by Mr. Plant, and then Mr.  
17 Smith.

18 ACTING COMMISSIONER REYES: Mr. Chair, while he  
19 makes his way up to the podium, I'm prepared to move  
20 adoption of this resolution.

21 ACTING CHAIRPERSON GORDON: Is there a second?

22 ACTING COMMISSIONER GARLAND: Second.

23 ACTING CHAIRPERSON GORDON: All those in favor?

24 (Ayes.)

25 ACTING CHAIRPERSON GORDON: Let's continue

1 testimony.

2 Thank you.

3 MR. LEYBA: Good morning, Committee. Good  
4 morning, people in attendance. My name is Ray Leyba. I  
5 am the President of the International Longshoremen and  
6 Warehousemen's Union of San Diego Local 29.

7 I stand and rise in favor of adopting this  
8 resolution. We stand in solidarity with the hard working  
9 management, CEO Wayne Darbeau, Commissioner Lou Smith and  
10 others, in regards to the maritime industry and the  
11 preservation of the industry in San Diego.

12 I've been involved in the maritime industry since  
13 June of 1965. I'm a third generation longshoreman. I was  
14 there when the Tenth Avenue Marine Terminal was dedicated  
15 in 1957. And contrary to popular belief, I'm in agreement  
16 with Brother Joel Valenzuela, that anything other than the  
17 movement of cargo in one of only two deep-water ports on  
18 the West Coast would be a travesty.

19 But one of the things that has not been mentioned  
20 is that not only are we instrumental in the types of cargo  
21 that we handle, referred to niche cargo; we don't plan to  
22 compete with the large container ports such as L.A., Long  
23 Beach, San Pedro, San Francisco, Oakland. We can never  
24 compete with them because we don't have the infrastructure  
25 and the space to handle volumes of containers.

1           But what we do do and what we specialize in doing  
2 is the handling of break bulk cargoes, such as the green  
3 cargo that is taken off as fast as the wind moves the  
4 props on the nacelles, that mountain on the hillside.  
5 It's an alternative source of cargo. It's a clean cargo.  
6 They're in line with the Environmental Health Coalition  
7 and, you know, with EPA in regards to cleaning up our act.

8           They passed recently at the beginning of the year  
9 a resolution that all trucks that weren't properly  
10 equipped with smog -- anti-smog devices were not allowed  
11 on the terminal.

12           So the Port is on the cutting edge. The Port is  
13 part of a larger program other than theirselves in regards  
14 to the preservation of maritime industry as it relates to  
15 the whole West Coast.

16           I have five children. Every one of them has the  
17 opportunity to go to college. I attribute this to the  
18 high paying jobs, the high paying -- not only the union  
19 jobs but all the jobs that are associated with the  
20 movement of cargo in Port of San Diego.

21           Another item that has to be considered is that  
22 San Diego as it sits is strategic to our national  
23 security. We're a navy town, we're a big navy town.  
24 North Island is across the bay. We are proud to say that  
25 we participated in six different wars in support of our

1 troops. We're patriots.

2 When the Midway was put to rest, we handled the  
3 lines and tied her up. She's a national museum in San  
4 Diego. We don't forget that we serve a great country.

5 And we have a great port in San Diego. And what  
6 we do -- we're not competing with the bigger ports, but we  
7 do handle the niche cargo, the break bulk cargo, the  
8 cement when building was in a boom - and it will rise  
9 again.

10 We are a major port of call for the cruise ship  
11 industry. As of recently because of the turmoil across  
12 the border in Mexico, the bottom has fell out. But it  
13 will rise again. We have an advocate that is passionate  
14 about her job, and we're in the works of trying to do  
15 something to jump-start that system.

16 The lumber associated with the building trades.

17 And as mentioned by Brother Joel Valenzuela, the  
18 automobiles that come through the port. There's a  
19 family-owned business, the Pashas, they are the largest  
20 automobile shipping privately-owned company in the United  
21 States today. And they chose to make San Diego their home  
22 town.

23 They are in the process of setting the hole and  
24 building a second ship that comes from Hawaii to San  
25 Diego, the Marjorie C.

1           And contrary to popular belief and to adverse  
2 publicity by Mr. Manchester, Mr. Lynch and associates, the  
3 maritime industry in San Diego is not dying; it's alive  
4 and well. We recently --

5           ACTING CHAIRPERSON GORDON: Mr. Leyba --

6           MR. LEYBA: -- 30 new workers in our industry.  
7 And I want to --

8           ACTING CHAIRPERSON GORDON: Thirty seconds  
9 please.

10          MR. LEYBA: -- just thank you for the  
11 opportunity. I could probably take everyone else's time.  
12 But as you can see, I'm passionate.

13          (Laughter.)

14          ACTING CHAIRPERSON GORDON: Thank you, sir.

15          Mr. Plant, followed by Mr. Smith and Mr. Darbeau  
16 please.

17          ACTING COMMISSIONER REYES: And, Mr. Chair, I'd  
18 just like to remind the audience that we have voted and  
19 it's been approved.

20          MR. PLANT: Thank you for the opportunity to talk  
21 to you this morning. I want to say thank you for  
22 approving the docket.

23          I just wanted to say that I've worked on the  
24 waterfront in San Diego for 43 years. So it's been my  
25 life, and my son is my partner in my business. We have

1 the only on-dock cold storage in San Diego and we handle a  
2 lot of perishables that come up. Forty-three percent of  
3 all the bananas on the West Coast come through the Port of  
4 San Diego.

5 But I'm here because of our group. We have a  
6 coalition of businesses in San Diego that encompasses the  
7 working waterfront. It's called the Working Waterfront  
8 Group. And we're all volunteers to defend the Port of San  
9 Diego and it's future; because that future is our future.  
10 We have approximately 40,000 employees in the group and  
11 about -- and billions of dollars of revenue to the  
12 regional economy.

13 Thank you for approving the proposition, and I  
14 hope we can work together on other things as you're coming  
15 forward.

16 Thank you very much.

17 ACTING CHAIRPERSON GORDON: Brevity.

18 MR. PLANT: I can read the whole speech.

19 ACTING CHAIRPERSON GORDON: Thank you, Mr.

20 Smith -- excuse me -- Mr. Plant.

21 Next, please.

22 Mr. Darbeau.

23 MR. SMITH: Thank you, Mr. Chairman,  
24 Commissioners. Again, I'm Lou Smith. I'm the Chairman of  
25 the Board of Port Commissioners for the Port of San Diego.



1 And I thank you for your support and your vote.

2 And I'm not even going to give this.

3 (Laughter.)

4 MS. SMITH: So I would just like to say, in an  
5 era of a global economy when 99 percent of America's goods  
6 go by ship, half of that 99 percent come through  
7 California's 11 ports. To me, it's critical we remember  
8 that the highest and best use of a land in our maritime  
9 facilities, this public land, is the maritime mission and  
10 how important that is to us here in California.

11 And, again, thank you all very much.

12 ACTING CHAIRPERSON GORDON: Thank you.

13 Mr. Darbeau, can you hold for one second please  
14 before you come up.

15 I do have one question, and it's probably for  
16 counsel. It's pretty clear I think that there's going to  
17 be a major push in San Diego for this stadium on the  
18 waterfront.

19 What are the legal parameters that are going to  
20 come before State Lands with regard to leasing, with  
21 regard to votes that will come before this Commission at  
22 some point in the future with regard to that project?

23 CHIEF COUNSEL LUCCHESI: For the Tenth Avenue  
24 Marine Terminal or the National City Marine Terminal, both  
25 of those facilities are located on lands granted to the

1 Port of San Diego. The State Lands Commission does not  
2 have any direct leasing authority over those lands. That  
3 leasing authority lies with the Port of San Diego pursuant  
4 to their Port Act.

5 If the Commission would like to -- the only legal  
6 remedy should the Port Commission authorize a use that was  
7 not consistent with -- the Commission believes it was not  
8 consistent with the Public Trust Doctrine or their Port  
9 Act would be to file litigation.

10 ACTING CHAIRPERSON GORDON: Okay.

11 EXECUTIVE OFFICER FOSSUM: I would like to add  
12 that following the last vote there was a local initiative  
13 to try and force on the Board of Harbor Commissioners and  
14 Port Commissioners in San Diego a project a few years ago.  
15 And this Commission did support efforts opposing that.  
16 And subsequently there was some legislation that helped  
17 protect the independence of port commissions from that  
18 type of being forced by local citizens to take a non-Trust  
19 use.

20 So there was subsequent legislation, and we think  
21 that will be helpful in the future. But as Jennifer  
22 mentioned, the Commission's -- other than a resolution  
23 such as you have here or reporting to the Legislature,  
24 it's filing an action.

25 ACTING CHAIRPERSON GORDON: Mr. Smith, what is

1 the makeup of the Port Commission in San Diego? Who are  
2 they and who are they appointed by?

3 MS. SMITH: Under the Port Act, 50 years ago this  
4 year it was set up that there would be seven  
5 Commissioners, three of them from the City of San Diego  
6 and one each from the other four member cities, of  
7 National City, Chula Vista, Imperial Beach, and Coronado.  
8 And we are appointed -- we're political appointees and we  
9 serve at the pleasure of our respective city councils.

10 ACTING CHAIRPERSON GORDON: Thank you.

11 Mr. Darbeau, would you like to make a  
12 presentation?

13 And after Mr. Darbeau will be Ms. Baumann and Ms.  
14 Cloward.

15 MR. DARBEAU: Thank you, Mr. Chairman,  
16 Commissioners.

17 I just want to say -- I'm putting my speech  
18 aside. I want to say thank you to the State Lands  
19 Commission. Again, you have displayed wisdom. You have  
20 showed historic commitment to the Public Trust Doctrine  
21 and to State lands. And your vote today is in solidarity  
22 with how we see California ports remaining competitive.

23 And I also want to take this opportunity to thank  
24 Mr. Curtis Fossum and his wonderful staff, Jennifer  
25 Lucchesi and Ms. Pemberton.

1           And that's all I want to say. Thank you from the  
2 bottom of my heart. Thanks a lot.

3           ACTING CHAIRPERSON GORDON: Thank you, Mr.  
4 Darbeau.

5           Ms. Baumann, followed by Ms. Cloward and Mr.  
6 Gusman.

7           MS. BAUMANN: Good afternoon. My name is Susie  
8 Baumann and I operate two restaurants on the tidelands.  
9 I've been on the tidelands, my family has, since before  
10 there was a Unified Port District. So I've been there  
11 since 1954.

12           And what I wanted you to know, as port tenants,  
13 we came together, all of the port tenants, the hospitality  
14 sector, the working waterfront, to defeat Prop B, which  
15 would have put a stadium on the Tenth Avenue Marine  
16 Terminal. And I wanted you to know that we're committed  
17 as port tenants in solidarity - hospitality tenants,  
18 working waterfront tenants - to keep our deep water port.

19           And so we support you today, and we thank you  
20 very much for this. But I'm probably the only hospitality  
21 tenant here; and I want you to know how important it is to  
22 me that we keep that water berthing.

23           So thank you very much.

24           ACTING CHAIRPERSON GORDON: Thank you.

25           Ms. Cloward, followed by Mr. Gusman and Mr.

1 Berge.

2 MS. CLOWARD: Good morning. My name's Sharon  
3 Cloward and I represent the tenants of the Port District.  
4 And I just wanted to thank you profusely for your  
5 resolution today. I'm in support of that.

6 We had -- Susie said it so well. We had a  
7 proposition -- it was put in the hands of the tenants to  
8 fight this and defeat this proposition. It was very, very  
9 costly. And in today's market, I don't know if we have  
10 the money -- if this was to happen again, would we have  
11 the money to fight a proposition like this. So we really  
12 appreciate it.

13 Thank you.

14 ACTING CHAIRPERSON GORDON: Thank you.

15 Mr. Gusman, followed my Mr. Berge. And then our  
16 last speaker on this subject, Mr. Schott.

17 MR. GUSMAN: Good morning. Shane Gusman on  
18 behalf of the California Teamsters Public Affairs Council,  
19 here at the request of our members who work in this  
20 industry at Local 911 in San Diego. We would like to  
21 thank you as well for supporting this resolution and  
22 supporting the continuance of maritime use of our vital  
23 ports.

24 As other speakers have said, this a critical area  
25 for job creation and the maintenance of our economy and

1 the growth of our economy in the State. It's not just the  
2 folks that live in the ports. It's rail, it's trucking,  
3 it's warehousing inland, and it's all kinds of jobs, not  
4 only in this state and throughout the country.

5 So we want to thank you and hope to continue  
6 working with you to preserve the maritime use here.

7 Thank you.

8 ACTING CHAIRPERSON GORDON: Thank you, sir.

9 Mr. Berge.

10 MR. BERGE: Thank you, Commissioners. John Berge  
11 with the Pacific Merchant Shipping Association. We  
12 represent OSHA carriers and marine terminal operators.  
13 And we have a long history of working with both the  
14 Commission as well as the various port authorities in  
15 helping to defend the Tidelands Trust Act against these  
16 particular concerns.

17 So we're very supportive of this resolution and  
18 we appreciate your support as well.

19 Thank you.

20 ACTING CHAIRPERSON GORDON: Thank you, sir.

21 Mr. Schott.

22 MR. SCHOTT: Commissioners and staff. Tim Schott  
23 on behalf of the California Association of Port  
24 Authorities, which is comprised of the State's 11  
25 commercial publicly owned ports. We greatly appreciate

1 your long-time defense of the Tideland Trusts and thank  
2 you for your support of the -- and sponsorship of the  
3 resolution.

4 Thank you.

5 ACTING CHAIRPERSON GORDON: Thank you.

6 I'd like to make one announcement just so people  
7 in the audience will understand.

8 Under the voting procedures of the Commission,  
9 the Department of Finance can vote on all issues. But  
10 when you have neither of the -- either the Lieutenant  
11 Governor or the Controller present here, of the designees,  
12 Mr. Garland and myself, only one of us is allowed to vote  
13 on particular matters. So what I'm going to do right now  
14 is I'm actually going to ask for a motion to rescind the  
15 last vote supporting this. We will then revote.

16 Can I have a motion to rescind the previous vote  
17 please?

18 ACTING COMMISSIONER GARLAND: No.

19 (Laughter.)

20 ACTING COMMISSIONER GARLAND: Motion to rescind  
21 the previous vote.

22 ACTING CHAIRPERSON GORDON: Second.

23 ACTING COMMISSIONER REYES: Good luck.

24 ACTING CHAIRPERSON GORDON: All those in favor?

25 (Ayes.)

1           ACTING CHAIRPERSON GORDON: Now, I would like to  
2 put the resolution on Item No. 79 to a vote.

3           All those in favor?

4           ACTING COMMISSIONER REYES: Aye.

5           ACTING COMMISSIONER GARLAND: Am I voting?

6           ACTING CHAIRPERSON GORDON: Yeah, you're voting.

7           ACTING COMMISSIONER GARLAND: Aye.

8           ACTING COMMISSIONER REYES: Does it require a new  
9 motion?

10          ACTING COMMISSIONER GARLAND: It probably does.

11          ACTING CHAIRPERSON GORDON: Yeah, we probably  
12 should have a motion.

13          ACTING COMMISSIONER REYES: Move approval of Item  
14 79.

15          ACTING COMMISSIONER GARLAND: Second.

16          ACTING CHAIRPERSON GORDON: Okay. All those in  
17 favor?

18          ACTING COMMISSIONER GARLAND: Aye.

19          Okay. Now, let's have the vote a second time.

20          All those in favor?

21          ACTING COMMISSIONER REYES: Aye.

22          ACTING COMMISSIONER GARLAND: Aye.

23          Okay. That motion is passed by a 2 to nothing  
24 vote.

25          For the record, the Controller would support



1 that.

2 EXECUTIVE OFFICER FOSSUM: Just in case you want  
3 to rescind that vote as well --

4 (Laughter.)

5 EXECUTIVE OFFICER FOSSUM: -- I want to add to  
6 the record that Senator Kehoe, Assemblyman Block, as well  
7 as Teamsters Local 911 and Teamsters 36 submitted written  
8 support letters as well. And I thought that should be  
9 mentioned. So thank you.

10 ACTING CHAIRPERSON GORDON: All right. So  
11 mentioned.

12 All right. We'll now move on to Item No. 80.  
13 And this is to consider a resolution opposing state  
14 legislation requiring all state agencies and local  
15 governments to adhere to Section 662 of the Evidence Code.

16 May we have the staff presentation please, Ms.  
17 Pemberton.

18 EXTERNAL AFFAIRS BRANCH CHIEF PEMBERTON: Yes.  
19 Sheri.

20 AB 2226 by Assemblymember Hueso addresses how  
21 State agencies and local governments determine property  
22 ownership when there's a question whether the holder of  
23 legal title is the entity who has actual possession or  
24 control of the property.

25 Under current law judicial proceedings are

1 governed by the strict rules of the Evidence Code and must  
2 presume that the holder of legal title of a property is  
3 the actual holder of full beneficial title.

4           ACTING CHAIRPERSON GORDON: Ms. Pemberton, can  
5 you stop for one second.

6           I need a legal clarification of something.

7           Since the Department of Finance is going to  
8 abstain on this, as they do on all legislation -- for the  
9 audience, the Department doesn't take a position until the  
10 Governor does, which is much later in the legislative  
11 session -- the question is, can only one of us vote on  
12 this?

13           The answer is yes.

14           CHIEF COUNSEL LUCCHESI: Yes, the answer is yes.

15           ACTING CHAIRPERSON GORDON: Therefore, I think I  
16 am going to bring this presentation to a close in the --  
17 because of brevity. We're not going to be able to vote on  
18 this measure at all. So I think there's probably not much  
19 use, unless Mr. Fossum tells me otherwise, in us  
20 continuing to have this conservation.

21           EXECUTIVE OFFICER FOSSUM: We can defer this to a  
22 following Commission meeting if -- assuming these bills  
23 are still alive. But we can also let the Commissioners  
24 know at their independent offices they're free to comment  
25 to the Legislature on matters that they feel so inclined.

1           ACTING CHAIRPERSON GORDON: Well, the  
2 Commission -- Mr. Garland, do you wish to hear this  
3 presentation so you can comment?

4           Mr. Reyes?

5           ACTING COMMISSIONER REYES: I will not comment  
6 one way or the other.

7           ACTING CHAIRPERSON GORDON: I think because we  
8 have a fairly lengthy agenda and there are numerous people  
9 who want to speak on some of the other items, we're going  
10 to put this one over until the July meeting. Okay?

11          EXTERNAL AFFAIRS BRANCH CHIEF PEMBERTON: Okay.

12          ACTING CHAIRPERSON GORDON: Thank you, Ms.  
13 Pemberton.

14          ACTING COMMISSIONER REYES: And 81?

15          ACTING CHAIRPERSON GORDON: Item 81 is another  
16 legislative proposal on which we cannot vote. So I think  
17 we're going to put that one over.

18          EXECUTIVE OFFICER FOSSUM: And Item 13, which was  
19 going to be next, has been pulled from the agenda till the  
20 next meeting.

21          So we're on to Item 67.

22          ACTING CHAIRPERSON GORDON: Item 13, which was  
23 what?

24          Oh, that was the Vanderbeeks. That was put over  
25 too. Okay.

1 All right. Got it.

2 All right. Item 67 is a resolution to consider  
3 an agreement for implementation of an Optimized Waterflood  
4 Program for the West Wilmington Oil Field.

5 I'm going to go forward with the staff  
6 presentation, but I'm going to announce something now. I  
7 do recognize there are people up from Long Beach, and  
8 that's why we're going to allow the presentation to go  
9 forward.

10 The Controller was not in favor of the deal that  
11 was offered to the City of Long Beach and Occidental  
12 Petroleum, expressed that earlier, and wishes to vote no  
13 once there could be an official vote, which can not take  
14 place if we go to a vote today. It would come out as a 2  
15 to nothing vote. So we are not going to grant permission  
16 today for the Lieutenant Governor to cast that second  
17 vote.

18 So we're going to have the presentation today on  
19 the contract as offered. The actual contract will be put  
20 over to the July meeting for a vote.

21 ACTING COMMISSIONER GARLAND: If I might.

22 ACTING CHAIRPERSON GORDON: Yes, sir.

23 ACTING COMMISSIONER GARLAND: I would just like  
24 it on the record that we were prepared to move forward on  
25 this item today.

1           And what would the normal procedure be here for  
2 this, since we were prepared to move forward?

3           CHIEF COUNSEL LUCCHESI: Of course. Well,  
4 pursuant to the Government Code, when both constitutional  
5 officers are not present and they're represented by  
6 alternates only, only one alternate can vote. And so if  
7 there's no agreement -- if no agreement can be reached on  
8 who will be voting -- which of the alternates will be  
9 voting, any vote taken would be void.

10           DEPUTY ATTORNEY GENERAL RUSCONI: In other words,  
11 if both of the alternates choose to vote, that vote would  
12 be void.

13           (Laughter.)

14           EXECUTIVE OFFICER FOSSUM: Another way to phrase  
15 that is that only one may vote.

16           ACTING COMMISSIONER GARLAND: That's a great  
17 legal explanation.

18           EXECUTIVE OFFICER FOSSUM: And so if both attempt  
19 to vote, there is no vote. And --

20           ACTING COMMISSIONER GARLAND: Well, I'm prepared  
21 to vote today on this item, and we have been for quite  
22 some time.

23           So are you prepared to vote as well?

24           ACTING CHAIRPERSON GORDON: Yes.

25           ACTING COMMISSIONER GARLAND: And you'll not

1 extend the same courtesy to me that we had when I was  
2 chairing and allowed you to vote on things?

3 ACTING CHAIRPERSON GORDON: Not on this one. The  
4 Controller has indicated to me he specifically wants to  
5 have official negative vote recorded on this one. I don't  
6 have any flexibility on this.

7 ACTING COMMISSIONER GARLAND: Okay. Well, I'd  
8 like to take this to a vote. And if it means nullifying  
9 the vote, then I'll nullify the vote.

10 ACTING CHAIRPERSON GORDON: Okay. Can the staff  
11 make the presentation please.

12 Can you identify yourself, ma'am.

13 MINERAL RESOURCES MANAGEMENT DIVISION ASSISTANT

14 CHIEF VOSKANIAN: Good morning, Mr. Chair and  
15 Commissioners. I'm Marina Voskanian. I'm the  
16 Commission's Mineral Resources Management Division  
17 Assistant Chief. And I'm presenting the staff report for  
18 Calendar Item C67, Consideration for implementation of an  
19 optimized waterflood program for the West Wilmington Oil  
20 Field in the City of Long Beach.

21 Can we have the presentation please. C67.

22 EXECUTIVE OFFICER FOSSUM: Audio-video people,  
23 would you please put up the presentation.

24 (Thereupon an overhead presentation was  
25 Presented as follows.)

1 MINERAL RESOURCES MANAGEMENT DIVISION ASSISTANT  
2 CHIEF VOSKANIAN: Since my first slide is a map, we need  
3 the presentation.

4 (Laughter.)

5 MINERAL RESOURCES MANAGEMENT DIVISION ASSISTANT  
6 CHIEF VOSKANIAN: Okay. Next one.

7 --o0o--

8 MINERAL RESOURCES MANAGEMENT DIVISION ASSISTANT  
9 CHIEF VOSKANIAN: This is an aerial view of the field in  
10 gold, showing the State tidelands portion on the bottom.  
11 And between -- showing the State tidelands portion, which  
12 is really the area between the two dark boundary lines in  
13 this map in the southern half of the field and is  
14 approximately 61 percent of the field.

15 --o0o--

16 MINERAL RESOURCES MANAGEMENT DIVISION ASSISTANT  
17 CHIEF VOSKANIAN: Legislature enacted Chapter 446 in  
18 September 2008 that authorized the Commission on behalf of  
19 the State to negotiate and enter into an agreement that  
20 provides financial incentive for Oxy, the contractor, to  
21 undertake further development of the oil field.

22 --o0o--

23 MINERAL RESOURCES MANAGEMENT DIVISION ASSISTANT  
24 CHIEF VOSKANIAN: The proposed agreement includes Oxy's  
25 commitment to invest \$50 million for field development.

1 The parties have agreed to share the incremental net  
2 profits with the State and Oxy, each receiving 49 percent,  
3 and the City receiving 2 percent.

4 None of the parties will receive any incremental  
5 net profit until Oxy recovers its investment.

6 On May 22nd the Long Beach City Council voted to  
7 authorize the mayor to execute the West Wilmington  
8 Optimized Waterflood Agreement.

9 --o0o--

10 MINERAL RESOURCES MANAGEMENT DIVISION ASSISTANT

11 CHIEF VOSKANIAN: The State will benefit from this  
12 proposed agreement in several ways. The State will profit  
13 from new development without the risk of capital  
14 investment.

15 The State's 95 percent of share of net profits  
16 from existing oil production for the remainder of the  
17 field life is maintained.

18 The State Lands Commission staff will be involved  
19 in discussions for the field development, including  
20 quarterly reviews and meetings. And staff time will be  
21 reimbursed annually.

22 And the Commission's staff will review the  
23 accounting computations and will be in the field to  
24 witness actual oil measurements.

25 --o0o--



1 MINERAL RESOURCES MANAGEMENT DIVISION ASSISTANT  
2 CHIEF VOSKANIAN: For your consideration, the Commission's  
3 authorization is summarized in this slide:

4 Find that the proposed agreement for the West  
5 Wilmington Optimized Waterflood Program complies with the  
6 requirements of Chapter 446, Statutes of 2008.

7 Approve the proposed agreement for implementation  
8 of the Optimized Waterflood Program for the West  
9 Wilmington field.

10 Direct the execution of all documents necessary  
11 to effectuate the Commission's action.

12 --o0o--

13 MINERAL RESOURCES MANAGEMENT DIVISION ASSISTANT  
14 CHIEF VOSKANIAN: This concludes my presentation.

15 ACTING CHAIRPERSON GORDON: Thank you, ma'am.

16 Comments from the Commissioners?

17 I'd like to state for the record the Controller's  
18 reasons for voting "no" on this, that the vote would be  
19 void.

20 The first has to do with the decline curve that  
21 was adopted. The Controller does not believe that the  
22 decline curve was an accurate representation of what's in  
23 the field.

24 The second reason is that the existing contract,  
25 which is a split of 95 percent for the State and 5 percent

1 for Oxy, while the Controller believes that that is  
2 probably out of line based on the difficulty of reaching  
3 the remaining portions of the field, that going from a 95  
4 percent share for the State to a 49 percent share for the  
5 State is not a good contract for the State of California.

6 So that's why he will be voting "no" on accepting  
7 this contract. But since the other votes for the contract  
8 are there, this contract at the July hearing I believe  
9 will be ratified with a vote that will count.

10 Any other questions from either of the  
11 Commissioners?

12 Mr. Reyes.

13 ACTING COMMISSIONER REYES: I move approval of  
14 the item. And I'm prepared to move approval of the item  
15 because we've been working on this for six years. And,  
16 you know, there's diminishing returns. Given the price of  
17 oil and the need for California's oil, I think the sooner  
18 we get into this, the better. Although we will not see  
19 General Fund benefit based on this production for several  
20 years, had this been in place six years ago when it was  
21 first proposed, we would have been seeing some benefit  
22 now.

23 And so I think that they've had several years to  
24 work on the production -- the current production curve and  
25 they've had folks outside look at this. It is not the

1 proposal that Oxy first came to us with. And the City of  
2 Long Beach has acquiesced on some of the issues as well.  
3 So I feel comfortable that this is a good deal right now.  
4 And for that reason, I move approval of the item.

5 ACTING CHAIRPERSON GORDON: We have a motion.

6 EXECUTIVE OFFICER FOSSUM: Mr. Chair?

7 ACTING CHAIRPERSON GORDON: Yes.

8 EXECUTIVE OFFICER FOSSUM: We do have two  
9 speakers who wish to speak on this item too, if you want  
10 to do that.

11 ACTING CHAIRPERSON GORDON: What I'm going to do  
12 is take the motion and the second. And I will hold off on  
13 the vote until after the speakers. Okay?

14 ACTING CHAIRPERSON GORDON: We have a motion to  
15 accept the contract.

16 Do I have a second?

17 ACTING COMMISSIONER GARLAND: You have a second.

18 ACTING CHAIRPERSON GORDON: And a comment.

19 ACTING COMMISSIONER GARLAND: And a comment.

20 First, I'd like, you know, obviously associate  
21 myself with the comments of the Finance Department. They  
22 obviously know better than most the situation the State is  
23 in and the benefits that we would reap from this proposed  
24 deal.

25 To clarify one thing I think that Alan and the

1 Controller are both aware of and would not dispute, the  
2 additional -- the portion of the contract we're talking  
3 about now is on additional oil, not -- we are not changing  
4 the underlying 95/5 agreement. And this proposal would  
5 just be on the incremental portion of oil drilled.

6 The final thing besides the financial benefits to  
7 the State is the -- the reminder here that we are talking  
8 about a process that's taken way too long. And there are  
9 jobs at stake here at a time when Californians need to go  
10 back to work. We've got two million folks out of work in  
11 California. These are good paying, in many cases,  
12 organized jobs that the people of this area desperately  
13 need.

14 And for those reasons, the financial and the job  
15 benefit here, we were prepared to move this today, and  
16 we'll be prepared to vote "yes" even though we are at  
17 deadlock on whether or not -- on the ability for it to go  
18 forward.

19 So second it.

20 ACTING CHAIRPERSON GORDON: All right. So we've  
21 got a motion and a second.

22 Can I call Mr. Tougas to the stage please -- I'm  
23 sorry if I'm pronouncing your name wrong -- to the  
24 speaker's platform.

25 Mr. Kevin Tougas, Oil Operations Manager, City of

1 Long Beach. Is he still here?

2 MR. TOUGAS: Yeah, I'm here.

3 Since we're not going to vote today, I'll hold my  
4 comments.

5 ACTING CHAIRPERSON GORDON: All right. Thank  
6 you.

7 And we also have Jim Eastlack, VP, Occidental  
8 Petroleum USA.

9 Also decide not to speak, sir?

10 Okay. Then since we have a motion and a second,  
11 I'm prepared to go to a vote.

12 All those in favor on Item No. 67 of accepting  
13 the contract between the State Lands Commission,  
14 Occidental Petroleum, and the City of Long Beach, please  
15 indicate by saying aye.

16 (Ayes.)

17 ACTING CHAIRPERSON GORDON: All those opposed?

18 No.

19 The vote is 2 to 1. But it's my understanding  
20 that that would make that a void vote. And this item will  
21 then go forward to the July Commission hearing?

22 EXECUTIVE OFFICER FOSSUM: That's correct, unless  
23 the Commission -- two of the Commissioners direct me to  
24 call a special meeting.

25 ACTING CHAIRPERSON GORDON: Okay.

1           With that, we're going to move to Item No. 73,  
2 another non-controversial issue before the Commission.  
3 This is to consider an amendment to regulations pertaining  
4 to ballast water performance standards.

5           And may we have the staff presentation please.

6           DR. NEWSOM: Good morning.

7           May I have my presentation slides.

8           Item 73.

9           DR. NEWSOM: My name is Amanda Newsom. I am the  
10 post-doctoral scholar with the Marine Invasive Species  
11 Program of the -- the sea grant post-doctoral with the  
12 Marine Invasive Species Program at the California State  
13 Lands Commission.

14           (Thereupon an overhead presentation was  
15 Presented as follows.)

16           DR. NEWSOM: And I'm here today to discuss the  
17 general framework and necessity of proposed amendments to  
18 Title 2, Division 3, Chapter 1, Article 4.7 of the  
19 California Code of Regulations.

20           Specifically I'll be discussing proposed  
21 assessment protocols for the discharge of ballast water  
22 for vessels operating in California waters.

23           --o0o--

24           DR. NEWSOM: As stated in California Public  
25 Resources Code Section 71206, the Commission shall, in

1 coordination with the United States Coast Guard, take  
2 ballast water samples -- take samples of ballast water and  
3 sediment from at least 25 percent of the arriving vessels  
4 subject to this division; examine documents; and make  
5 other appropriate inquiries to assess the compliance of  
6 any vessels subject to this division.

7 --o0o--

8 DR. NEWSOM: Pursuant to this sampling mandate,  
9 Commission staff have developed the proposed amendments I  
10 will outline today. These amendments are necessary to  
11 assess compliance with California law.

12 The proposed amendments contain protocols for the  
13 collection, handling, and assessment of ballast water  
14 samples. They are based on the EPA's environmental  
15 technology verification protocols and modified to allow  
16 for ship-board sampling. This development was also done  
17 in consultation with ballast water experts on the  
18 Commission's Technical Advisory Group.

19 The proposed amendments also provide  
20 clarification of definitions and regulatory language  
21 already contained in Article 4.7.

22 --o0o--

23 DR. NEWSOM: I will now outline the proposed  
24 changes to the regulatory text. Proposed changes to  
25 sections 2291 and 2292 of article 4.7 are primarily for

1 clarification. They add and modify definitions to assist  
2 in clarity of existing regulatory language.

3 Proposed amendments to Section 2293 are to bring  
4 the California Code of Regulations language in line with  
5 the standards in the Public Resources Code.

6 ACTING CHAIRPERSON GORDON: Can I stop you for  
7 one second.

8 I'd like you to address one additional issue as  
9 you go through each of these. How do the particular  
10 regulations that we are proposing to amend here differ  
11 from the U.S. EPA standards that the Coast Guard has  
12 adopted on the same subject?

13 DR. NEWSOM: Certainly.

14 ACTING CHAIRPERSON GORDON: Okay. Thank you.

15 DR. NEWSOM: So to answer your question just to  
16 begin with, the U.S. Coast Guard has adopted in its Phase  
17 1 ballast water standards the IMO guidelines. So those  
18 are -- I can discuss how they differ from California's as  
19 we go through.

20 EXECUTIVE OFFICER FOSSUM: And, Amanda, if you  
21 could describe the one section that deals with the  
22 sampling port for the --

23 DR. NEWSOM: Yes, the U.S. Coast Guard has also  
24 adopted the EPA's ETV protocols for the specifications of  
25 the sampling port. California has -- also has these in



1 regulation right now. The proposed amendments would  
2 change that. That's in response to some industry concerns  
3 that the existing language in the CCR is too technical and  
4 complicated. So it seeks to simplify and clarify some of  
5 those specifications.

6           So Section 2293 will address an important  
7 inconsistency between law and regulation. Standards in  
8 the Public Resources Code are listed as less than or equal  
9 to certain organism concentrations. While the current  
10 language in the CCR lists those same concentrations, but  
11 lists the standards as less than those concentrations.  
12 And this is consistent and needs to be rectified.

13                           --o0o--

14           DR. NEWSOM: Before discussing the protocols  
15 proposed for evaluation of ballast water discharge  
16 compliance, I want to discuss grandfathering provisions in  
17 sampling port specifications.

18           Methods for detection of microorganisms are  
19 expected to become more sensitive over the coming years.  
20 When this occurs, it will be necessary to amend the  
21 existing protocols so that they continue to reflect the  
22 best available science.

23           However, in recognition that a ballast water  
24 treatment system may need to be installed on certain  
25 vessels, and such an installation represents a significant

1 investment on the part of vessel owners and operators, the  
2 grandfathering provision would provide that protocols in  
3 place to evaluate compliance at the time of that ballast  
4 water treatment system's installation would be used to  
5 evaluate the same vessel's ballast water for ten years  
6 following the installation date.

7 --o0o--

8 DR. NEWSOM: California's standards are discharge  
9 standards. Therefore, for any sampling to occur, a  
10 sampling port is required to access the ballast main or  
11 ballast pipe. The existing language, as we discussed, was  
12 based on the EPA ETV protocols that have since been  
13 adopted by U.S. Coast Guard.

14 Among these specifications are a port diameter  
15 calculated for isokinetic sampling at the ballast main.

16 ACTING CHAIRPERSON GORDON: Can you tell us what  
17 that means please.

18 DR. NEWSOM: That means that the sample you're  
19 taking is going at the same speed as the water going  
20 through the ballast main.

21 EXECUTIVE OFFICER FOSSUM: And I think the  
22 important part there is our existing regulations in the  
23 California Code of Regulations are reflective of what the  
24 Coast Guard's are. And we were asked to simplify those by  
25 industry, and that's what's before you today.

1 DR. NEWSOM: Yes. And these specifications --  
2 the proposed amendments to those specifications, one of  
3 the specifications is a 4-inch diameter sampling port.  
4 And this would prevent sample cross-contamination as well  
5 as allow for sample disposal back to the ballast main  
6 instead of in the ship's bilges, which would be an  
7 undesirable situation.

8 ACTING CHAIRPERSON GORDON: Can I stop you for  
9 one second. And I'm going to ask for the Commissioners'  
10 input right now.

11 It's occurring to me that we're going to go  
12 through numerous fairly specific and scientific changes  
13 that are proposed in these regulations.

14 Would it be helpful to have a representative from  
15 the shipping industry here point by point or wait till the  
16 end after we've had the full presentation and then go  
17 back? Because my suspicion is that we're going to have  
18 folks who disagree with what these do. And would it be  
19 more helpful to go point by point as we go through these  
20 things rather than just a general opposition at the end by  
21 industry representatives?

22 EXECUTIVE OFFICER FOSSUM: Let me point out, Mr.  
23 Chair, that we have two speakers that have asked to speak.  
24 And there's one in favor and one opposed. So --

25 ACTING CHAIRPERSON GORDON: Okay. Did I ask,

1 what would be your desire here?

2 ACTING COMMISSIONER REYES: I'm trying to think  
3 about that. I'm okay with at the end, but I'm open. What  
4 would --

5 ACTING CHAIRPERSON GORDON: Chris, I hope you  
6 want --

7 ACTING COMMISSIONER GARLAND: Either way works as  
8 long as both parties are available for questioning if we  
9 have some question about --

10 ACTING COMMISSIONER REYES: But would your  
11 preference be to have them both at the same time so they  
12 can do point, counterpoint.

13 ACTING COMMISSIONER GARLAND: If it makes it  
14 easier for either or both of you, that's fine by me.

15 ACTING CHAIRPERSON GORDON: I think it would be  
16 easier for me, yeah.

17 ACTING COMMISSIONER REYES: Okay.

18 ACTING CHAIRPERSON GORDON: So when you get to  
19 the end of your -- Mr. Berge, could you please come  
20 forward.

21 When you get to the end on the port issue, I'd  
22 like to have Mr. Berge from PMSA tell us his perspective  
23 on what you just said, so I can understand what -- well,  
24 we're getting down to technical issues here which I don't  
25 feel competent to determine. So I want this clarified in

1 something that us non-scientists can understand.

2 DR. NEWSOM: Certainly.

3 ACTING COMMISSIONER REYES: Who's that  
4 non-scientist?

5 ACTING CHAIRPERSON GORDON: Well, you may be a  
6 scientist, but I --

7 ACTING COMMISSIONER REYES: My degree's into  
8 Nutritional Science, sir.

9 (Laughter.)

10 ACTING CHAIRPERSON GORDON: Oh, okay. You are a  
11 scientist. I just have a lowly law degree, so this is way  
12 above my head.

13 DR. NEWSOM: So concern has been raised regarding  
14 potential federal preemption of these amendments. It is  
15 important to note that Article 4.7 already contains  
16 sampling port specifications. And this port is not a  
17 requirement for operation of a vessel in California.  
18 Rather it is a condition for ballast water discharge to  
19 California waters.

20 Eighty-five percent of vessel arrivals comply  
21 with California standards by not discharging here.

22 Finally, installation of a California-compliant  
23 port on a vessel is not expected to conflict with federal  
24 port specifications.

25 ACTING CHAIRPERSON GORDON: Mr. Berge.

1           MR. BERGE: Thank you. John Berge with Pacific  
2 Merchant Shipping Association.

3           In regards to some of those comments, in terms of  
4 the preemption and the concerns over the technical aspects  
5 of the sampling port, we originally when the State Lands  
6 first issued these regulations a number of years ago  
7 stated that providing you are essentially in line with the  
8 IMO guidelines in terms of sampling ports, although we  
9 don't agree that the State has the authority to dictate  
10 that, no one's going to raise any fuss.

11           And the fact is, to be honest with you, I think  
12 as long as State Lands essentially mimics what's already  
13 required in either federal or international guidelines,  
14 you're probably not going to get a lawsuit on your hands.  
15 That does not mean that we agree that the State has the  
16 authority to do that, but that's just the way that stands.

17           I should also point out in terms of the 85  
18 percent of vessels, it's actually 85 percent of vessel  
19 voyages. And for a number of those voyages -- for  
20 instance, a ship might come in ten times and not discharge  
21 nine times, but has to discharge on the tenth time.  
22 Consequently, they have to be prepared to discharge  
23 virtually any time. So I think that's a little bit of a  
24 false argument.

25           And of course if there was a hundred percent of

1 ships that didn't need to discharge, we wouldn't be taking  
2 your time right now.

3 So thank you.

4 ACTING CHAIRPERSON GORDON: Mr. Berge, I have a  
5 question on that. I want to understand what you just  
6 said.

7 So the proto -- what is proposed would require a  
8 California-specific port for sampling?

9 MR. BERGE: You know, I have to look at the  
10 latest amendments. The original proposed amendments that  
11 came out had some specific requirements that went above  
12 and beyond what was outlined in either the federal or the  
13 international guidelines.

14 And I haven't had time to go through with  
15 technical experts - I'm also not a technical expert - to  
16 determine whether these amendments have actually addressed  
17 all of those concerns or not.

18 ACTING CHAIRPERSON GORDON: So what I've heard  
19 from both of you - and I want to be sure I've got this -  
20 is it is staff's position that what you're proposing with  
21 regard to the port is consistent with federal law and  
22 would not be preempted by federal law?

23 EXECUTIVE OFFICER FOSSUM: That's correct. And,  
24 in addition, it was an attempt to be responsive to  
25 industry's concerns about our existing regulations, which

1 it turns out is basically what the Coast Guard just  
2 adopted. So it isn't essential that that part of the  
3 regulations would go forward, because they in fact  
4 consistent now with the Coast Guard's regulations. We  
5 tried to help industry by making it a more simple. And in  
6 the meantime the Coast Guard basically adopted ours.

7 ACTING CHAIRPERSON GORDON: So is there any need  
8 for us to go forward with this section of the regulatory  
9 package?

10 EXECUTIVE OFFICER FOSSUM: There's not a  
11 necessity, no. We can sample using the current  
12 regulations that are in the -- but this was an attempt to  
13 help industry by simplifying the ability for them to  
14 qualify -- or to adapt a port that would be easy to sample  
15 from.

16 ACTING CHAIRPERSON GORDON: Mr. Berge, your  
17 response.

18 MR. BERGE: If I might point out, the only  
19 problem here might be in terms of the scheduling for the  
20 federal requirements versus what California's proposing.  
21 The federal requirement probably will not be rolled out  
22 for a period of time, after which California might be  
23 pursuing this same proposal.

24 So there might not be agreement in terms of  
25 scheduling if indeed the rest of the particulars are in



1 agreement.

2 EXECUTIVE OFFICER FOSSUM: But basically the  
3 regulations that the Commission has in effect already, and  
4 have been there for some time, will allow sampling; and  
5 they are consistent with the Coast Guard's that's just  
6 adopted. It's just that California is ahead of the rest  
7 of the world on this by a couple years, and so that's, you  
8 know -- it's not essential. Again, this was an attempt by  
9 staff to be responsive to industry and not over-complicate  
10 things. They were critical of our existing regulations  
11 and sought to have them modified.

12 ACTING COMMISSIONER REYES: So are you -- I want  
13 to make sure I get this part.

14 And, Dr. Newsom, if you please.

15 So what I'm hearing is that if this piece is  
16 dropped, it's status quo; but, Mr. Berge, you still have a  
17 concern?

18 MR. BERGE: A concern about this particular  
19 provision or the regulation --

20 ACTING COMMISSIONER REYES: Yeah, if this  
21 provision was dropped from the regulations, we basically  
22 go to status quo. And you would still have a concern  
23 or --

24 MR. BERGE: In regards to the sampling port or in  
25 regards to the proposal in front of --

1           ACTING COMMISSIONER REYES: To the existing  
2 regulations.

3           EXECUTIVE OFFICER FOSSUM: Sampling port.

4           ACTING CHAIRPERSON GORDON: We're just talking  
5 about the sampling port now.

6           MR. BERGE: Well, again, I'd have to double check  
7 on the schedule. If indeed this goes away, then -- that's  
8 a tough one for me to answer right now. I'd have to go  
9 back and see whether or not the ships are really prepared  
10 to meet the schedule that California has laid out.

11           ACTING COMMISSIONER REYES: So just to make sure  
12 I understand. Your issue then would still be on the  
13 existing regulation, the schedule of existing regulation?

14           MR. BERGE: Exactly, because the fact -- the fact  
15 that ships are prepared to put sampling ports in but  
16 they're also prepared to put them in when they're  
17 installing the ballast water treatment systems when  
18 they're expected to be meeting particular standard  
19 requirements. And the schedules that are being adopted by  
20 the Coast Guard are not aligned with California. So there  
21 could be a problem here in that you're essentially asking  
22 ships to do installations to their vessels, which I think  
23 the State is precluded from doing prior to -- prior to the  
24 time that they're ready to do that with the installation  
25 of their system.

1           ACTING COMMISSIONER REYES: But that ask - if I  
2 can call it an ask - it's being done under current  
3 regulation, not as a result of this regulation?

4           MR. BERGE: Yes. But current regulation was  
5 always predicated upon the actual implementation schedule.  
6 And the fact is we're just literally hitting that  
7 implementation schedule now --

8           ACTING COMMISSIONER REYES: Gotcha. Okay.

9           EXECUTIVE OFFICER FOSSUM: Yeah. And just to  
10 help the Commission on this clarification, these  
11 regulations have been in effect for a number of years.  
12 And the issue of construction of vessels, the current  
13 regulations beginning in January 1st, 2010, for a certain  
14 class of vessels, they were required to comply with these  
15 regulations. Beginning January 1st, 2012, another class.  
16 And, finally -- and there's two other classes that begin  
17 in 2014 and 2016, depending on their capacity, how much  
18 ballast water they're maintaining.

19           So even vessels that are being constructed this  
20 year know, and in previous years know that they are to be  
21 complying with this.

22           The problem is the Commission has yet to adopt a  
23 way to measure whether or not they're complying with it.  
24 The standards have been in effect for years. It's a  
25 question of how do you take the sample and take that

1 sample and then measure it against something to know  
2 compliance.

3           So all we're talking about today really, other  
4 than the port modification -- sampling port modification,  
5 is the actual scientific technology that we use for  
6 sampling. The regulations are not at issue.

7           ACTING CHAIRPERSON GORDON: Going back to  
8 strictly to the issue of the port right now - so I want to  
9 just be sure I understand this - the issue right now is  
10 the timing. We have existing regulations with regard to  
11 the port. They may, according to Mr. Berge, not line up  
12 with Coast Guard timing for implementing.

13           The question I have - and this may be something  
14 for counsel - is under the existing statute that we are  
15 drafting these regs under, do we have the ability by  
16 motion of this Commission to adopt the Coast Guard timing  
17 of adoption? Or does the existing statute for California  
18 preclude us from doing that?

19           EXECUTIVE OFFICER FOSSUM: No, you don't have  
20 that authority. What we do have is the fact that these --  
21 the current collection of the ballast water samples at the  
22 port has been in effect for three years already. So  
23 industry's been well aware of this. And, again, the  
24 current ones are basically reflective of the ones that  
25 will be going into effect in a few years for the Coast

1 Guard.

2           So this has been out there.

3           As far as a sampling port, we're talking about  
4 investment of possibly more than a thousand dollars, maybe  
5 several thousand dollars. But it's not an enormous  
6 amount. It's basically taking and coming up with a means  
7 to open up where they discharge the water, so that you'll  
8 be able to sample that water. That's all that the  
9 sampling port has to do with them. And, as I said, we  
10 don't need to modify that. It was an attempt to  
11 accommodate industry's concerns.

12           ACTING CHAIRPERSON GORDON: I would like to make  
13 a motion that we sever this part of the package, if  
14 that's -- so that the port -- so on the issue of the ports  
15 for this sampling we would go forward under existing.  
16 Since the aim of the Commission -- of staff was to  
17 simplify this, and we don't seem to have agreement from  
18 the industry that that's what it's accomplishing, I would  
19 make a motion that we sever the port issue from the rest  
20 of the regulatory package and put it over till a future  
21 time when we can have agreement either that it simplifies  
22 it or that we would prefer to go forward under the  
23 existing protocols.

24           EXECUTIVE OFFICER FOSSUM: And just to make it  
25 clear, the argument that's been raised for many years is

1 that somehow this would be -- that subject to preemption  
2 by federal law, which it is, however federal law's  
3 reflecting current standards, and what I -- let me clarify  
4 that. I don't want to mis-say that.

5 It is subject to federal preemption. Meaning if  
6 the federal government set a standard that was not  
7 consistent with what the Commission is doing, they can  
8 preempt. They have the authority to preempt.

9 We don't believe that's the case. If the  
10 industry believed that was the case when the Commission  
11 adopted this three or four years ago, they could have  
12 brought an action then even to challenge it, but that's  
13 not happened. And we don't expect it to happen because  
14 we're trying to be eminently reasonable about these  
15 regulations.

16 So that's the status of the port part. But then  
17 we can get on the address.

18 ACTING CHAIRPERSON GORDON: We have a motion.

19 Do we have a second?

20 ACTING COMMISSIONER GARLAND: Can we clarify --

21 ACTING CHAIRPERSON GORDON: -- who's voting?

22 (Laughter.)

23 ACTING COMMISSIONER GARLAND: -- the portions of  
24 the staff recommendations --

25 EXECUTIVE OFFICER FOSSUM: We'll need to clarify

1 who's voting as well though.

2 ACTING CHAIRPERSON GORDON: Well, there is that.

3 What the motion would be, to take the regulations  
4 that are proposed having to do with additional sampling  
5 ports and sever that from the rest of the regulatory  
6 package.

7 ACTING COMMISSIONER GARLAND: There are eight  
8 items up for staff recommendation for the adoption by the  
9 Commission. Which of these eight items would we be  
10 removing?

11 DEPUTY ATTORNEY GENERAL RUSCONI: While staff is  
12 checking that, I just wanted to make sure that you  
13 remembered that there was another speaker.

14 ACTING CHAIRPERSON GORDON: Yes. We will allow  
15 the speaker in favor of the existing to come forward.

16 EXECUTIVE OFFICER FOSSUM: This is section 2297.  
17 I believe it's C, dealing with the port for the collection  
18 and disposal of ballast water samples.

19 ACTING CHAIRPERSON GORDON: While we're checking  
20 on that, I would like to ask Ms. Karen McDowell to come  
21 forward, who wished to speak on this subject.

22 Yes, go ahead, Ms. McDowell.

23 MS. McDOWELL: Do you want me to speak on this  
24 issue or --

25 ACTING CHAIRPERSON GORDON: Speak on the entire

1 package, yes.

2 MS. McDOWELL: Okay. My name's Karen McDowell.  
3 I'm with the San Francis Estuary Partnership, which is  
4 part of the National Estuary Program, and also one of the  
5 most invaded systems in the world. I'm an environmental  
6 planner and I'm also a marine ecologist, and I've been  
7 working on the ballast water issue since 1999.

8 And we support the amendment to establish the  
9 procedures for the collection and analysis of the ballast  
10 water samples to assess vessel compliance with  
11 California's performance standards. This amendment will  
12 allow the State Lands Commission to determine if vessels  
13 are complying with the already-established discharge  
14 standards. And also it'll benefit the ship industry and  
15 the technology vendors, because it will describe in detail  
16 how the systems will be assessed.

17 Since I've been working this since 1999, what  
18 we've been hearing for a long time first was "please set a  
19 standard so we have a mark to hit" and then "set protocols  
20 so we know what protocols will be used to test systems and  
21 system compliances."

22 This is a very complex issue. And the State  
23 Lands Commission convened a technical advisory committee,  
24 they brought in the shipping industry. And looking at the  
25 list, I was not part of this group, but they basically



1 convened the top scientists in the world working on this.  
2 You scientists are also involved with the EPA's program  
3 and the Coast Guard's program and also the people working  
4 on the regulations at the international level.

5 I think they've done a great job at evaluating  
6 all the input and assessing it and making their protocols  
7 in line as much as possible with the federal program and  
8 the international programs.

9 Basically if we don't move forward with adopting  
10 these protocols and giving the State Lands Commission a  
11 way to assess the systems, we're basically playing  
12 ecological roulette, and something will be coming in and  
13 it will be bad. We probably don't know what it is yet.  
14 But we already have the Asian clam. Once these invasive  
15 species come in - it's not like a regular contaminant -  
16 they actually multiply and divide and they never go away.

17 So, we are expressing our support of this  
18 amendment and the process they went through to develop.

19 ACTING CHAIRPERSON GORDON: Thank you.

20 Any questions?

21 Mr. Reyes.

22 ACTING COMMISSIONER REYES: Before you go, what  
23 are your thoughts about the Chair's idea of severing this  
24 piece from the regulations?

25 MS. McDOWELL: I have not gotten into the details

1 as far as the sampling port. So are you guys actually --  
2 you don't like the new design of the sampling port, is  
3 that --

4 ACTING CHAIRPERSON GORDON: Mr. Berge, you can  
5 answer.

6 MR. BERGE: Well, our concern again is the fact  
7 that, number one, the State doesn't have the authority to  
8 ask the vessels to -- or to compel the vessels to put on a  
9 port.

10 We also have a concern that if indeed there are  
11 anything different -- there's anything different from what  
12 the Coast Guard, for instance, is recommending, we would  
13 feel that would be preempted under federal law.

14 Now, if indeed the revisions here will completely  
15 align with what's in the Coast Guard requirements, then  
16 again I would see no reason to have this particular item  
17 in the rules.

18 ACTING COMMISSIONER REYES: So Mr. Gordon  
19 suggested that this piece be severed and possibly not have  
20 it move forward.

21 What are your thoughts of that, Mr. Berge?

22 MR. BERGE: In all fairness, we have major issues  
23 with both the rule proposal itself or the amendments to  
24 the rule, as well as, in a sense, the bigger picture to  
25 this whole thing. We feel essentially what this rule is

1 doing is kind of creating a Potemkin village testing  
2 protocol that we think is just dishonest to the  
3 Commission, the people of California, and our industry.  
4 And so this is just one of the problems that we have with  
5 this particular proposal.

6 ACTING COMMISSIONER REYES: Okay.

7 ACTING CHAIRPERSON GORDON: All right. We have a  
8 motion before the Commission to sever the testing -- the  
9 port testing protocol issue.

10 Again, two members may vote.

11 And the motion was by the Chair.

12 ACTING COMMISSIONER GARLAND: I'm still seeking  
13 clarification on what of the nine -- what of the nine  
14 items will we be removing from the recommendation?

15 EXECUTIVE OFFICER FOSSUM: If you're looking at  
16 the Commission's authorization, it would be an amendment  
17 to number 5 by dropping 2297 out of that finding.

18 CHIEF COUNSEL LUCCHESI: 2297 subsection C of the  
19 proposed regulations.

20 EXECUTIVE OFFICER FOSSUM: Yes, correct.

21 ACTING CHAIRPERSON GORDON: I'm going to withdraw  
22 that motion. I think we're going to let this whole  
23 package go forward together rather than trying to sever  
24 this out, unless Mr. Reyes has any strong feelings one way  
25 or the other.

1           ACTING COMMISSIONER REYES: I was trying to find  
2 the strong feelings to sever, and I couldn't find one,  
3 so --

4           (Laughter.)

5           ACTING CHAIRPERSON GORDON: All right. I will  
6 withdraw that motion. And we can go forward with the  
7 staff presentation on the next item.

8           DR. NEWSOM: May I have the presentation again  
9 please.

10                           --o0o--

11           DR. NEWSOM: So finally, I will discuss the  
12 proposed protocol for evaluating compliance with ballast  
13 water discharged standards. These establish the clear  
14 detailed protocols for compliance assessment. And they  
15 encompass changes to section 2297 D through E.

16           These are necessary to assess compliance with  
17 California law and will provide data to determine whether  
18 ballast water treatment systems are operating as  
19 represented.

20           The assessment methods proposed, one of their  
21 strengths is that they will work for many standards  
22 including California's.

23                           --o0o--

24           DR. NEWSOM: I'm going to take a moment and  
25 explain the structure of this slide, as it will reflect



1 one second.

2 What is the federal standard on that?

3 DR. NEWSOM: The federal standard is 10.

4 ACTING CHAIRPERSON GORDON: We have the  
5 standard -- our statutory standard is .01 and the federal  
6 standard is 10?

7 EXECUTIVE OFFICER FOSSUM: That's correct.

8 DR. NEWSOM: Yes.

9 Existing technologies are not sensitive enough  
10 yet to detect concentrations as low as California's  
11 standard. Fortunately staff was able to use other federal  
12 and State laws as guide -- and regulations as guidelines.  
13 And in these cases the best available methods set the  
14 limits to which compliance can be evaluated.

15 --o0o--

16 DR. NEWSOM: I'm going to pause for a minute and  
17 give some examples of that.

18 Under the Clean Water Act, any facility as part  
19 of its -- as part of its lease application must submit a  
20 National Pollutant Discharge Elimination System Permit.  
21 This was done for the Shell Martinez Refinery's lease  
22 renewal.

23 In this permit, effluence objectives -- so that's  
24 what's -- that's the part of this that's comparable to  
25 California's standards -- for dioxins - and dioxins are

1 chemicals that are poisonous at very low concentrations -  
2 they're below the detection limits of currently available  
3 analytic methods. So all this facility needs to do to  
4 demonstrate compliance is to show that effluence for  
5 dioxins are not above those detection limits.

6 ACTING CHAIRPERSON GORDON: Is it California  
7 statutory standard a strict standard or is it objective?

8 EXECUTIVE OFFICER FOSSUM: It's a standard. But  
9 the point we're trying to make here on both these last two  
10 slides I think is that if you can't detect it, then you're  
11 not in violation.

12 And industry has said, you know, "You're fooling  
13 the public, you're fooling the Legislature if you adopt  
14 measurements that can't detect their standard." And the  
15 answer is it's done all the time. It's done by the EPA.  
16 It's done by the Water Board. It's done by a lot of  
17 different agencies whose responsibility is to try and  
18 comply with those standards that are set. But science  
19 does not detect that.

20 And Amanda will get to this. But the point we're  
21 making here is that we're asking the Commission to adopt  
22 standards that are measurable or not -- they're using  
23 techniques where you measure as good as you can and then  
24 to grandfather in those standards for anybody that -- any  
25 company that puts a system on their -- treatment system on

1 their vessel so that they're not going to be hampered in  
2 the next ten years by a moving target.

3 ACTING CHAIRPERSON GORDON: Okay.

4 ACTING COMMISSIONER GARLAND: All three of us  
5 have questions here.

6 ACTING COMMISSIONER REYES: So --

7 EXECUTIVE OFFICER FOSSUM: Did I confuse it more?  
8 I'm sorry.

9 ACTING COMMISSIONER REYES: No, no, no. Just to  
10 clarify a point.

11 So the standard is .01, and that's the statutory  
12 standard?

13 DR. NEWSOM: Um-hmm.

14 ACTING COMMISSIONER REYES: But there's no  
15 measurement for it at this point?

16 EXECUTIVE OFFICER FOSSUM: You can not measure  
17 that level of organisms at that --

18 ACTING COMMISSIONER REYES: So if a ship installs  
19 something that is approved right now by MO with the Coast  
20 Guard, and somehow somebody comes up with a method that  
21 will pick up that, will they then be grandfathered in as  
22 having to have the best available standard? And if so,  
23 aren't we sort of going back to your issue, that we're  
24 allowing microorganisms to replicate and now we've got to  
25 see them, but because we couldn't see them before we said



1 it was okay?

2 EXECUTIVE OFFICER FOSSUM: Again, the concept of  
3 grandfathering is one that -- you know, from a response to  
4 the industry's concerns. The idea that you put in an  
5 investment, an expensive investment on a vessel, and  
6 you're in compliance and then -- and then technology or  
7 science creates new technology of measurement, that you  
8 penalize those persons for that investment, I think --  
9 this is something that we believe is in the best interests  
10 of the State to get compliance soon, and we think it's  
11 going to have a serious positive impact on preventing new  
12 invasive species in here.

13 You know, the law is never perfect and neither is  
14 science. So what we're trying to get to is a point where  
15 we're going to reach the goal of limiting as much as  
16 possible new invasive species in California. And we think  
17 this does it, and it helps protect industry by giving them  
18 the protections of their investment.

19 ACTING COMMISSIONER REYES: But at that point we  
20 will then have industry or some members of industry, some  
21 ships not meeting the standard and us knowing that they're  
22 not meeting the standard, because we now can --

23 EXECUTIVE OFFICER FOSSUM: We know they aren't  
24 now. And the direction the Legislature's given to the  
25 Commission is to do everything it can to try and move that

1 forward in preventing new invasive species coming into  
2 California.

3           So delay doesn't answer that. And, you're  
4 absolutely right, this is a compromise in the sense that  
5 we would be not meeting that standard -- or they would not  
6 be meeting that standard. But that's always the case. As  
7 EPA, when their standards change -- when their  
8 measurements change, when the -- and we shouldn't  
9 interrupt Amanda here, I guess -- because the California  
10 Ocean Plan adopted by the Water Board and all the other  
11 things, infinitesimal numbers that you don't even come  
12 close to being about to measure them at this point. They  
13 will, presumably some day, may be able to measure those  
14 things.

15           We can't change the Legislature's prerogative.  
16 If they don't like -- and we'll be reporting next -- we'll  
17 be bringing to the Commission at the July meeting a report  
18 to the Legislature that is required on what the  
19 Commission's ballast water program is doing. And so our  
20 report to them that we bring to the Commission at the next  
21 meeting in July will be discussing all these things. And  
22 it can be that the Commission will tell the Legislature  
23 this story, and then they can decide whether they think  
24 they need to change standards or if they think the  
25 Commission has gone overboard on this by setting that or

1 grandfathering or anything else.

2           But to not do anything continuously when we're so  
3 far down the road on this is -- you know, 1999, it's been  
4 a long time. And we're directed by the Legislature to  
5 sample 25 percent of the ships coming in. And unless we  
6 have a way of measuring it, we might as well just take the  
7 water and throw it overboard, because we don't have any  
8 idea what the compliance -- whether they're complying  
9 unless we have a standard. And that's protecting the  
10 industry as well as the public in this.

11           ACTING CHAIRPERSON GORDON: Mr. Garland.

12           ACTING COMMISSIONER GARLAND: Are you done,  
13 Pedro?

14           ACTING COMMISSIONER REYES: Yeah. I'll have a  
15 follow-up, but go ahead.

16           ACTING COMMISSIONER GARLAND: Okay. A comment  
17 and a question for the staff.

18           It's interesting you say, if we don't have a way  
19 to test them, might as well just throw the water  
20 overboard. Because, frankly, we're already admitting that  
21 we don't have a way to test it. We've created a test that  
22 fits a standard that we can't meet, is the way it sounds  
23 to me at least from your explanation.

24           So let me ask this question. Since 2005, the --  
25 I have the actual bill in front of me, the Simitian bill

1 that requires your reporting. How many times since 2005  
2 has the Commission reported to the Legislature on this  
3 issue? And has the Commission on any of those reports met  
4 the requirement of the bill that would have required, if  
5 the technology is to meet the performance standards, are  
6 determined in their review to be unavailable, to include  
7 in that review and assessment of why the technologies are  
8 unavailable?

9 EXECUTIVE OFFICER FOSSUM: Yeah, Chris Scianni of  
10 our Ballast Water and Bio-fouling Program can answer that,  
11 I believe.

12 MR. SCIANNI: I believe we've done two  
13 legislative reports and two updates that weren't  
14 legislatively mandated since --

15 ACTING COMMISSIONER GARLAND: And in any of those  
16 have we -- has the Commission as was directed in the  
17 legislation told the Legislature that there is not a  
18 viable test here to test to the standards that they've put  
19 forward?

20 MR. SCIANNI: If I could backtrack. There are  
21 three reports -- legislative reports. And the first one  
22 said that there were not technologies available. And we  
23 recommended the first implementation date to be moved from  
24 2009 to 2010.

25 So we did that back in 2009, and then we

1 reevaluated for the 2010 and then again for the 2012.

2           So, yes, we did on one occurrence say that. We  
3 weren't confident that there were technologies that were  
4 available.

5           EXECUTIVE OFFICER FOSSUM: And that's only as to  
6 one standard. All the other standards can be measured  
7 too. Because the first one, as you noted, it's a  
8 detectable standard. And so whatever you detect is the  
9 standard. If you can't beyond that, then, you know, it's  
10 kind of a syllogism there.

11           So it's just this one standard. And that's where  
12 a lot of the criticisms -- you hear all the time  
13 California standards are a thousand times greater than IMO  
14 standards. This is the one area where the standards are  
15 greater.

16           And so we understand that. We'll report that to  
17 the Commission at the next meeting also for reporting to  
18 the Legislature. If they feel it's important to have a  
19 lower standard, then they can certainly do that.

20           But until we have ways of actually having people  
21 measure it that are standardized, then we're not helping  
22 industry comply with California law. If we have  
23 methodologies in place, then the companies -- and we have  
24 a couple letters from people who aren't here today, one of  
25 them I received last night at 7 o'clock, I think, from a

1 company - and we've reported this to both the Commission  
2 and the Legislature in the past - that says they can do  
3 it. They have ballast water treatment systems that will  
4 comply with California standards.

5 And, you know, that's -- and they said they've  
6 been doing this for a number of years. So we'll be  
7 reporting more of that to the Commission at the next  
8 meeting as well for part of the report. But --

9 ACTING CHAIRPERSON GORDON: I'm going to go to  
10 some of the representations in the slides as to  
11 similarity. Because it strikes me -- I have some  
12 background in environmental regulation. And it strikes me  
13 what you're doing here is we're comparing apples to  
14 oranges. The dioxin standard is an objective that most --  
15 there is a difference between an objective and a standard.  
16 When we say we want no detectable limits for dioxin, that  
17 doesn't say we need to go to .01. It says we need -- we  
18 have an objective of that and we will work -- with regard  
19 to the Water Board, we have a situation where you have a  
20 public health goal established by the Office of  
21 Environmental Health Hazards Assessments which is the  
22 ideal for numerous carcinogens, teratogens, mutagens.

23 But then we have a drinking water standard which  
24 takes that goal and takes into account technologies, cost,  
25 et cetera. I don't think we are comparing apples to

1 apples when we say that this standard is the same as an  
2 objective. If this were an objective that said let's get  
3 to nondetectable, that would be one thing. To have this  
4 standard of .01 -- which is essentially nonreachable.  
5 Though every time we have one of these hearings we have  
6 another company that comes in and says, "We have the  
7 technology that does it," and each time when we go back  
8 and look at those claims, they turn out to be lacking to  
9 some degree. I mean I remember the exact same  
10 conversation, I think it was in October, when we had this  
11 same issue before us. Turned out the company couldn't  
12 meet the standards.

13           So I want to be sure we're talking about the same  
14 thing. And I do recognize -- and I have great respect for  
15 your staff. I think they do phenomenal work. They  
16 understand this stuff at a level that I never will, I  
17 don't believe. It's the statute that is the problem. And  
18 it kind of goes -- it goes to what Mr. Garland raised,  
19 which is we continually -- and this has been going on for  
20 years now -- we continually go down here towards meeting a  
21 goal and a standard set in a bill that the technology  
22 isn't there.

23           And now I will go to the question, which is kind  
24 of behind my understanding of this from the beginning:

25           If you are proposing that we have a grandfather

1 clause that would essentially say on day X that we --  
2 whatever the best available technology is on that day, you  
3 must install for all ships going forward from that day.  
4 And I don't know about the -- that's not what you're  
5 proposing?

6 EXECUTIVE OFFICER FOSSUM: Not the technology.  
7 We're not telling anybody to put a ballast water treatment  
8 system on their vessel or anything else. The Commission  
9 has not been asked or directed by the Legislature to do  
10 that.

11 It's been directed to measure compliance with  
12 their standards. And to measure it, you have to have a  
13 way to measure it. And that's the direction that the  
14 Legislature's given the Commission.

15 And you mentioned about the nondetectable  
16 standard. The Legislature has set a goal by 2020 to have  
17 virtually, you know, no organisms in the ballast water.

18 ACTING COMMISSIONER REYES: Yeah, the goal is  
19 zero.

20 EXECUTIVE OFFICER FOSSUM: By 2020. But right  
21 now the way we're dealing with it is -- we've had these  
22 regulations and laws in effect for a number of years.  
23 And, you know, we've taken -- we've gone through and had  
24 input from all the industry as well as science and come up  
25 with the way to -- the best way to try and measure it.



1 And that's all we're talking about is trying to measure  
2 it. Now, ultimately if, for example, let's say we -- the  
3 Commission adopted these standards and we started  
4 measuring and we found somebody wasn't in compliance, then  
5 what's the next step?

6           Then -- the responsibility in the codes is for  
7 the Executive Officer to send them a complaint about it.  
8 "May," it says. It's not "shall" even. It's up to the  
9 discretion of the Executive Officer, the way the law's  
10 right now. And at that point, if they want to have a  
11 hearing, they go before an administrative law judge.

12           So there's a process that's been in place for a  
13 number of years about this. I'm just learning about this  
14 in the last two years myself. So there's a lot of history  
15 behind this, and the Commission's been involved in it for  
16 13 years. But we're at the place now where if we don't  
17 come up with some kind of measurement, then nobody knows  
18 what's going on and we're not complying with the  
19 legislation.

20           So staff's recommendation is to adopt these  
21 things, to report to the Legislature. And then let the  
22 Legislature do what they did before. And, that is, figure  
23 out what they think is in the State's best interest,  
24 whether the standards need to be changed or some other  
25 element of it needs to be changed.

1           ACTING COMMISSIONER REYES: I apologize to the  
2 audience, because I'm thinking out loud, and I hate when  
3 people do that. But I guess what I -- we have four people  
4 up here testifying. Anybody else want to join 'em?

5           (Laughter.)

6           ACTING COMMISSIONER REYES: If --

7           ACTING CHAIRPERSON GORDON: Are you serious?

8           MS. BLODGETT: Yes.

9           ACTING CHAIRPERSON GORDON: Why don't you come up  
10 then. Identify yourself. Let's have this whole  
11 conversation now.

12           ACTING COMMISSIONER REYES: So I guess what I --  
13 I understand the goal being zero, because unlike the  
14 chemicals there, these organisms do replicate, do  
15 reproduce and there will become more of them and they'll  
16 have an impact on us.

17           When it comes to the chemicals, you're looking at  
18 the, you know, toxicity or whatever and at what levels you  
19 can actually pick it up. And so in a lab work you can  
20 determine at what level they become, you know,  
21 carcinogenic or whatever it is they do.

22           On the microorganism level, you know, all you  
23 need is one or two. It depends on the organism. So I get  
24 that part, and the goal should be zero.

25           Where I'm struggling with is, is the purpose of

1 this regulation merely to pick up the ruler of which we're  
2 going to measure whether or not the animals are there or  
3 not? And in doing so, is it a practical ruler that  
4 deceives us in terms of what it is that we're measuring?

5           If we're going to measure the size of this room  
6 and all we have is a yardstick, and that's all we have -  
7 we can't measure into feet and inches - well, then we just  
8 do yards. And is that good enough? And are we asking  
9 folks to -- based on that larger, we would then come up  
10 with somebody who now has a 12-inch ruler, with the actual  
11 demarcations of a quarter of an inch and so forth, and now  
12 we say, "Oh, you're out of compliance," because now we  
13 have this thing that's more accurate.

14           EXECUTIVE OFFICER FOSSUM: Well, you know, I -- I  
15 think the analogy we've been looking at a lot on this is -  
16 and I'm certainly a witness to this - is technology  
17 dealing with measurement of speed limits. I've been given  
18 tickets by a policeman following me and clocking me on his  
19 speedometer, I've had tickets from radar by a highway  
20 patrolman, I've had it by planes flying over. There's  
21 different technologies. In each instance --

22           ACTING COMMISSIONER REYES: And I'm glad to  
23 hear --

24           (Laughter )

25           EXECUTIVE OFFICER FOSSUM: -- the Legislature had

1 set a standard --

2 ACTING COMMISSIONER REYES: I'm glad to hear you  
3 have a --

4 (Laughter.)

5 EXECUTIVE OFFICER FOSSUM: -- these crimes.

6 In each instance the Legislature dictated the  
7 standard and turned over to the administrative agent, the  
8 highway patrolman, the responsibility to try and measure  
9 that and use different technologies at different times.  
10 And they improve all the time.

11 What's important here, I think, is that we are  
12 providing that if you -- if one of these companies decides  
13 to put a ballast water treatment system on their vessel,  
14 then we're not going to change how we measure that for a  
15 ten-year period for that installation. That protects  
16 their investment.

17 Without that, there's the possibility that a new  
18 technology could come along to measure. Not just to  
19 treat, but to measure. And does that mean they should  
20 change their treatment systems every year? This is again  
21 in response to industry's concerns about the impact of  
22 these laws that California has adopted.

23 And so the Commission staff is looking at a  
24 reasonable methodology to measure this thing. Is it  
25 perfect? No. Is that patrolman following me perfect?

1 Did he really get it right? You know, that was the  
2 technology at the time and that's -- we're using the best  
3 science in the world today to measure these things. And  
4 if the Legislature wants to criticize that, I think that's  
5 their prerogative. But we stand behind that science.

6           ACTING COMMISSIONER GARLAND: To that point, are  
7 we not setting ourselves up to be criticized if we accept  
8 a measurement technique that we know doesn't actually meet  
9 the standards of what the Legislature has laid out? And  
10 we're putting ourselves in a position here where the  
11 Commission is trying to, so to speak, please the  
12 Legislature and their wishes for a standard that, frankly,  
13 we all support.

14           Let me just say for the record, you know, we  
15 actually -- California should be point of the spear on  
16 environmental impact and mitigating that and being in the  
17 forefront.

18           That being said - and I'd like to hear from some  
19 of our scientists - are we not setting ourselves up here  
20 to feel good about meeting a standard that, frankly, we  
21 know we can't meet? And are we providing -- you know,  
22 from both of our scientists here I'd like to hear, from  
23 both the Commission staff perspective and then from a  
24 conservation perspective, are you really comfortable that  
25 we've set a standard -- that we've set a measurement that

1 meets a standard, knowing that there are things getting  
2 through and that we're not actually doing what the law  
3 wants us to do?

4           And your recommendations on whether or not we  
5 should go back to the Legislature and comply with the '05  
6 statutes and say, "We can't meet this right now. What  
7 would you like us to do rather than chase a measurement  
8 technique that may or may not actually make a difference  
9 in our waterways?"

10           ACTING CHAIRPERSON GORDON: Before you answer  
11 that, Ms. Blodgett, can you please come forward, identify  
12 yourself, so that you can be part of this conversation  
13 also, so that we've got you on the record.

14           MS. BLODGETT: I'm not a scientist - I'm an  
15 attorney - so I can't speak to that question. But I'm  
16 here representing San Francisco Baykeeper and also the  
17 California Coastkeeper Alliance.

18           ACTING CHAIRPERSON GORDON: Great. Thank you.  
19 Okay. Now --

20           MS. BLODGETT: We're here in support of the  
21 amendments, yes.

22           ACTING CHAIRPERSON GORDON: Staff and -- yes, go.

23           MS. McDOWELL: So you want staff first?

24           ACTING CHAIRPERSON GORDON: Yeah, why don't we  
25 have staff go respond to that first. And then we'll have

1 advocates respond to Mr. Garland's question.

2 DR. NEWSOM: Well, what I can say to that is that  
3 the methods that are being proposed -- and the one place  
4 where the methods proposed cannot test to California  
5 standards is in this one case, is in the 10 to 50 micron  
6 size class.

7 ACTING CHAIRPERSON GORDON: Let me just stop you  
8 right there.

9 Mr. Berge, do you agree with that? Is this the  
10 only -- I'm trying -- what I keep trying to do is --

11 MR. BERGE: -- where do we have consensus.

12 ACTING CHAIRPERSON GORDON: -- yeah, where do we  
13 have consensus, exactly. So we've got a statement that  
14 the only place there's disagreement about the measurement  
15 standards is on this one case.

16 Do you agree with that statement?

17 MR. BERGE: In the sense the greater than 50  
18 micron category is a meaningless standard, because you can  
19 only define the standard by a volumetric basis. I could  
20 take a glass of water and hold it up and say I don't see  
21 any 50 micron organisms. So in a sense its defined by the  
22 testing protocol.

23 But I would also just like to point out there  
24 have been measurements of this. I'm glad the staff  
25 recognizes that these measurements don't reach the

1 resolution to actually verify meeting the California  
2 standard. But these systems have all been tested to the  
3 IMO standard, using the IMO protocols, which are  
4 land-based and ship-based. And according to the staff's  
5 own report, the six best systems they've identified failed  
6 meeting the California standard under this less rigorous  
7 testing protocol between about 20 to 90 percent of the  
8 time for both the 50 and the 10 to 50 micron organism  
9 size.

10           So the fact is, it's already been demonstrated  
11 that these systems can't meet the California standard.  
12 Once you reach a level of resolution in testing to  
13 actually define the California standard, that will only  
14 drive the failure rate up. It can't drive it in the other  
15 direction.

16           ACTING CHAIRPERSON GORDON: So the short answer  
17 is that, no, you don't agree that it's just about the 50  
18 micron standard?

19           MR. BERGE: No, I don't.

20           Okay. Thank you.

21           ACTING CHAIRPERSON GORDON: All right. Staff, go  
22 back.

23           EXECUTIVE OFFICER FOSSUM: Well, I mean I was  
24 following Mr. Berge's argument there. But when he jumped  
25 from the measurement standards, which are before the



1 Commission today, to the treatment proto -- or the  
2 treatment -- ballast water treatment systems that are out  
3 there on the market, that's a big jump. Because we  
4 have -- in fact, what I mentioned earlier to you, and I  
5 believe you have a copy of Ecochlor letter before you  
6 today, that is from a company that has had the most  
7 success, and so they're very proud of it apparently, in  
8 reaching these standards. They believe they can reach all  
9 these standards, and they've said that a number of times.  
10 And we've reported that to the Commission and the  
11 Legislature over the last few years.

12           So have all the treatment systems reached those  
13 levels? No. But a number of them have. And I believe we  
14 have -- you know, we kind of interrupted this presentation  
15 midstream. And so there's a lot more information maybe we  
16 should share and then get back to any details that the  
17 Commissioners still have questions on after we're done, if  
18 that's okay with you.

19           ACTING CHAIRPERSON GORDON: Mr. Berge.

20           MR. BERGE: I'd just like to point out that  
21 according to the staff's own report the Ecochlor system  
22 failed in the greater-than-50-micron category on  
23 land-based testing 47 percent of the time and failed on  
24 the 10 to 50 category 18 percent of the time and failed on  
25 bacteria category 27 percent of the time. That's

1 according to the staff's own documentation.

2 ACTING CHAIRPERSON GORDON: Thank you.

3 Amanda, I'm sorry.

4 And what's your last name, Amanda? I missed it.

5 DR. NEWSOM: Newsom.

6 ACTING CHAIRPERSON GORDON: Ms. Newsom, why don't  
7 you go forward.

8 DR. NEWSOM: So that is correct in land-based  
9 testing. These protocols have been agreed upon for  
10 ship-board testing, which is -- you can't get to the same  
11 level of rigor in a ship-board test.

12 That's one comment.

13 EXECUTIVE OFFICER FOSSUM: Yeah, in other words  
14 if you're doing the experimentation on land, Alan, these  
15 things, it's a totally different situation than going on  
16 and taking small samples on the vessels, which is the only  
17 practical way for us to enforce this.

18 You know, it's not the huge computer system that  
19 you might have in certain situations. We're taking  
20 samples of water and then going to test them in -- so --  
21 and I don't know if there's somebody else on the staff who  
22 knows that particular part of the staff report on those.  
23 But if they do, they're welcome to respond, as far as  
24 Ecochlor's compliance with the measurements that we have  
25 before us today.

1           ACTING CHAIRPERSON GORDON: Let me just stop  
2 right there.

3           Standard rule, okay? And let's just -- speaking  
4 for no one but the Controller. We will never vote for  
5 anything that gives essentially an exclusive contract for  
6 one company. We just think that is horrible public  
7 policy. And the fact that one company comes forward and  
8 says that we can meet the standard is just nothing we're  
9 going to vote for.

10           So the fact that there might be one company out  
11 there that claims they can meet this is at some level, for  
12 me at least, irrelevant.

13           EXECUTIVE OFFICER FOSSUM: We have a number of  
14 companies that have. And I think Maurya Faulkner, who's a  
15 retired annuitant and began this program in 1999 for the  
16 Commission and just retired last year, has a lot more  
17 background than a lot of us newer people involved in this.  
18 And so maybe she can clarify that.

19           ACTING CHAIRPERSON GORDON: Mr. Reyes first  
20 before she comes forward.

21           ACTING COMMISSIONER REYES: Mr. Fossum, I have a  
22 question for you, procedurally. I'm not trying to  
23 foreshadow anything. But by this point somebody would  
24 have made a motion, and nobody's done that. And you can  
25 see that some of the folks up here have some concerns. If

1 we do not take this item up now, we don't vote on this  
2 issue today, where do we go from here?

3 EXECUTIVE OFFICER FOSSUM: Well, at the next  
4 meeting we would be bringing to the Commission the report  
5 that they are to send to the Legislature, the biennial  
6 report on the status of the systems of the program, to  
7 seek compliance with this. And so what we'll be reporting  
8 is that the Commission to some degree has not yet  
9 established ways to measure this.

10 One of the things I think that is very important  
11 is, even if the Legislature changes the standard to the  
12 IMO standard, you still need to have a process to measure  
13 it. And this is the standard the staff would recommend.  
14 This is the process that we would recommend for compliance  
15 with a standard that's totally different.

16 So we're not really playing here with a standard.  
17 We're talking about how should we go out and measure this,  
18 how should we capture that data and then report that back  
19 to the Legislature as well? And without that ability,  
20 we're kind of flailing here a bit.

21 ACTING COMMISSIONER REYES: So what I'm  
22 struggling with is the concerns are with the size of the  
23 organisms and the concentration of the organisms. But it  
24 seems to me that the concentration of organisms are -- the  
25 standards set for those organisms is statute. And what

1 I'm hearing you say is -- what you're coming up with is  
2 the protocol by which you count. The issue then is, do  
3 folks have a concern with aspects of the protocol? But  
4 I'm trying to struggle where the -- yes, Dr. Newsom. Shed  
5 some water.

6 DR. NEWSOM: So in that case I may be able to  
7 help with a paraphrase.

8 ACTING COMMISSIONER REYES: Okay.

9 DR. NEWSOM: So, again, these protocols -- should  
10 the Legislature at some time determine that California  
11 standards need to change, these protocols would still  
12 work. All you're doing is counting. What we are  
13 proposing is the method by which you will count very small  
14 organisms that you need a microscope to do so.

15 ACTING COMMISSIONER GARLAND: Which is an  
16 excellent differentiation here to make, except that we are  
17 developing a protocol by which we would be holding others  
18 to account for. So while I appreciate that what we're  
19 coming up with here is a protocol that allows us to count,  
20 adopting that would then make it the measuring stick by  
21 which others are held accountable. And if we're going to  
22 hold others accountable to a standard by which we've  
23 developed -- for which we've developed a measurement, I  
24 would hope that our measurement would actually meet the  
25 standards that we've been requested to meet if we're going

1 to hold others accountable.

2 Do you see the Catch-22 here?

3 DR. NEWSOM: I do.

4 ACTING COMMISSIONER GARLAND: That the  
5 Legislature's put us in a position to develop a --

6 ACTING CHAIRPERSON GORDON: -- to measure what  
7 can't be measured.

8 ACTING COMMISSIONER GARLAND: -- to measure what  
9 can't be measured and to hold people accountable to a  
10 standard that we can't measure to, and then told us,  
11 "Well, get it done."

12 DR. NEWSOM: But under -- if these amendments are  
13 adopted, those people will only be held accountable to the  
14 detection limits of the protocols.

15 ACTING COMMISSIONER GARLAND: Right now.

16 EXECUTIVE OFFICER FOSSUM: And right now they're  
17 not being held to any. Even though the law has been in  
18 effect for years, the Commission has not adopted a way of  
19 telling them.

20 The other analogy that I've -- is thinking about  
21 the DUI standard that the Legislature directed, .10, and  
22 now it's .08. The detection methodologies are the same,  
23 whether it's breathalyzer or blood alcohol or whatever  
24 else. You know, doing those tests is simply what we're  
25 talking about, a scientific means to doing that. It's up

1 to the Legislature to decide what the compliance is.  
2 We're just saying here's the scientific way to tell you  
3 whether or not you're doing it.

4           ACTING COMMISSIONER GARLAND: But you're  
5 admitting that we can't actually do what we're saying  
6 we're doing.

7           EXECUTIVE OFFICER FOSSUM: Just like EPA and  
8 just like the Water Board and other ones where there's a  
9 standard that's been set that's --

10           ACTING COMMISSIONER GARLAND: I don't buy that  
11 argument. That's just a -- that's a false argument and  
12 we'll shut that one down right there.

13           ACTING CHAIRPERSON GORDON: Mr. Berge, let me ask  
14 you a question. Does the U.S. EPA standard that the Coast  
15 Guard has adopted, does it have a measurement protocol  
16 that is doing the same thing we're trying to do here?

17           MR. BERGE: The U.S. Coast Guard rule?

18           ACTING CHAIRPERSON GORDON: Yes.

19           MR. BERGE: Yes. They are using the ETV protocol  
20 which the staff referenced in terms of the development of  
21 their protocols. I think it's environmental testing  
22 verification. But the critical thing is that the Coast  
23 Guard is using only land-based testing to certified  
24 systems. And it's going to be much -- it's actually going  
25 to be more rigorous than the IMO testing protocol. And

1 our guess is that some of these systems that are actually  
2 meeting the IMO protocol under their -- or IMO standard  
3 under their testing will probably fall off the map once  
4 the Coast Guard develops their testing, because it will be  
5 more rigorous.

6 ACTING CHAIRPERSON GORDON: Is the -- is the  
7 testing protocols that the -- and are you using "testing"  
8 and "measuring" as synonyms?

9 MR. BERGE: Yeah. And that's slightly wrong,  
10 because there's a difference between certification and  
11 verification.

12 But I can put it one simple way. If the Coast  
13 Guard had the California standard, they could not be able  
14 to certify any systems. And it's not because they can't  
15 measure to that. It's because they know on existing  
16 measurement capabilities that they can't meet that  
17 standard.

18 ACTING CHAIRPERSON GORDON: Is the Coast Guard  
19 standard that is being considered, is that standard that  
20 U.S. EPA -- current U.S. EPA, Obama administration U.S.  
21 EPA, Lisa Jackson, Administrator, is that the standard  
22 that they have adopted?

23 MR. BERGE: Yes, they -- well, they proposed it  
24 for their next version of the vessel general permit. They  
25 proposed it at the end of 2011. It's in the process of



1 being adopted. I think it goes -- becomes effective  
2 December 2013. So that's actually the regulation of  
3 ballast water under the Clean Water Act, NPDES permit  
4 issue, exactly. They are the same standard. It's also  
5 the same as the IMOD-2 standard; it's been determined the  
6 only standard that best available technology can meet at  
7 this time.

8 ACTING CHAIRPERSON GORDON: So let me -- now I'm  
9 going to go back to staff, and whoever the appropriate  
10 person at State Lands staff answer this.

11 So U.S. EPA has a measurement standard for this.  
12 And I understand that we have a statute in California that  
13 is more rigorous than that U.S. EPA standard.

14 EXECUTIVE OFFICER FOSSUM: One category.

15 ACTING CHAIRPERSON GORDON: Okay. So we've got  
16 two options here before the Commission. One, we can  
17 continue to move forward trying to find measurement  
18 protocols for a standard that can't be met to meet the  
19 statute that California's Legislature has passed. Or --  
20 well, there's obviously others. But one other would be to  
21 go back in this report and tell the Legislature that the  
22 U.S. EPA has come up with a standard that the Coast Guard  
23 will be enforcing and that we could amend the California  
24 statute to comply with U.S. EPA standards.

25 EXECUTIVE OFFICER FOSSUM: Then let me say that

1 there -- Public Resources Code section 7127 already  
2 requires the Commission to recommend repeal of this  
3 program if the federal government ever actually gets into  
4 a point where they're enforcing standards that meet the  
5 standards in California.

6           So we'd love to have that. That's been on the  
7 books for 13 years. They haven't gotten there yet.  
8 But -- and the Commission can certainly do that. But we  
9 have come up with possibly an alternative that will  
10 satisfy the concerns the Commission has about the standard  
11 that can't be met. And, that is, that for that standard  
12 the Commission would direct staff to simply take  
13 measurements that is based upon best available technology  
14 in measuring that for a two-year period, so that we have  
15 an idea of how good compliance is with that particular  
16 standard, and not do any enforcement dealing with the  
17 standard that can't be measured.

18           And so that should take away those concerns about  
19 the fact that we're misleading people. We will report  
20 that to the Commission and report that to the Legislature,  
21 and not do any enforcement actions in that category for  
22 two years while we measure.

23           The other benefit of this particular set of  
24 regulations we have is it gets the data. It allows the  
25 Commission to go on board these vessels, test it, and then

1 report it back to the Commission and the Legislature. So  
2 it's a fact-gathering informational base too so that --  
3 the Legislature would need to know these things.

4 ACTING CHAIRPERSON GORDON: Mr. Garland, I think  
5 you have a question. And then I'd like to go to Mr.  
6 Berge's response to that and then Dr. Newsom.

7 ACTING COMMISSIONER GARLAND: We did hear that  
8 there was some dispute over the one versus both testing  
9 and the failure rates here.

10 To the question of the -- it sounds like at least  
11 staff here is saying that the greater than 50 is -- that  
12 we can test for that and it's fine and we have no problem  
13 there. It's the under 50 -- the 10 to 50 that we're  
14 having a problem.

15 But in the staff's own report I go back to the  
16 chart that I've got in front of me of the six best  
17 technologies. Even on the greater than 50, we fail  
18 between 27 and 90 percent of the time to be able to  
19 identify.

20 EXECUTIVE OFFICER FOSSUM: Could you direct us to  
21 that particular part of the staff report.

22 ACTING CHAIRPERSON GORDON: She seems to have an  
23 answer to that one.

24 Thank you.

25 DR. NEWSOM: Okay. Well, just for informational

1 purposes. That failure rate, I believe you're talking  
2 about land-based testing, which is very much like the type  
3 approval process, which is what the U.S. Coast Guard will  
4 be undergoing. U.S. Coast Guard has not come up with  
5 protocols for ship-board verification of anything.

6 So we are dealing with a pretty different  
7 situation in California. And there are -- there are  
8 more -- there's more than one system. In the 2010 report  
9 that has already gone before the Commission, that is --  
10 that had a high success rate, a hundred percent success  
11 rate in ship-board tests. Now, land-based tests, you  
12 know, are another issue. But ship-board testing is what  
13 reflects what would be happening in inspections.

14 ACTING COMMISSIONER GARLAND: And do you have the  
15 comparable data on the failure rates on the ship-board  
16 versus land?

17 DR. NEWSOM: For three systems there  
18 were -- there was a hundred percent success rate in  
19 ship-board tests. I would have to go back and check for  
20 each of those systems what the failure rate is in  
21 land-based tests.

22 ACTING CHAIRPERSON GORDON: Mr. Berge, can you  
23 respond to -- of course you may need to restate your  
24 question. But I'd like to hear Mr. Berge's response to  
25 it.

1 MR. BERGE: Yeah, actually I'd appreciate it if  
2 you could restate the question.

3 ACTING COMMISSIONER GARLAND: Well, do we still  
4 have disagreement on the ability to test to both  
5 standards, of the over 50 and the 10 to 50? Is the  
6 industry in agreement that we can test for the over 50 and  
7 we've got -- we can verify and it's --

8 MR. BERGE: Well, the fact is we can test that it  
9 can't be done. And that's been proven under these various  
10 land-based tests. But that doesn't necessarily -- in  
11 order to actually find a system to prove that it's  
12 actually meeting the standard -- and, again, with a  
13 greater than 50 it becomes almost an meaningless standard.  
14 It's whatever you decide it to be. But the fact of the  
15 matter is, based on all the testing that's been done,  
16 which is the IMO testing, you can't exceed the IMOD-2  
17 standard in the greater than 50. That's been determined  
18 by the EPA, the Coast Guard, the Science Advisory Board, I  
19 think the National Academy of Science and other states.

20 ACTING COMMISSIONER GARLAND: All right. That  
21 leads me to my final question before we move to this,  
22 which is, you know, has our methodology been subjected to  
23 peer review in the scientific community? And what is the  
24 community saying about our methodology?

25 DR. NEWSOM: Was is the scientific community

1 saying about the --

2           ACTING COMMISSIONER GARLAND: Have we submitted  
3 our methodology to peer review? And what is that peer  
4 review concluding?

5           DR. NEWSOM: So the Commission has the Technical  
6 Advisory Group, which is comprised of ballast water  
7 specialists, of scientists that deal with measuring  
8 microorganisms in ballast water every day. And these  
9 methods were vetted through that process.

10           ACTING COMMISSIONER GARLAND: Let me restate. In  
11 the scientific community, independent peer review is  
12 usually the standard we use to identify whether or not  
13 something is acceptable in the community.

14           Has this been submitted to independent peer  
15 review in the scientific community? And what has that  
16 review brought back to us?

17           DR. NEWSOM: The ETV protocols have been. And  
18 our protocols are based on the ETV protocols.

19           ACTING COMMISSIONER GARLAND: What you're telling  
20 me is our protocols as they're being presented to us have  
21 not independently been submitted for review by the  
22 scientific community? Yes or no.

23           DR. NEWSOM: No.

24           ACTING COMMISSIONER GARLAND: Did we submit ours  
25 to independent peer review?

1 DR. NEWSOM: No, sir.

2 ACTING COMMISSIONER GARLAND: Okay. Thank you.

3 ACTING CHAIRPERSON GORDON: Let me follow up on  
4 that question though.

5 Are they identical to the ETV protocols or are  
6 they an interpretation of the ETV protocols?

7 DR. NEWSOM: They have been modified to allow for  
8 ship-board sampling under consultation with the TAG.

9 EXECUTIVE OFFICER FOSSUM: So in other words the  
10 amount of water that you can actually take to sample, you  
11 know -- land-board you could take a tanker trunk and  
12 sample that. When you're going on a vessel, we take a  
13 much smaller amount of water. And that's the difference  
14 in the methodology.

15 ACTING CHAIRPERSON GORDON: Okay. Mr. Fossum,  
16 you presented a few moments ago a compromise for  
17 essentially a two-year abeyance, would be the way I would  
18 refer to it. Can you restate that so we can be sure we  
19 have that, so the Commission knows what might be before  
20 it.

21 EXECUTIVE OFFICER FOSSUM: Yeah, this slide may  
22 be a good way of indicating it. And, that is -- and just  
23 a clarification. We keep hearing that the first standards  
24 of greater than 50 microns is zero. And it's not zero.  
25 It's nondetectable. That's what the standards adopted by

1 the Legislature are.

2           So if you can't detect it, it's equivalent to  
3 whatever you want it to be. That's the standard and  
4 that's the standard that we believe is compliant. So the  
5 only one is the 10 to 50 microns that we hear a hundred or  
6 a thousand times greater than the IMO standard.

7           So we agree that that's a standard that you can't  
8 measure. But we need the data to be able to know and  
9 report to the Commission and the Legislature what we can  
10 measure and how close these vessels are coming to  
11 compliance with that standard, so that they can change  
12 that number if necessary. So we want to be able to test  
13 that at least. And if the Commission's decision is that  
14 we wouldn't do any enforcement actions for a couple years  
15 until we can report that back to the Commission and the  
16 Legislature, then that's something we think is a good  
17 compromise and protects the industry from any kind of fear  
18 of sanctions in that regard.

19           CHIEF COUNSEL LUCCHESI: Just to clarify. That  
20 any direction, you know, based on that proposal or any  
21 other proposal to staff, staff would need to develop the  
22 specific language of those proposed regulations, vet them  
23 through the process, the 45-day or 15-day comment period.  
24 And it would come back to the Commission similar to this  
25 situation for final approval.



1 EXECUTIVE OFFICER FOSSUM: Yes, since we -- this  
2 is a rule-making process and all the information's that's  
3 been submitted to the Commission in writing and taken  
4 otherwise is in the record and it goes to OAL after the  
5 Commission approves it.

6 ACTING COMMISSIONER REYES: Mr. Chair, I'm  
7 prepared to move that motion.

8 ACTING CHAIRPERSON GORDON: Okay. You want to  
9 state the motion, Mr. Reyes.

10 ACTING COMMISSIONER REYES: Well, as proposed  
11 by -- to give them time to go back to the rule-making  
12 process and to allow for the two-year, just as you  
13 specified.

14 ACTING CHAIRPERSON GORDON: No enforcement for  
15 two years, gathering data during that two-year period.

16 But it was specifically with regard to only the  
17 10 to 50 microns was what the proposal was.

18 And I see Mr. Berge up there shaking his head no.

19 ACTING COMMISSIONER GARLAND: Let me ask a  
20 question here.

21 Are we precluded in any way from collecting this  
22 data? Do we need statute to collect this data? You  
23 know --

24 ACTING CHAIRPERSON GORDON: Regulation.

25 ACTING COMMISSIONER GARLAND: Do we need

1 regulation to collect this data?

2 EXECUTIVE OFFICER FOSSUM: We've been directed by  
3 the Legislature to do so, but --

4 ACTING COMMISSIONER GARLAND: Right. So --

5 EXECUTIVE OFFICER FOSSUM: To come up with these  
6 standards for compliance.

7 But the answer's no. We can -- we have been for  
8 years. That's how we've gotten to this point.

9 ACTING COMMISSIONER GARLAND: Right. So the  
10 question -- my question then is -- you say that we need  
11 these standards to be able to collect the data. But we've  
12 been collecting the data all along, so we don't really  
13 need the standards to collect it; am I correct in that  
14 assumption?

15 EXECUTIVE OFFICER FOSSUM: That's correct.

16 ACTING COMMISSIONER GARLAND: Okay. Thank you.

17 EXECUTIVE OFFICER FOSSUM: But since we don't  
18 have the concerns expressed by the Commissioners on the  
19 compliance with that, that's why we're suggesting that --  
20 for that particular area, that I think - people think  
21 maybe the Legislature needs to change it - that we  
22 wouldn't enforce it basically. We'd just continue to  
23 collect data.

24 ACTING COMMISSIONER REYES: Mr. Fossum, I just  
25 want to -- I want to seek clarification. Are we or are we

1 not collecting data? I'm looking at staff.

2 MR. SCIANNI: Not this type of data, no, we're  
3 not. These vessels that are supposed to meet these  
4 standards have not come into California yet. And the data  
5 we have been collecting is on their ballast water  
6 management, which is exchange right now. So this type of  
7 data we have not had a chance to collect yet.

8 ACTING COMMISSIONER REYES: Okay.

9 ACTING CHAIRPERSON GORDON: Do we have authority  
10 under existing regulatory protocol to collect this data?  
11 Or do we need a specific direction from the Commission to  
12 do so?

13 ASSISTANT CHIEF COUNSEL MEIER: Excuse me. Mark  
14 Meier, Assistant Chief Counsel on your staff.

15 Under the Administrative Procedures Act, the  
16 Commission could just simply collect data. But if you  
17 want to specify a standardized testing protocol on how you  
18 test data, just going by what the Office of Administrative  
19 Law tells us they like, that should be adopted through a  
20 regulation.

21 So if we are -- if you want to establish a set of  
22 protocols on how we're going to collect data, the testing  
23 protocols that we're going to use to collect the data,  
24 that should be done through a regulatory process.

25 So these -- because then it becomes standardized.

1 The regulated community knows what kind of standards are  
2 being used to collect the data. So for a two-year period  
3 if you just want to use these testing protocols to  
4 determine whether or not for a two-year period you're  
5 going to be -- the regulated community is going to be able  
6 to meet the statutory standards, then the best approach  
7 would be to adopt a regulation adopting these protocols on  
8 how that data is going to be collected. And that would be  
9 the best way to determine -- to assure that you would meet  
10 the Administrative Procedures Act.

11 ACTING COMMISSIONER REYES: And I think this also  
12 forces the staff to come up with a standardized protocol  
13 and we're not subject to underground regulation claims  
14 later.

15 ASSISTANT CHIEF COUNSEL MEIER: I would also add  
16 that if you have the data, then you would have the  
17 information to take to the Legislature to tell the  
18 Legislature whether or not their standards are meaningful  
19 or not.

20 ACTING COMMISSIONER REYES: But under this two  
21 years it would not have enforcement provisions.

22 ACTING CHAIRPERSON GORDON: Yes ma'am.

23 MS. McDOWELL: I just want to make sure we're  
24 separating every time -- his arguments are more going to:  
25 Can we meet the standard? Can we meet the standard?

1           This is a measurement tool. And if anyone should  
2 be concerned about the measurement tool, it should be the  
3 people concerned about the environment, because we can't  
4 detect to that low level. But the levels we can detect to  
5 are way better than what we're doing now.

6           And also when we set these measurement tools,  
7 it'll make it easier to assess these systems to determine  
8 if they're ready to go and get them on the ships faster.

9           And, you know, the item that's coming up in July,  
10 you know, on the report, that's going to be, you know,  
11 maybe a more difficult item.

12           But we definitely are supportive of these  
13 measurement tools. We think it's going to help everything  
14 move forward. It does -- you can't detect to that low  
15 limit. But the limits we can detect to are way more  
16 environmentally protective than what we're doing now.

17           EXECUTIVE OFFICER FOSSUM: And just for a  
18 clarification, let me state -- and this particular code  
19 section is 71206. And it says, "The Commission in  
20 coordination with the United States Coast Guard shall take  
21 samples of ballast water and sediment from at least 25  
22 percent of the arriving vessels subject to this division."  
23 And for us to -- and let me finish. "...examine documents  
24 make other appropriate inquiries to assess the compliance  
25 of any vessel subject to this division."

1           So compliance is what we're trying to measure  
2 here. To take samples and then measure compliance with  
3 that.

4           Whether or not there's enforcement or simply  
5 reporting is at the Commission's discretion at this point.  
6 We're not forced -- in fact, the only enforcement section  
7 in the Code of -- CCRs is one that says the Executive  
8 Officer may bring an action or to file a notice to a buyer  
9 later of those compliance numbers.

10           So I just wanted to make that clear what the  
11 status of that is.

12           ACTING COMMISSIONER GARLAND: Before we move too  
13 much further along, I'd like to go back to my question  
14 about peer review.

15           How long would a peer review take?

16           DR. NEWSOM: Peer review can take up to a year.

17           EXECUTIVE OFFICER FOSSUM: You know, if in fact  
18 our standards are based upon ones that have been peer  
19 reviewed and there's only modifications to them -- you  
20 know, it may be somewhat speculative as to how long that  
21 takes -- the Commission at anytime can modify its  
22 regulations. And the staff, you know, would work at the  
23 discretion of the Commission on that as well. I think our  
24 concern is this has been postponed for a number of years  
25 already and --

1           ACTING COMMISSIONER GARLAND: Yeah. And I'll  
2 make this my last comment.

3           And that's, you know, frankly, the frustration  
4 here, is that this has been dragging on long before we got  
5 here. And the fact that, you know, we weren't collecting  
6 data, we haven't gone out for peer review, we haven't done  
7 the things that could have gotten us to a resolution  
8 sooner is frustrating. And so, you know, I just -- I want  
9 that on the record that this has been dragging on. And  
10 it's a shame we've gotten to this point without at least  
11 getting some more data and scientific input on this stuff.

12           EXECUTIVE OFFICER FOSSUM: And I'd like staff to  
13 clarify that. Because if that's the cases, then I'm  
14 certainly under a misunderstanding. The Commission has  
15 hired out-of-state experts. We've had worldwide experts  
16 give us information on this. And --

17           MR. SCIANNI: First off on the peer-review  
18 process, we can definitely do it a lot shorter than a  
19 year. That's usually for publishing in a peer-review  
20 journal for this sort of thing.

21           What we've done is we've had four technical  
22 advisory groups meetings that we've mentioned earlier.  
23 And those involved the group of scientists that do this.  
24 So a peer-review process would essentially be going back  
25 to those same scientists and having them review this. And

1 we went through that process, and those notes are  
2 available -- those meeting notes are available to the  
3 public.

4 ACTING CHAIRPERSON GORDON: Mr. Reyes is about to  
5 make a motion.

6 ACTING COMMISSIONER REYES: Amend.

7 ACTING CHAIRPERSON GORDON: Amend.

8 Well, I don't think we have a motion before us  
9 right now. So --

10 ACTING COMMISSIONER REYES: I did -- I did make a  
11 motion.

12 ACTING CHAIRPERSON GORDON: Did you make a  
13 motion?

14 ACTING COMMISSIONER REYES: Yes.

15 ACTING CHAIRPERSON GORDON: Oh, you made a motion  
16 to -- why don't you restate what the amended motion would  
17 be, sir.

18 ACTING COMMISSIONER REYES: So my motion was to  
19 go with the proposed rule-making process for -- and then  
20 doing this two-year -- for the two years without  
21 enforcement provisions.

22 And what I would like to -- and it was discussed  
23 earlier. What I would like to amend my motion to include  
24 is that before the enforcement provisions kick in, that it  
25 comes back to the Board, so that we're satisfied with



1 where we've landed and what we have. That would be the  
2 one item.

3 The second item would be that the proposed  
4 regulations that are before us now, that they fall on a  
5 separate track and go through the scientific peer review  
6 that my fellow Board members want to have.

7 Is it possible to do both concurrently?

8 So on the one motion you're looking at the  
9 regulations, the protocol that you're proposing to  
10 establish and have that, go through the scientific peer  
11 review for review and acceptance by the scientific  
12 community.

13 And then the second one on the parallel track is  
14 looking to work on these regulations for two years? Or is  
15 it --

16 EXECUTIVE OFFICER FOSSUM: Let me make sure I  
17 understand what you're suggesting then, is the current  
18 proposal that has been vetted to the public and we've --  
19 the process we've been through and gotten to this point in  
20 time, which you're suggesting that is --

21 ACTING COMMISSIONER REYES: Well, it's not the  
22 process. It's the protocol, that folks aren't comfortable  
23 with the scientific peer review -- yes.

24 CHIEF COUNSEL LUCCHESI: May I --

25 ACTING COMMISSIONER REYES: Clarify my thoughts.

1 CHIEF COUNSEL LUCCHESI: Yes, I'll try.

2 The motion would be to defer action on this item,  
3 and with the direction to staff that it go back and revise  
4 the proposed regulations in accordance with the two-year  
5 nonenforcement provision and the peer review. And that it  
6 would come back to the Commission after we went through  
7 the requisite comment period per the APA regulations and  
8 for Commission's final approval.

9 ACTING COMMISSIONER GARLAND: And is that because  
10 we can't change regulations without notice and input and  
11 all that other stuff?

12 CHIEF COUNSEL LUCCHESI: That's correct.

13 ACTING COMMISSIONER REYES: Thank you.

14 EXECUTIVE OFFICER FOSSUM: And so it could come  
15 back to the Commission this year if the peer review was  
16 complete?

17 ACTING COMMISSIONER REYES: Correct.

18 ACTING CHAIRPERSON GORDON: Yes.

19 EXECUTIVE OFFICER FOSSUM: So you're basically  
20 directing staff to -- you're denying this particular one  
21 and giving us direction, if you will, as to your guidance  
22 on this?

23 ACTING COMMISSIONER REYES: I'm just trying to  
24 salvage something, because the votes aren't here.

25 I hate to --

1           ACTING CHAIRPERSON GORDON: It looks like counsel  
2 has a comment here.

3           Mr. Rusconi.

4           DEPUTY ATTORNEY GENERAL RUSCONI: My question is  
5 two-year abeyance of enforcement, does that apply to all  
6 of the standards or just to the one --

7           ACTING CHAIRPERSON GORDON: The 10 to 50?

8           ACTING COMMISSIONER REYES: I'm open to --

9           ACTING COMMISSIONER GARLAND: I'd say we'd leave  
10 it to the staff to bring back the recommendations and with  
11 the revised regulations.

12           EXECUTIVE OFFICER FOSSUM: Yes.

13           ACTING COMMISSIONER GARLAND: And then if we've  
14 reached a point here, I'd like to take a five-minute  
15 recess.

16           ACTING CHAIRPERSON GORDON: Okay. I think we can  
17 do that.

18           (Off record: 12:30 PM)

19           (Thereupon a recess was taken.)

20           (On record: 12:37 PM)

21           ACTING CHAIRPERSON GORDON: All right. Come to  
22 order.

23           Television crew, we got this thing live again?

24           Okay. Everybody could please find a seat so we  
25 can proceed, finish off with this item, and move to our

1 next, which will be highly uncontroversial, the issue of  
2 how we are going to measure rents at Tahoe.

3 EXECUTIVE OFFICER FOSSUM: Actually, Mr. Chair,  
4 if we could. We have a short item that actually was  
5 skipped over accidentally. It was Item 77 on alternative  
6 energy program the Commission has.

7 ACTING CHAIRPERSON GORDON: And I think at this  
8 point I actually may defer to all the folks here from  
9 Tahoe and see if they want to wait anymore.

10 But I'm kidding. We'll finish this one off.  
11 They have been very patient with us, learning more than  
12 they probably ever thought they were learn about ballast  
13 water discharges. You are all as expert as we are now on  
14 the subject.

15 All right. So I think what we need to do is  
16 conclude on the previous item, which is Item No. 73.  
17 There are numerous options before us as to where we could  
18 proceed from here. I think where we are going to proceed  
19 is simply we're going to punt. I think the Commission  
20 staff has direction on where we need to go here, which is  
21 to go back and -- go back out to comment on the regulatory  
22 package. We've given you directions with regard to peer  
23 review and a two-year enforcement abeyance as we  
24 hopefully -- maybe the Coast Guard and everyone will come  
25 to agreement as to what needs to be done and this thing

1 will be -- it's clear right now. The only question is, is  
2 it -- the clarity is about the Mississippi River clear,  
3 about three inches.

4 EXECUTIVE OFFICER FOSSUM: And we will bringing  
5 the report to the Legislature at the next meeting. But we  
6 will try and conclude or bring back a regulation package  
7 to you hopefully before the end of the year.

8 ACTING CHAIRPERSON GORDON: Very good.  
9 So we're going to put over Item No. 73.

10 Mr. Fossum has a short presentation that was  
11 agendized as number --

12 EXECUTIVE OFFICER FOSSUM: -- 77

13 ACTING CHAIRPERSON GORDON: -- as number 77.

14 EXECUTIVE OFFICER FOSSUM: It's a non-voting  
15 informational item.

16 ACTING CHAIRPERSON GORDON: And then we will move  
17 on to the Lake Tahoe rent issue, for which all you folks  
18 are sitting here for.

19 All right. Staff.

20 Is there a staff presentation here, Mr. Fossum?

21 CHIEF COUNSEL LUCCHESI: Yes, there is. Jennifer  
22 DeLeon.

23 ACTING CHAIRPERSON GORDON: Okay.

24 SENIOR ENVIRONMENTAL SCIENTIST DeLEON: Good  
25 afternoon. Thank you for making time to hear this brief

1 presentation.

2 I was going to give you all a primer on how the  
3 California Energy Commission is calculating the number of  
4 acres needed per megawatt of energy produced in the desert  
5 between solar, thermal solar, and wind set. But I'll make  
6 it mercifully short instead.

7 (Thereupon an overhead presentation was  
8 Presented as follows.)

9 SENIOR ENVIRONMENTAL SCIENTIST DeLEON: Mr.  
10 Fossum has asked me to come to you today and give you a  
11 brief overview of the activities of the new Alternative  
12 Energy Program that was established in December of last  
13 year in order to address some of the emerging renewable  
14 energy issues and administrative priorities in the State.

15 I'm Jennifer DeLeon. I'm a program manager for  
16 the Alternative Energy Program. This is an  
17 interdivisional team that was created consisting of the  
18 Environmental Planning Division, the Land Management  
19 Division, and the Mineral Resource Management Division, as  
20 well as a representative from the Legal Office.

21 --o0o--

22 SENIOR ENVIRONMENTAL SCIENTIST DeLEON: So one  
23 little bit of background. Why do we need this program?  
24 Why was it established?

25 Over the past many years, the State of California

1 has been making a big green push. The top of this slide  
2 is just a summary of the numerous executive orders and  
3 legislative efforts that have been undertaken by the State  
4 in the past -- since 2005, the first one by former  
5 Governor Schwarzenegger. That established greenhouse gas  
6 emission reductions to 1990 levels by 2020 and to 80  
7 percent of 1990 levels by 2050.

8 After that, as was stated before, in 2006 AB 32  
9 was passed, which directed the State to come up with a way  
10 to measure greenhouse gas emissions and provide a roadmap  
11 on how to reach the 1990 level by 2020.

12 Most recently, we have had legislation passed  
13 that puts the 33 percent of renewable energy goal by 2020  
14 into statute. And what that means is that requires  
15 providers of energy -- of electricity in California to  
16 provide 33 percent of the energy they provide out of  
17 renewable energy.

18 So this involves the State Lands Commission,  
19 because we have hundreds of thousands of acres of school  
20 lands all over the state, primarily in the desert where  
21 solar is being pushed. We also have our jurisdiction in  
22 the submerged lands where there's emerging efforts and  
23 priority on offshore renewable energy consisting of wave,  
24 wind and tidal.

25 SENIOR ENVIRONMENTAL SCIENTIST DeLEON: So,

1 first, our efforts in the coastal and marine environment.

2           We have been consulting prior to the formation of  
3 this team on two specific projects: One off of Humboldt  
4 Bay by PG&E and called Wave Connect; and one that came in  
5 in a pre-application phase, a person who applied to FERC  
6 and then drew us in who was looking to put devices in the  
7 water offshore San Onofre.

8           Neither of those projects moved forward, for a  
9 number of reasons. One of them primarily being the cost  
10 and effort associated with the research necessary to put a  
11 pilot project into the water. Both of those were wave  
12 energy pre-applications.

13           So we don't currently have any active  
14 applications in front of the Commission, but we are now --  
15 our team internally at the State Lands Commission is also  
16 coordinating on the renewable energy working group, and  
17 it's a team of State and federal agencies that work  
18 through proposals by companies. I've put two examples on  
19 the slide and provided just a couple of stock photos of  
20 the types of devices or prototypes that people are  
21 proposing.

22           So we have recently had a presentation by the  
23 parent company of Golden Gate Energy, who are looking to  
24 put tidal energy devices in the San Francisco Bay for  
25 SPICE sinking a miniature prototype into the water from a



1 barge. They want to do that by the end of 2013, not  
2 knowing that their timing conflicted with the America's  
3 Cup.

4           And the second, we are hearing actually a webinar  
5 this afternoon by Nautica Windpower. And they are looking  
6 to install wind energy devices offshore either in the  
7 northern part of the state or the southern part of the  
8 state, using potentially existing transmission or cables.

9           So we have certain pre-application. Applicants  
10 do run into again technical issues as well as regulatory  
11 and environmental review issues.

12           In response to this, we have been involved in  
13 coordinating with the marine renewable energy working  
14 group. And products to date include a preliminary State  
15 permitting guidance document to hand out to people who are  
16 interested in doing projects so that they understand who  
17 they need to talk to, who may need to issue permits, and  
18 basically walks them through the process and gives them  
19 contacts.

20           The second major effort we are undertaking is  
21 utilizing the services of a graduate student, a Sea Grant  
22 Fellow named Holly Wyer. We have her for one year. And  
23 she has been taking the lead on putting together a  
24 research paper on potential public-private partnerships or  
25 other ways to identify how to get past the challenge of

1 the pre-deployment regulatory environmental review effort.

2           So we have a number of options. We are looking  
3 potentially for who to partner with to identify a  
4 feasible -- one or more feasible test sites, how do get  
5 through the process so that we can deploy a pilot project,  
6 and who and how we will conduct monitoring of those pilot  
7 projects.

8           The information that could be obtained from this  
9 pilot project could benefit industry and science as a  
10 whole and potentially allow us to move into commercial  
11 scale deployment of these renewable energy resources off  
12 the shore of California.

13   --o0o--

14           SENIOR ENVIRONMENTAL SCIENTIST DeLEON: The  
15 second part is our desert efforts. We do have in the  
16 desert multiple applications of geothermal, solar, and  
17 wind. I've given just a brief summary of the approximate  
18 acreage amount and the locations of those projects.  
19 Again, this is primarily in the desert. This does not  
20 include the existing producing geothermal that we have in  
21 the geysers and in other parts of the state, for what the  
22 alternative energy program is focusing on right now out of  
23 necessity is the desert area.

24           We are heavily, heavily involved in interagency  
25 planning on the Desert Renewable Energy Conservation Plan,

1 which is a large scale -- 22-million-acre large scale  
2 development and conservation plan that was actually  
3 mandated through the earlier Executive Order by former  
4 Governor Schwarzenegger.

5           So in coordinating on these -- on the Renewable  
6 Energy Conservation Plan, we are also responding to  
7 recently passed legislation which Mr. Fossum mentioned  
8 earlier. He signed a Memorandum of Agreement with the  
9 State Director of the Bureau of Land Management on Monday.  
10 This lays out a process for prioritizing lands that we  
11 would wish to exchange with the Bureau of Land Management  
12 and which we would like to give them and which we would  
13 like to receive from them. The purpose of this would be  
14 to consolidate school lands into larger blocks of either  
15 habitat or developable land so that we can contribute to  
16 the goals of the DRECP as well as provide funds for the  
17 State General Fund to be directed towards the State  
18 Teachers Retirement System.

19                               --o0o--

20           SENIOR ENVIRONMENTAL SCIENTIST DeLEON: This  
21 slide just gives a little bit more detail on those  
22 interagency planning efforts. Again, the larger group of  
23 the DRECP, which consists of multiple State and federal  
24 partners, it is a giant plan. And we are there to make  
25 sure that the Commission's interests are adequately

1 represented in the plan. And we provide coordination. We  
2 provide input.

3 We have had authorization to get staff to be  
4 dedicated to this effort. I have a staff in the  
5 Environmental Division that goes to meetings almost every  
6 day. And they are currently in the process of mapping the  
7 potential alternatives to present to the managers and  
8 higher level executive people in the administration for  
9 the State and also for the Department of the interior.

10 --o0o--

11 SENIOR ENVIRONMENTAL SCIENTIST DeLEON: A couple  
12 of cute photos. Those are representative of the type of  
13 projects that might go in as a result of the DRECP; and  
14 also of a burrowing owl, which is one of the species that  
15 might be affected and whose conservation would be provided  
16 for in the DRECP.

17 --o0o--

18 SENIOR ENVIRONMENTAL SCIENTIST DeLEON: Lastly,  
19 one of the things that the DRECP and the legislation has  
20 done is allowed us to make progress on our mapping.  
21 That's one of the primary efforts that we are involved in.  
22 And so I wanted to just provide an example of what -- of  
23 the result of those efforts. This is a map that  
24 illustrates both the extent of the Desert Renewable Energy  
25 Conservation Plan as well as identifying the locations of

1 our projects.

2           This effort by our staff has allowed us to  
3 participate more effectively in negotiating where  
4 development focus areas should be as part of the plan and  
5 again to represent the Commission's interests adequately  
6 as this planning effort moves forward.

7           And that is what we are doing in the alternative  
8 energy program. Thank you very much.

9           ACTING CHAIRPERSON GORDON: A couple of  
10 questions, Jennifer. First, do you have -- I see, now I'm  
11 looking -- one of them actually as I look up there in the  
12 inset. So you're mapping -- are we mapping all State lands  
13 in that map area or are -- and I'm assuming you're talking  
14 GIS mapping, correct?

15           SENIOR ENVIRONMENTAL SCIENTIST DeLEON: Correct.

16           ACTING CHAIRPERSON GORDON: So are we doing  
17 everything or just sites that would be appropriate for  
18 renewable?

19           SENIOR ENVIRONMENTAL SCIENTIST DeLEON: We've  
20 actually -- the effort has been for all school lands. The  
21 mapping prior has shown general locations but hasn't  
22 necessarily had the refinement. It might show an entire  
23 section, when our ownership may be only part of that  
24 section. So it's corrected errors. It has provided  
25 increased detail and refining. And as of yesterday, we

1 have asked the staff to move forward on mapping of -- and  
2 I might need help from Jennifer on this one -- but of  
3 mapping land-based sovereign lands that we have ownership  
4 of but that are not school lands.

5 EXECUTIVE OFFICER FOSSUM: Yeah, I think to  
6 summarize, we started on the desert because of the  
7 desert -- the plan for solar. We've moved to other school  
8 lands in the State. And then ultimately we'll try and do  
9 sovereign lands.

10 We do have some layers right now that show where  
11 our leases are. But it's difficult to show boundaries,  
12 for example, on sovereign lands since rivers move and the  
13 ocean erodes, and the creeks and so forth.

14 But that is -- the program is progressing and we  
15 have a -- the staff is working very hard on that right now  
16 to --

17 ACTING CHAIRPERSON GORDON: What is the time  
18 frame that we believe before we would have the entire --  
19 all of the school lands into a GIS system?

20 SENIOR ENVIRONMENTAL SCIENTIST DeLEON: All of  
21 the school lands into it?

22 ACTING CHAIRPERSON GORDON: Well, I'm just asking  
23 to Mr. Fossum --

24 EXECUTIVE OFFICER FOSSUM: You know, I can't  
25 answer that now, but we can get back to you this afternoon

1 on that.

2 ACTING CHAIRPERSON GORDON: Okay. And then also  
3 with regard to the sovereign lands?

4 EXECUTIVE OFFICER FOSSUM: Sovereign lands would  
5 be more difficult. And part of the thing is the  
6 Commission hired somebody, an outside person, a few years  
7 ago. And what they've done is they pinpointed where our  
8 leases are, for example. But it doesn't show the exact  
9 location of it and as far as the detail. Ultimately that  
10 kind of information will be available to the public as  
11 well, so that they'll know where the Commission has  
12 existing leases and so forth.

13 But right now because of the goals for greenhouse  
14 gas reduction and alternative energy, we're focusing on  
15 the desert and trying to get that understood. And we have  
16 a goal since the MOA was signed with BLM this week of 240  
17 days, I believe it is, to bring back to the Commission a  
18 package of exchanges with BLM to further the alternative  
19 energy goals.

20 So we're looking with them at how we can do that  
21 that will facilitate moving the primarily solar but also  
22 wind and geothermal projects forward.

23 ACTING CHAIRPERSON GORDON: Excellent.

24 Just one minor critique. We need better  
25 acronyms. Drec-pe(phon)(DRECP) really doesn't work. So

1 the acronym department needs to get to work on coming up  
2 with something better.

3 EXECUTIVE OFFICER FOSSUM: We'll run those by the  
4 Commission next time.

5 SENIOR ENVIRONMENTAL SCIENTIST DeLEON: I will  
6 let them know.

7 ACTING CHAIRPERSON GORDON: All right. Last --

8 SENIOR ENVIRONMENTAL SCIENTIST DeLEON: So I did  
9 just hear from the Land Management Division Chief that the  
10 target for completing that mapping is June or July.

11 ACTING CHAIRPERSON GORDON: Fantastic. Okay.  
12 Wonderful.

13 SENIOR ENVIRONMENTAL SCIENTIST DeLEON: Thank  
14 you.

15 ACTING CHAIRPERSON GORDON: All right. Thank  
16 you. Last item, Mr. Fossum.

17 ACTING COMMISSIONER REYES: Mr. Chair, I do have  
18 one question.

19 On the prototypes in the Bay Area, San Francisco,  
20 you indicated that one of the plans was at the same time  
21 as the America's Cup.

22 SENIOR ENVIRONMENTAL SCIENTIST DeLEON: Yes.

23 ACTING COMMISSIONER REYES: So they changed that,  
24 I presume?

25 SENIOR ENVIRONMENTAL SCIENTIST DeLEON: Yes.



1           ACTING COMMISSIONER REYES: And then you also  
2 indicated that they're going to have underwater equipment  
3 with a barge on top. Is that -- I presume that it will  
4 not be in the traffic lanes or --

5           SENIOR ENVIRONMENTAL SCIENTIST DeLEON: Yes. We  
6 had a spirited discussion as they were presenting their  
7 proposal to us. And we did talk about their timing as  
8 well as the navigation and environmental issues that they  
9 would need to address through the Environmental Quality  
10 Act process, and provided them a little bit of additional  
11 reality on the length of that process.

12           ACTING COMMISSIONER REYES: Great. Thank you.

13           SENIOR ENVIRONMENTAL SCIENTIST DeLEON: You're  
14 welcome.

15           ACTING CHAIRPERSON GORDON: Thank you, Mr.  
16 DeLeon.

17           Last item. The rent methodology for recreational  
18 piers and buoys in Lake Tahoe.

19           May we have the staff presentation, please.

20           (Thereupon an overhead presentation was  
21 Presented as follows.)

22           LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

23           Good afternoon, Commissioners. My name is Colin  
24 Connor, and I'm the Assistant Chief of the Land Management  
25 Division.

1           And can I get, before I go much further, our  
2 presentation -- my PowerPoint presentation up.

3           It's 82.

4           Great. Thank you very much.

5           Again, I'm Colin Connor. I'm the Assistant Chief  
6 of the Land Management Division, and I'm here to present  
7 an update on the Lake Tahoe benchmark methodology.

8           As you recall at the January Commission meeting,  
9 there was an extensive discussion on the methodology used  
10 in establishing the Lake Tahoe toe benchmark. The  
11 benchmark is used for determining annual rent for private  
12 recreational docks and mooring buoys. This methodology  
13 has been used by staff since 1985.

14                           --o0o--

15           LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

16           At the Commission meeting, one applicant, Mr.  
17 Gregory Price, spoke to the Commission regarding what he  
18 considered to be inconsistencies in the Commission's  
19 benchmark methodology, which led to confusion and an  
20 inability by the public to understand how Commission staff  
21 had arrived at its rents. He stated that there was a need  
22 for, quote, "common, simple-to-understand approach,"  
23 unquote.

24           And actually I'm going to go back for just a  
25 moment. This gives you a little bit of a timeline

1 following the Commission meeting of what we've done  
2 bringing us here.

3 --o0o--

4 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

5 So after considering Mr. Price - and I also made  
6 a presentation - the Commissioners asked staff to meet  
7 with Lake Tahoe stakeholders to discuss the current Lake  
8 Tahoe benchmark methodology and to report back to the  
9 Commission with a recommendation on whether or not to make  
10 changes to the methodology.

11 The Commissioners amended the staff  
12 recommendation to include that if rent methodology was  
13 modified at a subsequent meeting in a way that  
14 recalculation of the rent methodology resulted in a lower  
15 rent than that utilizing the current benchmark  
16 methodology, then the annual rents would be adjusted.

17 And as you can see, I'm just going to go over  
18 this real briefly.

19 --o0o--

20 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

21 Right after the meeting or shortly after the  
22 meeting, we attempted to set up a meeting. We actually  
23 sent out the invitation on February 13th.

24 On February 29th we had a stakeholder meeting  
25 here in -- or in Sacramento at our offices. We really



1           What came out at the prior meeting is that the  
2 benchmark methodology for docks is not simple or really  
3 easy for the public to understand. It's, I would say, a  
4 little bit of a, you know, kind of a complex formula.

5           The benchmark for buoys is easier to understand.  
6 And basically we're just taking the rate of increase from  
7 the market survey, you know, from the prior one to the  
8 current, whatever that rate of increase was, we apply that  
9 to the then-existing buoy rate.

10                           --o0o--

11           LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

12           So the comments that we received:

13           The first one was from -- and actually aren't  
14 necessarily in chronological order. But Mr. Curtis  
15 Sproul, who's an attorney representing a homeowners'  
16 association, submitted comments relative to the  
17 Commission's practice of determining rent for seasonal  
18 swim areas including the applicability of the benchmark to  
19 those swim areas.

20           So his comments weren't directed at the actual  
21 methodology.

22           In response to Mr. Sproul's input, staff has  
23 modified its recommendations for rent and other  
24 considerations for seasonal swim areas going forward.

25           The next set of comments we received was from Mr.

1 Kevin Agan, who is here today.

2 Kevin -- I'm probably going to get this wrong,  
3 Kevin, so excuse me. But he specializes in preparing and  
4 submitting lease applications on behalf of his clients.

5 Kevin's recommendations centered around using the  
6 cost of the piers and buoys as the basis for establishing  
7 rent. He suggested rent be based on 9 percent of the  
8 replacement cost. And he gave numbers of \$35 per square  
9 foot for pier structures and \$2500 for mooring buoys. And  
10 then he also recommends that those figures would be  
11 updated every five years based on current market price --  
12 price fluctuations.

13 The drawback to his proposal is that the  
14 Commission's practice, and as stated in the Code of  
15 Regulations, is to determine the rent base on the value of  
16 the public lands, not the cost.

17 So while his formula is easy to understand, it's  
18 not consistent with our practices or the Code of  
19 Regulations.

20 The third one was Mr. William Threlfall, who is a  
21 lakefront property owner. He provided more or less  
22 general comments regarding the equity of the rent  
23 situation in the lake. He seemed to take issue with the  
24 fact that a lot of people can throw buoys out into the  
25 lake, and they're not permitted by TRPA, they're not under

1 lease, and they get a free ride. So he would like us to  
2 address that.

3 Another comment he had was also that he thinks  
4 that if you're not using the buoys, that there should be  
5 like a non-operational status, much like the DMV does with  
6 cars. And his concern is that, while he might not have a  
7 boat or other lakefront property owners might not have a  
8 boat at the time, if they give up those buoys, then they  
9 basically fall at the end of the line with TRPA's  
10 permitting process, and it might be a long, long time  
11 before they get them back if they get them back.

12 --o0o--

13 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

14 The fourth set of comments that we received, it  
15 was actually just two days ago, was Mr. Price, who was at  
16 the Commission meeting. And he basically is tiering off  
17 the benchmark methodology that we established. He thinks  
18 that -- the 5 percent is actually the tier off. But he  
19 thinks that for buoys it should be just basically a 5  
20 percent of the benchmark rate.

21 And then also with respect to - and this is kind  
22 of novel or unique - with respect to the docks, he makes a  
23 contention that a lot of these docks don't have usable  
24 areas. You might have a catwalk, you might have a  
25 boathouse. There might be certain areas but not the

1 entire dock, so why be charged rent for the entire dock?  
2 He thinks that you should establish what he would call a  
3 safe berth location. And depending on the size of the  
4 dock and how it's configured, you might have one or two of  
5 these safe berth locations.

6 Now, the safe berth location would be set for  
7 benchmark purposes, according to his proposal, at 25 feet.  
8 And then you would basically use a marina rate and apply  
9 it to that 25 feet.

10 The drawback to his proposal is that it doesn't  
11 seem to address the entire pier structure. You might have  
12 certain areas of the pier, so-called use areas or what he  
13 would call safe berth locations, but not the footprint.  
14 You could have a very large pier that might only have one  
15 use area and you'd only be charged for that one safe berth  
16 location, as opposed to the year-round occupancy of a very  
17 large structure, which prohibits the public from using  
18 that area.

19 The last proposal we got was just late yesterday,  
20 as a matter of fact. And it was from the Tahoe Lakefront  
21 Owners' Association. And I believe they're here as well.  
22 I know they're here.

23 The letter, which I, you know, read last night  
24 asserted several inconsistencies and flaws in the  
25 benchmark methodology. Frankly, I don't understand some





1 current dock rate. Basically right now we have a split  
2 methodology, if you will. We have -- from the survey we  
3 take a rate and apply -- the existing rate is 80 cents.  
4 We apply that to docks. But for buoys we use a rate of  
5 increase. So they're not the same.

6           Alternative number 2 is basically to unify those.  
7 We take the 80 cents from the marina survey and apply that  
8 to the circular area of the buoy, what we call swing area.  
9 And for purposes of our analysis, it's 25 feet. So it's  
10 actually a 50-foot circle.

11           And the advantage to that is now you've got one  
12 mathematical methodology applied to both the docks and the  
13 buoys.

14           The third one is to basically use what's in our  
15 regs and base rent for docks and buoys on 9 percent of the  
16 appraised land value. And there's the reference to that.

17           There are some drawbacks to this. Because of the  
18 varia -- well, I think there's -- the first issue is, you  
19 know, how do you appraise the submerged land underlying a  
20 dock, you know, or a buoy. And basically we would have to  
21 rely on the nature of the upland. In this case, most of  
22 these things are residential lots. So we'd look for  
23 comparable sales in residential lots, not with houses,  
24 just vacant land, and essentially say that using 9  
25 percent, which is in the regs, we'd apply that to the

1 lease area, whatever that upland would -- the value of  
2 that upland would be.

3           The problem to that from a benchmark perspective  
4 is that the lakeshore varies. I mean the physical  
5 characteristics vary greatly - shallow areas, steep banks,  
6 sandy beaches, you name it. So for benchmark purposes we  
7 might have to break it up into several benchmarks. I'm  
8 not sure if one would really be advantageous.

9           ACTING CHAIRPERSON GORDON: Can you tell me where  
10 that 9 percent figure -- I mean I understood some of the  
11 regs. But how did they come to 9 percent as opposed to 8?  
12 Is it just like 8's too small and 10's too big, so we just  
13 decided on 9?

14           EXECUTIVE OFFICER FOSSUM: I can't tell you the  
15 year, but it's probably been in the regs for about 30  
16 years.

17           LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:  
18           It's actually increased. Back in the sixties and  
19 seventies it was 6 percent, then it went to 8 percent.  
20 And I believe in 1992 - and, Brian, correct me if I'm  
21 wrong - it might have been even the set of regs that were  
22 done before 1992. We know that 9 percent has been in the  
23 regs since 1992.

24           Now, that's a good question - how did they get  
25 there? I'm assuming that it's based on prevailing market

1 rates, round -- around lease rates -- rates of return.

2 We get a lot of grief on that. The current  
3 market clearly is not geared towards 9 percent rates of  
4 return. And that's what this is. It's basically we're  
5 going to turn over our land to you to use and we want 9  
6 percent of whatever, you know, revenue you generate from  
7 whoever it's worth.

8 ACTING CHAIRPERSON GORDON: Uh-huh. Okay.

9 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:  
10 It's a great return.

11 EXECUTIVE OFFICER FOSSUM: And just to be clear.  
12 2003 in the Code of Regs provides that "rental for the  
13 various categories of uses shall be generally as follows:"  
14 So it's not a -- it's not dictating to the Commission,  
15 because the Commission adopted this. It's giving  
16 guidance --

17 ACTING CHAIRPERSON GORDON: It's an objective,  
18 not a standard?

19 (Laughter.)

20 EXECUTIVE OFFICER FOSSUM: -- self-inflicted  
21 guidance, if you will.

22 And there's another -- several other provisions  
23 that have given us guidance to adopt the benchmark as well  
24 in looking at competitive substitutes of land and things  
25 like that.

1           So there's a number of provisions in the code  
2 that are the basis for the approaches the staff does to  
3 bring to the Commission for its review.

4           ACTING CHAIRPERSON GORDON:   Okay.   Continue.

5           LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

6           So going on.   4 -- there's actually 4A and B, and  
7 they're related.

8           The first one, which is very simple to  
9 understand, is starting with buoys, is basically if  
10 you're -- you know, if you're faced with a choice of  
11 putting in your own buoy or renting a buoy - you have a  
12 boat - what is the market?   So we surveyed the commercial  
13 marinas and we found -- and, again, this varies.   And in  
14 El Dorado County, it was much lower; in Placer County, the  
15 seasonal rates were much higher.

16           But the analysis or where we're going with this  
17 is that if you've got -- if it costs \$3,000 to rent a buoy  
18 for a season, you'd either be paying that to a marina  
19 operator for the use of their buoy or you'd have the  
20 choice of putting it in yourself, going through all the  
21 permitting process, going through the State Lands  
22 Commission.

23           Okay.   We looked at what is the cost of a buoy?  
24 We talked to a couple of people in the Lake Tahoe area:  
25 What does it cost to put that buoy in?   Anchor block,

1 chain, the buoy itself. And it's approximately \$2500. So  
2 we looked at spreading that cost over a typical ten-year  
3 term, \$250 a year. So if your choice is to buy this thing  
4 and put it in or go to a commercial marina and you'd pay  
5 \$3,000, say, for a season, the difference would be  
6 approximately, you know, \$2,750, because you're saving  
7 that money by, you know, going through the lease process.

8           And so where does that \$2,750 go? We're the  
9 landowner, you know, much like a marina operator. There  
10 are differences, and I'll acknowledge that.

11           But if that's the simplest way of doing it,  
12 basically, here's your choice: Pay \$3,000 to them or put  
13 it in yourself, pay us the difference. Unfortunately, you  
14 know, depending on your respective, this would result in a  
15 significantly higher rent for the property owners. And  
16 I'm going to go into that. I've got a breakdown of all  
17 the numbers that we worked up here.

18           And then the Option 4b is basically to take that  
19 rate for a buoy. And let's say it is \$3,000. I can't  
20 remember what our sample rate is. But if the area of the  
21 circle -- lake Tahoe, you've got a buoy and the boat  
22 basically can swing around that. And I believe TRPA uses  
23 a 25-foot swing radius for planning purposes. We used the  
24 same thing.

25           So if you've got an area of a circle with

1 basically, you know, a radius of 25 feet, it works out to  
2 1962.5 square feet. Divide the \$2,750 by that, you get a  
3 rate, a per square foot rate.

4 Under 4b you would basically use that rate and  
5 apply it to the dock, you know, the lease premises for the  
6 dock.

7 There are some drawbacks to that. With the buoys  
8 you have less infrastructure costs. You know, the  
9 property owner should say, "Well, wait a minute. The dock  
10 costs a heck of a lot more to put in and it's going to  
11 last a lot longer than a buoy." So that analogy might not  
12 be appropriate.

13 The last one is a paired sales analysis. And  
14 this is fairly complex. And it would probably give a very  
15 good indication of value. But much like the 9 percent of  
16 appraised, you'd probably have to do it on a smaller  
17 geographic area.

18 And what the paired sales analysis would attempt  
19 to do is to find sales, one of -- in a perfect world, of a  
20 property, vacant lakefront lot with no dock. And then  
21 sales another one, hopefully nearby of similar size, that  
22 did have a dock. In the perfect world the theory would be  
23 that the difference should be attributed to that dock.

24 Well, part of that dock, you know, the whole  
25 difference isn't necessarily the stick, the cost of

1 putting it in. There's got to be some contributory value  
2 of the submerged land underneath it. That's what that  
3 analysis would attempt to do, is to try and isolate that.

4 The drawbacks to this method are that there's  
5 probably not going to be a whole lot of paired sales that  
6 you could draw from. The lakefront is fairly built up --  
7 pretty well built up. There's a lot of variances from lot  
8 sizes. You might have to use houses. There's a lot of  
9 variables in what's going on here.

10 We haven't really had the time to analyze that.  
11 It would probably be better served if it was a consultant  
12 who could address that, preferably, you know, an  
13 appraiser.

14 --o0o--

15 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

16 This is a summary of the alternatives. And you  
17 can see the numbers that we worked up.

18 The first one is the current benchmark at 80  
19 cents and 340 per buoy. If we update it, which we did, we  
20 found that the -- the rates, the surveyed marina rates  
21 have stayed the same. But the size of the boats being  
22 berthed there have gone up, which leads to a decrease in  
23 the rate from 80 cents to 79 cents.

24 The buoys -- there was a 10.9 percent increase in  
25 the surveyed average seasonal buoy rate. And seasons



1 vary. It's anywhere from typically May through September,  
2 but some open a little bit earlier and stay open a little  
3 bit longer.

4           On number 2, this is the one where we're taking  
5 the 79 cents and applying it to the area of the circle.  
6 That's why it goes up to 1550.

7           Number 3 is the appraised value. We did a  
8 sampling. We found seven sales from El Dorado and Placer  
9 counties of lakefront lots. Some had -- actually had  
10 piers. They ranged all over the board, depending on the  
11 size of the lot, location. It seems like Placer County --  
12 certain areas of Placer County are at a premium.

13           We concluded, if you will, a preliminary value of  
14 fifty to a hundred dollars. Using the low end, this is  
15 what we get. It would be \$4 -- you know, 9 percent of  
16 that \$50. It would be \$4.50 which you would apply to the  
17 lease area of a dock. And then using that same \$4.50 and  
18 applying it to the area of the circle, you get, you know,  
19 \$8800.

20           Under 4a - this is what we call the direct  
21 comparison approach - you -- and you can see under the  
22 text under 4a El Dorado is significantly -- El Dorado  
23 County is significantly lower. The average was \$1163 for  
24 a season -- you know, per buoy per season. Placer  
25 County's significantly higher. The average is 2701.

1           So if we were looking to establish a lakewide  
2 benchmark for buoys, it would be \$2700 using that  
3 approach. Very simple, very easy to understand, based on,  
4 you know, direct comparison to the market.

5           And then 4b is the corollary of that. And  
6 based -- taking that \$2700 and dividing it by the area of  
7 the circle to get a per-square-foot range. And that's the  
8 \$1.38. And on the text side there's also the breakdowns.

9           An then as I mentioned before, the paired sales  
10 analysis would require a consultant.

11                           --o0o--

12           LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

13           This is a sample. We've plugged in those numbers  
14 to a sample lease area. And you've got a dock of 1150  
15 square feet, a use area of 2887. And, again, that's the  
16 area ten feet around both sides and the top of the dock.  
17 And that's why that use area is much bigger.

18           In this sample we have two buoys. And then the  
19 buoy area, that's the calculation I was telling you about,  
20 1962.5 square feet. These are the sample rents over on  
21 the right-hand side.

22           So under the current -- the 2007 benchmark, that  
23 lessee would be paying \$2700. If we update the benchmark,  
24 keep the same methodology, it's 2800. If you use any of  
25 the other methods, it starts climbing.

1                   --o0o--

2                   LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

3                   And these are -- you know, looking over all these  
4 things, we've come up with some recommendations. And  
5 we're just kind of weighing these things. Our criteria  
6 were kind of set out in the original meeting. And, that  
7 is, that -- what we're looking for here is it's got to be  
8 supported by market data, and preferably easy to  
9 understand, and at the same time reasonable to both the  
10 State and the applicants and lessees.

11                   Well, what we found here, and in looking over the  
12 proposals that were submitted to us, is that really  
13 nothing fits all these bills. Because it kind of gets  
14 back to, what is the definition of reasonable? What we've  
15 seen from the proposals from the property owners, some of  
16 their methods are simple, but they really seem to be  
17 geared towards just moving the rent down. And maybe  
18 that's the definition of reasonable.

19                   But, you know, we also looked at what's in the --  
20 we have to look at what's in the State's best interests as  
21 well; but by the same token, what's reasonable, you know,  
22 to the users.

23                   So I think what -- you know, this is for docks.  
24 We're recommending that the benchmark be -- the current  
25 methodology just be updated and applied as we've done

1 since 1985.

2 --o0o--

3 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

4 And for buoys it's essentially the same thing.

5 Let's just update it.

6 You know, I think that we're trying to, you know,  
7 strike a balance here. And we've been doing this for 25  
8 years. And more or less -- you know, we really haven't  
9 had a lot of push-back. We expect this with the passage  
10 of SB 152. We think this is fair. If the property owners  
11 had to go to the commercial marina's, they're going to pay  
12 a higher rate.

13 One of the things that we also need to consider  
14 when we're talking about the docks is that the docks  
15 occupy the state property year-round. They're not like  
16 renting a slip in a marina for five months.

17 So, anyway, this is what we've done -- the  
18 staff's recommendation is to continue to go along.

19 That concludes my presentation. I'm available  
20 for questions. I understand we have several people as  
21 well.

22 ACTING CHAIRPERSON GORDON: I do have one.

23 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

24 Sure.

25 ACTING CHAIRPERSON GORDON: You just referenced

1 the -- and I'm forgetting the bill number -- but the  
2 recently passed legislation. Can you tell me specifically  
3 what differences that legislation makes in how you  
4 calculate this? You've been doing this for 25 years. As  
5 you've said, the new legislation puts a different burden.  
6 Can you explain what that is so the public will  
7 understand.

8 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

9 It doesn't change the calculation. It changes  
10 the numbers of people who are going to be subject to  
11 lease.

12 Okay. Prior we have approximately 70 people who  
13 may have been paying rent. Now we're going to have -- a  
14 lot of these leases over the next ten years as their  
15 leases come due, they were -- they had qualified for  
16 rent-free status. They do not. So we're anticipating  
17 these people were getting sticker shock basically.

18 ACTING CHAIRPERSON GORDON: Okay. So these are  
19 people who have been essentially getting a free service  
20 from the State for 25 years and now we're going to start  
21 charging them for it?

22 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:  
23 Correct.

24 ACTING CHAIRPERSON GORDON: All right.

25 EXECUTIVE OFFICER FOSSUM: And others who haven't

1 qualified have been paying rent all along under this  
2 methodology.

3           ACTING CHAIRPERSON GORDON: And one other  
4 question before we get into kind of -- I'm going to open  
5 it here and then go to members of the public.

6           This all seems incredibly complicated. I mean  
7 all of the formulas you have used are -- they're very  
8 complex. Have we ever looked at just doing something, and  
9 I mean, really simple as in a hundred -- for the first --  
10 for everything up to a hundred-foot pier you pay X  
11 dollars, 100 to 200 you pay X dollars, and really  
12 simplifying this thing so the public would have a -- I  
13 mean just indexed for inflation or something?

14           EXECUTIVE OFFICER FOSSUM: Well, one of the  
15 things that SB 152 did is direct - and this was at the  
16 request of the Lakefront Property Owners' Association -  
17 was to use local conditions as part of the analysis as to  
18 how much rent would be charged. So the situation in a  
19 coastal area is different than a river area, is different  
20 than a lake area. And so at each of those instances we're  
21 looking at those local conditions, the local values, the  
22 local marina values.

23           And the regulations that the Commission has had  
24 for scores of years, dozens of years at least, give the  
25 Commission discretion, and again it's mostly guidance - it

1 says right in the regulations the Commission has broad  
2 discretion - but it gives guidance as to how to approach  
3 these things. And some of the guidance is that you look  
4 for competitive substitutes. If a person can't use this  
5 piece of State property for what they want to do, where  
6 are they going to go?

7           And so that's really the basis of using a marina  
8 is, is that marina has a slip that you can go to. And  
9 it's not going to cost you to put in your dock. But  
10 you're going to pay a lot of money for that marina and  
11 you're going to have to get in your car and go drive there  
12 and get in.

13           There's a real benefit, not only to the  
14 convenience of somebody having a dock, for example, at  
15 Lake Tahoe because you can just go out on your dock and  
16 use it, go out to your buoy and use it; you don't have to  
17 go and pay somebody else to do it other than to install it  
18 initially. And so there's a real benefit to that.

19           There's also a benefit we've seen in the market.  
20 And we've seen advertisements that people will charge  
21 thousands of dollars just for a weekend, on a holiday.

22           ACTING CHAIRPERSON GORDON: Well, we're kind  
23 of --

24           EXECUTIVE OFFICER FOSSUM: So there's a lot of  
25 value to the property owner in these things. And, in

1 fact, the one -- Mr. Threlfall, who had sent us written  
2 comments, indicated that his buoy -- he doesn't even have  
3 a boat. But he wants to keep the buoy there because it  
4 has value. But he thinks, and he's right, that there's a  
5 number of people who have buoys out there that aren't  
6 under lease and they're not paying anything. That's a  
7 dilemma that the Commission has.

8           And, in fact, the item that was pulled from the  
9 agenda, number 13, is an example where somebody has had a  
10 dock out on State property and a buoy out there for many,  
11 many years and never come under lease. And the staff  
12 doesn't -- we don't have a big enough staff to really go  
13 up to Lake Tahoe and monitor this. We don't have a boat  
14 up there. It's been a drawback. But we're going to try  
15 and do the test we can, and we've been doing that.

16           We had -- the Commission actually had a program  
17 back in the early 1950s. We just found the file, where we  
18 went up to Lake Tahoe and notified property owners up  
19 there at that time. Many of them fought back. And, in  
20 fact, number 13 is in an example of that, where subsequent  
21 property owners obviously own it today. But they were  
22 contacted at that time.

23           We did it again in the 1970s.

24           It takes years to try and get all these people  
25 under lease because there are thousands of them. We have



1 thousands of leases, but there's a lot of other people who  
2 haven't.

3           One of the things that I think it's important to  
4 understand is some of the other states - and you may hear  
5 people suggest that -- you suggested a flat rate of some  
6 kind -- other states sometimes have a fee, a \$50 fee or a  
7 hundred dollar fee or something, to maintain something  
8 like this.

9           That's exactly how we believe the buoys started  
10 at Lake Tahoe 27 years ago, is we set a flat rate. And  
11 all we've done to adjust that rate over the years is, what  
12 was the rate of the marinas at that time, what were they  
13 charging for a buoy, and how much are they charging today?  
14 So if they went up 1 percent a year or something like  
15 that, every five years we look at those rates -- we try to  
16 every five years. We have staff. We just lost our only  
17 appraiser on our staff. He left -- I think tomorrow is  
18 his last day, or last week.

19           We try and look at those values and then adjust  
20 that, so that we're not stuck in the past on those things.  
21 And that's the basis. The Commission has a lot of  
22 discretion in this. But we feel this practice that  
23 they've been using for the last 27 years is one that's  
24 equitable for the property owners as well as the State.  
25 It could be a lot higher. There's a lot of ways to adjust

1 this and --

2 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

3 You know, I would also like to add to that. I  
4 mean that would be the easiest way of doing it, to have,  
5 you know, a structure like that. I think the question,  
6 what we struggle with, is how do you get there? How do  
7 you get to that number? And because we do have to look at  
8 what is in the State's best interests and what's a fair  
9 return to the State for the use of this, you know, those  
10 kind of things. So it's the methodology which we're  
11 talking about, how do we get there?

12 And so --

13 EXECUTIVE OFFICER FOSSUM: And part of this is,  
14 since it is the public's property, if you're a member of  
15 the public and an individual member has private use of the  
16 public's property, the question is, should they compensate  
17 them for that?

18 ACTING CHAIRPERSON GORDON: I'm not questioning  
19 that. I mean, look, the ability to use Public Trust Lands  
20 for your private purpose, this is an incredible value. It  
21 is, you know, monetarily, aesthetically, a whole lot of  
22 things.

23 What I'm trying to find here -- and the buoy  
24 system seems to me to be eminently reasonable and what the  
25 benchmark is and how we get there. But a buoy costs this.

1 Trying to figure out what the various rates are for all  
2 the other stuff is where I'm getting lost in the  
3 complexity of it.

4           It would strike me that the methodology that  
5 we're using for the buoys where you'e basically saying,  
6 here's a buoy; we look at your buoy; you know, we're going  
7 to charge you for that buoy; we will index it for  
8 inflation going forward, that strikes me as fairly simple.  
9 The homeowners will know what to expect.

10           The dock part is where I'm bogging down, you  
11 know, as we get to this incredible complexity as to how to  
12 do that. And I think, you know -- you know, in a place  
13 like Tahoe, yeah, I mean if you're in Carnelian Bay versus  
14 some other -- it has a lot -- you know. And we can go  
15 through that a hundred times. I mean the idea of you can  
16 look at comparable sales. I mean, you know, in real  
17 estate, it's all about location, you know. And a 3,000  
18 square-foot house in one place is worth a heck of a lot  
19 more than a 3,000 square-foot in another. And not knowing  
20 Tahoe real estate, I suspect that's the same thing up  
21 there, you know, what's your view, shed, all those other  
22 issues.

23           So I want to hear from everybody. I'm open. I  
24 don't -- I don't have any answers on this stuff. What I  
25 just think is simple is best. It seems that as the State,

1 our -- what our job should be, to find something that  
2 protects the State's value; is understandable to the  
3 public, so they know what they have; and is replicatable,  
4 so that the variations are not great. And I will leave it  
5 to that.

6 Other Commissioners have any comments?

7 And then we'll go to the public.

8 Nope.

9 ACTING COMMISSIONER GARLAND: I do have one  
10 question.

11 You had a slide that demonstrated the costs  
12 associated with the other methodologies that have been  
13 proposed.

14 Do you have copies of that that we can use so it  
15 doesn't have to stay up on the screen?

16 That -- come back one. You had it.

17 You had a sample cost there.

18 Do you have this somewhere printed for us?

19 It's not -- I don't see it in the documentation  
20 on line.

21 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

22 I don't. It was part of this presentation. I  
23 could print it -- I might have a copy in my file that I  
24 could make copies of and --

25 ACTING COMMISSIONER GARLAND: If you could just

1 get one over here for us to at least --

2 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

3 -- Yeah, let me check right now.

4 ACTING COMMISSIONER GARLAND: -- look at while  
5 others are talking. Because I suspect some of the people  
6 who made suggestions here will be referencing this. And I  
7 would want to be able to...

8 Oh, it does bring up one other question before we  
9 start. You said that the likely reason for people -- that  
10 they wanted to lower their costs - and I'm looking at all  
11 of the suggestions here and they seem to be higher than  
12 what we would be --

13 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

14 Exactly. These are staff's proposals. The  
15 proposals that we received aren't shown on this. The most  
16 recent one we just got night, I didn't have an  
17 opportunity -- I barely had a chance to really review it.

18 Kevin Agan's proposal was a per square foot -- 9  
19 percent of \$35 per square foot - which is a cost, not a  
20 value - that's what you would apply to the structure --  
21 the pier structure.

22 And then the buoys, I believe it was 9 percent of  
23 the benchmark.

24 Kevin, is that correct?

25 ACTING COMMISSIONER GARLAND: But before we go

1 down that road --

2 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

3 Sure.

4 ACTING COMMISSIONER GARLAND: -- just to be fair.

5 So we don't have a comparison of the same type of sample  
6 for --

7 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

8 Correct.

9 ACTING COMMISSIONER GARLAND: -- these other  
10 proposals?

11 Okay.

12 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

13 That's correct.

14 EXECUTIVE OFFICER FOSSUM: This was the  
15 information that was provided back in February to the  
16 homeowners.

17 ACTING COMMISSIONER GARLAND: Oh, I was just  
18 wondering, if we had this same sample, if we're going to  
19 use it, did we have it for the other proposals as well.  
20 And it doesn't appear to be that way. So sorry. Moving  
21 on.

22 ACTING CHAIRPERSON GORDON: I think we're  
23 probably ready to go to public comment.

24 I have these in order. If there is -- do you --  
25 you folks have all been so patient with us today. Is

1 there any specific order that you folks would like to  
2 testify in? Or should we just go in order of what we have  
3 here? Have any of you worked this out as to -- okay.  
4 You'd like to go first?

5           You want to come up, Ms. Brisco, up to the  
6 microphone. And please identify yourself for the record  
7 please.

8           MS. BRISCO: Jan Brisco representing the Tahoe  
9 Lakefront Owners' Association.

10           And I very much appreciate the Commission hearing  
11 this item today, because it has been one that we have been  
12 struggling for literally months. We'd hoped to have our  
13 information back to staff in a more timely manner. But as  
14 you can imagine, the different machinations really get to  
15 the heart of what you're seeing today.

16           You have our proposal in front of you and our  
17 comments and recommendations. And, in fact, if you look,  
18 we really like the idea of a flat rate. It is  
19 predictable. It tells people what to expect. It is not  
20 based on anything other than purely what is there, what is  
21 fair, and what is reasonable. And that, again, is what  
22 the legislation was all about.

23           In fact, our proposal for a flat rate on the  
24 buoys is significantly higher than would be a benchmark as  
25 we had proposed it. So we were not looking for just

1 lowering the cost. We were looking for something that  
2 would be fairly applied around the lake.

3 A little bit of background again. I was in the  
4 office of the author of the legislation, SB 152, with  
5 State Lands staff and we were talking about how to go  
6 about some of our concerns and issues. One of them is  
7 this use area you see up here, which is almost -- I don't  
8 know, I can't see -- double what the actual occupation of  
9 the State lands would be.

10 We don't have a problem with that structure, as  
11 it occupies State lands. That is very reasonable to  
12 charge for that. But to charge this arbitrary ten-foot  
13 use area adds significantly to the cost for the property  
14 owner. In fact, you're actually renting water, not land.  
15 So we think that really needs to be in consideration.

16 When we talked about local conditions, it wasn't  
17 just talking about how to base it on a commercial rate,  
18 because residential use is much different from an  
19 income-producing type of operation.

20 A pier is for the loading and unloading of  
21 passengers. A slip is for actual mooring, where you can  
22 get out of your car, walk down to your boat, hop on, and  
23 you're off and running.

24 For a pier you have to -- you don't have a boat  
25 moored at your dock. You have to go out -- row out to



1 your buoy, get your boat, bring it back to the pier, and  
2 then you're on your way.

3           So those are completely different,  
4 apples-and-oranges kind of approach. And that's why we  
5 tried to come up with something that would reflect the  
6 actual use that was going on on State lands.

7           So the author said, "Yes, rather than taking all  
8 of these conditions for the whole State of California, why  
9 don't you come back and look at those local conditions."  
10 You've got fluctuating reservoir levels. In some cases,  
11 the piers are unusable during the drought years. In other  
12 places you've got other seasonal conditions where you're  
13 not going to be out there boating, neither is the public  
14 necessarily. A few fishermen. I've been out there in  
15 January and it's beautiful. But you're not going to have  
16 general boating happening outside of that six-month  
17 boating season, what we assume to be a May to October  
18 boating season.

19           So you can see local conditions was more than  
20 just the actual value based on a marina operation.

21           The fairness issue really is at stake here. And  
22 I think one of the things that gets to it is looking at  
23 the past legislation. While the State's been doing this  
24 for 25 years - and I'll wrap up very quickly - is that we  
25 also looked at the prior legislation.

1           No matter how you slice it, piers are a benefit  
2 to the public, because they do provide an aid to  
3 navigation, keeping boats out of unsafe waters; they are  
4 actually safe harbor if you become distressed. And I  
5 could bring 20 lakefront owners here to this Commission to  
6 tell you about stories where they've rescued children  
7 who've gotten away in a dinghy, people who have been  
8 sinking in boats and have been able to be rescued at dusk.  
9 The stories go on and on and on.

10           And so I want you to know that there is a human  
11 aspect to this. We appreciate your consideration. And  
12 we -- if you in fact continue with the current  
13 methodology, we'd like you to direct staff to continue  
14 working with us to maintain this fair approach, being open  
15 to revision and coordination with us.

16           Thank you very much.

17           ACTING CHAIRPERSON GORDON: Thank you, Ms.  
18 Brisco.

19           Next --

20           EXECUTIVE OFFICER FOSSUM: Mr. Chair?

21           ACTING CHAIRPERSON GORDON: -- witness please.

22           EXECUTIVE OFFICER FOSSUM: I'm sorry.

23           ACTING CHAIRPERSON GORDON: Curtis.

24           EXECUTIVE OFFICER FOSSUM: I was just going to  
25 say, if you would like, I can address some of the issues

1 that were raised there, just to respond to that.

2           The flat rate. I think we do have a flat rate.  
3 And that's the column here as to the square footage being  
4 used against how big the dock is. And so the amount  
5 that's on the State property's calculated based on that  
6 flat-rate square-footage number. This is just a typical  
7 dock up at Lake Tahoe of 1150. Some of them are much  
8 smaller. Some of them only have a few feet on State  
9 property. Some of them have much larger than this.

10           So the flat rate we use is that square footage  
11 rate.

12           The other part of it is - and I think it's very  
13 important what Jan said - and, that is, this idea of the  
14 use area being larger, and that's very true. And it does  
15 come as a concern to the property owners there, because  
16 it's larger than the dock. And the dock only sits there  
17 24/7/365 days a year. That use area may or may not be  
18 used.

19           It's been called a use area. But in fact what it  
20 is is it's an area adjacent to the structure. And in the  
21 past if people paid rent up at Lake Tahoe on these things,  
22 they've been paying a hundred percent of that use area the  
23 same as the dock. And there's been a ten-foot border  
24 along those for those who were paying rent.

25           Staff looked at this, with all these other people

1 paying rent at this point in time, and struggled with it:  
2 How are we charging that same rate for the open-water area  
3 adjacent to the dock as the dock itself?

4           And in looking at other places in the State, we  
5 were assessing that as well.

6           So the conclusion that -- and the recommendations  
7 we've made is that we only charge 50 percent of that use  
8 area, because they do not use that all year long, it is a  
9 seasonal use; the dock is there 24/7, but the property  
10 owner isn't using it that often.

11           But it's a little bit of a misnomer to call it a  
12 use area too, because we weren't charging just for that.  
13 It's the impact that the occupancy of the dock on the  
14 public's property has on the public. How often are they  
15 going to go in that area that they might otherwise kayak  
16 or swim or fish in and things like that?

17           So we saw that as a compromise in two ways: One,  
18 only having a ten-foot impact area, and having a  
19 discounted rate based on both the conditions of Lake Tahoe  
20 being seasonal and so forth.

21           So that is the staff's approach on that  
22 recommendation of discounting it half of what it used to  
23 be.

24           But that again is something that's in the broad  
25 discretion of the Commission to decide how much you charge

1 for that area adjacent to the dock.

2 And it's analogous to what we do in all other  
3 leases, whether it's a marine terminal or a pipeline or a  
4 cable or anything else. There's always an expanded area.  
5 You may have a three-inch pipeline going across State  
6 property and we lease six feet, and that's what we charge  
7 you for. It's not just the footprint. It's the impact  
8 area adjacent to it.

9 ACTING CHAIRPERSON GORDON: Okay. Next witness  
10 please.

11 Yes, come on up, sir.

12 And please identify yourself please.

13 MR. AGAN: I'm Kevin Agan of Agan Consulting.  
14 I'm one of the participants that responded, and probably  
15 considered one of the stakeholders. I represent many  
16 property owners and homeowners' associations on Lake Tahoe  
17 and have worked with the State for few years.

18 To clarify Colin Connor's representation of my  
19 methodology that I advanced for consideration is -- the  
20 number was hypothetically set at \$2500. And I'm just  
21 talking buoys here. And buoys really range between 1250  
22 to 2500. I deal with nuts and bolts. And by using the  
23 methodology of, let's say, \$2500, and applying a 9 percent  
24 reduction ratio that was already established in the regs,  
25 we would -- I was advancing an annual rental fee of \$225

1 is what that would equate to, not 25. I just wanted to  
2 clarify that.

3           And just for comparison purposes only, I know  
4 it's just on the other side of the lake, over in Nevada  
5 they charge \$50 per annum per buoy. So the 340 up to 379,  
6 or something like that, to what I was advancing, which was  
7 pretty much middle of the road, to what the State across  
8 the lake charges, I thought was pretty reasonable. And  
9 that's what we're really getting down to is what's  
10 reasonable.

11           And then there's some other methodologies as to  
12 piers that we came up with.

13           And there should also be credit, from our  
14 perspective, for homeowners' associations in multiple use  
15 facilities that should be reduction ratios, because  
16 they -- in some cases we're really using one structure  
17 that's shared by many families, many other properties, not  
18 just single use. So there would be a different category  
19 for it. But we're trying to keep it real simple and we  
20 have a simple equation but it's based on construction  
21 costs -- or a median construction cost versus appraisal of  
22 real estate, use areas and so forth, which, as you've  
23 probably observed, is very complex and can get very  
24 confusing.

25           If you have any questions, I'd be more than happy

1 to respond.

2 ACTING CHAIRPERSON GORDON: No.

3 MR. AGAN: Well, thank you.

4 ACTING CHAIRPERSON GORDON: Thanks.

5 Next witness please.

6 MR. HAYMAN: Hi. My name is Marc Hayman. I'm a  
7 homeowner on Lake Tahoe.

8 And I actually don't agree with any of this  
9 methodology. Staff was saying if you're conversing in the  
10 methodology, you must be endorsing the methodology in some  
11 manner. Not true. It's just that we're here to comment,  
12 so we're trying to talk in the same language.

13 I'm opposed to this whole tormented calculus that  
14 the staff has been instructed to try and formulate. And,  
15 yes, there is obviously value to piers and buoys. But  
16 what's being asked for really is a double tax. Homeowners  
17 have paid a premium when they bought that home because it  
18 has lakefront access, because it has a pier. Even if it  
19 has the ability for buoys to be dropped, you pay a premium  
20 up front, and your yearly tax rate reflects that.

21 And every time you sell your home, that is a  
22 carrot for selling a home, that it has a pier or a buoy;  
23 and you charge more for your house, and the yearly tax  
24 rate reflects that.

25 I'd like the Commission to move away from all the

1 proposals relative to this Item 82. I think it's a  
2 regressive tax that's really being sought out. There are  
3 new homeowners, second generation homeowners, third,  
4 forth, fifth generation homeowners on Lake Tahoe that in  
5 no way can afford to pay the fees that are being proposed.

6 I think the fees that are being proposed even by  
7 our lakefront association, who's trying to make better  
8 with the methodology that's on the table, are crushing.  
9 You know, we love our state. I don't want you to think I  
10 don't understand that the Legislature is looking for more  
11 revenue, that we're in a hole here. And a lot of citizens  
12 will support our state. We want to be good citizens and  
13 move forward and help our society.

14 But I think we need to look at a progressive tax.  
15 And I think this land commission's the wrong place. I  
16 think we should use the Division of Motor Vehicles. And  
17 you Commissioners fortunately have the State purview. The  
18 Division of Motor Vehicles registers boats, but they don't  
19 register them at the same progressive -- in the same  
20 progressive manner that they register road vehicles.

21 As you know, when you buy a new expensive  
22 vehicle, you pay a high yearly registration. We're not  
23 doing that with our boats. And as you know with road  
24 vehicles, every year as your vehicle gets older, the  
25 registration fee diminishes. This is a progressive tax.



1 I just would ask you Commissioners to please  
2 support a DMV-style approach and have the State Lands  
3 Commission eighty-six Item 82.

4 Thank you.

5 (Laughter.)

6 ACTING CHAIRPERSON GORDON: Sir, let me just  
7 respond real quickly.

8 Without weighing in on the merits of your  
9 proposal, which is actually interesting as an alternative  
10 way, we have a statute in front of us that directs us to  
11 do certain things. And you might want to call your  
12 legislator and see if there's another way to do it. We  
13 don't have it within our capacity, even when the  
14 Legislature passes things that tell us to measure things  
15 that we can't measure --

16 (Laughter.)

17 ACTING CHAIRPERSON GORDON: -- to ignore their  
18 directive. It's State law.

19 So I'm sympathetic to your argument. And over a  
20 beer, it might make a whole lot of sense. But we have to  
21 follow the statute, and that's really where we have to go  
22 right here.

23 MR. HAYMAN: Can I make one short comment?

24 ACTING CHAIRPERSON GORDON: Yes.

25 MR. HAYMAN: But you have guidelines and you have

1 great latitude. I'm suggesting you report back to the  
2 Legislature that there's a better way, that there's a more  
3 fair way, that there's a progressive way to tax our  
4 citizens.

5 Thank you.

6 ACTING CHAIRPERSON GORDON: Thank you.

7 Let's see. Next we have, unless -- I'm going to  
8 go with Mr. Seligman if --

9 MR. SELIGMAN: Here I am.

10 ACTING CHAIRPERSON GORDON: Oh, great.

11 And following Mr. Seligman we will go with Mr.  
12 Lien, Mr. Duffield, and Mr. Hansen, in that order.

13 MR. SELIGMAN: Thank you, members. My name is  
14 Howard Seligman. I am an owner of a residential unit at  
15 Tahoe Tavern, which is located at -- in Tahoe City,  
16 California.

17 Tahoe Tavern is a condominium project consisting  
18 of 151 residential units. It is also comprised of a  
19 homeowners' association of which I was past president.

20 That homeowners' association, among other things,  
21 owns the pier, which is the longest in the lake,  
22 approximately 1300 feet, as well as having 90 buoys for  
23 its owners, occupants, and renters.

24 I think that I'm coming from a different  
25 perspective. Not only do you have to look at this from

1 the interests of the State, but you also have to consider  
2 the fairness and potentially adverse impact to the  
3 homeowners and property owners of this particular project.

4 Presently we are paying in excess of \$1300 a  
5 year. Proposals that have been submitted by staff range  
6 anywhere from in excess of \$43,000 to more than \$1  
7 million.

8 Rather than consider the issue of benchmarks, I  
9 think that you have to consider the overall actual  
10 financial impact on property owners and homeowners that  
11 live in the area and that will be impacted by whatever fee  
12 is ultimately approved by this Commission.

13 It is one thing to say that we should be paying  
14 something. It's another thing to say that we are going to  
15 be priced out of the market.

16 I think that there is strong benefit to having  
17 piers, buoys, and the traditional amenities that are in  
18 Lake Tahoe. It's another thing to say that you have to  
19 pay to the point where you can't have them. And what  
20 these proposals are doing essentially is the latter.

21 And what I am suggesting as a residential owner  
22 of a rather large condominium project is that you weigh  
23 not only the fairness to the State but you also weigh the  
24 overall financial impact to the homeowners.

25 And do nothing to further decline the overall

1 financial impact that already face property owners in the  
2 State of California, but establish policies that are  
3 proactive and encourage the continuing use of what we  
4 have.

5 The pier has been in existence at Tahoe Tavern  
6 since 1965. We are not newcomers. And I think that you  
7 have to recognize and protect what has been there for so  
8 many years.

9 Thank you.

10 ACTING CHAIRPERSON GORDON: Mr. Seligman, hold on  
11 one second please.

12 Can you please -- can you describe for me the  
13 units - I mean price range, size - can you give me an idea  
14 what we're talking about here.

15 MR. SELIGMAN: The price -- the size of the  
16 condominium units are approximately 12 to 1400 square  
17 feet. They consist primarily of three bedrooms, maybe two  
18 baths. There are some few that are two bedrooms, one  
19 bath. There are some that are four bedroom, very -- most  
20 of them are three bedroom, two bath, ranging under 1500  
21 square feet.

22 ACTING CHAIRPERSON GORDON: And what do these  
23 units sell for in the market?

24 MR. SELIGMAN: It depends -- well, now they're  
25 substantially less than what they were. It depends where

1 they're located within Tahoe Tavern. There are three  
2 different ranges. There is the forest, which is the lower  
3 end of the area. There is the lakeview, which have a view  
4 of the lake. And then there's the lakefront.

5 At the peak, the -- when I purchased our unit  
6 approximately six or seven years ago I paid \$875,000 for a  
7 forest property. Placer County on its own initiated a  
8 reduction for this current tax year to \$600,000. I didn't  
9 even make the request. I'm not going anywhere. But it  
10 shows you the significant decline that has occurred even  
11 in projects such as this.

12 The values in the lakeview and in the lakefront  
13 area are significantly higher.

14 ACTING CHAIRPERSON GORDON: Thank you.

15 EXECUTIVE OFFICER FOSSUM: Commissioners, if --  
16 and I'm not familiar with this. But it sounds like  
17 there's a quarter-mile long pier out on there. I don't  
18 know how much of that's on the State's property. But if  
19 there's 90 buoys out there, and they're paying \$1300 a  
20 year, that's somewhere in the neighborhood of \$13 per  
21 buoy. And if the numbers of \$43,000 are accurate, that  
22 would raise it to 400, approximately, dollars -- 400 and  
23 some dollars -- less than \$500 for this quarter-mile long  
24 pier and the 90 buoys per person out there -- not per  
25 person. If you divided it all up, so that would be the

1 total for each of the homeowners who have a buoy and use  
2 the pier.

3 MR. SELIGMAN: Can I make a brief response?

4 ACTING CHAIRPERSON GORDON: Mr. Seligman.

5 MR. SELIGMAN: The issue should not be the length  
6 of the pier. Granted, we have a long pier. The issue  
7 should be, what price should one pay for the use of a buoy  
8 which is only in existence for four months out of a  
9 12-month period?

10 ACTING CHAIRPERSON GORDON: Well, I'm trying to  
11 figure out what a -- that exact -- what a reasonable price  
12 is. I mean going from 1300 to 43,000 sounds extreme. And  
13 you said that's the low end of where it could be.

14 MR. SELIGMAN: That's correct.

15 ACTING CHAIRPERSON GORDON: Asking someone to pay  
16 \$400 a year for an amenity to a \$600,000 property strikes  
17 me as not out of line. And I'm trying to find out --

18 MR. SELIGMAN: You have to take that into account  
19 with regard to the other fees and costs that are assessed  
20 by governmental agencies - property taxes, TRPA, the Coast  
21 Guard, the various other fees that are imposed in addition  
22 to what you're considering. And you multiply that out and  
23 it's not cheap.

24 ACTING CHAIRPERSON GORDON: Okay.

25 EXECUTIVE OFFICER FOSSUM: And the difference,

1 Mr. Chair, is that these are not fees and charges. This  
2 is a rent for the use of State property. And up until the  
3 new law went into effect, that is the reason they were  
4 paying \$1300, is because those people -- the vast majority  
5 of those members in the homeowners' association were  
6 exempt from rent. Only those who weren't exempt were  
7 paying, and that's what we calculated the rent based on.  
8 The rent hasn't changed. It's the number of people who  
9 are no longer qualified for a subsidized use of the  
10 State's property. Now they have to pay rent.

11 ACTING CHAIRPERSON GORDON: And how was that  
12 calculated as to what used to be -- what used to be  
13 exempted and what is now not?

14 EXECUTIVE OFFICER FOSSUM: It's a very good  
15 question. What the practice had been is that if you had,  
16 let's say, five members of the 90-member homeowners'  
17 association that were LLCs or corporations that owned  
18 those units, they would pay because they were not exempt  
19 under the prior law.

20 However, those who were exempt, the homeowners'  
21 association members, weren't paying anything. So the  
22 burden for the rent fell only on those who were not  
23 qualified under the prior law.

24 So that's why they were paying rent at all.  
25 Otherwise they wouldn't be paying anything in the past.

1 They were paying \$1300.

2 MR. SELIGMAN: And I would suggest we have a flat  
3 rate on a buoy charge, not the length of the pier.

4 ACTING CHAIRPERSON GORDON: Well, I'm not  
5 thinking that's what they're proposing. They're proposing  
6 a flat buoy charge, aren't they, on this?

7 EXECUTIVE OFFICER FOSSUM: No, this -- there's  
8 two things here. We have the buoys and we have the dock.  
9 And if you average the two together, I mean the buoy rate  
10 would be -- you know, if this goes into effect - and I  
11 don't when their rent -- when their lease is up for  
12 renewal.

13 MR. SELIGMAN: A year or two.

14 EXECUTIVE OFFICER FOSSUM: So in a couple years  
15 these people would come in, their homeowners' association,  
16 with 90 buoys on State property. And using the 340 or  
17 \$377 times that would come up with whatever that number  
18 is. So it's not quite 40,000. It's some number under  
19 that - 20 some thousand.

20 And then there's the quarter-mile long pier. And  
21 so you add that in, and that's where you'd come up with  
22 the \$43,000.

23 ACTING CHAIRPERSON GORDON: All right. Mr. Lien.

24 MR. LIEN: Good afternoon, Mr. Chairman,  
25 honorable members of the Commission, distinguished staff



1 and counsel. My name is Greg Lien. I'm an attorney in  
2 Tahoe City. I represent a number of interested parties.  
3 And I want to thank the staff for the opportunity to  
4 participate as a stakeholder at some of those recent  
5 meetings.

6 The issues are somewhat inscrutable, getting down  
7 to the level of details, what they say, the Devil's in the  
8 details here. And I think your staff have done a  
9 reasonable job of trying to split the baby.

10 Nonetheless we need to recognize, as Mr. Fossum  
11 has said, that 90 percent of the lakefront owners who have  
12 facilities out there so far have been rent free. There is  
13 going to be what people have termed sticker shock. I  
14 think that's a good term.

15 The Legislature previously had made a clear  
16 determination that piers, as Jan Brisco alluded to, were a  
17 benefit to the State. And they certainly had their  
18 benefits in terms of public health and safety and so on.

19 But the main issue I believe is getting to  
20 fairness here. And if the Commission sees fit to vote on  
21 this today and take a position in favor of the staff  
22 recommendation, that we understand that there are a lot of  
23 variables here that really aren't clearly fleshed out.  
24 And while I can't say on its face this is an unreasonable  
25 effort to split the baby - and I think it's a good faith

1 attempt to do so - the Devil's in the details. And on an  
2 as-applied basis we may find situations that, as you run  
3 the variables here - we've got one variable nailed down,  
4 an important one, that's 79 cents a square foot - how the  
5 rest of the variables in the equation go though may lead  
6 in certain cases to inequitable unfair situations that we  
7 may have to bring back to you.

8           One of the virtues of the way this is laying out  
9 is that these are going to be coming before you kind of in  
10 a metered way, because a lot of -- you know, if you've got  
11 90 percent of the folks before were rent free, they're  
12 going to be coming to you as their leases run out and  
13 we'll have some time to really work through the bugs. And  
14 I look forward to working with your staff on a  
15 case-by-case basis here to work through to a fair  
16 conclusion on each of them.

17           Thank you.

18           ACTING CHAIRPERSON GORDON: Mr. Duffield.

19           MR. DUFFIELD: I'm going to go after Mr. Hansen.

20           ACTING CHAIRPERSON GORDON: Okay. Mr. Hansen.

21           MR. HANSEN: I should be so lucky to be Mr.  
22 Duffield. My name's David Hansen. We share the same  
23 birthday.

24           I manage five community associations at Lake  
25 Tahoe, representing 358 homeowners, 5 piers, 221 buoy

1 moorings.

2 I agree with you, Mr. Gordon. This is  
3 complicated, very complicated. And I appreciate staff's  
4 efforts to have meetings to inform what are defined as  
5 stakeholders. They are homeowners. I think we need to go  
6 to further lengths to engage the stakeholders. I've  
7 spoken with many lakefront homeowners, my community  
8 association members. They just aren't aware of the  
9 severity of all this.

10 Greg referred to some sticker shock. Just as an  
11 example, three of my associations.

12 Mr. Seligman referred to Tahoe Tavern. Their  
13 current lease is very reasonable, \$1,392. The least  
14 expensive -- I ran through this grid for three of my  
15 associations to reveal what the least expensive increase  
16 would be and the most onerous. At Tahoe Tavern, it's a  
17 3,182 percent increase to \$43,000 a year. The most  
18 onerous is \$1.7 million a year.

19 At Tavern Shores, a smaller pier, fewer buoys,  
20 currently they enjoy a \$1,283 annual lease fee. It would  
21 go up to \$19,000. The most onerous would be over  
22 \$800,000. It would just be prohibitive.

23 At Chambers Landing, the homeowners' pier in the  
24 current lease agreement that applies to the pier and buoys  
25 is \$2,113. The least expensive of those would be about

1 \$17,000 and it would go up \$820,000.

2 ACTING COMMISSIONER GARLAND: Can I just  
3 interrupt you and ask you a question?

4 MR. HANSEN: Yeah.

5 ACTING COMMISSIONER GARLAND: On some of these  
6 the numbers are rather large and obviously, you know,  
7 sound bad. But what would be the per-unit share of those?  
8 Since that would be the more reasonable way to look at  
9 this as we consider these issues.

10 MR. HANSEN: I haven't done that math. When Mr.  
11 Duffield speaks, I can go do some quick division, if you  
12 don't mind, and provide that.

13 ACTING COMMISSIONER GARLAND: Sure.

14 MR. HANSEN: I want to work some of the same  
15 topics that Jan hit.

16 This swath, this ten-foot use area around the  
17 piers. The Tahoe Tavern, that pier's enormous. That area  
18 is enormous. We don't even allow mooring of boats on any  
19 of these homeowners' pier. It's a loading and unloading  
20 zone only. So we're really not prohibiting the public  
21 from using that section of the lake.

22 Attestations have also been made. And I'd like  
23 to dispel us of this notion that buoy fields create a  
24 barrier by perception to the public to use that area.

25 Swimmers, kayakers, paddleboarders - I'm a

1 paddleboarding enthusiast - we love the refuge of buoys  
2 fields. We wind our way through them so we're not out  
3 where the boats are speeding on Lake Tahoe.

4 I'd also like to dispense with this perception  
5 that my homeowners are resisting public use of Lake Tahoe.  
6 We're allowing that to take place. Nobody's standing out  
7 in the pier and ranting and raving at them and telling  
8 them to get on their way with their kayaks and  
9 paddleboards. This issue has brought up at our meeting.

10 I really would hope that the Commission would  
11 continue this review and that we try to have a meeting,  
12 perhaps this summer, at Lake Tahoe where most of the  
13 stakeholders will be on hand to be informed about this  
14 complicated formula and all these methodologies that are  
15 being proposed.

16 ACTING COMMISSIONER GARLAND: I have one final  
17 question for you. Since you're asking us to do what we  
18 did the last time, did you participate in the last set of  
19 stakeholders meetings? Did your association --

20 MR. HANSEN: There was one stakeholders meeting.  
21 It was on February 29th. I appreciated attending it very  
22 much. I don't know how that information was disseminated  
23 to -- how many lease agreements do we have, over 700, on  
24 the north and west shores of Lake Tahoe?

25 Does everybody have that number?

1           How many lease agreements are on -- Curt, do you  
2 know?

3           I mean I don't know how staff approached all  
4 those individuals.

5           ACTING COMMISSIONER GARLAND: Outreach.

6           MR. HANSEN: I don't think they've really reached  
7 out to them in a -- other than maybe a two-page letter.

8           ACTING CHAIRPERSON GORDON: I would just like to  
9 make one comment. And as one commissioner, I'm very  
10 sympathetic to the arguments you guys are making. I think  
11 the sticker shock issue is a big issue.

12           I also think that this is an incredibly valuable  
13 resource that the State is leasing.

14           Using percentages doesn't persuade me. Going  
15 from one dollar to two dollars, if I remember my math, is  
16 a hundred percent increase.

17           Going from 0 to \$300 is -- by percentage is just  
18 a massive increase. I suspect people can afford it.

19           So we need to talk dollar values. I do think the  
20 sticker shock issue at least for this one commissioner is  
21 something I am concerned with. Whether people should have  
22 had a free benefit for 25 years, you know, we can't remake  
23 history. But to go from 0 to thousands strikes me as  
24 onerous. On the other hand, how we get there so that the  
25 State does get value for what it is leasing is what I'm

1 trying -- what I'm struggling with right now.

2 I think we have one more witness. And then I  
3 will --

4 MR. HANSEN: Mr. Garland, on that math, just  
5 quick and dirty calculation, it's about \$300 per buoy.

6 ACTING COMMISSIONER GARLAND: Okay. So --

7 MR. HANSEN: If you were just applying that cost  
8 to the buoy. This of course incorporates the cost of the  
9 piers and the square footage involved.

10 ACTING COMMISSIONER REYES: You want per buoy or  
11 per resident?

12 ACTING COMMISSIONER GARLAND: The cost per  
13 resident for --

14 MR. HANSEN: Yeah, per resident would be about  
15 \$300.

16 ACTING COMMISSIONER GARLAND: Okay. So we just  
17 went from an onerous number of a million dollars to \$300 a  
18 unit?

19 MR. HANSEN: No, I'm sorry. I didn't do that --  
20 I did the least onerous of them.

21 Thank you.

22 ACTING COMMISSIONER GARLAND: Thank you.

23 ACTING CHAIRPERSON GORDON: Mr. Duffield.

24 MR. DUFFIELD: Commissioners, thank you for  
25 giving me this time to be able to speak.

1 I have not been involved in the meetings before.  
2 I'll introduce myself. My name's Bob Duffield, and I'm  
3 the General Manager of Chinquapin Homeowners' Association,  
4 which is located on the north shore of Tahoe.

5 And for the benefit -- our board president was  
6 here earlier but couldn't hang out as long as the rest of  
7 us. So she wanted to make sure she was in the record.  
8 Her name was Kathy Payne.

9 And we're on the north shore, as I said, outside  
10 of Tahoe City, 172 units. We've got 132 buoys and two  
11 piers.

12 I wanted to start with a question about this  
13 exemption so I can understand - because again I'm coming  
14 into this - the exemption that homeowners have gotten to  
15 this point.

16 And maybe, Curtis -- is that going to continue or  
17 is that going away.

18 EXECUTIVE OFFICER FOSSUM: The exemption that  
19 existed in the prior law was repealed last year and  
20 effective January 1st of this year. And so leases going  
21 forward beginning this year -- new leases, not old leases  
22 that are in effect -- but beginning January 1st of this  
23 year the Commission is required to charge rent.

24 In addition, if an applicant had submitted an  
25 application prior to March 31st, I believe, of last year,



1 the bill also allowed that that applicant would not be  
2 charged rent for the ten-year period of the lease.

3 So probably even on this schedule I think there's  
4 a number of them that aren't being charged rent pursuant  
5 to that statute.

6 MR. DUFFIELD: Okay. Thank you for that.

7 So a couple things I wanted to touch on. And  
8 these are observations, these are realities that I want to  
9 just bring before the Commission, regarding buoys and  
10 piers.

11 I've been up in Lake Tahoe since '85. I've been  
12 with Chinquapin just a short while.

13 But what I can say - and some of it's reiterating  
14 what has been said - and, that is, that the public even  
15 on -- and I'll speak to Chinquapin, I'll speak to -- I've  
16 been on probably at least half of the piers around the  
17 lake, even if they are private, whether it was my boat  
18 breaking down or I was out swimming and I crawled up on  
19 them. But that happens all the time.

20 And I can tell you at Chinquapin last year I  
21 personally had two rescues come in where we had the boat,  
22 and we allowed them to stay overnight at the pier; which  
23 we don't even allow them to stay -- our owners to be at  
24 the pier. I can tell you, we've snapped them on to buoys  
25 when people are having problems. And I have many

1 photos -- Chinquapin happens to be one of the more popular  
2 places for stand-up boarders and kayakers to come in. And  
3 they love the buoy field because it gives them protection  
4 from the rest of the lake, which Mr. Hansen alluded to as  
5 well.

6 I don't see that the public does not use those  
7 facilities. And I can tell you that because I've seen it.  
8 I've come to work at 6 in the morning and I've found many  
9 boats on our buoys. And I'll ask them to leave politely.  
10 But we don't do anything. They use them. So there is --  
11 that needs to be said. That's a reality around the lake.

12 Another thing I want to bring up is how we  
13 charge -- Lake Tahoe is unique. It's a two-state lake.  
14 We need to look at our neighbors in Nevada. What happens  
15 in Nevada? I think that should be considered, because  
16 we're one community up there, California and Nevada.

17 Let me look at my notes here.

18 I wanted to comment on the looking at a  
19 commercial rate of a marina or a buoy. Because something  
20 I see up there is it's kind of like comparing, if you went  
21 and rented a house or you were a full-time resident, what  
22 you would pay versus if you went and got a hotel room  
23 every night. Because that's really what you're talking  
24 about. If someone's a property owner, they've paid for  
25 their property. If the right of a buoy came with it,

1 they've paid for that up front. And they have -- when you  
2 go to a marina, or you rent a buoy, you're paying premium,  
3 premium rates. Okay? If you rent a house, by the month,  
4 by the year, it may come with a buoy and you pay very  
5 little.

6 So you're comparing -- it's kind of an apples and  
7 oranges. That's just an assessment, as I was listening to  
8 this, that came to mind.

9 Again -- or not again, but in addition, the buoy  
10 price -- and maybe the Commission knows this, doesn't know  
11 it. What TRPA requires homeowner associations to do with  
12 buoys, we need to put them in and take the buoy heads out  
13 every year. So that cost of \$250 or whatever that number  
14 that came up per year is not real for us. It's more than  
15 that. So it's true there's a rent to State Lands. But  
16 then there's the maintenance of those buoys. And we have  
17 divers every year that check the condition. We have to  
18 put the buoys in, take them out. That's addition cost  
19 that I'm not sure that the Commission's aware of.

20 Then there's the maintaining of a pier. We had  
21 storms in December, January where we're repairing -- I  
22 just put \$15,000 into our pier from storms. So where does  
23 that -- so that's a cost in addition to and it's  
24 maintaining and it's addition to the building of it.

25 So it's not just the rent of the State. And I

1 understand and appreciate, I really do, that there should  
2 be some rent. But the whole picture needs to be looked at  
3 of the things I just talked about.

4 So thank you for your time again. I really  
5 appreciate it.

6 ACTING CHAIRPERSON GORDON: Thank you, sir.

7 EXECUTIVE OFFICER FOSSUM: Just a clarification.  
8 And I may not get this exactly right. But my  
9 understanding is that TRPA does require certain buoy  
10 fields to be -- to have the ball removed during the winter  
11 months.

12 MR. HANSEN: All of our buoys have been removed.

13 EXECUTIVE OFFICER FOSSUM: The homeowners'  
14 association --

15 MR. DUFFIELD: -- association.

16 EXECUTIVE OFFICER FOSSUM: So there's a lot of  
17 buoys at the lake that are individual, and there's  
18 Marinas. And TRPA has required some of those to drop  
19 their -- or to leave the anchor in place but to take the  
20 ball out during the winter when they're not using them  
21 anyway. So very few are used during the winter. But the  
22 anchor is left in place, I believe.

23 ACTING CHAIRPERSON GORDON: Mr. Reyes, do you --  
24 do we have any more comments? Any of the other homeowners  
25 wish to speak, those of you who have waited all day

1 patiently?

2 Yes, sir. Come up.

3 Identify yourself at the microphone please.

4 MR. KERN: Hi. I'm Richard Kern. I'm a  
5 homeowner at the Tahoe Tavern properties. And I'm  
6 currently the board president for this year and the past  
7 couple of years.

8 I didn't sign in. I got here late from the  
9 airport. As it turned out, I guess I could have taken a  
10 later flight.

11 But I wanted to just add a few things.

12 In terms of the outreach to the stakeholders, I  
13 would hope the Commission isn't -- doesn't get the  
14 impression that since they've received five letters that  
15 people are not concerned about this. We did not share  
16 this with our entire association yet. We have our annual  
17 meeting this weekend. And we were, frankly, waiting for  
18 more tangible information to distribute to our members.  
19 And, again, our membership is 151 units.

20 I think that's probably what you're going to  
21 find -- and I'm sure you would agree that once you contact  
22 the 600 stakeholders that are going to be brand new  
23 stakeholders, I'm sure you'll get some feedback.

24 The last gentleman talked about the commercial  
25 rate versus the homeowner, and that was a very good point.

1           In a commercial operation, they need to cover  
2 their overhead and they need to make a profit. If you're  
3 a homeowner with a buoy, you're not trying to meet that  
4 same benchmark. And that kind of ties in with -- you  
5 know, there's an expression -- not an expression. But the  
6 feeling up there - and this is more single family  
7 residences than condos - if you have a lakefront home with  
8 a pier and a buoy, typically a realtor will say, "Well,  
9 that's worth another million dollars."

10           Well, you're paying property taxes on that, on  
11 that extra million dollars. So we've had -- you know, Mr.  
12 Connor at one point said that, you know, the State's just  
13 looking for a fair return on their land. My argument  
14 would be that you've been -- we've been paying property  
15 taxes on that land and the State is getting a return via  
16 property taxes on that.

17           Just as Mr. Gordon said a few minutes ago, you  
18 know, we've had people receiving free rent for 25 years.  
19 I disagree. I would challenge that. We all pay property  
20 taxes.

21           And I would hope that we would continue this so  
22 we can get more input from our associations. My personal  
23 feeling would be that more of a simple CPI increase  
24 approach would make the most sense in terms of buoys.

25           In terms of piers, I don't think I would tax

1 them, because you can't make a comparison to -- yes, we  
2 have a 1300-foot-long pier. We have that and it's the  
3 longest pier on the lake because we're in a shallows. So  
4 if you're at Rubicon where it drops off precipitously, you  
5 could have a 20-foot pier and be able to bring a freighter  
6 in. You can't do that at the Tavern. As a matter of  
7 fact, in low water times even at the very end of our pier  
8 you'd have trouble bringing in a boat on the last 20 feet  
9 of our pier. Tavern Shores had the same problem a couple  
10 of years ago; actually had to ask us if they could unload  
11 at our pier temporarily.

12 So those are my comments. Thank you very much.

13 ACTING CHAIRPERSON GORDON: Thank you, sir.

14 Anybody else?

15 What's the will of the Commission?

16 Mr. Reyes, you seem to have an idea how to go  
17 forward from here.

18 ACTING COMMISSIONER REYES: Wow.

19 You know, the issue of property taxes has come up  
20 several times. And the fact of the matter is people don't  
21 pay property taxes on lake underwater property.

22 You're using -- you're paying for the use of that  
23 or for the reservation of that space. It's much like a  
24 restaurant that uses the sidewalk pays possessory  
25 interest. In this case, you know, the restaurant's making

1 a profit on the use of public land.

2 In the case of Tahoe, as it is in any other  
3 waterway, it is the reservation of that piece of land for  
4 the private purpose -- not for profit making but for  
5 private purpose. If it were for profit, it would be much  
6 higher rate.

7 And so I think that there are two distinct  
8 features. And I know that the county assessor is -- while  
9 there's value to being a much -- there's value to being on  
10 the coast, on the beach area, there's value to being on  
11 the river, there's value to being by the lakefront  
12 property, and that impacts the assessed value. I mean  
13 real estate is location, location, location.

14 And if you add amenities to it like a pool or  
15 whatnot, a sun deck, there's going to be value to that,  
16 and many times it exceeds the actual cost of the item.

17 So I'm not compelled by, the property taxes we  
18 pay pays for everything. Because this is not a property  
19 tax, this is a rent fee, from this commissioner's  
20 perspective.

21 I think that it's a sticker shock because it  
22 hasn't been done before and then now we need to do it.

23 Then the question comes up, well, how do we do  
24 it? How do we get there that softens the blow, if you  
25 would? Should we phase it in? Well, technically we can't



1 phase it in, because if you say the fair value's a hundred  
2 bucks but we're going to charge you 50 bucks the first  
3 year and a hundred bucks moving forward, well, the 50  
4 bucks the first year is no longer fair, and then we'll get  
5 an audit finding on that, that we're not charging the fair  
6 market price anymore.

7           And then everybody goes into, well, what is  
8 reasonable? I mean some of the proposals are you're  
9 looking into the cost of doing the pier. And the cost is  
10 going to vary based on what you do to the pier and how big  
11 the pier and what materials you use. So that really has  
12 very little or no bearing to how much space you're taking  
13 of the land.

14           Then we have the issue of, well, what about the  
15 land around the pier or the water, because you don't --  
16 you're not taking over that land but you're taking over  
17 the water use or the space. And then that becomes kind  
18 of, to some degree, philosophical, is that, you know,  
19 when -- as I look at the piers -- and I was looking at my  
20 iPad, and I apologize because I sort of looked up Tahoe.  
21 And I started looking at -- and as I see the fingers  
22 coming down, I'd be hard-pressed to take my boat through  
23 all of them or swim through all of them, even though I'm  
24 sure there are some people that do.

25           So from a public perspective, I'm thinking, well,

1 that does sort of reserve that area. And having spent  
2 many summers up in Tahoe, we always -- I didn't sit on the  
3 Commission at the time -- so I always assumed that was  
4 private property and I should not go through it. And I  
5 think that's more the general view of people rather than  
6 the people who live there. Those of us who go up there  
7 for the summer as tourists have a tendency to stay away.  
8 And I know there's going to be exceptions. I know there's  
9 tourists also that violate private property and jump  
10 fences and whatnot.

11 So I'm struggling to see where -- what we can do  
12 or what is fair now in light of where we need to be with  
13 the legislation that kicks in place. And I guess, if I  
14 may borrow the -- I guess I am kind of comfortable with  
15 updating the current benchmark methodology for buoys. You  
16 know, I'm not crazy about, you know, looking at this stuff  
17 that's going up to 50,000 in this example or 13,000.  
18 That's more than stick shock to me.

19 And so I think the methodology that is being  
20 proposed on 1, I'm prepared to move that.

21 ACTING COMMISSIONER GARLAND: And correct me if  
22 I'm wrong, but I believe that's the staff's  
23 recommendation, to continue --

24 ACTING COMMISSIONER REYES: The staff's  
25 recommendation, continue.

1           ACTING COMMISSIONER GARLAND: Now, are you saying  
2 we should also update the benchmark to 79 instead of --

3           ACTING COMMISSIONER REYES: Yes.

4           ACTING COMMISSIONER GARLAND: Okay.

5           EXECUTIVE OFFICER FOSSUM: And that is based on  
6 the fact that it's been five years since it's been --

7           ACTING COMMISSIONER REYES: Correct. Yeah, it  
8 needs to be updated. And you need to update it on a  
9 regular basis based on what's going on in the market.

10           ACTING COMMISSIONER GARLAND: And I'm prepared to  
11 support that, with the caveat here that Ms. Brisco I think  
12 rightly had, which is to direct the staff to continue to  
13 work with the stakeholders. And, you know, I don't know  
14 what the barriers were to getting the word out to  
15 stakeholders on the last meeting, and if there was enough  
16 outreach. But it would at least make this commissioner  
17 happier if we could do an assessment of what that outreach  
18 was and maybe do a little bit better job at that as well.

19           CHIEF COUNSEL LUCCHESI: Just a comment, not  
20 directly related to the outreach for the stakeholders, but  
21 pursuant to the Commission's direction, in January, staff  
22 did send a letter outlining the changes to the law, SB  
23 152, to all of our lessees in the State, including the 700  
24 lessees at Lake Tahoe. And I believe we received between  
25 200 and 300 responses, calls, that we then responded to,

1 and have been working more on a case-by-case basis with  
2 those individuals or lessees that have called us to ask  
3 for more information.

4 ACTING COMMISSIONER GARLAND: Excellent. Thank  
5 you for that contribution.

6 EXECUTIVE OFFICER FOSSUM: But we will continue  
7 to do that.

8 ACTING CHAIRPERSON GORDON: So do we have a  
9 motion?

10 ACTING COMMISSIONER REYES: That was the motion.

11 ACTING CHAIRPERSON GORDON: A second?

12 ACTING COMMISSIONER GARLAND: Second.

13 ACTING CHAIRPERSON GORDON: Counsel.

14 DEPUTY ATTORNEY GENERAL RUSCONI: I just wanted  
15 to remind you about the voting problem.

16 ACTING CHAIRPERSON GORDON: Yes.

17 ACTING COMMISSIONER REYES: Okay. I'm voting  
18 now. You guys figure it out.

19 ACTING CHAIRPERSON GORDON: Okay. We have a  
20 motion. We have a second.

21 All those in favor?

22 (Ayes.)

23 ACTING CHAIRPERSON GORDON: All those opposed?

24 EXECUTIVE OFFICER FOSSUM: That concludes the  
25 open session.

1 MR. HANSEN: To pass the 79 cents per square  
2 foot, is that it?

3 EXECUTIVE OFFICER FOSSUM: That's correct.

4 MR. HANSEN: And remind me, \$377 per buoy?

5 ACTING COMMISSIONER REYES: That was the motion,  
6 yes.

7 MR. HANSEN: Thank you.

8 ACTING CHAIRPERSON GORDON: Thank you all very  
9 much.

10 MR. HANSEN: I don't know if I see a need to hold  
11 another stakeholders meeting.

12 EXECUTIVE OFFICER FOSSUM: We will continue to  
13 take input from -- and do outreach with the homeowners of  
14 Lake Tahoe. And if there's ideas that we believe should  
15 be brought to the Commission, we'll certainly do that,  
16 because we are always looking to improve techniques.

17 ACTING CHAIRPERSON GORDON: Mr. Fossum, what is  
18 your next order of business?

19 EXECUTIVE OFFICER FOSSUM: We have a public  
20 comment period now, if anybody has any other items.

21 ACTING CHAIRPERSON GORDON: That concludes the  
22 regular calendar.

23 We'll now adjourn into closed session.

24 (Off record: 2:21 PM)

25 (Thereupon the Commission recessed into

1 closed session.)

2 ACTING CHAIRPERSON GORDON: Open the meeting.

3 We'll now adjourn. We're done.

4 (Thereupon the California State Lands

5 Commission meeting adjourned at 2:28 p.m.)

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