

MINUTE ITEM

This Calendar Item No. 22
was approved as Minute Item
No. 22 by the State Lands
Commission by a vote of 3
to 0 at its 10/26/83
meeting.

MINUTE ITEM

22.

10/26/83
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Horn

APPROVAL OF MODIFICATION OF
REGULATIONS IN TITLE 2, DIVISION 3,
CHAPTER 1, ARTICLE 2, CALIFORNIA
ADMINISTRATIVE CODE - GENERAL LEASING

During consideration of Calendar Item 22, John Zaines of McCutchen, Black, Verleger and Shea, representing the Western Oil and Gas Association, appeared. His main concern was that WOGA was objecting to volumetric rental language currently existing in the Commission's administrative regulations. A copy of his written statement was submitted for the record and is on file in the office of the State Lands Commission.

Dennis Eagan, Deputy Attorney General, appeared to give the Commission the status of the pending volumetric rental litigation currently pending entitled Western Oil and Gas, et al., v. Cory, et al., 9th Circuit Court, Case No. 18577.

Chairman Cory informed Mr. Zaines that the recommendation before the Commission had no effect on the Commission's current volumetric rental regulations.

Upon motion duly made and carried, the Commission adopted the Calendar Item as presented, by a vote of 3-0.

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10/26/83
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APPROVAL OF
MODIFICATION OF REGULATIONS IN
TITLE 2, DIVISION 3, CHAPTER 1, ARTICLE 2,
CALIFORNIA ADMINISTRATIVE CODE - GENERAL LEASING

Pursuant to the Commission's authorization of February 28, 1983 (Minute Item 37) and in compliance with applicable provisions of the Administrative Procedures Act, staff has held a public hearing on proposed changes to the Commission surface-use leasing regulations. Notices of the hearing were sent to persons who previously expressed interest in this area and notice was also published in the Notice Register on May 20, 1983. The hearing was held on July 7, 1983.

The purpose of the hearing was to allow the public ample opportunity to make statements, contentions, or arguments, both written and oral, regarding the proposed changes. Only a few people attended the hearing; two of which had oral comments in addition to their written comments. A third written comment was also provided by Ms. Jane C. L. Goichman, Pacific Interstate Company. The comments are summarized in the Final Statement of Reasons, on file in the principal office of the Commission and by this reference made a part hereof.

Generally, the reviewers felt that the proposed changes were overly broad, lacked specificity, could lead to unreasonable rentals and in the case of WOGA (Western Oil and Gas Association represented by B. J. Kirwan of McCutchen, Black, Verleger and Shea) violated federal constitution law. Staff has

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provided answers to these comments all which are set forth in the final statement of reasons. Also included are the reasons why staff has rejected those comments that did not result in changes to the noticed version of the regulations.

Based upon the material contained in the rule-making file, together with comments received during the public hearing process, staff believes that the regulation changes proposed for adoption meet all the statutory review requirements.

AB 884: N/A.

EXHIBIT: A. Proposed Changes to Regulations.

IT IS RECOMMENDED THAT THE COMMISSION:

1. DETERMINE THAT THERE HAS BEEN COMPLIANCE WITH GOVERNMENT CODE SECTION 11346.4 (PUBLICATION AND NOTICE) FOR THE PURPOSE OF MODIFYING ITS REGULATIONS IN TITLE 2, DIV. 3, CHAPTER 1, OF THE CALIFORNIA ADMINISTRATIVE CODE.
2. DETERMINE THAT THERE IS NO STATE MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS ASSOCIATED WITH THESE REGULATIONS THAT REQUIRE REIMBURSEMENT UNDER SECTION 2231 OF THE REVENUE AND TAXATION CODE. THERE WILL BE NO INCREASED COSTS TO STATE OR LOCAL AGENCIES AS A RESULT OF THESE REGULATIONS.
3. DETERMINE THAT THE REGULATIONS WILL HAVE NO EFFECT ON HOUSING COSTS.
4. DETERMINE THAT THE REGULATIONS WILL HAVE NO ADVERSE IMPACT ON SMALL BUSINESSES NOR WILL THE REGULATIONS HAVE A SIGNIFICANT ADVERSE IMPACT ON PRIVATE PERSONS OR BUSINESS WITHIN THE MEANING OF GOVERNMENT CODE SECTION 11346.13.
5. ADOPT FOR FILING WITH THE OFFICE OF ADMINISTRATIVE LAW (OAL) THOSE CHANGES TO ITS ADMINISTRATIVE REGULATIONS SUBSTANTIALLY AS SET FORTH IN EXHIBIT "A"; PROVIDED, HOWEVER, THAT STAFF MAY MAKE MINOR NON-SUBSTANTIVE CHANGES TO THE TEXT OF THE REGULATIONS SO AS TO CONFORM TO THE REQUIREMENTS OF OAL.
6. AUTHORIZE STAFF TO TAKE ALL STEPS NECESSARY, INCLUDING FILINGS WITH OAL, TO GIVE EFFECT TO THE FOREGOING DETERMINATIONS AND ADOPTIONS.

EXHIBIT "A"

CALIFORNIA ADMINISTRATIVE CODE
TITLE 2, DIVISION 3, CHAPTER, ARTICLE 1

ADOPT NEW SECTION 1911 TO READ:

1911 INTEREST AND PENALTY PAYMENTS

(a) Time of Payment

(1) Any payment pursuant to any permit, lease, contract, or other agreement due the Commission shall be paid on or before the date specified in the instrument.

(2) If the date that a sum becomes due and payable to the Commission is a Saturday, Sunday, Federal or State holiday, the due date is extended to the next business day.

(3) Timeliness of receipt of remittances sent by mail to the Commission shall be governed by the postmark date as described in Government Code Section 11002.

(4) In case of a postmark by a private postage meter, the date specified thereon shall be considered as the date of payment. Where a payment is received after the due date and where a question arises as to the actual date of mailing, a declaration executed under penalty of perjury by the person responsible for the mailing of payment to the State specifying the date of mailing shall be considered as evidence of the date of actual mailing.

(b) Interest and Penalty

Unless otherwise provided in the permit, lease, contract, or other agreement:

(1) Simple interest shall be calculated at the rate of one and one-half percent (1-1/2%) per month on the amount due the Commission from the date payment was due the Commission until the date the payment is received.

(2) Penalties shall be calculated at the rate of five percent (5%) on the principal sum due the Commission.

(3) Interest and penalty shall be charged for failure to make a timely payment; or the mode of payment is not honored by a bank, savings and loan, post office, or other financial institution.

(c) Exemption from Interest and Penalty

(1) The Commission may waive the assessment of interest and/or penalty where:

(A) Incorrect instructions were rendered to a party by the Commission's staff, or use by the party of an accounting procedure pursuant to an agreement with a member of the Commission staff; or

(B) Notwithstanding the provisions of paragraph (2) infra negotiated settlements are approved by the Commission and provide for a waiver of penalty and/or interest.

(2) Penalty only shall be excused where failure to make a timely payment was due to one of the following:

(A) The death or serious illness of a natural party;

(B) Catastrophe, such as fire, flood, theft, vandalism, or riot;

(C) The fact the books and records of a party were impounded by court order, or were in the hands of a Federal or State agency; and unavailable for use by the party;

(D) The discovery by a party, before that of the Commission staff, of the erroneous amount of a party's original payment and the prompt tender by the party of the balance due.

(d) Payments: Payments shall be applied to retire obligations in the following order:

- (1) interest and penalty
- (2) past principal
- (3) current principal

(e) Any person who uses or occupies any lands owned or controlled by the State under the jurisdiction of the Commission without a lease, permit or other agreement and who subsequently obtains a lease, permit or other agreement providing for the payment of back rent, shall pay penalty and interest in accordance with the provisions in (b), (c), and (d) above.

AUTHORITY: PRC 6108, 6224
REFERENCE: PRC 6224, Government Code 11002

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STATE OF CALIFORNIA
STATE LANDS COMMISSION

Title 2, Division 3, Chapter 1, California Administrative Code

Amend Section 2000 to read:

Article 2. Leasing or Other Use of Public Lands

2000. General.

(a) This article applies to the leasing of all lands under the Commission's jurisdiction for all surface uses except the exploration for or extraction of all natural resources except timber, including minerals, oil, gas or other hydrocarbons, or geothermal resources. ~~or any other natural resources, excluding timber.~~

(b) Leases or permits may be issued to qualified applicants and the Commission shall have broad discretion in all aspects of leasing including category of lease or permit; and which use, method or amount of rental is most appropriate; whether competitive bidding should be used in awarding a lease, what terms should apply; how rental should be adjusted during the term; whether bonding and insurance should be required and in what amounts; whether an applicant is "qualified"; etc., based on what it deems to be in the best interest of the State.

(c) Leases or permits for tide or submerged lands shall generally only be issued to riparian or littoral upland owners or use right holders, provided however that such leases or permits may be granted to the best qualified applicant irrespective of riparian or littoral status, in the Commission's discretion.

(d) Leases or permits for school, lieu or indemnity lands ~~may shall~~ be for value or value natural, cultural or resource enhancement purposes.

AUTHORITY: PRC 6105, 6108, 6501, 6501.1, 6501.2, 6005, 6216,
6301, 6321, 6309
REFERENCE: PRC 6501.1, 6501.2, 6216

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Amend Section 2002 to read:

2002. Categories of leases or permits.

(a) ~~General Lease:~~ Uses may include the following:

(a) (1) Commercial Lease: Income producing uses such as marinas, restaurants, clubhouses, recreation piers or facilities, docks, moorings, buoys, helicopter pads, decks or gas service facilities.

(b) (2) Industrial Lease: Uses such as oil terminals, piers, wharves, warehouses, stowage sites, moorings, dolphins and islands; together with necessary appurtenances.

(c) (3) Right of Way Lease: Uses such as roadways, power lines, pipelines or outfall lines; except when used only as necessary appurtenances.

(b) ~~General Permit:~~ Uses may include the following:

(d) (1) Public Agency uses Permit: Uses such as public roads, bridges, recreation areas or wildlife refuges having a statewide public benefit;

(e) (2) Public Resources Code Section 6321 p Protective Structures Permit: Uses such as groins, jetties, sea walls, breakwaters and bulkheads;

(f) (3) Non income producing uses Noncommercial Lease: Uses such as piers, buoys, floats, boathouses, docks, waterski facilities and campsites not qualifying for a private recreational pier permit under 2002(f) (j). Other uses may include campsites, cabins, dwellings, arks, houseboats, or boathouses provided that when such uses are located on sovereign lands that such uses are not found to be inconsistent with public trust needs.

(g) (c) Grazing Lease: Use includes the feeding of livestock on available forage.

(h) (d) Agricultural Lease: Uses may include farming, silviculture and horticulture.

(i) (e) Forest Management Agreement: Uses may include reforestation, improvement of timber growth and soil productivity, vegetation control, reduction of fire and erosion hazards, insect or disease control or any other use that enhances the value of lands subject to the agreement.

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(j) (f) Private Recreational Pier Permit: Use is limited to any fixed facility for the docking or mooring of boats constructed for the use of the littoral landowner, as specified in Public Resources Code Section 6503.5, and does not include swimming floats or platforms, sun decks, swim areas, fishing platforms, residential, recreational dressing, storage or eating facilities or areas attached or adjacent to recreational piers, or any other facilities not constructed for the docking or mooring of boats.

(k) (g) Salvage Permit: Use includes the salvage of abandoned property over and upon ungranted tide and submerged lands of the State which property belongs to the State and is under the Commission's jurisdiction pursuant to Public Resources Code Section 6309. The Commission may retain or sell any or all salvaged property or may allow the permit applicant to retain it.

AUTHORITY: PRC 6105, 6108, 6501, 6501.1 6501.2, 6201,
6210.3, 6221, 6309, 6321, 6322
REFERENCE: PRC 6501.1, 6201, 6309, 6321, 6503.5

Amend Section 2003 to read:

2003. Rental.

(a) Rental for the various categories of uses shall be generally as follows:

(1) Commercial Use Lease: An annual rental based on any one or combination of the following rental methods, with a minimum rental of \$250: as determined by the Commission:

(A) A percentage of annual gross income (the percentage being based on an analysis of the market for like uses and other relevant factors);

(B) 9% A percentage of the appraised value of the leased land; as determined in accordance with section 2005.

(C) The volume of commodities passing over the lease premises;

(D) A rate per diameter inch per lineal foot of pipelines and conduits set in accordance with Section 2005.

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(2) Industrial Use Lease: An annual rental based on any one or combination of the following rental methods with a minimum rental of \$250⁺ as determined by the Commission:

(A) 9% A percentage of the appraised value of the leased land together with 2 cents per diameter inch per lineal foot of pipelines and conduits on the leased premises; (see section 2005).

(B) A rate per diameter inch per lineal foot of pipeline and conduits on the leased premises.

(C) The volume of commodities passing over the lease premises.

(3) Right of Way Use Lease: An annual rental based on any one or combination of the following rental methods with a minimum rental of \$100⁺ as determined by the Commission:

(A) 9% A percentage of the appraised value of the leased lands, together with compensation for any damage caused to such lands; (see section 2005).

(B) 2 cents A rate per diameter inch per lineal foot, of pipelines and conduits.

(C) The volume of commodities passing over the lease premises.

(4) General Permits: Annual rental shall be based on 9% of the appraised value of the leased lands with a minimum rental of \$50⁺

(A) Public Agency Permits: No rental shall be charged for public agency use of tide and submerged lands if If the Commission at its sole discretion, determines that a statewide public benefit accrues from such use; a public agency's use of State land no rental shall be charged for such use; otherwise such public agency shall receive a fee lease or permit.

(B) (5) Protective Structure Permit: Monetary rental for Public Resources Code Section 6321 protective structures may be waived if the Commission determines that a public benefit accrues from the installation of such structures.

~~(5)~~ (6) Private Recreational Pier Permits: Pursuant to Public Resources Code Section 6503.5 a rent free permit shall be issued to those applicants demonstrating their qualifications under that section as implemented by 2002~~(f)~~ (j).

(7) Noncommercial Lease: Annual rental shall be based on a percentage of the appraised value of the leased lands with a minimum annual rental as determined by the Commission.

~~(6)~~ (8) Grazing Lease: An annual rental based on appraised value for the intended use, with a minimum annual rental as determined by the Commission.

~~(7)~~ (9) Agricultural Lease: An annual rental based on any one or a combination of the following rental methods with a minimum rental of \$250 as determined by the Commission.

(A) A percentage of annual gross income (the percentage being based on an analysis of the market for like uses and other relevant factors);

(B) 9% A percentage of the appraised value of the leased lands.

~~(8)~~ (10) Forest Management Agreements: Rental shall constitute an enhancement of the land's value resulting from the permitted use may offset all or a portion of the rental.

~~(9)~~ (11) Salvage Permit: Rental shall be as follows:

(A) A rental of \$25.00 as determined by the Commission per annum per acre, computed on a whole or fractional basis, for the total acreage of the permit area; and

(B) 25% A percentage of the net salvage value up to \$25,000 and 50% of all such value over that amount for all salvaged property the salvor is permitted to retain; or (see section 2005); or

(C) The net salvage value of any property the State retains less any rental to which it is entitled; and

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(D) Such other consideration as may be deemed by the Commission to be in the best interest of the State.

(b) The following factors shall be considered by the Commission in determining which rental method should apply:

(1) The amount of rental the State would receive under various rental methods;

(2) Whether relevant, reliable and comparable data is available concerning the value of the land proposed to be leased;

(3) Whether a particular method or amount of rental would effectively cause an applicant to use more competitive substitute land or to abandon its project altogether;

(4) Whether the land proposed to be leased has been classified as environmentally significant pursuant to Public Resources Code Section 6371.

(5) The monetary value of actual or potential environmental damage anticipated from an applicant's proposed use to the extent such damage is quantifiable;

(6) Other factors relating to the appropriateness of the proposed rental method.

(c) The following limitations shall apply to rental based on the volume of commodities passing over State lands:

(1) Rental shall not be imposed more than once for the identical commodity passing over the same State land if the ownership of that commodity has not changed.

(2) The rental rate for a right-of way for passage of a commodity across State lands shall be made proportional to the percentage of the total length of the pipeline or conduit that such right-of-way comprises. For the purposes of this section, the total length of a pipeline or conduit shall be the length of the pipeline or conduit between two

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facilities, uninterrupted by another facility. "Facility" includes terminal, production, storage, refining, manufacturing, processing, mixing or intermixing facilities.

(d) Rental adjustment during the lease term shall be provided for as appropriate.

AUTHORITY: PRC 6105, 6108, 6503, 6504, 6503.5, 6309, 6321.2
REFERENCE: PRC 6321.2, 6503, 6504, 6503

Amend Section 2004 to read:

2004. Term.

{a} The term for leases and permits including any optional renewal periods shall be no longer than necessary to accomplish the intended use or purpose.

{b} The term of Commission leases and permits shall be limited to standard commercial lease practices, with maximum terms as follows: The Commission shall not issue a lease or permit with a term in excess of 30 years unless it makes a finding that special circumstances exist and that substantial public benefit will accrue from such longer term. In no event shall the Commission issue a lease for a term in excess of 66 years.

- {1} General Lease 49 years
General Permit
Forest Management Agreement
- {2} Agricultural Lease 25 years
- {3} Grazing Lease 10 years
General Permit
General Permit Recreational Use
- {4} Salvage Permit 1 year but extendable for one additional year.

AUTHORITY: PRC 6105, 6108, 6501, 6501.2, 6505.5, 6309, 6321, 6008
REFERENCE: PRC 6501.2, 6505.5

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Adopt Section 2005 to read:

2005. Percentage Return Rate and Rates for Pipelines and Conduits.

Periodically, the Commission shall consider and adopt the specific rates of return to be applied to appraised land value, diameter inch/lineal foot rates for pipelines and conduits and the percentage of net salvage to be charged as rent for salvage permits as such apply to the various categories of leases and permits set forth in this article.

AUTHORITY: PRC 6108, 6501, 6501.2, 6505.5
REFERENCE: PRC 6501.2, 6505.5

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