

Tide Water Associated Oil Company

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1. (OIL AND GAS LEASE APPLICATION, ST. ANTHONY OIL CORPORATION, SANTA BARBARA COUNTY - W. O. 2046.) The following report was presented to the Commission:

"On January 19, 1956 (Minute Item 5, pages 2534-37) the Commission directed the Executive Officer to continue with the processing of the consideration of offering for oil and gas lease tide and submerged lands at Summerland, Santa Barbara County, as initiated under W. O. 2046.

"In accordance with Section 6873.2, Public Resources Code, and pursuant to request by the County of Santa Barbara, the requisite public hearing relative to the area to be considered for lease was held January 11, 1956. Section 6873.2, Public Resources Code, also provides in part that 'within thirty (30) days after such hearing the commission

1. 'shall determine to offer the land for lease, as provided under Sections 6871.3, 6872 and 6872.1, unless' it
2. 'shall determine that the issuance of a lease as to all or part of such land would result in an impairment or interference with the developed shoreline, recreational or residential areas adjacent to the proposed leased acreage, or'
3. 'may determine to offer such land for lease as to all or part thereof and include in the offer for lease such reasonable rules and regulations which, in the opinion of the commission, are necessary for the exploration, development and operation of said lease in a manner which will not impair or interfere with said developed shoreline, recreational or residential areas; provided however, that no tide or submerged lands should be offered for lease under any conditions, rules, or regulations which will result in a discrimination between bidders, as provided by Section 6874.'

"The stage in process of the subject lease application does not give a complete basis for determination of offering the land for lease, nor a basis for determining that the lease of the lands would result in impairment. Therefore, inasmuch as a lease offer can be made 'in a manner which will not impair or interfere with said developed shoreline recreational or residential areas', proceeding under this alternative is suggested for consideration.

"The following questions have been referred to the office of the Attorney General for informal opinion:

1. Can the State Lands Commission prevent oil and gas developments from piers constructed for the purpose?
2. Would the Commission have authority to write into an oil lease, and to enforce, a provision permitting the State to suspend operations immediately upon an occurrence of any situation that would be in violation of the provisions of Section 6873 (b) of the Public Resources Code?
3. Does the Commission have authority to specify in a lease of tide and submerged lands that any wells drilled on adjoining privately owned uplands must, upon completion of the drilling operations, be placed on production with their surface facilities recessed below the adjoining ground level?
4. Whether in the light of Public Resources Code Section 6873 (d), providing that leases of tide and submerged lands shall contain provisions that offshore filled lands and structures 'shall conform to the rules and regulations of the Commission in effect at the time of invitation for bids in pursuance of which the lease is awarded . . .', the Commission may
  - (a) rely solely upon the conditions in a bid offer and lease as a means of control over such offshore filled lands and structures, or
  - (b) may adopt rules and regulations which in turn provide that conditions in the bid offer and lease shall be the criteria for offshore filled lands and structures?
5. Whether the reference to 'rules and regulations' in Public Resources Code Section 6873.2 providing that the Commission may include 'rules and regulations' in an offer for lease means rules and regulations adopted in accordance with the Administrative Procedure Act, or refers to conditions in a lease?

6. Whether the time of the Commission's determination 'to offer the land for lease' within the meaning of Public Resources Code Section 6873.2 is related to 'the time of invitation for bids' within the meaning of Public Resources Code Section 6873 (d)?

"The reply as to the first four questions is in the affirmative as given in detail in the opinion report from the office of the Attorney General attached hereto as Exhibit 'A'. The reply to question 5 in summary provides that the Commission may, at its discretion, authorize lease operating conditions as rules and regulations adopted in accordance with the Administrative Procedure Act, or as specific terms and conditions in an oil and gas lease. The reply to question 6 states that the time of the Commission's determination 'to offer the land for lease' is not related to 'the time of invitation for bids'.

"Staff conclusions relative to lease bases and land classifications have been reviewed and concurred in by the economic, planning and geological consultants retained by the Commission."

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, IT WAS RESOLVED AS FOLLOWS:

1. THE COMMISSION DETERMINES THAT THE MOST LANDWARD 500 ACRES OF TIDE AND SUBMERGED LAND UNDER CONSIDERATION UNDER W. O. 2046 ARE LANDS WITHIN THE KNOWN GEOLOGIC STRUCTURE OF A PRODUCING OIL OR GAS FIELD.
2. THE EXECUTIVE OFFICER IS AUTHORIZED TO PREPARE AN OFFER FOR LEASE PURSUANT TO SECTION 6827 P.R.C. OF THE MOST LANDWARD 500 ACRES OF TIDE AND SUBMERGED LAND UNDER CONSIDERATION UNDER W. O. 2046.
3. A MEETING DATE IS TO BE ESTABLISHED BETWEEN APRIL 1 AND APRIL 15, 1956 TO CONSIDER:
  - (A) THE ADOPTION OF RULES AND REGULATIONS, IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT, PROPOSED FOR OIL AND GAS LEASES PURSUANT TO DIVISION 6 OF THE PUBLIC RESOURCES CODE.
  - (B) THE FORM OF OIL AND GAS LEASE TO BE UTILIZED IN THE OFFERING OF TIDE AND SUBMERGED LANDS IN THE SUMMERLAND AREA, SANTA BARBARA COUNTY, AS AUTHORIZED UNDER (1) ABOVE.

Attachment: Exhibit "A"

EXHIBIT "A"

( C O P Y )

STATE OF CALIFORNIA  
Los Angeles 12

INTER-DEPARTMENTAL COMMUNICATION

TO: Col. Rufus W. Putnam, Executive Officer  
State Lands Commission  
302 State Building  
Los Angeles 12, California

DATE: February 2, 1956

FILE NO.

FROM: DEPARTMENT OF JUSTICE

SUBJECT: QUESTIONS RAISED  
BY THE CUNNINGHAM-SHELL  
TIDELANDS ACT OF 1955

As the Executive Officer of the State Lands Commission you have requested certain informal opinions of this office. The questions posed substantially are:

1. Does the Commission have authority under Section 6873.2 of the Public Resources Code to include "rules and regulations" in an offer for lease of tide and submerged lands as specific terms of the lease without adopting such rules and regulations in accordance with the Administrative Procedure Act?
2. Does the Commission have authority to include in a lease of tide and submerged lands a prohibition upon the use of piers constructed for the purpose of extracting oil and gas?
3. Does the Commission have authority to include in such a lease a provision which would permit the State to suspend operations immediately upon the occurrence of any situation that would be in violation of Section 6873(b) of the Public Resources Code?
4. Does the Commission have authority to include in a lease of tide and submerged lands a requirement that any wells drilled on privately owned uplands must be placed on production with their surface facilities recessed below the adjoining ground level, upon completion of the drilling operations?
5. Does the time of the Commission's determination "to offer the land for lease" within the meaning of Public Resources Code Section 6873.2 relate to "the time of invitation for bids" within the meaning of Section 6873(d)?

ANALYSIS

1. Rules and Regulations Within  
the Meaning of Section 6873.2

Section 6873 provides:

"When leasing tide or submerged lands, the Commission shall prepare a form of lease which shall contain . . . the following:

". . . .

"(d) Any offshore filled lands or structure or structures constructed for the purpose of drilling pursuant to this section shall conform to the rules and regulations of the Commission in effect at the time of invitation for bids in pursuance of which the lease is awarded. Drilling, whether from upland, littoral or offshore locations, shall be conducted in conformance with such rules and regulations in effect at the time of invitation for bids in pursuance of which the lease is awarded."

Section 6873.2 provides:

". . . The Commission may . . . include in an offer for lease such reasonable rules and regulations which, in the opinion of the Commission, are necessary for the exploration, development and operation of said lease in a manner which will not impair or interfere with said developed shoreline recreational or residential areas; provided, however, that no tide or submerged lands shall be offered for lease under any condition, rules, or regulations which will result in a discrimination between bidders as provided by Section 6874."

A "regulation" is defined by Section 11371(b) of the Government Code to mean "every rule, regulation, order or standard of general application or the amendment, supplement or revision of any such rule, regulation, order or standard . . ." (Emphasis added.)

Government Code Section 11380(a)(3) exempts from the operation of the Administrative Procedure Act any regulation which is "directed to a specifically named person or to a group of persons and does not apply generally throughout the State."

Section 6873(d) of the Public Resources Code is a general provision. It speaks in terms of "conformance with" rules and regulations in effect at the time of invitation for bids. It applies to every lease of tide and submerged lands. It clearly contemplates "rules and regulations" of general application adopted by the Commission in accordance with the Administrative Procedure Act.

Section 6873.2, however, is a specific provision. It relates to a particular offer. By its very language, it authorizes the Commission to include in the offer for lease such reasonable "rules and regulations" as the Commission deems necessary under given circumstances. The whole tenor contemplates discretion in the Commission to tailor particular leases to meet specific needs which needs shall have first been determined in accordance with the hearing procedure required by Section 6873.2. The rules and regulations authorized are those which will be directed to a specific lessee for the protection of a particular area.

See: Faulkner v. Calif. Toll Bridge Auth. (1953), 40 Cal. 2d 317.

In our opinion the rules and regulations authorized by Section 6873.2 would thus be of specific application and not within the scope of the Administrative Procedure Act.

It is a familiar maxim of law that a general provision is controlled by one that is specific. It is an equally well established principle that a statute should be construed so as to give meaning and effect, not only to the statute or code section as a whole, but to each and every part thereof, i.e., to every word or clause and to every distinct or coordinate provision of the section. The legal intendment is that each and every word or clause so inserted shall have some useful and sensible purpose and that, when correctly understood, it may have some practical operation.

As indicated before, Section 6873.2 provides for the inclusion of specific "rules and regulations" which the Commission deems necessary in the particular lease to prevent impairment or interference with the shoreline developments in the area. If we are to interpret the phrase "rules and regulations" as used in Section 6873.2 as referring to the existing rules and regulations adopted by the Commission in accordance with the Administrative Procedure Act, that section would be rendered nugatory since every such rule and regulation of the Commission is implicitly made a part of every oil and gas lease by compliance with Section 6873(d). To give meaning and effect to Section 6873.2, it is thus necessary to construe the phrase "rules and regulations" in the sense of "conditions" or "provisions" which the Commission is authorized to include in specific leases for the protection of a particular area.

In our opinion Section 6873.2 gives the State Lands Commission authority to impose additional "rules and regulations" or "conditions" upon an oil and gas lessee or permittee as terms of a particular lease where the Commission makes its determination in compliance with the procedure provided by that section. Such rules and regulations need not be adopted in accordance with the Administrative Procedure Act.

## 2. Prohibition Upon Use of Piers.

Section 6874 of the Public Resources Code provides that the Commission shall not discriminate between bidders by prohibiting drilling from upland, filled lands, piers or platforms. That section contains an exception, however, whereby the Commission may prohibit a particular drilling method or methods if it first determines that: (1) the State owned lands are being drained by adjacent wells, and (2) the prohibition imposed is necessary to prevent interference with or impairment of developed shoreline, recreational or residential areas.

It is our opinion that the Commission thus has authority to offer a lease of tide and submerged lands with a prohibition upon the use of piers for the extraction of oil and gas if the Commission first determines the existence of the prerequisite facts essential to bring the matter within the exception expressed.

STANDARD B &amp; P "NOISEAR"

STANDARD B &amp; P "NOISEAR"

### 3. Suspension of Operations Upon Pollution or Contamination.

Section 6829(e) provides that every oil and gas lease of tide and submerged lands shall include such "covenants, conditions, requirements and reservations as may be deemed advisable by the Commission in effecting the purpose of this chapter and not inconsistent with any of its provisions; . . ."

Section 6873 provides:

"When leasing tide or submerged lands, the commission shall prepare a form of lease which shall contain, in addition to other provisions deemed desirable and necessary by the commission, appropriate provisions contained in this chapter and the following:

"(b) Pollution and contamination of the ocean and tidelands and all impairment of and interference with bathing, fishing or navigation in the waters of the ocean or any bay or inlet thereof is prohibited, and no oil, tar, residuary product of oil or any refuse of any kind from any well or works shall be permitted to be deposited on or pass into the waters of the ocean or any bay or inlet thereof."

Subsection (b) manifests an intention of the Legislature to prohibit pollution and contamination of the ocean and tidelands. Implicit within the duty to prohibit pollution and contamination is the authority to take such action as appears necessary to carry out the obligation imposed. The Legislature has not left such authority up to implication, however. By the broad provisions of Section 6829(e) the Commission has been given express authority to include in its lease any covenant or condition it deems advisable to effectuate the purposes of the chapter. As indicated, one obvious purpose of the chapter is to encourage development of the State's oil and gas reserves while at the same time to guard against pollution and contamination of the ocean and tidelands. Authority to provide for immediate suspension of operations until the abuse is remedied seems consistent with the intent of the Legislature expressed by the sections herein considered.

We therefore conclude that the Commission has the authority to include in its lease a provision which will effect an immediate suspension of operations in the event of pollution or contamination of the ocean or tidelands.

### 4. Recessed Surface Facilities of Wells in Production.

Section 6829(c) of the Public Resources Code provides that every oil and gas lease of tide and submerged lands shall include "provisions specifying methods of operation and standard requirements for carrying on operations in proper and workmanlike manner."

Section 6829(e) authorizes the inclusion of any covenant, condition, requirement or reservation deemed advisable by the Commission in effecting the purposes of the Act, as quoted above.

Section 6873.2(c) provides that the Commission in determining whether to issue any tide or submerged land lease shall consider whether such lease would "destroy, impair or interfere with the esthetic and scenic value of such recreational, residential or park areas" as are likely to be affected by the lease.

Section 6873.2(c) thus expresses as a purpose of the Legislature the desire to preserve and protect the esthetic and scenic value of areas surrounding tide and submerged lands offered for oil and gas leases. Sections 6829(c) and (e) give the Commission authority to specify methods and conditions of operation which are designed to effect the stated purpose. Some reservation is had with respect to the constitutionality of exercising such regulatory authority as to wells located on private property. (See 21 Ops. Atty. Gen. 43.) Where there are such serious considerations as appear in the conflict between the development of oil and gas resources and the protection of scenic and esthetic values, and where there is a sufficient relationship between the State and the matter subjected to regulation, we believe the grant of regulatory authority will be sustained by the courts. Here the regulation of drilling operations upon private property is justified by the relationship between the State and the lessee.

It is our opinion that the Commission has authority to require its lessees to place wells drilled on adjoining privately owned uplands in production with their surface facilities recessed below the adjoining ground level upon completion of the drilling operations if the Commission deems such to be necessary to preserve and protect the esthetic and scenic value of the area.

5. Must the Determination to Offer Land for Lease be Concurrent with the Time of Invitation for Bids?

Public Resources Code, Section 6873(d) provides:

"Any offshore filled lands or structure or structures . . . shall conform to the rules and regulations of the Commission in effect at the time of invitation for bids . . . Drilling . . . shall be conducted in conformance with such rules and regulations in effect at the time of invitation for bids . . ." (Emphasis added.)

Public Resources Code, Section 6873.2 provides in part as follows:

"Within thirty (30) days after such hearing the Commission shall determine to offer the land for lease . . ." (Emphasis added.)

A literal construction of the language of these two sections demonstrates



Col. Rufus W. Putnam

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that the time of invitation for bids need not concur with the time at which the Commission shall determine to offer the land for lease.

A practical construction of the language confirms this interpretation. Necessity may require a reasonable lapse of time between the "determination" and the actual "invitation". It is consistent with the mandate of the Legislature that a reasonable time should be allowed for preparation of the invitation for bids once the determination to offer the land has been made.

#### CONCLUSION

In our opinion the rules and regulations contemplated in Public Resources Code Section 6873.2 refer to specific terms of a particular lease and need not be adopted by the State Lands Commission in accordance with the Administrative Procedure Act. The Commission has authority under the exception expressed in Section 6874 to prohibit a particular method of exploration, development or operation, such as the use of piers, if it determines the facts to be such as will bring the lease within the exception afforded. By construing Sections 6873(b) and 6829(e) together, we conclude that the Commission may provide for an immediate suspension of any operations which would be the cause of a situation in violation of the former section. The Commission has authority under Section 6829(c) and (e) to require that producing wells on adjoining privately owned uplands have their surface facilities recessed below ground level if it is first determined that such requirement will prevent otherwise probable impairment or interference with the esthetic or scenic value of the area involved. The Commission may determine to offer land for lease within the meaning of Section 6873.2 and at a later time issue the invitation for bids as provided by Section 6873(d).

Respectfully submitted,

EDMUND G. BROWN, Attorney General

By (Signed) Victor A. Gables  
VICTOR A. GABLES  
Deputy Attorney General

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