

PARCEL 14, CH. 979, STATUTES OF 1955, DESCRIBED AS THE PROPERTY KNOWN AS WALTER'S ISLAND, LOCATED IN THE STOCKTON DEEP WATER CHANNEL PROJECT OF THE SAN JOAQUIN RIVER, COMPRISING APPROXIMATELY 15 ACRES, AND BEING A PORTION OF SECTION 28, T. 2 N., R. 5 E., M.D.B. & M., COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA.

THE COMMISSION APPROVES THE NON-RESERVATION TO THE STATE OF THE MINERAL RIGHTS IN THE SALE OF THE FOLLOWING DESCRIBED PARCEL OF LAND:

PARCEL 6, CH. 1668, STATUTES OF 1953 (ALSO DESCRIBED AS PARCEL 19, CH. 979, STATUTES OF 1955), DESCRIBED AS LOTS 20, 29 AND 30 IN SECTION 14, T. 2 S., R. 8 W., CITY OF CHINO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA.

THE EXECUTIVE OFFICER IS AUTHORIZED TO ADVISE THE PUBLIC WORKS AND ACQUISITION DIVISION OF THE DEPARTMENT OF FINANCE ACCORDINGLY.

21. (APPLICATION, LEASE OF TIDE AND SUBMERGED LANDS, UTAH CONSTRUCTION COMPANY, CONTRA COSTA COUNTY - W. O. 2270, P.R.C. 1689.1.) The following report was presented to the Commission:

"An application has been received from the Utah Construction Company of One Hundred Bush Street, San Francisco 4, California, for a lease of 382.76 acres, more or less, of tide and submerged lands adjacent to the Mountain Copper Company properties northerly from the City of Martinez, Contra Costa County. The applicant desires a lease for a term of sixty years, on a form of lease which is a modification of the Commission's standard lease form. Title to the adjoining upland, comprising an area of 250 acres, is now owned by the Utah Construction Company. In its application, the applicant sets forth the purpose for which it desires to use the property. Paragraph 10 of the application is quoted, as follows:

'Applicant proposes that the property to be leased will be used for commercial and industrial purposes. It is intended that major improvements will be made upon the property at no cost to the State. Permanent filled land and waterfront will be created by means of hydraulic and dry fill and by the construction of bulkheads, dikes or other improvements. The attached lease form provides for approval by the State of fill and bulkheading plans and contains a provision requiring the Lessee to expend not less than \$500,000 upon such work. It is intended that the improved land will be made available to business organizations, by sublease or other suitable arrangement, for construction and use of such facilities as warehouses, docks, manufacturing plants, and similar installations which are economically desirable on industrial property with access to both land and ocean transportation. If most of the property to be leased were filled, as is contemplated, the total cost of fill alone at present prices

would exceed \$2,000,000. Applicant has already expended over \$16,000 in conducting soil tests on the property and on the adjacent upland (mentioned in the next paragraph). A development of the size contemplated will require bank or insurance company financing on a large scale and for a long term. In order to attract the type of business which could make the fullest use of the land when filled, and in order to finance the development work, it is necessary to have a lease in which obligations are clear and fixed for as long a term as possible. We feel that it would be in the interest of both the State and the applicant to establish conditions of tenure on the property which, by encouraging the optimum use of the land, would create an important contribution to the business development of the Bay area, as well as insuring high yields in taxes and rentals.'

"The Commission will recall that it has been the policy to issue leases for a firm period of fifteen years at a rental of 6.6 per cent of the appraised value of the bare land, with option in the lessee for two additional ten-year terms, upon such terms and conditions as shall be set forth by the Commission at the time of renewal. The policy of using 6.6 percent of the appraised value as the rent is based on a rental of 6 percent of appraised value for each year for the first five years, with an increase in this rate of 10 percent for each successive five-year period. Thus the average for a fifteen-year period on this basis is 6.6 percent of the original bare land appraised value. If the Commission were to lease the land herewith applied for under the above-mentioned formula, the average annual rental over the sixty-year period would be at the rate of 9.3 percent.

"In so far as a sixty-year term is concerned, there is no statutory limitation on a specific term of lease under which the Commission must operate. A limit on the term is in avoidance of an 'in perpetuity' situation. In this case the Attorney General's office has stated that the sixty-year term does not violate the 'in perpetuity' rule.

"Attached hereto (Exhibit 'A') is a copy of the lease now under consideration. The principal departures in this proposed lease from the standard lease form are:

- (1) Term of sixty years rather than fifteen years.
- (2) The requirement of the sixty-day notice of default by the State before the State relets the property, in order to permit Lessee to correct the default.
- (3) Lessee is given full control to sublet, or to assign the lease upon notification to the State. However, the original lessee is not relieved of any of its obligations upon reletting or assignment unless the State consents thereto.

- (4) Alterations or changes in the improvements may be made by the Lessee without the consent of the State; removals are permitted provided they are for the betterment of the lease.
- (5) In reserving 100 percent of the minerals in the property, the State agrees that only the minerals below 500 feet from the surface shall be extracted, and then only by means of slant drilling.
- (6) In case a suit for an unlawful detainer of the premises is filed for recovery of rent due or because of a breach of covenant, Lessee shall pay the State a reasonable attorney's fee as fixed by the Court.
- (7) A waiver by the State of any breach of any term of the lease shall not be deemed to be a waiver of any subsequent breach.
- (8) The lease provides that the Lessee may, without the consent of the State, mortgage or otherwise hypothecate the leasehold estate for the purpose of assisting in financing the development of the work contemplated. The State agrees that in the event of a default during the existence of the mortgage other than for nonpayment of rent or expenditure of the \$500,000 or the filing of the \$50,000 surety bond, the leasehold estate created by this proposed lease shall not be forfeited or terminated. However, the State may exercise any other remedy at law or in equity to secure redress of the default.
- (9) In the event that the leased property or any improvements thereon are taken by condemnation, the Lessee shall be entitled to receive from the award not less than an amount sufficient to reimburse it for the unamortized balance of its costs in improving the premises.

"The area for which the application is made has been appraised by an independent appraiser, employed by the staff, as having a value of \$350 per acre, which sets the total value on the area to be leased at \$133,966. This appraisal has not been disputed by the applicant.

"The area to be leased is presently unimproved tide and submerged land from which the State receives no income. It is adjacent to an area that is becoming highly industrialized, and it is an area that has a potential for industrial property except that to utilize the area it would have to be filled in at substantial cost. It is a class of property that cannot be sold; i.e., tide and submerged land within two miles of an incorporated city, the sale of which is prohibited under the Constitution.

"It will be noted from the statement in the original application quoted above that applicant proposes to expend \$500,000 in major improvements, and that the proposed lease requires that this expenditure shall be made within twelve years and that not less than \$350,000 shall be spent on fill and bulkheading of the State land.

The applicant has offered, under certain conditions of rental, to increase the expenditures for major improvements from \$500,000 to \$750,000, and the expenditures for bulkheading and fill of State land from \$350,000 to \$600,000. This change in guaranteed expenditures was a counter to the annual rental of 9.3 percent of the appraised value proposed by the State which is discussed above. As part of the counter offer, Utah suggested a lower rental in accordance with the following formula, expressed in percentages of the original appraised value:

For the first 15-year period 6.6 percent
 For the second 15-year period. 7.2 percent
 For the third 15-year period 7.8 percent
 For the fourth 15-year period. 8.4 percent

"The average of this counter offer is 7.5 percent of the original appraised value over the sixty years, as against 9.3 percent.

"There is set forth below a tabulation of the rental to the State under the staff's recommendation, as compared to the counter offer of the Utah Construction Company:

COMPUTATION OF PROPOSED RENTALS FOR TIDE AND SUBMERGED LANDS

On 382.76 Acres at \$350 per Acre or Total of \$133,966.00

	<u>PROPOSAL OF THE STAFF OF THE STATE LANDS COMMISSION</u>			<u>COUNTER PROPOSAL OF UTAH CONSTRUCTION COMPANY</u>		
	<u>RENTALS</u>			<u>RENTALS</u>		
	<u>Rate %</u>	<u>Each Year</u>	<u>Totals</u>	<u>Rate %</u>	<u>Each Year</u>	<u>Totals</u>
1st 15 yrs.	6.6	\$ 8,841.75	\$132,626.25	6.6	\$ 8,841.75	\$132,626.25
2nd 15 yrs.	8.4	11,253.14	168,797.10	7.2	9,645.55	144,683.25
3rd 15 yrs.	10.2	13,664.53	204,967.95	7.8	10,449.35	156,740.25
4th 15 yrs.	12.0	16,075.92	<u>241,138.80</u>	8.4	11,253.14	<u>168,797.10</u>
Total Rentals			<u>\$747,530.10</u>			<u>\$602,846.85</u>

"The office of the Attorney General has approved the attached proposed lease as to form."

The Executive Officer informed the Commission that the only disagreement between the Utah Construction Company and the State was with respect to the rate of rental which should apply.

Miss Miriam E. Wolf pointed out that the form of lease being proposed varies considerably from that usually used, but that this was for the purpose of safeguarding and protecting the interests of the State.

Mr. Joe Allen of Utah Construction Company informed the Commission that his company's reasons for suggesting a slightly lower rental were based on their feeling that the land was of no benefit to the State in its present condition and probably would not be of any benefit unless it was developed in a manner similar to that which they were proposing. They are unable under the law to purchase the land, as they would prefer to do; they are therefore interested in a type of lease that would be satisfactory to the tenants that will be brought in. He went on to say that there would be actual creation of values where none exist now, with resulting benefits to the State from the increased tax base, and from the creation of business opportunities. In addition, all capital investments that is made, which will be a substantial amount, will revert to the State at the termination of the 60-year lease period. He did not object strenuously to the State's proposal, but wanted to make it clear that they felt there are many other benefits which the State will receive and therefore felt it in order to request consideration of modification of the Commission's rental rates.

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

IT IS RECOMMENDED THAT THE EXECUTIVE OFFICER BE AUTHORIZED TO ENTER INTO A SIXTY-YEAR LEASE WITH THE UTAH CONSTRUCTION COMPANY, FOR 382.76 ACRES, MORE OR LESS, OF TIDE AND SUBMERGED LANDS ADJACENT TO THE MOUNTAIN COPPER COMPANY PROPERTIES NORTHERLY FROM THE CITY OF MARTINEZ, UNDER TERMS OF THE LEASE PRESENTED TO THE COMMISSION AS AN EXHIBIT TO THE FOREGOING REPORT, ON FILE IN THE OFFICIAL RECORDS OF THE STATE LANDS COMMISSION, AND BY REFERENCE MADE A PART HEREOF, AT AN ANNUAL RENTAL, BASED ON THE PRESENTLY APPRAISED VALUE OF \$133,966, OF 6.6 PERCENT FOR EACH OF THE FIRST FIFTEEN YEARS OF THE LEASE; AT AN ANNUAL RENTAL OF 8.4 PERCENT FOR EACH YEAR OF THE SECOND FIFTEEN-YEAR PERIOD OF THE LEASE; AT AN ANNUAL RENTAL OF 10.2 PERCENT FOR EACH YEAR OF THE THIRD FIFTEEN-YEAR PERIOD OF THE LEASE; AND AT AN ANNUAL RENTAL OF 12.0 PERCENT FOR EACH YEAR OF THE FOURTH FIFTEEN-YEAR PERIOD OF THE LEASE; PROVIDED THAT THE UTAH CONSTRUCTION COMPANY SHALL SPEND \$500,000 IN MAJOR IMPROVEMENTS DURING THE FIRST TWELVE YEARS OF THE LEASE, AND NOT LESS THAN \$350,000 OF THIS AMOUNT SHALL BE SPENT ON FILLING AND BULKHEADING THE STATE LAND; AND FURTHER PROVIDED THAT THE UTAH CONSTRUCTION COMPANY SHALL FILE A GOOD AND SUFFICIENT PENAL BOND IN FAVOR OF THE STATE IN THE SUM OF \$50,000 TO GUARANTEE PERFORMANCE UNDER THE LEASE.

22. (AMENDMENT TO RESOLUTION AUTHORIZING SALE OF VACANT SWAMP AND OVERFLOW LAND, LOCATION NO. 4262, FRESNO COUNTY, MILDRED FREER - S.W.O. 5968.) The following report was presented to the Commission:

"By resolution adopted by the State Lands Commission at its meeting held June 13, 1955 in Los Angeles, Minute pages 2344-45, the sale to Mildred Freer of 9.41 acres of swamp and overflowed land in Fresno County was authorized.

"It has been determined that a course and distance has been omitted from the description contained in said resolution."

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

THE DESCRIPTION SET FORTH IN THE AFORESAID RESOLUTION, LINE 6, PAGE 2345, OF THE MINUTES OF THE COMMISSION MEETING OF JUNE 13, 1955, IS AMENDED BY INSERTING IMMEDIATELY FOLLOWING "...WEST 10.90 CHAINS" THE FOLLOWING: "AND SOUTH 32° WEST 8.03 CHAINS".

*Approved
Mildred Freer*