

This document is a transcription of the following testimony from the May 8, 2007 Marin County Board of Supervisors meeting:

- PRNS Superintendent Neubacher (starts 00:35:07)
- PRNS Scientist Sarah Allen (starts 00:43:21)
- PRNS Biologist Natalie Gates (starts 00:50:12)
- PRNS Biologist Denise Greg (starts 01:15:00)
- Supervisor McGlashan questioning Superintendent Neubacher (no time noted)

Superintendent Neubacher (Time on hearing tape: 00:35:07)
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“Thank you very much for the opportunity this morning. I want to start off by saying this really is an incredible complex issue, and really involves the centerpiece of PR national seashore. There’s been a lot of history about Drakes Estero. One thing I want to illustrate too is that all of us know the park is biologically rich. The offshore waters are in the top four most richest waters in the world really. Drakes Estero is home to one of the largest harbor seal colonies in the state. Thus the decision about its future really can’t be taken lightly. To highlight this point, we believe because of recent actions taken ... that the harbor seal pupping area in Drakes Estero is seriously threatened now. Dr. Allen is going to discuss this, but we have some major problems because you can see from your handout that pup bags have been recently put in pupping areas, you’ll get statistics, but it’s amazing how many pups we have probably lost this year. Serious problem right now. I also gave you a handout of key points – btw the first picture shows propeller cuts in eelgrass and some of those photos were taken over the weekend... aerial bottom two was taken a year ago... we want also in the handout on key points, you’ve got a lot of background on DR, and again it’s been a long history, but the most important thing after 5 years of planning is that this area was designated potential wilderness, and that’s why the 2012 issue is very important.

“But let me just talk a bit about the letter to Feinstein, and the letter from Supervisor Kinsey to other supporters. I really believe the NPS has been diligently trying to resolve the issues regarding DBOC. We hope the supervisors realize that really the driver on this is not even really us, it’s the Coastal Commission. C&D done in 2003 is held by them, basically nobody can make any improvements on site until the CC actually finishes that c and d order. So we don’t agree with the second paragraph stating the NPS is not willing to finalize this planning process. In fact, I’ve called the coastal commission and meet with them this afternoon and try to get them to resolve some of these issues.

“And the other thing that we want to state because the letter sort of puts the fault on the NPS, we believe DBOC have really not met its (unintelligible word) obligations has been the major cause of the delays. For example, the C&D was over 3 years ago and we were just informed last week by the CC staff that as of March 25, 2007, the application package was just completed. And previously to this, their application was incomplete, they wanted some detail drawings. So it hasn’t even been a month – the NPS didn’t even get these drawings until May 2, about a week ago. So how are we supposed to act on this if we don’t really get the drawings?

“We also believe we’ve been up from many times in letters, that all improvements would be subject, just like the county, to NEPA. We have to do an environmental analysis. We’re pretty much complete, all those maps are basically developed for the environmental analysis. We didn’t know there were that many bags in the pupping area. We didn’t know that 96% of racks are in eelgrass. So there are some serious issues related to this and what we’re going to do now based on the level of deeper review that we’re doing, we have to decide whether there’s going to be an EA done or an EIS for this project.

“I mean its that complex, because now you’re talking about the marine mammal commission wrote us a letter this morning, they’re going to take it up, this is a national issue. They’re going to take it up on a national level. Now here’s another reason why the permit is not available at this time. There’s the NEPA issue, but there’s jurisdictional issues over the waters and what happened in 1976, I’m sorry in the late 60s and in the 70s, the state ceded the bottom to us, to the people of the United States, the federal government. So Drakes Bay Oyster Company has said they don’t want anybody besides the state telling them where to put bags or orchestrating the bottom. So they will not sign a permit from the NPS to use those waters, which we think is a violation of law. I’ve got a legal opinion, and we wrote to DBOC and it’s a CFR, I don’t really have a choice. But in the end, they’re going to have to get a permit from us to operate in the estuary in our opinion based on a legal opinion. So that’s a major hurdle.

“Until they’re willing to sign a permit – we’ve sent them two new draft permits and asked them for comments, we never got much of a response from them. So I do want to sort of end here, well a couple of endings. Most importantly, a final permit cannot be issued until the NEPA compliance is completed, until we decide whether, we’re going to decide this week, I have a meeting with the lawyers tomorrow, decide whether there’s going to be an EA or an EIS required.

“I also want to state that DBOC has not met many of their obligations under the reservation or this lease agreement that they have, that the Johnson’s had previously, which was a 40-year lease. In the fall of 2005, Mr. Lunny was observed in NPS land outside the reservation area construction a new septic system with no permission from NPS, next to an archeological site. On December 28, 2005 the NPS inspected the site and found two new large containers or construction trailers and plumbed oyster tanks that had not been approved by the Coastal Commission. That was another violation by the Coastal Commission in late December, and no one, NPS did not give permission, again the oyster tanks are outside the reserved area.

“And then also on that site visit we also noticed that DBOC had dumped excavated material from the cliff area into the parking area, which is also NPS property, with no authority to do so. And then on February 22 2006, the Costal Commission documented the Drakes Bay Oyster Company had paved a substantial part of the ROP area with proper permits or NPS approval.

“We hope the supervisors will delay this letter, talk to the coastal commission – I think one phone call to them will indicate that they are pretty much driving this process – and we would like the supervisors to come out on site. We could have a serious problem with our harbor seal population because of the recent activities. So we would hope that the supervisors would meet with coastal commission staff and really get their perspective on the issue. They’re an important player. Thank you.”

PRNS Scientist Sarah Allen (Time on hearing tape: 00:43:21)

“Good morning, and thank you for allowing me to present to you. My name is Sara Allen and I'm a scientist with the National Park Service and more specifically, I've been studying the ecology of Drakes Estero for almost thirty years. I completed my master's thesis on harbor seals in Drakes Estero. So I have some familiarity with that population.

“In the brief time that we are allotted here, I want to speak specifically to the harmful effects of the oyster farming on the wildlife and the ecology of the Estero. For a more detailed analysis, we provided you some documents which you can refer to.

“Drakes Estero is a 'western hemisphere site of significance to shorebirds' as part of the international shorebird conservation plan for the Pacific and a similar designation is pending for water birds. This is hemispheric recognition. Thousands of shorebirds and water birds, many of which are rare, migrate through and over winter here in the estero. These birds depend on the eelgrass and the organisms living in the mudflats to survive this migration. Thousands of black brant, species on the Audubon's watch list, are entirely dependent on eelgrass for food – that's their food. The estero is one of only a few places where they over winter. We have documented the oyster boats directly disturbing hundreds of black brant in one hour that are resting and feeding in the eelgrass beds this year.

“Bird studies by an Audubon canyon ranch scientist have documented that the number of birds is reduced by the thousands of oyster bags on the mud flats. The bags reduce the source of food, because the birds cannot access their food in the mud by the bags physically reducing their access, but more specifically the bags create a dead, noxious zone underneath them. So that kills all life, there's no food available in the mudflats for the shorebirds. Depending on size and number and bags and racks, the overall effect on the organisms in the mudflats could cause irreversible, ecological damage. And I have a letter from the USGS scientist, who's a specialist; who can provide you with that documentation.

“The damage of the commercial oyster operation on Drakes Estero is more easily documented because the Park Service has over 25 years of continuous monitoring data from Drakes Estero. Seals feed in the ocean, but most come on shore to give birth, nurse and rest. They have to come on shore, that's what makes them a pinniped, they can't be like a whale and spend all their life in the ocean - they have to come on shore to give

birth. Within a 24 hour period, they can come on shore for about 7-12 hours, so that's their resting period. You go to bed at night at 8 or 9 or midnight perhaps, they have to go to bed in the daytime when the tidal mudflats are exposed. Disturbances cause pups to be separated or abandoned from their mothers. In chronic disturbance day after day causes these seals to abandon these sites. If you were to be disturbed every night, you'd go to the other room. If your husband or wife is snoring, I snore, but if you're snoring, you're going to sleep in another room. Well that's what happens to them. Chronic disturbance leads to abandonment. The Estero is a major seal nursery for female seals to give birth and raise their pups. Marin County has the highest density of harbor seals in the state of California - the highest density, little Marin County. And it represents 20% of the main population of harbor seals in the state. And Drakes Estero represents 40% of that nursery. It is the largest nursery in Marin County, Drakes Estero. Over 12,000 seals normally congregate there to give birth to around 300-500 pups. And the number in the Estero swells to about 2,000 during the summer. I've attached satellite and radio tags to harbor seals - over 200 in central CA, and the ones in Drakes Estero range as far as the Smith River, and as far as Monterey Bay, but they come back to Drakes Estero to give birth because it's a protected spot, it's remote, protected.

“In the early 1990s, data show that boats were disturbing seals and the pup numbers declined by 50%. The park implemented a seasonal closure from March through June to avoid disturbance to this nursery. And the population recovered within a couple of years. Seals congregate at Drakes Estero because it's remote and safe. This is no longer true. Over the past few weeks we have documented oyster operations disturbing mothers with pups and oyster bags left on sandbars where seals would normally give birth and nurse their pups. The harm is resulting in abandonment of one area where more than 250 seals, including 100 pups 2 years ago occurred in that spot, this year chronic disturbance and placement of bags on the nursery area has caused an 80% reduction in the seals dropping to around 35 this last Saturday. I was out there on Saturday. This issue has raised, has been received and recognized by the marine mammal commission and we've received a fax today from the executive director of the marine mammal commission because they've just heard about this which I will provide to you. And they're going to bring it up in their next commission meeting because it has national significance.

“So, finally, the indirect effects of oyster operations include impairment of the ecosystem upon which the seals depend. 10 million nonnative oysters and clams filter 50 gallons per day each oyster. That depletes the food web upon which organisms such as seals and birds depend. [unintelligible], anchovies, smelt, are all schooling fish that compete with commercial oysters. And perhaps if seals ate oysters we'd have a different discussion today. Thank you.”

PRNS Biologist Natalie Gates (Time on hearing tape: 00:50:12)

“I'm Natalie Gates. I'm a wildlife biologist at Pt Reyes national seashore. Thank you very much for having me here. I want to talk about two of the major concerns that the Park

Service has for impacts in Drakes Estero, and that is the introduction of invasive species and the impacts to eelgrass. First I'll talk about invasives.

“Drakes Bay Oyster Company’s import permit from the California Department of Fish and Game allows importation of four species of shellfish. All four species are nonnative to the estero. They are pacific oysters, purple hinged rock scallops, European flat oysters, and manila clams. Three of the species, the two oysters and then the clam, are documented in the literature worldwide to be invasive and to compete with and displace native species. Pacific oysters in Drakes Estero were documented this past winter to have invaded the natural habitat on [Bull Plain/Point?] which is outside of the oyster operations. The imported shellfish can themselves be vehicles for introduction of other invasive species – for example, a protozoan parasite oyster drills, which can impact native oysters; [valadaria?], which is a non-native snail that has been documented in the estero; and most importantly, a colonial tunicate, or a sea squirt, it’s name is [didemnum labaliam?], it has been found on oyster structures in the estero. It is a highly aggressive invasive species that could substantially alter Drakes Estero’s ecology. Forever. And has major ecosystem and financial impacts on the West coast and on the grand banks on the east coast. On the grand banks the species now completely covers 175 sq km of the sea floor. And when I say it covers the sea floor, I mean it covers it completely - nothing else grows there.

“In terms of eelgrass, I don’t know if any of you saw the front page of the Marin IJ yesterday, but eelgrass is big news. In Mark Prado’s article yesterday it was described as the ‘key to marine life – creatures feed, nest, and hide in it while its roots stabilize the sea bed. But there’s a dire shortage of eelgrass in the Bay area and local scientists want to do something about it.” Well, Point Reyes National Seashore is no exception to that. Eelgrass is well-recognized as a really, really important resources. It is considered essential fish habitat by the state. Under the Magnuson-Stevens Fisheries Management Conservation Act, it is been identified by the California Coastal Commission as” a species of special biological significance” and it requires special protection under the Coastal Act. Large eelgrass beds are found in only a few estuaries in California. And many species are entirely dependent on eelgrass for part of their life cycle. Eelgrass beds in the estuary provide cover, food, and a nursery for fish. Several marine species spend their larval and juvenile stages in these estuary grass beds, cod, English sole, speckled sand dad, and several species of near-shore rockfish. The federally-listed steelhead trout spawns in Schooner Bay in the estero and uses the estero eelgrass during its juvenile phase for protection from predators. Dr. Allen mentioned black brant, which are found in only a few locations in California. They feed exclusively on eelgrass and they’re found in the thousands in Drakes Estero.

“What does oyster farming do to eelgrass? Well you have some aerial photographs and you can see that direct impact to eelgrass. The racks shade out eelgrass and kill it. There is direct damage from oyster boats from the propellers and hulls – you can see the damage aerially and you can probably see it from thousands of feet above the water. There’s direct damage to eelgrass during placement of the racks from churning and crushing. And there’s erosion of the estero floor around the racks which causes trenching,

or scouring, of the floor. Eelgrass cannot grow on that kind of a sea floor. There's increased sedimentation, increased silt and mud from the oyster operations. All these things damage eelgrass.

"We know that 89 out of the 93 racks that are currently in DE are in eelgrass beds. We also know that eelgrass has disappeared under every single usable rack. Thank you."

PRNS biologist Denise Greg (Time on hearing tape: 01:15:00)

"Hi, my name is Denise Greg and I'm the marine biologist at the marine mammal center. I did my master's work on reproduction of harbor seals and currently study health and survival of harbor seals in the San Francisco Bay. I just wanted to tell you a little bit about how sensitive they are during this nursing period. In Marin County, harbor seals give birth in April and may and spend approx 3-4 weeks nursing their pups. During this time the mother can transfer a third of her bodyweight to that pup so it's a very critical intense time.

"During this period the marine mammal center admits a number of harbor seal pups that have been separated from their mothers, usually / often through human disturbance, whether intentional or unintentional. They're dehydrated and malnourished and some areas, like starbury spit (between toubron? And Saucelido?), a long-term harbor seal haul-out sit was abandoned because of chronic human disturbance. This spring alone I pulled 6 dead newborn harbor seal pups out of Richardson Bay. This is what happens when they don't have a place to haul out and take care of their pups. These data, while not peer-reviewed, are public data, part of the National Marine Mammal Health and Stranding Response Program, so those are all available. And I agree with dr. Coolidge that it would be good to wait to make a decision until the current data documenting pup numbers within Drakes Estero makes it into a document. And the other thing I want to say was that the timing is really important, like Castro Rocks underneath Richmond where the harbor seals haul out. They've moved construction activities to different parts of the bridge and they only do maintenance and construction outside of the pupping season. This has resulted in stable and increasing pup numbers at that particular site.

"The third thing I wanted to say is that Drakes Estero is a, just such a huge treasure and an amazing place for these harbor seal pups and very important for the statewide population of harbor seals."

Supervisor McGlashan Questioning Superintendent Neubacher (no time noted)

Supervisor Charles McGlashan: Supervisor, if it's ok with you, I'd like to ask Superintendent Neubacher just a few questions. As Mr. Neubacher comes up, I just want to reinforce something our president just said, which is to state my view that this letter definitely is NOT a declaration of wanting to make a decision today about what happens in 2012. I think we have a lot of discussion and debate to have before that decision is

reached either in this room or in any other room. Frankly in the federal authorities have a lot to say on that matter too. I feel extremely loyal to Peter Bayer and Clem Miller and others who worked on the original intent in '76. I'm also a huge fan of the notion of sustainable agriculture, so I'm torn and have a lot to think about as we eventually debate what happens in 2012. And Steve has made it very clear, I think, that the intent of today's letter is to send a distress call to our Senator that we need help to unlock what I think may be a deadlock. So I wanted to just ask you, Superintendent if you can kind of restate what, in your view, is actually going on here. You've made some comments that the Lunny family was late getting some things fixed, um, Mr. Lunny commented that no, in fact the septic system was required under the consent decree and... so I just want to try and reach some clarity. I think the reason President Kinsey wants to send this letter is we need some referee to happen, and I worry that maybe things have gotten personal and that sending a distress call to our Senator would help unlock the logjam here. In my view, we've been witnessing for at least three or four years an incredible and expensive effort to clean up the operation. I've been out on Drakes Estero several times in the last five years on a kayak and I saw what the Johnson oyster farm looked like and seeing with great joy a great contrast between what the Lunny family is accomplishing there and what it used to look like. So I just want to make sure that there's no, sort of alternative motive going on here that everything you're pursuing is by the book with the objective of rapidly permitting what I would argue is a darn good effort to clean things up and enjoy the final five years of the lease in good faith with clean environmentally sustainable activities. In fact, nothing that's going on here is using NEPA as a constant delay tactic or as a way to shut someone down prematurely. I will say that I love NEPA and CEQUA, I'm an enviro, but I've also seen it abused badly. And I've seen it used to torture people who are trying to do sometimes the right thing because things go awry in personal relationships. So I just would love it if you would comment and reassure me that you actually don't believe there's any need for the Senator to get involved to help referee and reach a resolution of this controversy. I think Steve's intent here is help, let's get this fixed let's get it cleaned up, let's let Mr. Lunny enjoy the final five years of this lease while we then conduct a bigger debate about what happens after 2012 to the extent that it's appropriate at the local level. So I need your reassurance that what's going on here is affair and adequate and will reach expedition and concurrent conclusions so this guy can get what he deserves out of these final five years.

Neubacher: Yeah, and we've always stated that Mr. Lunny has the legal right to operate to 2012, so we agree with you 100%. There is the coastal commission, and a lot of people think I control the Coastal Commission – well there's nothing further from the truth. So the question is, um, I can't even approve repairing the buildings until the CC has finalized their coastal development permit. And I even encouraged them to come out this week and I gonna meet with them at 1 o'clock to try to finalize what's going on. (supervisor: we better get you going!) Yeah, I better get going. (Audience laughter) So we are not trying, we just have a standard process just like the county does. You have to have a complete application. Then we do the environmental review. This is all standard practice for us. Then a planning team decides whether there's enough information - we have a mandatory checklist, we have environmental compliance officers that determines what's the level of compliance that's needed to move on. So we're trying to move

through the process, but if you really, we did not have a complete package (please call the CC, call their law enforcement division) until really late March. I think we are going to get to resolution really quickly. I don't think there's a need for the letter at this point in time.

McGlashan: So this discrepancy in testimony today, you know, between your assertions that septic units were done without permits and his assertion that they were in fact required... this is the kind of thing that makes me worried that we do in fact need to ask for help from a higher authority to try to sort out this kind of conflict, because you could deadlock for a long time over...

Neubacher: The septic system... his lease agreement or reservation says that he needs to notify us so we can be on-site when construction occurs. The county did approve the septic permit. We, we happened to drive by one day and there was equipment out on the hill – there's an archeological site right next to it – and we had to go up there and stop work just like the county would, just because we didn't have anybody on-site. There wasn't any... there was potential for damage, so we got the OK for the archeological site and that proceeding within 2-3 days after that incident... maybe even the next day after we got the authorization from archeological personnel on site. So, I mean it just, it was, um, a violation that he's required under his lease agreement to notify us before – and this is just part, this isn't even on the reservation, up on a hill above the complex – but we wanted the septic system too because of the pollution issues that occurred in the early 1990s.

McGlashan: So these kinds of mistakes haven't led you to conclude that he oughtta be shut down now, and...

Neubacher: No, not even close. No. I'm committed to, and I've told this to Steve, to get it through 2012. I do think there are some major issues but he, he has a leasehold interest basically, until 2012. And the lease with the state says once that ceases, then the water lease will cease at the same time, basically. They're concurrent. And I could submit that lease to you if you want, from the state of California. And the only, I'll just tell you one other outstanding issue which is kind of interesting: State ceded the land to the US Government, which probably would never happen today, and they only kept the right to fish. The right to fish does, only includes wild fish. So, it doesn't include oyster growing. So there's a big legal issue even with that... which we're trying to get the attorneys to sort out, which is not easy.