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MEETING
STATE LANDS COMMISSION

STATE CAPITOL
ROOM 2170
SACRAMENTO, CALIFORNIA

ORIGINAL

WEDNESDAY, DECEMBER 15, 1976
10:00 A.M.

C.S.R. License No. 3067

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MEMBERS PRESENT

- 1
2 Hon. Kenneth Cory, State Controller, Chairman
3 Hon. Mervyn M. Dymally, Lt. Governor, Commissioner,
4 represented by Mr. Walter D. McGuire
5 Hon. Roy M. Bell, Director of Finance, Commissioner,
6 represented by Mr. Sid McCausland
7

MEMBERS ABSENT

8
9 NONE
10

STAFF PRESENT

- 11
12 Mr. William F. Northrop, Executive Officer
13 Mr. Richard S. Golden, Assistant Executive Officer
14 Mr. Robert C. Hight, Staff Counsel
15 Mr. James F. Trout, Manager, Land Operations
16 Mr. Donald J. Everitts, State Lands Division, Long Beach
17 Mr. Donald Hoagland
18 Mr. Mathew Brady
19 Mr. Al Willard
20 Ms. Diane Jones, Secretary
21

ALSO PRESENT

- 22
23 Mr. N. Gregory Taylor, Assistant Attorney General
24 Ms. Jan Stevens
25

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P R O C E E D I N G S

--oOo--

CHAIRMAN CORY: Call the meeting to order.

The first order of business is confirmation of the minutes of the meeting of October 28th. Are there any corrections or additions to the minutes of the 28th?

If not, the minutes will be approved as read.

The next item is the report of the Executive Officer. I notice that in my absence it's getting lengthier, so please proceed.

EXECUTIVE OFFICER NORTHROP: Good morning, Mr. Chairman.

The Waterways Advisory Committee held an informal meeting on November 17th and scheduled its first public meeting for January 12th. The group revised its bylaws, which are before you for approval. The changes in the bylaws are as follows: They changed the name from the River Marina Liaison Committee to the Waterways Advisory Committee. They reduced the membership from eleven members to nine, inserted a provision which would allow the Committee to request reimbursement for expenses to nongovernmental members. Additionally, they requested that they elect a Chairman of the Committee.

All of the suggestions, except the latter, have been incorporated into the revised bylaws that are before

1 you.

2 We can study them for this time and adopt them at
3 the next meeting, however, the changes are as outlined.

4 We have discussed with the member of the Committee
5 from Finance the reimbursement for the nonmembers and he
6 seems to feel that that is equitable arrangement.

7 MR. McCAUSLAND: I move for adoption.

8 CHAIRMAN CORY: As long as it's not going to cost
9 any money they are willing to go along with it?

10 EXECUTIVE OFFICER NORTHROP: Well, this is going
11 to cost them a little money.

12 CHAIRMAN CORY: No. That's the thing you always
13 see walking out the door.

14 I just have a question in terms of the Advisory
15 Committee.

16 EXECUTIVE OFFICER NORTHROP: The name itself?

17 CHAIRMAN CORY: No, changing the number of members
18 from eleven to nine.

19 EXECUTIVE OFFICER NORTHROP: What we did,
20 Mr. Chairmar was substantially reduce -- the three-member
21 reduction was from the government sector. And they felt
22 that this information could be supplied and still not have
23 them be members of the Committee, and we dropped a member
24 from the Resources Agency and one from State Lands, and
25 another governmental member, and we let the balance of the

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1 election toward the private sector, public sector. Prior to
2 that it was loaded from the government sector.

3 CHAIRMAN CORY: Any questions?

4 Okay. Fine.

5 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, the trial
6 of the first phase of 14 lawsuits against the City of Eureka
7 and the State of California involving more than a mile of the
8 Downtown Eureka waterfront has been concluded.

9 The trial court held that private ownership extends
10 waterward to the line in Humboldt Bay, where the water was
11 six feet deep at low tide in 1857. However, the trial court
12 rejected the plaintiff's claims that they owned beyond that
13 depth, and invalidated certain deeds issued after the
14 adoption of the 1879 Constitution. Eureka's participation
15 in this litigation, as trustee of granted and submerged
16 lands, has been very expensive.

17 And in light of the City's conscientious and
18 vigorous efforts to protect the public's title to these
19 granted tide and submerged lands, it is recommended by staff
20 that the Commission express its support of the City by
21 adopting the following resolution.

22 Mr. Chairman, I would like to read the resolution,
23 if I may. It is quite long.

24 CHAIRMAN CORY: Do we need to?

25 MR. McCAUSLAND: Why don't you just read the

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"Resolved."

EXECUTIVE OFFICER NORTHROP: Okay.

"NOW, THEREFORE, be it RESOLVED, the State
Lands Commission:

"1. Commends the City of Eureka for its
diligent, conscientious and vigorous actions
in protecting and promoting the statewide public
interest in said granted tide and submerged lands
held in trust by the City; and

"2. Urges the City of Eureka to continue to
fulfill its duties and responsibilities as
trustee of said granted tide and submerged lands
in order to resolve all title and boundary
disputes involving such lands, either by
settlement or continuation of the ongoing
litigation and thus realize the City's objective
of adopting and implementing an overall plan for
the development and use of its waterfront area
that would be mutually beneficial to all of the
citizens of the State of California."

CHAIRMAN CORY: The question, I guess, is that
this gives as much moral encouragement as we can to the
City of Eureka that they may, indeed, be interested in
something more than just moral encouragement. And there is
a policy question of whether or not we are in a position to,

1 or should be in a position of providing direct subsistence
2 for this purpose.

3 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, I'm
4 informed by counsel and staff that historically the
5 Commission has never taken a position of initiating
6 reimbursement legislation, because we have some 70-odd grants
7 and it would establish, perhaps, a precedent we would not
8 want to establish by entering into that kind of a situation.

9 However, staff would recommend a support in
10 litigation or in legislation if it were sponsored by someone
11 else or, at least -- Greg?

12 MR. TAYLOR: Well, I think, in further amplification
13 of staff's views are that while we want to commend them for
14 what they are doing, we believe that they are bound by the
15 statute --

16 CHAIRMAN CORY: To do it anyway.

17 MR. TAYLOR: -- to do it anyway. And they will
18 also have the benefit or the result of this in terms of
19 eventually, once this litigation is resolved, in setting up
20 a port facility and a waterfront area which would be income
21 producing.

22 If the City does not want to carry forth with this
23 duty, then we don't believe the grant would be appropriate,
24 and the State should resume control of the property. There
25 are some discussions about whether the litigation should be

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1 continued. We believe the City, having gotten this far,
2 they have a duty to finish it.

3 So, while this is politely worded, I believe, that
4 the message, at least, as drafted by the staff, it's fairly
5 clear as to what our respective roles are.

6 CHAIRMAN CORY: Does anybody in the audience wish
7 to address the Commission on this subject?

8 Is the Commission ready to --

9 MR. McCAUSLAND: I'd just like to ask, if I can --
10 I can understand the staff's position in this matter, but I
11 also heard reference to legislation. Does anyone have, off
12 the top of their head, a rough estimate of how much we've
13 actually been required to pay as a result of legislation
14 associated with these actions in the past?

15 EXECUTIVE OFFICER NORTHROP: Jim, do you have a
16 number off the top of your head?

17 MR. TROUT: Well, the State has already advanced
18 Eureka \$250,000 under legislation sometime in the past, just
19 as an example. This legislation, probably, has now cost the
20 City perhaps as much as a million dollars.

21 CHAIRMAN CORY: In litigation --

22 MR. TROUT: In litigation.

23 CHAIRMAN CORY: -- cost them that much?

24 MR. TROUT: Right.

25 The City is supposed to pay that back. I think

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1 we're talking in terms of -- we have problems at a number
2 of places, and probably, we're talking in the neighborhood
3 of maybe as much as half a million dollars a year of costs
4 that are directly related to grants which do not result in
5 revenues to the State or really any significant control.

6 CHAIRMAN CORY: How much in the past -- I think
7 your question was how much in the past have we spent on
8 special legislation to grant these?

9 MR. McCAUSLAND: I think the answer to my question
10 is they don't have the answer today.

11 MR. TROUT: Two hundred fifty thousand is all I'm
12 aware of on this particular matter.

13 MR. McCAUSLAND: I was just curious about state-
14 wide, how much.

15 MR. TAYLOR: None, other than Eureka.

16 CHAIRMAN CORY: We did not fund any of the
17 litigation in Long Beach, in Los Angeles Harbor, historically?

18 MR. TAYLOR: The Long Beach is a special
19 circumstance, where there is sufficient assets of the
20 trustee. We bill our expenses to Long Beach.

21 CHAIRMAN CORY: Now, before 138, when we were
22 haggling over who owned the oil with the Feds, did we fund
23 any of that?

24 MR. TAYLOR: No. As a matter of fact, I think,
25 originally Long Beach itself carried the major responsibility

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1 in U.S. versus California. We have never paid any money to
2 the City of Los Angeles, to my knowledge.

3 MR. McCAUSLAND: I would just like to make a
4 comment.

5 The City -- I'm glad to see that this Commission
6 is frugal -- but the City of Eureka has had an unusually
7 difficult time with the State of California in recent years.
8 My experience with Caltrans reminds me that we virtually
9 wiped out Downtown Eureka with a freeway that will never be
10 built. And now we're taking -- we're not taking, I'm sorry
11 -- the City is now committed a substantial expenditure, in
12 what is basically mud flaps, and it will take them several
13 years -- that City is going to have a lot of trouble. I'm
14 not quite certain, if there are some kinds of criteria we
15 could consider in terms of sharing some responsibilities
16 with some of our grantees. I don't know whether it would
17 be appropriate to ask staff to look at it or not. But, I
18 just want to express a little sympathy for the folks of
19 Eureka.

20 With that, I move adoption.

21 CHAIRMAN CORY: It's been moved and --

22 MR. McGUIRE: Second.

23 CHAIRMAN CORY: -- second. Without objection,
24 the resolution will be adopted, and the staff should convey
25 Commissioners' concern to the City of Eureka.

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1 And maybe we can figure out some way to sell them
2 some of that property where the freeway is going to be built.

3 (Laughter.)

4 MR. McCAUSLAND: That's a good idea. We can
5 charge them for that.

6 (Laughter.)

7 CHAIRMAN CORY: We can let them make a profit on
8 the deal..

9 Maybe, there are some mitigating circumstances
10 which can be pointed out if legislation is introduced.

11 EXECUTIVE OFFICER NORTHROP: Fine.

12 On November 15, 1976, an article appeared in the
13 Sacramento Bee concerning junk and debris exposed along the
14 Sacramento River due to abnormally low water levels.

15 The State Lands Commission investigated the matter
16 and initiated a clean-up program in coordination with other
17 State, County and local agencies. The cooperation has been
18 substantial and has resulted in expedient clean-up operations.
19 The Sacramento County side of the river from the junction of
20 the Sacramento and American Rivers to Miller Park has been
21 completed. Work has begun on the Yolo County side, which
22 will include the area from the junction, the confluence of
23 the Sacramento and American Rivers to the entrance to the
24 Barge Canal of the Port of Sacramento.

25 The State Lands Division held a public information

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1 meeting in Blythe, on November 18, 1976, to inform the
2 general public of the Division's Davis Lake Area Project
3 sovereign land identification and mapping program.

4 Approximately 35 people attended the meeting. Most
5 of those attending were representatives of various public
6 agencies, such as the U.S. Bureau of Reclamation and U.S.
7 Bureau of Land Management. Other companies represented
8 included San Diego Gas and Electric Company, the Safeco
9 Title Insurance and the Title Insurance and Trust Companies,
10 however, no representative of the Arizona State Lands
11 Department was present.

12 Many questions were asked by those who attended,
13 and a very informative dialogue was developed. However, no
14 reference material or testimony was offered by anyone
15 attending the meeting that would affect the position of the
16 area claimed by the State as specified in the Davis Lake
17 Boundary Study.

18 On Wednesday and Thursday, December 8th and 9th,
19 State Lands Commission participated in a five-day, five-
20 state agency hearing on the Dow Petrochemical Plant. The
21 main issue of the hearing was the tradeoffs to be considered
22 between possible significant adverse environmental effects and
23 the economic effects of new capital and jobs. A series of
24 speakers addressed the issue on each side, about twice as
25 many speaking against the project as for it.

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1 Negotiations are continuing in the Division on the
2 lease terms and conditions with Dow, looking toward
3 resolving remaining issues in advance of finalizing the
4 environmental impact requirements.

5 The final phase of the combined hearings will be
6 held this Friday, December 17, and State Lands, again, will
7 participate to the conclusion of the hearing process.

8 The staff will report back next month.

9 The City of Long Beach, under the terms of their
10 grant, is required to obtain prior approval from the State
11 Lands Commission for the expenditure of oil revenue in a
12 project which exceeds \$50,000. The City currently has issued
13 a contract to expend \$310,000 of oil revenue on a feasibility
14 study for a proposed marina on the tidelands in the downtown
15 area, and contends that prior approval is not required
16 because of an adequate detailed description of the project
17 cannot be made until the preliminary planning has been done.

18 The City's position is to conduct the feasibility
19 study, and then if a decision is made to construct the
20 marina, the funds expended for the feasibility study would
21 then be incorporated into the project fund prior approval
22 requested to the Commission for the marina (sic).

23 The Attorney General's Office and the Division are
24 not in agreement with the City's contention that this type of
25 expenditure does not require prior approval by the Commission.

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1 While not objecting to the City's action in this instance,
2 upon the advice of the Attorney General's Office, our non-
3 objection is conditioned on the Attorney General's advice.

4 The City has been formally notified that in the
5 future expenditures of oil revenue in excess of \$50,000 for
6 planning will require prior approval. Phase I and Phase II
7 prior approval are now given for subsidence costs, and this
8 type of procedure will be followed in the future.

9 CHAIRMAN CORY: What are you telling us, that Long
10 Beach has spent it without our approval and there's nothing
11 we can do about it?

12 MR. TAYLOR: No. What happened in this instance
13 was that they asked us if this would be correct, in relying
14 upon a previous opinion of our office. They said that they
15 needed to get the contract out because of some time bind
16 they were in. They felt they justifiably could rely on our
17 previous opinion.

18 We don't think that that opinion speaks to this
19 issue, but there is enough ambiguity in it that we said,
20 as far as this project, which is a marina, which is a specific
21 use authorized in Section 6 of Chapter 138, that we would
22 not object. But, in the future we wanted them to adopt the
23 same procedure they were using for subsidence measures, Phase
24 I and II type of approvals.

25 The main problem is that we don't want to get into

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1 a situation that developed in the early stages of the QUEEN
2 MARY, again, and that's why we have given them notice, and
3 that's the reason for that particular case.

4 CHAIRMAN CORY: Okay. But, if the feasibility
5 study comes out, in their opinion, that they want to build
6 it and the project is back before us; and we come to the
7 conclusion that, no, we don't want them to build the marina,
8 we don't think it's a valid use, what happens with the
9 \$310,000 bill? Is it a legitimate use of oil revenues?

10 MR. TAYLOR: This is not a discretionary item
11 for the Commission as to whether the City proceeds or does
12 not proceed, unless we find in review that is not an item
13 authorized under the section.

14 The City has never come into us for discretionary
15 review, that would be Section 6-G. They would come in, and
16 the only finding that the Commission could make at that time
17 was whether the use they were seeking to make of one part of
18 money was one specifically authorized. And in this instance
19 it would be one of those that was specifically authorized.

20 So, at that point the staff review is a review of
21 the plans to see that it conforms to the specific
22 authorization of Chapter 138. If it does, the judgment about
23 whether to do or not to do that project is with the City and
24 how it spends its share of the money.

25 Now, if they were to come in on a different kind of

1 situation which we discussed previously, where it is not a
2 specifically authorized project, then the Commission would
3 have discretion, and that would be in a situation we
4 discussed with you last meeting.

5 CHAIRMAN CORY: Back up, so I understand this.
6 As I recall, a museum was a specifically
7 authorized purpose --

8 MR. TAYLOR: That's correct.

9 CHAIRMAN CORY: -- so that this could be a new
10 QUEEN, and we would have no discretion on it.

11 If they wanted to buy 84 London Bridges, move them
12 over to create a marina around something, we are compelled
13 to approve it?

14 MR. TAYLOR: No, no. We have to review it. We
15 only approved a portion of the QUEEN that dealt with the
16 ship, that dealt with the museum. The rest of it was held
17 that that was commercial area that had to be self-sustained.

18 No. That's the purpose of the review, is to make
19 sure it does fall within the division specified. And anything
20 outside of what is specified in our review of those plans, it
21 seems to me to be on its own hook for that, or either make
22 application under the discretionary section.

23 MR. McGUIRE: So, we have no discretion over
24 whether or not -- we're not approving this 300 grand, we are
25 just saying you should let us know about it?

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1 MR. TAYLOR: Yes.

2 EXECUTIVE OFFICER NORTHROP: From now on --

3 MR. TAYLOR: The whole purpose of the calendar item
4 is to inform you that we have informed the City that we'll
5 let it go by this time, but if there is any ambiguity in our
6 previous opinion to them, we have now clarified it, and in
7 all other problems from here on out we want them to come in
8 and have the finding made initially. And I think that's
9 the purpose.

10 MR. McGUIRE: The finding made that we have no say?

11 MR. TAYLOR: The finding made that it either fits
12 in one of these specific things or that they make the
13 specific authorizations, or they come in under the
14 discretionary.

15 CHAIRMAN CORY: I guess what I'm kind of leery about,
16 here, is when the definition of a marina is not a marina is
17 still -- the City is on notice that they will have to come in,
18 and that is an arguable point.

19 MR. TAYLOR: Yes. That will be part of your
20 review. If there are features of this marina that they
21 don't think are properly includable as a marina, the City is
22 on its own hook for that. And they've not given us notice
23 as yet pursuant to Chapter 138 on this project, so we still
24 retain that right to say that after our review of these plans
25 this falls within the marina and these things are extraneous

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1 to it.

2 CHAIRMAN CORY: So, you are convinced that we
3 haven't given up anything at this point?

4 MR. TAYLOR: No, we have not.

5 CHAIRMAN CORY: That the feasibility study has the
6 feasibility of dredging Downtown Long Beach and making the
7 QUEEN MARY the Mama ship of a whole lot of other ones --

8 MR. TAYLOR: You still can't.

9 CHAIRMAN CORY: -- we can talk about that, then I
10 will let that statute add one to where they said marina.

11 MR. TAYLOR: Yes.

12 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, the U.S.
13 Army Corps of Engineers estimates that future dredging
14 requirements to maintain harbor and mooring facilities in
15 San Francisco Bay will be 200 million cubic yards over the
16 next 20 years. The practice of the Corps of Engineers has
17 been to approve placement of most of the dredge spoil in sites
18 where active currents cause the spoil to migrate considerably.

19 A significant component of the sediment being
20 removed probably comes from previously spoiled dredged
21 material. Additionally, the Corps study indicates that the
22 annual inflow of sediments to the Bay exceeds the outflow by
23 about four million cubic yards.

24 On today's Consent Calendar there is an extension
25 of a maintenance dredging permit in San Francisco Bay. Spoils

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1 are to be disposed of at the U.S. Army Corps of Engineers
2 approved San Francisco Bay disposal site south of Alcatraz
3 Island.

4 The Division has a large number of other dredging
5 applications in various stages of processing. Because of
6 the magnitude of the ever-increasing sediment load, it
7 appears necessary to consider the potential impact on State
8 lands of all applications, and it is suggested that the staff
9 be given permission to hold public hearings and conduct a
10 study of this migration problem of dredging.

11 MR. McCAUSLAND: I think that's an extremely
12 significant item.

13 BCDC acts on numerous applications for maintenance
14 dredging every month, and it's always south of the Alcatraz
15 disposal site. And what you are suggesting here is that
16 it moves back there on to everybody else's territory.

17 EXECUTIVE OFFICER NORTHROP: We have staff that
18 feels that not only is this dredging causing more dredging,
19 but, in fact, it's plating the bottom of the Bay, so benthic
20 organisms are probably being choked out.

21 CHAIRMAN CORY: Does Commissioner know what that
22 is?

23 (Laughter.)

24 MR. McCAUSLAND: Well, I can't believe what I've
25 heard before that the State Lands Commission staff would know

1 what that is, that's very impressive. That's good.

2 CHAIRMAN CORY: Why don't you use words that we
3 can understand?

4 (Laughter.)

5 EXECUTIVE OFFICER NORTHROP: Things that live on
6 the bottom of the ocean.

7 CHAIRMAN CORY: Oh, the --

8 EXECUTIVE OFFICER NORTHROP: "Creepy crawlers" on
9 the bottom of the ocean.

10 MR. McCAUSLAND: One of the things you are saying
11 is that it might inhibit the return of the oyster industry?

12 EXECUTIVE OFFICER NORTHROP: Right. One of our
13 fellows feel it's a very deleterious operation.

14 MR. McGUIRE: In other words, they would take it
15 somewhere else, they would take it outside of the Bay?

16 EXECUTIVE OFFICER NORTHROP: They would take it
17 outside the Golden Gate, Mr. McGuire. That may be one of
18 the solutions.

19 But, I think we should study it. There are those
20 among the Corps of Engineers who feel the same way, however,
21 they are not in the majority, at least, their voices are not
22 being heard. We just would like to take a look at it and talk
23 about it.

24 MR. McCAUSLAND: I'd like you to take a look at it,
25 then, if we find that you've discovered something, I'd like

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1 you to share it with the staff of BCDC because that's
2 currently being treated in an administrative permit
3 procedure, because it is seen as a total problem. If you are
4 suggesting we need to find other spoil sites, then we ought
5 to figure that out pretty soon. Maybe we need to build more
6 foster cities.

7 EXECUTIVE OFFICER NORTHROP: That was one of the
8 recommendations of staff.

9 (Laughter.)

10 MR. McCAUSLAND: May I make that recommendation for
11 the record?

12 (Laughter.)

13 CHAIRMAN CORY: He said, "Jokingly."

14 (Laughter.)

15 EXECUTIVE OFFICER NORTHROP: Gravity differential
16 is the last subject.

17 CHAIRMAN CORY: Without objection you are to
18 proceed on that.

19 EXECUTIVE OFFICER NORTHROP: Fine. Thank you.

20 There is some question as to the payment of
21 maximum ceiling price for State-owned crude oil as reflected
22 in the recent FEA ruling on gravity differential. Staff
23 feels such non-payment places the contractor in default, and
24 recommends to the Commission that the staff be directed to
25 take all steps for legal remedy on this matter.

1 In this connection, on December 3, 1976, letters
2 were sent to all of the State's lessees demanding a maximum
3 ceiling price for lower tier oil be paid to the State
4 pursuant to their respective leases, commencing October 1.
5 A copy of the letter which was sent to each of the oil
6 companies is before you. The State's position is that
7 stripper oil price posting is the best indication of fair
8 market value, and the State is entitled to be paid that
9 amount unless restricted by Federal regulations such as
10 maximum ceiling prices on upper and lower tier crude.

11 It is requested that you ratify this action and
12 find that the staff position with regard to the fair market
13 value of oil is as stated in this letter.

14 CHAIRMAN CORY: Is there anybody in the audience
15 who wishes to address the Commission on this subject?

16 Questions by Commission Members?

17 Without objection, you have unanimous approval of
18 the Commission.

19 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, before
20 I close, Items 24 and 41 are off of the Calendar.

21 CHAIRMAN CORY: Let's go back. Where is the
22 letter, Bill, that we just approved?

23 Okay. We have the letter and the approval here.

24 EXECUTIVE OFFICER NORTHROP: Housekeeping item,
25 Mr. Chairman, Items 24 and 41 are off the Calendar. And

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1 because of a presentation to be made in Item Number 26,
2 it is suggested that that be held and brought up at the end
3 of the meeting.

4 And Item Number 36, I'll have a comment on that
5 when we get to it. I understand that Pacific Gas and
6 Electric will have someone to appear on that item.

7 CHAIRMAN CORY: Are we ready to go?

8 EXECUTIVE OFFICER NORTHROP: Right.

9 CHAIRMAN CORY: Items on the Consent Calendar,
10 C1 through C23, these will, unless there is an objection by
11 somebody in the audience or one of the Commission Members --
12 these will be approved as presented by the staff.

13 Is there anybody in the audience who wishes to
14 address the Commission on Items C1 through C23? Any
15 questions from members of the staff on any of the Consent
16 Calendar items?

17 Without objection, Items 1 through 23 will be
18 approved as presented.

19 Next item is Item --

20 EXECUTIVE OFFICER NORTHROP: 24, and it's off.

21 CHAIRMAN CORY: -- 24 is off.

22 Item 25, the Executive Officer, or his designee,
23 wants to hold public hearings with the Lake County Planning
24 Commission in Lakeport on the Draft Environmental Impact
25 Report concerning an application to prospect for geothermal

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1 resources on Boggs Mountain State Forest.

2 EXECUTIVE OFFICER NORTHROP: Right. That's a
3 geothermal committee, EIR.

4 CHAIRMAN CORY: Anybody in the audience on this
5 item? Any questions from the Commission?

6 This is a public hearing request. Without
7 objection, you're authorized to proceed with the public
8 hearing.

9 You suggest that Item 26 be held to the end.

10 Item 27, public hearing request for Executive
11 Officer, or his designee, -- this relates to the dry gas
12 from the Delta that we have had before the Commission at
13 some time and was contemplated, I believe, in the hearings.

14 So, without objection, you are authorized that those
15 hearings will proceed.

16 Item 28 is a Compromise Settlement, City of San
17 Mateo, on swaps of land. Will somebody explain that to me?

18 EXECUTIVE OFFICER NORTHROP: Jim, do you want to
19 point that out on the map?

20 MR. TROUT: Mr. Chairman, this doesn't fit on an
21 easel very well, so we will try to do it without.

22 San Mateo in the area near Foster City, right here,
23 is an undeveloped piece of property just to the southwest of
24 the Bayshore Freeway, about 3.8 acres of State claim within
25 17 acres here. The owner of this property desires to develop

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1 the property and asks the State to exchange its interest in
2 this property for interest in the Suisun marsh in an area of
3 148 acres up in this vicinity.

4 This area is within the City of San Mateo, this is
5 in Solano County. It's my understanding -- well, staff
6 recommends this approval. We think this is a particularly
7 attractive transaction from the standpoint of acquiring
8 significant acreage many times the Commission's other
9 interests in the Suisun marsh.

10 Now, it is moving the property outside of the City
11 of San Mateo. And we understand that the City has authorized
12 the City Attorney, Maury Hamilton, to appear before the
13 Commission and briefly discuss the City's attitude towards
14 this.

15 It is my understanding that the City does not
16 object to this transaction.

17 CHAIRMAN CORY: Mr. Hamilton.

18 MR. HAMILTON: Yes. If I may, Mr. Chairman and
19 Members of the Commission, the City of San Mateo is not
20 objecting to this settlement. However, it does point up the
21 matter that we had raised by Resolution Number 160-1976,
22 that the City Council had approved and forwarded to the
23 Commission on November 15th, and that is, the urging of the
24 State Lands Commission to, wherever feasible, settle these
25 land exchanges within the jurisdiction where the claim arises.

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1 And the staff of the State Lands is very
2 cooperative in working with my office for the purpose of
3 attempting to do just that with this exchange. With the
4 time constraints that we were facing, this became impossible.
5 And so, in view of the need to get the matter settled, we
6 have no objection to it.

7 The principal purpose -- if I might direct your
8 attention to the schematics of the San Mateo Shoreline Plan --
9 the principal purpose of our urging this is the lack of
10 additional financial resources on the part of the City of San
11 Mateo to develop that shoreline and reclaim a lot of the
12 natural environment.

13 MR. McCAUSLAND: Mr. Chairman, if I might?

14 CHAIRMAN CORY: Yes.

15 MR. McCAUSLAND: I appreciate the discussion,
16 however, I reviewed the material provided in our Board Book,
17 and I am ready to move adoption of this item. I'm not
18 certain it needs significant discussion at this point.

19 MR. HAMILTON: Well, if I may, Mr. Chairman, I --

20 CHAIRMAN CORY: Yes. You must have some bottom line
21 of why you're here.

22 MR. HAMILTON: Yes.

23 CHAIRMAN CORY: Could you let us know why you are
24 here?

25 MR. HAMILTON: This is actually apart from it.

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1 One, we're urging the Commission wherever feasible,
2 because this applies to other State agencies as well as to
3 San Mateo, to attempt to settle these land disputes within
4 that jurisdiction; and, secondly, to sort of set the stage
5 with the Commission for what will be taking place in the
6 City of San Mateo in the future with respect to the tidelands.
7 Our tideland grant of 1933 was modified this year in AB 4237,
8 and will be effective January 1st.

9 We will then have the responsibility under the new
10 grant to engage in these exchanges of property. However,
11 those are subject to your approval.

12 And so I wanted to expose you to what we are doing,
13 the planning that we've gone into and the amount of money
14 that the City of San Mateo is committing itself to in
15 attempting to restore the more natural bay front.

16 That's the purpose of the schematic. I also have
17 some small individual ones --

18 CHAIRMAN CORY: These?

19 MR. HAMILTON: Yes, to expose you to what we plan
20 to do, and we will be back in the future because there are
21 still a number of similar claims of the State that remain to
22 be settled in this area which will come about after January
23 1st.

24 With that, then, Mr. Chairman, I'm prepared to
25 answer any questions that I can with relation to this. I

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1 would like to appear on your future Agenda to, perhaps, go
2 over our shoreline plan in some detail so that you are
3 familiar with what we will be planning to do along the
4 Bayshore.

5 CHAIRMAN CORY: Is there anyone else in the
6 audience who wishes to address the Commission on Item 28?

7 Questions from Commissioners?

8 Without objection, we authorize Compromise
9 Settlement with the changes outlined before the Board in
10 Item 28.

11 Item 29.

12 MR. HAMILTON: Thank you, Mr. Chairman.

13 CHAIRMAN CORY: Compromise Settlement, Lower Tubbs
14 Island.

15 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Mr. Trout
16 will make a presentation.

17 MR. TROUT: I'd like to direct the Commission's
18 attention to your right. This is an enlarged aerial photo
19 on the chair there which shows in the upper left-hand corner
20 outlined in yellow the boundary that we are speaking of.

21 The upper part of Tubbs Island was owned by Sonoma
22 Ranch Company, and the Commission entered into a Boundary
23 Agreement some years ago around that part of the island.
24 The Nature Conservancy desires a Boundary Agreement on their
25 small portion at the lower end of the island in order that

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1 they may transfer ownership to the United States, or sell
2 it, actually.

3 The Agreement has been reviewed by the staff. We
4 recommend its approval. The only unusual factor regarding
5 this particular Boundary Agreement is that the Nature
6 Conservancy paid for significantly more acreage than we think
7 the person that sold it to them had title to. Therefore,
8 the Agreement is for a smaller area, and so, they're going
9 to take a small loss in the value of the property in selling
10 it to the United States.

11 Therefore, the Conservancy, because they're a non-
12 profit organization, has asked that the State not require
13 them to furnish title insurance. Usually, in a Boundary
14 Agreement the applicant is required to furnish all evidence
15 of title. In this case, we would like Commission approval
16 for the State to get insurance from the title company that we
17 have of record all of the parties necessary to sign it.

18 With that, we recommend your approval.

19 MR. TAYLOR: Mr. Chairman, going back, there is an
20 amendment to the Calendar item which indicates that instead
21 of the Nature Conservancy retaining the easement for certain
22 improvements they have on our side of the line, they will have
23 a permit included in the Agreement for 49 years for the area
24 covered by those improvements. And the consideration will be
25 the consideration supporting the settlement.

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1 With that, that item -- I have a copy. I think
2 they have been distributed to you.

3 CHAIRMAN CORY: Okay. Instead of an easement it's
4 a --

5 MR. TAYLOR: It's a limited time permit --

6 CHAIRMAN CORY: A limited time permit.

7 MR. TAYLOR: -- for the area of those improvements.

8 CHAIRMAN CORY: You've got, what, 29 letters of
9 opposition closing the island for hunting purposes, and
10 you've petitioned 43 signatures in closing the same, and you
11 have a letter from John Dunlap.

12 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, I think --

13 CHAIRMAN CORY: I think these are issues of whether
14 what use the property is put to after.

15 EXECUTIVE OFFICER NORTHROP: That's correct. And
16 I think at this stage we are putting in a Boundary Line
17 Agreement which will go into a Nature Conservancy, including
18 the bulk of the Bay Area in front of you and some of the
19 marginal areas as well. So, it's a very large area of
20 Federal wildlife area it's going to be amended into.

21 At this time we are working on a Boundary Line
22 Agreement and not that -- extends not beyond that.

23 MR. McCAUSLAND: Who is to be the operator of the
24 wildlife preserve that essentially runs all the way over?

25 MR. TROUT: All right. At this point, the

1 property outside the boundary would just be under the
2 Commission's management and jurisdiction, as San Francisco
3 Bay and much of the rest of it.

4 The United States Fish and Wildlife Service has
5 asked for a lease of significant increase to be included in
6 the San Pablo National Wildlife Refuge. Within that Refuge
7 would be areas set aside for wildlife habitat, for bird
8 watching, for hunting, for recreation, for other things. The
9 largest segment of the Refuge would be within the area
10 leased by the State Lands Commission. The Fish and Wildlife
11 Service is now preparing a Management Plan. That plan, by
12 law, must be made available for public scrutiny and there
13 must be public hearings. The plan is not developed enough
14 for us to obtain from the Fish and Wildlife Service their
15 concrete thoughts as to where hunting ought to be. The
16 Boundary Agreement is an entirely separate matter.

17 MR. McCAUSLAND: I think that's appropriate.

18 CHAIRMAN CORY: Okay. Mr. Glen Olson, I believe,
19 wishes to address the Commission on this. He's representing,
20 I believe, the National Audubon Society, Western Regional
21 Office.

22 MR. OLSON: I just came here wanting to talk to
23 you if you were going to discuss hunting. Being that it
24 doesn't look like it is going to be discussed at this point,
25 I don't want to waste your time.

1 CHAIRMAN CORY: Thank you, sir.

2 Are there any other people in the audience who wish
3 to address themselves to the Commission on this item?

4 Hearing none, are we ready to move?

5 MR. McCAUSLAND: I'm ready to move. I just want
6 to make it clear that the record does say that we're adopting
7 the staff recommendations which find that the proposed
8 Boundary Agreement is in the best interest of the State and
9 has authorized its execution; we find that the Agreement is
10 not subject to the requirements of CEQA by reason of its
11 exemption contained in the Public Resources Code relating
12 to Boundary Agreements; and we authorize the State Lands
13 Commission and/or the Attorney General to take all steps
14 necessary, that this has nothing to do with the management
15 of the area, it is only a Boundary Agreement.

16 MR. McGUIRE: So moved.

17 MR. McCAUSLAND: Second.

18 CHAIRMAN CORY: Mr. McGuire moves, Mr. McCausland
19 seconds. It's approved.

20 Now, I guess on Item 27 it was suggested that I did
21 not ask for comments from the audience. So, we can go back
22 to that item. Who wishes to address themselves to the
23 Commission on Item 27?

24 Identify yourself for the record.

25 MR. McCLOUD: I'm Douglas McCloud, and I'm Manager

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1 of Gas Purchase for PG&E.

2 And I'd like to point out some information the
3 Commission may not be aware of on these public hearings on
4 the cost for a dry gas, mainly, at Rio Vista.

5 Under the terms of the State land lease market
6 value is defined as follows.

7 MR. McCAUSLAND: This is the wrong item.

8 CHAIRMAN CORY: No. We went back to 27 for him,
9 because I didn't call upon him. This is the question we had
10 some dispute over and some negotiations with Standard Oil of
11 California. And the settlement was that we would hold
12 hearings, approve the deal that they had for a short period
13 of time and hold hearings to ascertain what the true value
14 of the gas was. And that's the question before the
15 Commission, whether or not we should have the public hearings.
16 PG&E wants to talk to us about it.

17 MR. McCLOUD: Again, I say the market value is
18 defined as follows:

19 "Market value of all gas produced from
20 State lands shall be defined under the State
21 lease terms to mean the value of the product
22 being paid by a purchaser in the field of
23 substantial quantities of gas produced from
24 the Rio Vista gas field, but shall not be
25 less than the reasonable market value as

1 determined by the Commission." End of quote.

2 PG&E has reached agreement on gas price with other
3 Rio Vista producers, and is purchasing at least 80 percent
4 of the Rio Vista gas from such producers at \$1.20 per million
5 Btu during the two-year period beginning July 1, 1976.

6 Accordingly, the only way the State Lands
7 Commission can increase its royalty revenue is to unilaterally
8 determine that the market value of its gas exceeds the agreed
9 upon price for a major portion of the gas in the field. The
10 Commission, apparently, hopes to get backing for its opinion
11 on price through public hearings. PG&E contends that such a
12 self-serving declaration will be damaging to the people of
13 Northern California --

14 CHAIRMAN CORY: Pardon me, sir. Was this your own
15 volition, or did someone in management send you here?

16 MR. McCLOUD: Largely, my own, and I am directed
17 by management.

18 CHAIRMAN CORY: Well, my problem is this, sir.

19 You're taking up Commission time on something, I
20 think, at this point is absolutely irrelevant. And I must
21 tell you just cold turkey out front. I'm offended that you
22 are taking the time to read something to us that we are
23 perfectly capable of reading ourselves.

24 Secondly, the public hearing is -- if you want to
25 argue what the price of gas is, that is the purpose of the

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1 public hearing. And what you are really suggesting -- and I
2 don't think the management of Pacific Gas and Electric is
3 really in favor of what you are suggesting -- is that we
4 shouldn't have a public hearing to find out what the price of
5 gas is, because I always thought that PG&E was an enlightened
6 company and its management believed that people had a right
7 to know. And I don't know the purpose of what we're doing
8 here. And that's why I asked you, you know, whether you
9 cleared this and its purpose, because it's a relatively
10 routine item as to whether or not we should have a public
11 hearing.

12 Now, if you are for the public hearing, we've got
13 nothing to say; if you are against the public hearing and
14 your management has said they are against the public hearing,
15 I'll be glad to hear that. But, I really don't think PG&E
16 is really against having public hearings.

17 MR. McCLOUD: Let me mention that PG&E would
18 appreciate an opportunity to express our views at this public
19 hearing. But, I want to point out one thing, and I'll make it
20 very short here -- just one or two sentences if you can take
21 the time.

22 CHAIRMAN CORY: Sure.

23 MR. McCLOUD: In the example you presented with your
24 item on the Calendar, you said that -- you pointed out that
25 if the cost of gas is raised from \$1.20, which we have

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1 settled with 80 percent of our producers, to a dollar and a
2 half for the State Lands Commission, you will obtain
3 \$750,000 additional revenue. Now, such a unilateral act by
4 the State Lands Commission could very well act to cost the
5 people of Northern California 42 times as much as the revenue
6 gained by the State Lands in royalty commissions. That would
7 amount, roughly, to \$31,795,000.

8 And just to make it brief in accordance with your
9 wish, we feel that the market value has been established, and
10 we are requesting the public good that can come from increasing
11 the cost of gas to PG&E's customers by 42 times what you stand
12 to gain.

13 That's the end of my statement.

14 CHAIRMAN CORY: The Commissioners would like to
15 know what your position and what PG&E's position is. Are
16 you against a public hearing? I mean, that's the only item
17 before us.

18 MR. McCLOUD: PG&E is not against public hearings
19 and we feel that there's -- or I feel that the good that
20 can come of this hearing is very minimal or detrimental.

21 MR. McGUIRE: So, in other words, on this Agenda
22 item which is solely for the approval of holding this hearing,
23 PG&E and you don't object to that. So, our approval of this
24 particular Calendar item should be --

25 CHAIRMAN CORY: They don't object, but only bad can

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1 come of it.

2 MR. McCLOUD: There is one additional item that
3 apparently you don't want to hear, but we are involved in
4 three arbitrations for about 16 percent of our gas, a small
5 portion of it. And any unilaterally set price by a State
6 agency would literally be the floor from which any additional
7 arbitrated price would arise. Now, this is --

8 MR. McGUIRE: I don't think they are saying they
9 don't want to hear. I think they are saying the proper
10 place to hear it is in the public hearing. The Calendar
11 item here is whether we hold that hearing to hear that.
12 That's my understanding, unless I'm really dense.

13 CHAIRMAN CORY: Yes. That's all it purports.
14 And that's why I'm a little miffed about this. The only
15 question before this Commission this morning is whether or
16 not we should have a public hearing on the question of price
17 of gas.

18 Now, it seems to me that's something a sophisticated
19 company like PG&E should be able to comprehend.

20 What does the Commissioners wish? We took an action
21 to authorize the public hearing. Does anybody wish to
22 rescind that?

23 MR. McGUIRE: Not at all.

24 CHAIRMAN CORY: Is there anybody else that wishes
25 to address the Commission on Item 27?

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1 Thank you, sir.

2 Our action on Item 27 stands.

3 EXECUTIVE OFFICER NORTHROP: Item 30.

4 CHAIRMAN CORY: Item 30, Public Agency Permit for
5 the East Bay Dischargers for a pipeline --

6 EXECUTIVE OFFICER NORTHROP: Outfall diffusion.

7 CHAIRMAN CORY: -- outfall.

8 Is there anybody in the audience on Item 30?

9 Do you wish to testify?

10 MR. McCAUSLAND: You think the dredging operation
11 is priced high, you ought to see what this does.

12 But, I'll move adoption.

13 (Laughter.)

14 CHAIRMAN CORY: Okay. We have a motion and --

15 MR. McGUIRE: Second.

16 CHAIRMAN CORY: -- and a second that Item 30 will
17 be approved as presented.

18 Without objection, such will be the order.

19 Item 31, determination of Exploratory Permits of
20 Mr. Charles A. Kenworthy, dba The Quest.

21 Is there anybody in the audience who wishes to
22 address the Commission on Item 31?

23 MR. McCAUSLAND: Move adoption, Mr. Chairman, and
24 I'd like to recommend that staff not enter into such agreements
25 in the future.

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1 CHAIRMAN CORY: We have a motion --

2 MR. McGUIRE: I second that, if that was an
3 amendment.

4 CHAIRMAN CORY: Second as amended.

5 I believe, we have a motion before us to terminate.
6 Does the staff enter into these, or do they come before the
7 Commission?

8 MR. HIGHT: This is the only one in existence,
9 Mr. Chairman, under the old regulations. That is why this
10 one is in existence, and there are no more, and it came
11 before the Commission.

12 MR. McCAUSLAND: I'd also like to stipulate in the
13 interest of equity, we might return a prorated portion of
14 the last year's payment of that permit.

15 CHAIRMAN CORY: If that's legal, I think that
16 would be appropriate.

17 MR. TAYLOR: He's at the end of a period right now.
18 Instead of acting on our renewal, we can send him back his
19 money for that period.

20 CHAIRMAN CORY: Okay. Without objection, Item 31
21 will be terminated as recommended with the stipulation that
22 the money that's in the pipe will be returned. Such will be
23 the order.

24 Item 32, East Bay Regional Park District, Public
25 Agency Permit, and its public use.

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1 Is there anybody in the audience that wishes to
2 address the Commission on Item 32?

3 Yes, sir. Would you identify yourself for the
4 record.

5 MR. CRUTCHER: Lewis Crutcher, Chief of Planning
6 for the East Bay Regional Park District.

7 I would appreciate this action. It would do two
8 things: It would clear up title to the end of a proposed
9 fishing pier that we plan to build and provide very good,
10 in fact, the only deep-water fishing in the hundred miles of
11 shoreline for people in the East Bay, and enable us now to
12 proceed with both State and Federal grants. Secondly, by
13 broadening the band around Point Norwegian Park we'd have
14 better control to protect the shoreline and the park in
15 general.

16 MR. McCAUSLAND: I had one question.

17 When this matter was before BCDC, there was some
18 preliminary suggestion that the District was proposing to run
19 some kind of a mechanized transit system out to the pier --

20 MR. CRUTCHER: Yes. Point Pinole is a quiet place.

21 MR. McCAUSLAND: -- and back. Can you afford it?

22 I understand that it's a quiet place, but can you
23 afford that? The operating cost for that fishing pier are
24 suddenly going to become quite a burden on the Park District.

25 MR. CRUTCHER: We understand that but also know

1 the cost of putting in a two-lane road for a mile and a half
2 and a parking lot at the end of the pier is rather
3 substantial, and we felt that the tradeoff was very --

4 MR. McCAUSLAND: How about bicycle routes?

5 MR. CRUTCHER: Bicycles can go out there now.

6 MR. McCAUSLAND: I'm sorry. I'll move adoption.

7 CHAIRMAN CORY: Moved and --

8 MR. McGUIRE: Second.

9 CHAIRMAN CORY: -- and seconded.

10 It's been moved and seconded that Item 32 be
11 approved as presented. Is there anybody else in the audience
12 who wishes to address the Commission on this point?

13 Without objection, it will be approved as
14 presented.

15 Item 33, ten-year Right-of-Way Lease for --

16 EXECUTIVE OFFICER NORTHROP: Saltwater.

17 CHAIRMAN CORY: -- saltwater in the Santa Monica
18 and El Segundo Plant, Stand-Cal.

19 Is there anybody in the audience who wishes to
20 address the Commission on Item 33? Any questions by Members
21 of the Commission?

22 Without objection, it will be approved as
23 presented.

24 Item 34, San Diego Gas and Electric, one-year
25 Industrial Lease for seven circular parcels of submerged

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1 land for thermal monitoring buoys.

2 Anybody in the audience who wishes to address the
3 Commission on this item? Questions from Commissioners?

4 MR. McCAUSLAND: I just have one. What does that
5 work out to per acre, any off-the-cuff idea? Since we're
6 going to be looking at some land of approval in value later
7 on --

8 MR. TROUT: Let's see, we have 2,000 times that
9 per acre since there's only 500th of an acre.

10 CHAIRMAN CORY: He's got seven of them.

11 MR. TROUT: But, the total area within the seven
12 circles is only 500ths of an acre.

13 CHAIRMAN CORY: In the aggregate.

14 MR. TROUT: In the aggregate.

15 CHAIRMAN CORY: Sum total, okay.

16 MR. TROUT: The dollar figure there is the minimum,
17 because it doesn't even come close to the area.

18 MR. McCAUSLAND: All right. So moved.

19 CHAIRMAN CORY: McCausland moves --

20 MR. McGUIRE: Second.

21 CHAIRMAN CORY: -- second.

22 Without objection, Item 34 will be approved as
23 presented.

24 Item 35 is an assignment from Hercules to Valley
25 Nitrogen Producers, Inc., of the rights to -- this is a

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1 terminal in a pier, is that correct, in Contra Costa County
2 of Hercules? Any necessary update of rental, I presume, are
3 in there?

4 MR. TROUT: This is not a terminal. It's the
5 remains of an old wharf where they have a cooling-water
6 pipeline. The rental was negotiated as consideration of
7 Boundary Line Agreement 144 and --

8 CHAIRMAN CORY: Fine.

9 MR. TROUT: -- Hercules has sold to Valley Nitrogen.

10 MR. McCAUSLAND: Okay.

11 CHAIRMAN CORY: Is there anybody in the audience
12 on Item 35?

13 Without objection, Item 35 will be approved as
14 presented.

15 Item 36.

16 EXECUTIVE OFFICER NORTHROP: Mr. Chairman --

17 CHAIRMAN CORY: Sorry I offended the gentleman,
18 could have gotten even instead.

19 Item 35 is for Industrial Lease of 73 acres of
20 Morro Bay, volumetric rental rate is pursuant to new
21 regulations, minimum of 46,000. PG&E wants to pay anything
22 in excess into a suspense account, as I understand it?

23 EXECUTIVE OFFICER NORTHROP: Right.

24 CHAIRMAN CORY: And pending determination of
25 volumetric -- I'll keep my mouth shut.

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1 EXECUTIVE OFFICER NORTHROP: You have a letter from
2 Mr. Nurisso from PG&E?

3 Mr. Nurisso has indicated he'd like to speak to
4 the Commission.

5 MR. TAYLOR: Could we have the statement before
6 you by the Executive Officer?

7 EXECUTIVE OFFICER NORTHROP: Could we read this
8 into the record, Mr. Chairman.

9 "PG&E has requested a letter from the
10 Executive Officer outlining PG&E's obligation
11 to pay the volumetric rental under this lease
12 amendment should a court later determine that
13 the Commission's volumetric rental charge is
14 invalid. They also have inquired concerning
15 disposition of such rentals pending resolution
16 of any such litigation. If you will recall, a
17 similar letter was provided to PG&E last month
18 in connection with their volumetric rental
19 payments.

20 "The staff is agreeable to sending such a
21 letter. The letter will provide that any
22 volumetric rental over the minimum rental will
23 be paid into a special treasury account pending
24 the result of the present litigation challenging
25 the Commission's new rental regulations. Should

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1 volumetric rentals be held invalid, these excess
2 rentals will be refunded, together with interest
3 actually earned on the money."

4 CHAIRMAN CORY: Yes, sir. Identify yourself for
5 the record.

6 MR. NURISSO: Commissioner, my name is Emile
7 Nurisso. I work for Pacific Gas and Electric Company, and
8 I just wish to say that we concur with the lease as it stands
9 right now.

10 MR. McCAUSLAND: Move adoption.

11 EXECUTIVE OFFICER NORTHROP: Do we have an
12 additional thing?

13 CHAIRMAN CORY: I've been muzzled. He suggests I
14 not.

15 MR. McCAUSLAND: I move adoption, Mr. Chairman.

16 MR. McGUIRE: Second.

17 CHAIRMAN CORY: It's been moved and seconded that
18 Item 36 be approved as presented.

19 Is there anybody in the audience who wishes to
20 raise any questions?

21 Without objection, then, Item 36 will be approved
22 as presented.

23 MR. TAYLOR: Mr. Chairman, together with the
24 authorization of the Executive Officer to send a letter?

25 CHAIRMAN CORY: Yes.

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1 Item 37, C and H. We have an amendment for an
2 Industrial Lease, 20-inch diameter outfall, 49 years from
3 August 1, 1975; consideration of \$24,212 with reservation
4 on the justice at the fifth anniversary.

5 Anybody in the audience on Item 37?

6 MR. McCAUSLAND: Yes, I have one question,
7 Mr. Chairman.

8 Is this pursuant to requirement of the Regional
9 Water Quality Control Board?

10 EXECUTIVE OFFICER NORTHROP: That's correct. We're
11 the last agency in all.

12 MR. McCAUSLAND: Move adoption, Mr. Chairman.

13 MR. McGUIRE: This is a policy which, I think, I
14 asked you. There's nothing we can do about the original
15 lease, is that correct?

16 EXECUTIVE OFFICER NORTHROP: We did not. You
17 discussed it with us. We did not discuss it with the
18 Attorney General yet.

19 MR. McGUIRE: Maybe this isn't an appropriate time.

20 MR. TAYLOR: Oh, I think a long time ago we looked
21 into it. I don't think we concluded anything at that time.
22 I'd be happy to take another look at it.

23 MR. McGUIRE: I know you guys are working on it.

24 MR. TAYLOR: I know what the problem is. We had
25 looked at it with the staff at some previous time several

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1 years ago. I'd be glad to have somebody look at it again.

2 CHAIRMAN CORY: Are you suggesting that maybe we
3 shouldn't approve that until they look at it?

4 MR. McGUIRE: No, no.

5 MR. TAYLOR: This doesn't have anything to do with
6 the original lease.

7 CHAIRMAN CORY: Okay. Are we ready on the item?

8 Without objection, Item 37 will be approved as
9 presented by the staff.

10 Item 38, Amendment of Minor Commercial Lease of
11 Robert M. and Mabel L. Edwards, Steamboat Slough, Sacramento
12 County; rental adjustments pursuant to regulation.

13 Is there anybody in the audience on Item 38?
14 Any questions from Members of the Commission?

15 Without objection, Item 38 will be approved as
16 presented.

17 Item 39, staff is wanting authorization for
18 execution and assignment of geothermal lease from the Davies
19 Estate to the Natomas Company in Lake County. This is the
20 one where they met --

21 EXECUTIVE OFFICER NORTHROP: Right.

22 CHAIRMAN CORY: -- the underlying owner met the
23 high bid.

24 EXECUTIVE OFFICER NORTHROP: Davies met the bid
25 submitted by the City of Santa Clara, and now they are asking

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1 to assign the lease to Natomas.

2 CHAIRMAN CORY: May I ask a question of the Attorney
3 General?

4 This is basically a perfunctory thing, but if I
5 have been a long-time friend, acquaintance and recipient of
6 the Large S, from a gentleman from the management of this
7 company, is it the appropriate time to disclose that?

8 MR. TAYLOR: I think you might disclose it and
9 refrain from voting.

10 CHAIRMAN CORY: If it's a requirement of refraining
11 from voting, I'm not sure we can get a majority of the
12 Commission to act on this item.

13 MR. McGUIRE: Which, I think, the Lieutenant
14 Governor would also like to make a similar disclosure.

15 MR. TAYLOR: I beg your pardon?

16 MR. McGUIRE: The Lieutenant Governor would like
17 to make a similar disclosure.

18 MR. McCAUSLAND: Well, I'd like to say that I don't
19 even know who we're talking about.

20 CHAIRMAN CORY: Mr. Jordon Thomas, I believe, is
21 one of the high executives in the Natomas Company and has
22 been a long-time personal friend of mine. He's never, to my
23 knowledge, I don't recall him ever mentioning this to me.

24 MR. TAYLOR: Do you have any financial interest in
25 the --

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1 CHAIRMAN CORY: No.

2 MR. TAYLOR: -- in the Natomas Company?

3 CHAIRMAN CORY: None whatsoever.

4 MR. TAYLOR: Do you have any interest in the
5 Natomas Company, the Lieutenant Governor?

6 MR. McGUIRE: No, no.

7 CHAIRMAN CORY: Other than, historically,
8 Mr. Thomas has contributed to my campaigns, I believe, before
9 he was even with Natomas Company. I don't think he was there,
10 but through elsewhere.

11 I just want the record to show.

12 MR. McCAUSLAND: I think I could state for the
13 purposes of the record that I was not aware prior to this
14 moment of either the interests of the Controller or the
15 Lieutenant Governor in this matter, and that I reviewed the
16 proposal in some detail, and I believe that it's procedurally
17 consistent with every other matter like this that would come
18 before this Commission. And I don't think anyone needs to
19 disqualify themselves.

20 MR. TAYLOR: I didn't think that would be the case.

21 MR. McGUIRE: This is just an assignment. I mean,
22 the terms have been negotiated?

23 MR. TAYLOR: No. There's no financial interest
24 that's been disclosed of any of the people that are voting
25 on this matter, therefore, I don't think anyone should

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1 disqualify themselves.

2 MR. McCAUSLAND: Move adoption.

3 MR. McGUIRE: Second.

4 CHAIRMAN CORY: Without objection, Item 39 will be
5 adopted.

6 Item 40, approval to the City of Long Beach for
7 assignment of all interests in the Standard Oil Company in
8 the Contractors' Agreement to Chevron, U.S.A., Inc.

9 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, I've
10 been advised by Standard Oil Company that while this name
11 change is happening universally with the company, they would
12 stand behind the contractual obligations -- the new company
13 would stand behind the contractual obligations of Standard
14 Oil Company -- or Chevron would stand behind the contractual
15 obligations that they made, which brings us to the contractual
16 obligations we discussed earlier --

17 CHAIRMAN CORY: Pricing agreements.

18 Without objection, then, is there anybody in the
19 audience who has any --

20 MR. McCAUSLAND: I have a question, but this isn't
21 in the appropriate form.

22 I'd like to have somebody contact me at some point
23 in time and advise me of what this change represents. That's
24 all.

25 CHAIRMAN CORY: Okay. I think it's just an

1 organizational change within Standard Oil Company of
2 California in terms of how they're doing something, probably,
3 relates to tax considerations.

4 MR. McCAUSLAND: All right.

5 EXECUTIVE OFFICER NORTHROP: But, we will.

6 CHAIRMAN CORY: Without objection, Item 40 will be
7 approved as presented.

8 Item 41 is --

9 EXECUTIVE OFFICER NORTHROP: Off Calendar.

10 CHAIRMAN CORY: -- off Calendar.

11 Item 42, you want to report to the State Controller
12 the subventions.

13 EXECUTIVE OFFICER NORTHROP: The subventions are
14 legislatively mandated.

15 CHAIRMAN CORY: Without objection, Item 42 will be
16 approved as presented.

17 Item 43, land baring, tell us about it.

18 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, we have
19 nearly two acres of property -- nearly an acre and a half of
20 property in the Santa Barbara area which is located in an
21 area that has become a prime area for prime development for
22 commercial and business offices. And staff would like to
23 take a look at the use of this property that we are currently
24 using for our Santa Barbara Office, perhaps, to expand its
25 use and put it to other uses.

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1 MR. McCAUSLAND: Isn't that where the freeway is?

2 CHAIRMAN CORY: That's Highway 101 that runs --

3 EXECUTIVE OFFICER NORTHROP: It's the freeway that
4 runs right close there. That's near a freeway offramp.

5 MR. McCAUSLAND: Gentlemen, I like that property.
6 How much would it cost me?

7 (Laughter.)

8 CHAIRMAN CORY: They want to --

9 EXECUTIVE OFFICER NORTHROP: We would like to find
10 a developer and get some estimates of what we really have in
11 that piece of property from a commercial point of view.

12 CHAIRMAN CORY: You understand that nothing is
13 going to happen till they come back to us?

14 EXECUTIVE OFFICER NORTHROP: That's right.

15 CHAIRMAN CORY: Any problems with the Commission?
16 Anybody in the audience that wishes to address themselves to
17 this item?

18 Without objection, it will be approved.

19 Item 44, an expenditure of \$173,500 by Long Beach?
20 Is this for what, subsidence?

21 EXECUTIVE OFFICER NORTHROP: No. Mr. Chairman,
22 this is for some beach property near Redondo Avenue and
23 Ocean in Long Beach, which is owned by a private party.
24 However, the Attorney General has met with the City of Long
25 Beach and pointed out the considerable public, perhaps,

1 adverse condemnation on the property, and henceforth has
2 lowered the price considerably.

3 CHAIRMAN CORY: This is the item we had before us
4 some months ago?

5 EXECUTIVE OFFICER NORTHROP: Is this the one for
6 350?

7 MR. TAYLOR: I'm sorry. This is a separate item.
8 This is a continuation of the East Beach Lot acquisition,
9 or acquisitions of lots for the East Beach of Long Beach.
10 And this is to eliminate another private ownership that is
11 encroaching in that park area. Because we are using our own
12 money, we have been asked to be given notification. We're
13 doing more than receiving notification in this case, we are
14 also affirmatively saying it should be affirmed.

15 It's part of litigation that we've had over the
16 years with the park. It's an outgrowth of litigation over
17 the seaward boundary of the property, and whether there was a
18 lien deed put on a portion of the property. They have agreed
19 to our contentions in those regards that the property has been
20 accordingly valued as they now want to take the property to
21 complete the East Beach.

22 CHAIRMAN CORY: So, the various clouds on the title
23 have been adjusted and reflected in the price?

24 MR. TAYLOR: Yes. We reviewed them and are
25 satisfied on it.

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1 CHAIRMAN CORY: We are telling them yeah, if we
2 send the money it's okay.

3 Anybody in the audience on Item 44?

4 Without objection, it will be approved.

5 Item 15, Redwood City, we want to determine that
6 they have complied with the --

7 EXECUTIVE OFFICER NORTHROP: Grant.

8 CHAIRMAN CORY: -- grants, is that correct?

9 EXECUTIVE OFFICER NORTHROP: That is correct.

10 CHAIRMAN CORY: What can you tell us to assure us
11 of that?

12 (Laughter.)

13 MR. TROUT: Mr. Chairman, if I might respond to
14 that, the grant required, as is typical, that these lands
15 be improved. And the staff has been down there and
16 investigated, and we found that the City of Redwood City has
17 expended significant amounts of its own money and has
18 applied for and received Federal grants. They have developed
19 a deep-water channel and put in a significant number of
20 wharfing facilities. And by that, we believe, they have
21 substantially complied with the terms of the grant.

22 CHAIRMAN CORY: Anybody in the audience on this
23 item?

24 Any questions from Members of the Commission?

25 You're going to let this go that Redwood City has

1 become a deep-water port, just like that?

2 (Laughter.)

3 MR. McCAUSLAND: If you're going to force me to
4 use the opening, it's not necessarily clear that all of the
5 State lands that have been granted are in areas that are
6 any longer considered suitable for development. We might
7 want to -- I don't want a budget request for this. You might
8 want to take a look at that sometime to see if we want to
9 renegotiate some of those grants.

10 MR. TROUT: I think, Mr. McCausland, you may recall
11 that approximately a year ago in response to legislative
12 request in 1970, the Commission adopted a report on granted
13 tidelands. And that was one of the major findings, that many
14 of the grants have outlived their usefulness and are no longer
15 appropriate.

16 Senator Dills had some legislation which failed,
17 and so we have it in the budget request. But, the Commission
18 has gone on record in that area.

19 CHAIRMAN CORY: Without objection, Item 45 will be
20 approved as presented.

21 Item 46, accept the Quitclaim by the City of
22 Martinez of tide and submerged lands, which, I think, is one
23 step in a legislative change in the --

24 EXECUTIVE OFFICER NORTHROP: Right.

25 CHAIRMAN CORY: -- areas.

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1 Any questions by Members of the Commission?
2 Anybody in the audience on this item?

3 Without objection, Item 46 will be approved as
4 presented.

5 Item 47, litigation, you want to ratify the
6 Attorney General's actions on disclaimer of United States
7 versus 212.43 acres of land, more or less.

8 You think the U.S. Attorney can handle that suit?
9 (Laughter.)

10 MR. TAYLOR: These are just temporary easements.

11 CHAIRMAN CORY: We have no interest in the area?

12 MR. TAYLOR: In one area, it's a possibility. But,
13 for what it is involved it's not worth getting into, and it's
14 only a temporary easement.

15 CHAIRMAN CORY: Okay. Without objection, Item 47
16 will ratify the Attorney General's action.

17 48, offshore boundaries which we approve goes to
18 LAFCO, and then comes back to us. And this is for creation
19 of two new cities of Muir and West Pittsburg --

20 EXECUTIVE OFFICER NORTHROP: That's correct.

21 CHAIRMAN CORY: -- which is in the general area of
22 the Dow Plant.

23 EXECUTIVE OFFICER NORTHROP: Existing Dow facilities,
24 as well as industrial complex on that side of it.

25 MR. McGUIRE: Would these boundaries just encompass

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1 what is now Dow, or would they encompass --

2 EXECUTIVE OFFICER NORTHROP: No. They would
3 cover -- there are two cities, Mr. McGuire, and they would
4 cover areas in the existing industrial complex, on that side
5 of the Bay.

6 CHAIRMAN CORY: Okay. Comes back to us, if we want.

7 EXECUTIVE OFFICER NORTHROP: Mr. Trout is pointing
8 out the location of it, now.

9 MR. TROUT: It fills in the whole area between
10 Pittsburg and Martinez. It covers, basically, this area
11 right here. There is not a great deal of residential
12 property. It's basically like the City of Commerce and
13 Vernon.

14 MR. McCAUSLAND: Who are the petitioners for this?

15 MR. HIGHT: The proponents of the new cities,
16 Mr. McCausland.

17 CHAIRMAN CORY: They are -- you have a gentleman
18 coming forward.

19 Would you identify yourself.

20 MR. LICHTI: Yes. My name is Ted Lichti, I'm on
21 the Committee to incorporate the City of West Pittsburg.
22 I'd be happy to answer any questions you might have on it.

23 MR. McCAUSLAND: I'm fairly familiar with the area,
24 and I was just trying to determine what was compelling those
25 cities to want to incorporate at this point in time. I

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1 remember back in the early '50's where the City of Fremont
2 took in half the State of California in its incorporation,
3 and I was just curious to know what advantage it would
4 improve your area with an incorporation at this point in
5 time.

6 MR. LICHTI: Basically, it would be a tax advantage
7 to the residents of the community, because there's approxi-
8 mately 11,000 people living in the proposed boundaries of
9 the City of West Pittsburg.

10 And they are slowly being surrounded by other
11 incorporated areas. And I understand once they are surrounded,
12 why, they will be forced into the present incorporated cities.
13 So, if they don't make a move at this time to save their
14 tax base or maintain a lower tax base by incorporating, they
15 will be gobbled up, so to speak.

16 MR. McCAUSLAND: West Pittsburg will encompass
17 the assessed value of the Dow Plant?

18 MR. LICHTI: No, not at all. It's on the west side
19 of Pittsburg where Dow is on the east side of Pittsburg.
20 So, it doesn't even come close to the Dow Plant.

21 MR. McCAUSLAND: Do you have any good, substantial
22 tax base available to you other than residential?

23 MR. LICHTI: Yes. There's quite an extensive area
24 available for industrial development, and there's quite a
25 bit of industry out there at the present time, sir.

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1 MR. McCAUSLAND: Thank you.

2 MR. McGUIRE: That's the town of Muir that's
3 a development.

4 MR. LICHTI: The town of Muir, I'm not on that
5 committee, but that's another city adjacent to the City of
6 Martinez. And it does not border the property that I'm
7 speaking about. It's quite an area.

8 MR. McCAUSLAND: It's close to the Naval Weapons
9 Station.

10 MR. LICHTI: The Naval Weapons Station separates the
11 two by quite a few miles.

12 CHAIRMAN CORY: Any questions from Members?

13 MR. McGUIRE: We have no choice in this anyway?

14 CHAIRMAN CORY: No -- Thank you, sir.

15 Without objection, then, Item 48 is approved as
16 presented.

17 The question is asked, why do they always come back
18 to us?

19 EXECUTIVE OFFICER NORTHROP: This is a -- go ahead.

20 MR. HIGHT: The Commission at this phase of the
21 application is required or requested to approve the
22 sufficiency of the legal descriptions since it encompasses
23 some tide and submerged lands under the jurisdiction of the
24 Commission.

25 The next step, then, as a property owner, the

1 Commission will be requested to either approve or disapprove.

2 CHAIRMAN CORY: Whether or not we want our
3 property in the city?

4 MR. HIGHT: Yes.

5 MR. McGUIRE: Or out of the city.

6 CHAIRMAN CORY: Okay. Item 49, is to approve and
7 authorize the execution of litigation settlement agreement in
8 the case of Long Beach Amusement Company versus Atlantic
9 Richfield Company, and authorize the State Lands Commission
10 and Office of the Attorney General to take all necessary
11 and appropriate action to implement said agreement.

12 MR. TAYLOR: This is a lawsuit, Mr. Chairman, on
13 Seaside Walk in the downtown portion of the City of Long
14 Beach. We're only named a party because of the seaward
15 boundary of the Walk is Chapter 138 line. That line is being
16 recognized, and will be confirmed in this agreement. We also
17 monitored in the lawsuit any effect it might have on the
18 Long Beach unit, and we're satisfied that it will not.

19 MR. McCAUSLAND: Fine.

20 CHAIRMAN CORY: Without objection, authorization is
21 granted and the staff will proceed.

22 Item 50, authorizing the Attorney General to file
23 on behalf of the State Lands Commission a disclaimer of any
24 right, title, or interest in, which case? Dominici versus
25 Coates, King County?

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1 MR. HIGHT: Yes, Mr. Chairman, this involves some
2 land around Mussel Slough which it was thought the Commission
3 had some jurisdiction in, and we have discovered that we do
4 not.

5 CHAIRMAN CORY: Okay. Without objection, Item 50
6 will be approved as presented.

7 (Thereupon a discussion was held off
8 the record.)

9 CHAIRMAN CORY: Item 51, you find that the amount
10 of \$707.42 represents a fair and just monetary settlement
11 for timber trespass on school land in Plumas County, and
12 accept said amount from the U.S. Department of Agriculture,
13 Forest Service, as payment in full for this grievous error
14 on their part, this war of aggression by the Great "Federal
15 Allies."

16 Is there anybody in the audience who would like to
17 offer us more money for the timber?

18 (Laughter.)

19 CHAIRMAN CORY: It certainly wasn't a Christmas
20 tree. I think I paid more than that for the Christmas tree
21 I just bought.

22 (Laughter.)

23 MR. TROUT: Actually, it was eight trees.

24 CHAIRMAN CORY: Eight trees?

25 MR. TROUT: Eight trees.

1 MR. McCAUSLAND: Big or little?

2 CHAIRMAN CORY: Anybody in the audience on this
3 item?

4 Without objection, we will accept the \$707. That's
5 one Boeing 707.

6 (Laughter.)

7 MR. McCAUSLAND: I don't think that should be
8 without objection, I think we should object strenuously to
9 this.

10 CHAIRMAN CORY: Okay. The record will please
11 note, in case anybody ever reads it.

12 Item 52, approval of proposed Boundary Line
13 Agreement between the Winter-Durnford Company and the State
14 Lands Commission relating to the -- Oh, this is the Colorado --

15 EXECUTIVE OFFICER NORTHROP: River raft.

16 CHAIRMAN CORY: -- River raft, and we have an
17 easement and a boat launching ramp and parking access along
18 the Colorado River near Palo Verde Dam.

19 Is there anybody in the audience on Item 52?
20 Any questions by Members of the Commission?

21 Without objection, Item 52 will be approved as
22 presented.

23 The next item is status of major litigation. Is
24 there anything to report on that?

25 EXECUTIVE OFFICER NORTHROP: Do we have anything

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1 major on that, Greg?

2 MR. TAYLOR: Yes. I'm sorry I was back on the last
3 item.

4 There are six items that I would like to briefly --

5 CHAIRMAN CORY: Why are you back there and we
6 weren't? What do you know that you aren't telling us?

7 (Laughter.)

8 MR. TAYLOR: I didn't see one of the documents,
9 but it was reviewed by someone in the office. I'm sure it's
10 fine.

11 CHAIRMAN CORY: That's a little weasel word, I
12 think.

13 (Laughter.)

14 MR. TAYLOR: Mr. Chairman, there have been five
15 items of interest in litigation over the last month.

16 The first is United States versus California where
17 we sued the quiet title around Channel Island's National
18 Monument, which are Anacapa and Santa Barbara Islands.

19 The Federal Government has filed a response to our
20 request that the Supreme Court adjudicate that matter by
21 submitting their own proposed decree, which is different
22 from ours. They have also requested that a Special Master
23 be appointed to hear testimony. Russell Iungerich, a
24 Deputy in the office, is going to be meeting with them in
25 Washington, D.C. tomorrow on another matter, which I will

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1 discuss next. We will try to work out with them a brief
2 procedure which may alleviate the necessity of having a
3 Special Master. If we can't agree on that, apparently, the
4 Supreme Court next month will appoint a Special Master to
5 hear testimony.

6 On the second item is that tomorrow, a representative
7 of the State Lands, Bud Uzes and Bud Iungerich will meet in
8 Washington, D.C. with the Department of Interior and the
9 Department of Justice and other Federal agencies, Department
10 of State. The meeting will actually be held in the Department
11 of State, to try to work out the remaining problems in our
12 offshore boundary, as to where it will be measured from, to
13 determine the three-mile limit. And this primarily concerns
14 walks, piers, groins and jetties. It is hoped that we can,
15 at least, resolve a substantial amount of the problems so
16 that very little will go back to the Supreme Court.

17 In that connection, a letter was sent, with the
18 approval of the Executive Officer, to the attorney handling
19 this matter objecting to 20 parcels that have been indicated
20 the Federal Government would offer for offshore leasing in
21 Lease Sale Number 48. We feel that portions of these 20
22 tracts are subject to State claims as a result of these
23 unresolved issues, and we've asked that those 20 tracts be
24 deleted from the sale unless the problem is resolved before
25 the sale occurs.

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1 Tomorrow, in Los Angeles, the Executive Officer
2 will be attending a meeting in the Attorney General's Office
3 with representatives from the Department of Justice, I
4 understand, representing the Colorado Indian Tribes, the
5 Attorney General of Nevada and representatives from the
6 State of Arizona and also from the State of Nevada, in
7 connection with the case of Arizona versus California, which
8 concerns who had the rights to the water from the Colorado
9 River.

10 Now, the Federal Government is insisting that the
11 State agree to the Secretary of Interior's readjustment or
12 expansion or change in the boundaries of certain of the
13 Colorado Tribes. That would have an effect on the amount of
14 water that the Indians are entitled to take from the river,
15 and it would also have a very serious effect, in the view of
16 some of the users of the river, in connection with what they
17 assert their rights are.

18 In addition, the expansion or change of these
19 boundaries as they have been regarded potentially can have
20 a serious effect on State ownership of land in this area of
21 the Colorado River, both with regard to the ownership of the
22 riverbed and with regard to some school lands and lieu lands
23 which we have remaining, and also in connection with some
24 mineral reservations. The changes of these boundaries may
25 say that land that has been occupied for a substantial period

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1 of time by people under patents from either the Federal
2 Government or from the State can now be included as part of
3 the Indian Reservations.

4 The states are not willing to agree to the
5 conditions of the Federal Government. If some compromise
6 cannot be found at this meeting tomorrow, then the matter
7 will have to go back for litigation before the United States
8 Supreme Court, which will be quite lengthy. And one element
9 of that litigation will involve title or the boundaries of
10 the Indian Reservations, and who has title to certain
11 properties. This lawsuit is primarily a water rights lawsuit,
12 but State Lands will become involved because of these Indian
13 boundaries. And I'm sure you will be hearing from the five
14 Colorado Tribes, as well as from interested water heater
15 users in Riverside, San Bernardino, and Imperial Counties.

16 This will be very substantial litigation, if we
17 go back to score one, if the Federal Government would not
18 insist upon the acceptance of the boundaries. We also feel
19 that in some instances, when these boundaries have been
20 adjudicated by a Special Master, they were found in the
21 State's favor -- whoever of the parties would be, not in the
22 Federal favor.

23 Tomorrow, Mr. Stevens is going to go with a group
24 from State Lands to meet at Lake Tahoe with representatives
25 of the State of Nevada. And Nevada has requested the meeting

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1 to coordinate with California as to what we're doing in our
2 respective sides of the lake in terms of title and boundary
3 problems and administration of the lake, and so on, which is
4 somewhat consistent with the proposal of the Commission to
5 try to do some joint planning up there.

6 Primarily, it's an information-gathering meeting
7 for us to find out what Nevada is up to, and let them ask us
8 some questions and give them some responses.

9 We are now up to 37 new lawsuits since the
10 beginning of July 1st. This is almost the total number that
11 we received last year which was double the number that we
12 had three years previous. If we cannot resolve our matter
13 with the lessees, oil lessees, which is the item that
14 Mr. Northrop first mentioned where you found the Arab market
15 price for oil to be as stated in his letter, we will have to
16 commence a series of cases against the oil companies in each
17 instance to protect our contract rights under those leases
18 for that amount of money.

19 I believe that there are other lawsuits which we
20 have discussed with you which private parties are contemplating
21 filing, but I just want to point out that the number continues
22 to grow.

23 Finally, I would like to say that Mr. Hamilton who
24 is here today has been co-counsel with us on the West Bay
25 lawsuit for a number of years, and has given very good support

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1 and help to us.

2 And we are going to go to trial on the Centex
3 parcel next year, which is shown up on the top of the map.
4 And I want to compliment him on his confidence because he
5 shows that we own it, which is perfectly consistent with our
6 position.

7 That concludes my report.

8 CHAIRMAN CORY: Mr. Northrop, I would suggest in
9 the future calendars that you revise the title, "Status of
10 Major Litigation" to "Budgetary Requests."

11 (Laughter.)

12 MR. McCAUSLAND: I'd like to go on record opposing
13 that.

14 (Laughter.)

15 CHAIRMAN CORY: All right. We can go back to
16 Item --

17 EXECUTIVE OFFICER NORTHROP: 26.

18 CHAIRMAN CORY: -- 26. And here we have some
19 dilemma over which we get to parch the baby, I understand.

20 MR. TAYLOR: Mr. Chairman, could I first indicate
21 to you that there are three courses of action which you can
22 take today.

23 CHAIRMAN CORY: How do we punt?

24 MR. TAYLOR: The staff has recommended that you
25 accept the second bid for reasons that we'll discuss. You

1 have a choice to also take the first bid, if you find after
2 the evidence that the first bid would be the one that you'd
3 want to accept. This is a discretionary matter.

4 The third choice is that you can refuse to accept
5 all of the bids, and ask the staff to do the process over.

6 So, those are the three choices which you have
7 before you, and you are sitting in a capacity, now, of
8 exercising your discretion as to the manner in which you want
9 to proceed.

10 MR. McCAUSLAND: Is there a question as to the
11 facts in this case?

12 CHAIRMAN CORY: Yes, unfortunately there is.

13 MR. TAYLOR: Yes. The facts are absolutely
14 conflicting.

15 The position of the staff -- and we're willing to,
16 I guess, if it were necessary, to put on both sides, and we
17 have an attorney here for the party who tendered the highest
18 offer, which is not being recommended.

19 CHAIRMAN CORY: How about the number two bidder,
20 which the staff did recommend? Are they represented?

21 MR. TAYLOR: I have no idea. He was informed of
22 the meeting.

23 CHAIRMAN CORY: He was informed?

24 MR. TAYLOR: Is that correct, Mr. Brady, he was
25 informed?

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1 MR. ERADY: Yes, letters were sent.

2 CHAIRMAN CORY: In writing?

3 MR. BRADY: Yes.

4 MR. McCAUSLAND: No, letters over the phone.

5 (Laughter.)

6 CHAIRMAN CORY: Well, I just want to make sure.

7 I mean, there seems to be some mystical qualities of this
8 division.

9 MR. McCAUSLAND: Would it be appropriate to proceed
10 under oath in a matter such as this?

11 MR. TAYLOR: I think that we probably should, since
12 there are declarations under penalty of perjury that the
13 bidder who presented the highest amount offered to make a
14 lease with us for the highest amount, that he has a series
15 of declarations that he wants to present.

16 If I can just state the facts, briefly, and we'll
17 probably have to add some testimony to this.

18 On August the 26th, 1976, a Proposal of the State
19 Lands Commission to Enter into a Lease for the Extraction of
20 Geothermal Resources from Certain Reserved Mineral Interests
21 of the State of California, Situate in Sonoma County, State
22 of California, was executed by the Executive Officer of the
23 Commission and sent out to interested parties, anyone that
24 requested it.

25 This notice, I would ask the Chairman's permission

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1 to include as a part of this item, as well as the entire
2 file of the staff on this matter.

3 CHAIRMAN CORY: No objections?

4 MR. TAYLOR: The offer of lease says that:

5 "No deviation from any requirements or
6 provisions included within the form of the
7 bid-lease, or from the requirements or provisions
8 which are specifically set forth hereafter in this
9 proposal shall be permitted; provided, however,
10 that the State Lands Commission may, in its
11 discretion, waive any technical defect which does
12 not give the bidder any substantial advantage
13 over other bidders."

14 Now, the position of the staff -- Let's go to the
15 first page, and it says that:

16 "All bids made pursuant to this proposal
17 shall be addressed to the State Lands Commission,
18 sealed and delivered to the State Lands
19 Commission, Suite 300, 100 Oceangate, Long Beach,
20 California 90802, on or before 11:00 a.m.,
21 November 3, 1976."

22 And then there is a further reference that the
23 sealed envelope containing said bid shall be a -- a statement
24 shall be written with regard to what the contents of the
25 envelope are.

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1 Primarily, with regard to the paragraph that we
2 read to you previously, the fact that the bid should be seen
3 and the fact that it should be delivered on or before 11:00
4 a.m., that the controversy centers.

5 CHAIRMAN CORY: 11:00 a.m. or 10:00 a.m.?

6 MR. TAYLOR: 11:00 a.m.

7 MR. HIGHT: I know we said 10:00 before, but it's
8 11:00.

9 MR. TAYLOR: As you can note from the Calendar item
10 the staff's position is that the bid was delivered after
11 11:00 o'clock, and after the time that other bids which had
12 been received in a timely manner were already beginning to be
13 opened. That's the posture of the matter.

14 I may want to speak to you at the end of the hearing.

15 CHAIRMAN CORY: Okay.

16 MR. McCAUSLAND: Who speaks for --

17 MR. TAYLOR: I think maybe Mr. Hill wants to speak
18 on behalf of the man that submitted the highest offer.

19 CHAIRMAN CORY: At some point, could we have the
20 principals from the Commission who were at that meeting?

21 MR. TAYLOR: Yes, we do.

22 CHAIRMAN CORY: And, please, would anybody caution
23 me in terms of the oath if I forget to deal with that and
24 start taking the testimony.

25 First, could you identify yourself for the record.

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1 MR. HILL: Yes, sir. My name is Rodney C. Hill.
2 I'm with the law firm of McKenna and Fitting, and I represent
3 George P. Post who submitted, we assert, the highest valid
4 bid for the tract under consideration.

5 CHAIRMAN CORY: You wish to proceed just as counsel,
6 or do you wish to offer factual information?

7 MR. HILL: Unfortunately, I was not a participant
8 witness. I cannot offer factual information. I have a
9 prepared statement and a number of declarations executed
10 under penalty of perjury, and some supporting documents which
11 I would like entered into the record. I think that would
12 save a great deal of time, and I am prepared to summarize
13 the content of those documents.

14 MR. McCAUSLAND: Well, would you be willing to
15 stipulate that the only issue before us is the question of
16 the facts relating to the timely receipt of the bid, and its
17 state of being sealed or non-sealed at the time of receipt?

18 MR. HILL: Yes. All right. I think we're willing
19 to stipulate that the questions are whether or not the bid
20 was timely tendered, whether the bid was sealed, whether or
21 not those are defects, and the manner in which it was
22 presented.

23 MR. McCAUSLAND: Do you have someone representing
24 the firm here who actually participated who can testify as
25 to the facts?

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1 MR. HILL: No, sir. Mr. Post is here. Mr. Post
2 was not present at the bidding procedure. He was
3 represented by a gentleman named Holmes whose affidavit I
4 have here.

5 If you so desire, we can have Mr. Holmes come up.

6 MR. McCAUSLAND: I think it is clear that in terms
7 of monetary consideration the bid was the highest. And the
8 only question before us is if it was procedurally deficient
9 and unless --

10 MR. HILL: And whether or not --

11 MR. McCAUSLAND: -- parties are here who can
12 testify to that effect, I don't know --

13 CHAIRMAN CORY: You started to add something?

14 MR. HILL: Yes, and whether or not those
15 deficiencies were excusable, and if they were not excusable
16 whether they were material deficiencies.

17 The purpose of the bidding procedure, basically, is
18 to protect the integrity of the process to insure that, one,
19 that the bidder does not obtain an advantage over another, to
20 insure that the State realizes the highest possible bid under
21 the circumstances.

22 MR. McCAUSLAND: Perhaps, it's important for me to
23 lay my biases on the table at this point, because in my
24 lifetime I have participated in probably several hundred
25 bid openings. And I have never participated in a bid opening

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1 where a bid was opened that had not been received prior to
2 the commencement of the opening of the other bids, nor to the
3 best of my recollection, have I ever participated in a bid
4 opening where one of the bids was unsealed.

5 MR. HILL: Well, sir, we are prepared to present
6 to you examples of instances in which precisely those
7 incidents occurred, and which the bids were accepted and
8 which the body accepting the bids was sustained.

9 CHAIRMAN CORY: Okay. The question I have is a
10 procedural one in terms of questioning, of getting at the
11 facts. And it was suggested by Commissioners, I think, it
12 is appropriate that we put people under oath.

13 Now, do you have any qualms about going under
14 oath at this point?

15 MR. HILL: No.

16 CHAIRMAN CORY: Would you raise your right hand.

17 (Thereupon Mr. Rodney C. Hill was, by
18 the Chairman, sworn to tell the truth,
19 the whole truth, and nothing but the
20 truth.)

21 THE WITNESS: I do.

22 CHAIRMAN CORY: Let's go ahead and proceed, and
23 somebody stop me if I fail to do that. And we know that
24 Greg always speaks the truth, so I didn't swear him in since
25 he wasn't there, either.

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1 This change was made in the offices of the Division of the
2 State Lands, was made in response to several telephone
3 conversations between our office and Mr. Holmes, and our
4 office and the Division of State Lands.

5 As I understand the facts, Mr. Holmes arrived at
6 the office which, in the invitation was designated as
7 Suite 300, well before 11:00 o'clock, which was the prescribed
8 time for the opening of the bids. Mr. Holmes was directed to
9 the office of, I believe, a gentleman by the name of
10 Priddy by the receptionist. He was not directed to another
11 office to a conference room where, I understand, the bids
12 were, in fact, opened.

13 There were no signs posted to indicate that the
14 bids were to be opened in a particular office.

15 I might mention that I understand Suite 300
16 consists of several offices, so that a person entering Suite
17 300 would not know which office to go to unless he was
18 specifically directed to that office. Mr. Holmes states that
19 he was not directed to that office at the time he initially
20 came into the Division's offices, and instead, as I say, he
21 was directed to Mr. Priddy's office.

22 It was in Mr. Priddy's office and another office
23 to which the bid was subsequently moved, that these alterations
24 in the bid took place with Mr. Post's consent.

25 Now, our contention, one, is that Mr. Holmes was at

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1 the prescribed place on time; in making the alterations,
2 Mr. Holmes had to unseal the package. The bid was originally
3 placed in a package which was sealed with Scotch tape.
4 Mr. Holmes has stated that he resealed the package by
5 pressing down on the Scotch tape, that he did not have
6 additional Scotch tape with which to reseal it.

7 I might say that, parenthetically, this is a
8 question, I think, of how high we can elevate technicalities
9 to obscure the substance, of the purpose of this procedure.

10 In any event, Mr. Holmes made his alterations,
11 attempted -- whether successfully or not, I don't know --
12 to reseal the package and went in search of the place in which
13 the bidding was to be conducted, and this is several minutes,
14 I understand, before 11:00 o'clock. I don't know how long
15 it took Mr. Holmes to get there, apparently, it took him, I
16 don't know, a number of minutes to find the appropriate
17 office. And then somebody in the hallway asked, "Where's
18 everybody," and was directed to a conference room.

19 Mr. Holmes entered the conference room, I understand,
20 at two minutes past eleven. Some two bids had been opened
21 at that point. He knew nothing about what was going on in
22 terms of the amounts of those bids. His bid had been
23 established prior to the time that he walked in there.

24 He handed the bid, I believe, to Mr. Brady or
25 Mr. Priddy --

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1 MR. BRADY: Mr. Priddy.

2 THE WITNESS: There was a question as to whether
3 or not the bid should be accepted at all because it was
4 some two minutes late.

5 It was ultimately resolved that the bid should be
6 accepted, not formally accepted, but taken and received.
7 And the statement was made, I believe by Mr. Brady, that the
8 Commission has the power to waive any irregularities of a
9 technical nature if they, in fact, did exist.

10 Our position, basically, is that nobody was
11 prejudiced by this delay. A two-minute delay certainly
12 hurts nobody, as long as we gain no advantage from that
13 delay, and we didn't. The delay, we think, was excusable
14 because of the misinformation which Mr. Holmes received and
15 because of the lack of delineation of the appropriate place
16 to go in the Division's offices.

17 I could belabor you with reading Mr. Holmes'
18 affidavit, and the other affidavits. We have a number of
19 cases which we are submitting for your review which support
20 the proposition that the Commission has the authority to
21 accept Mr. Post's bid. It is certainly the highest bid.
22 At least, by the State's figures it's some half a million
23 dollars in excess of the second highest bid. We think that
24 these two technical defects, if they do exist, are certainly
25 meaningless in this situation which exists here.

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1 I request your Commission to submit these as part
2 of the record, and I have copies for you.

3 MR. TAYLOR: Mr. Chairman, may I read these into
4 the record?

5 First, is a statement of Rodney C. Hill, Esquire,
6 on behalf of George P. Post, with declarations attached.

7 The first declaration is one attached to the
8 overall statement of Mr. Hill, a declaration signed by
9 George P. Post. The second item attached to Mr. Hill's
10 statement is a declaration of Albert T. Holmes, II. The
11 third declaration which is attached is one of David R.
12 Wilson. The fourth declaration which is attached is Jeffrey
13 E. Sultan.

14 Then, there is a November 23rd letter on the
15 State Lands Commission stationery to Jeffrey E. Sultan,
16 Esquire, signed by the Executive Officer, Mr. Northrop.

17 The next is, appears to be a Press Release or some
18 kind of a news release, one page.

19 MR. HILL: That's on the geysers, I believe,
20 geothermal publication.

21 MR. TAYLOR: It's a piece out of a newsletter put
22 out by the geothermal people.

23 The next is a copy of a case entitled William F.
24 Wilke, Inc., versus the Department of Army.

25 The next is a case of Cameron versus the City of

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1 Escondido.

2 Next, is a case of North American Coal Company,
3 which is the decision of the Department of Interior, Volume
4 74, at page 209.

5 The next is a decision of the Department of
6 Interior, case in Volume 75, commencing at page 147.

7 The next is a Xerox copy of the case of Excavation
8 Construction, Inc. versus the United States, 494 F.2d, 1289.

9 The next is a summarization, apparently, it's a
10 decision of the Bureau of Land Management in Ashland Oil and
11 Refining Company case. It has at the bottom of the page
12 T626, and then in caps BLM-1968-48. And at the top right-
13 hand corner of the first page it says Ashland Oil and
14 Refining Company, W, in caps, 11783, parens (Kansas) end
15 parens; on the next line, parens (August 13, 1968) end
16 parens; and below that, Bureau of Land Management.

17 CHAIRMAN CORY: Those are all of the items?

18 MR. HILL: Yes, sir.

19 MR. TAYLOR: I believe there is one other problem
20 which probably should be discussed with the Commission and
21 that is --

22 CHAIRMAN CORY: Before we accept those, that which
23 reported to be a newspaper clipping, I would just like to
24 state that it has some sort of a heading about Cory attacking
25 something.

1 MR. HILL: I'd be happy to excise that, if you so
2 desire.

3 (Laughter.)

4 CHAIRMAN CORY: I'm kidding. I'm sorry.
5 Greg.

6 MR. TAYLOR: Mr. Chairman, with your permission the
7 materials which Mr. Hill has submitted to become part of the
8 record of today's hearing --

9 CHAIRMAN CORY: So ordered.

10 MR. TAYLOR: There is one additional item, and
11 that is that there isn't a bid package, no evidence of the
12 authority of the agent of Mr. Post to appear at the time of
13 the bid opening, and Mr. Hill may want to address himself to
14 that question.

15 MR. HILL: Yes.

16 MR. McCAUSLAND: Yes, there is.

17 CHAIRMAN CORY: Yes, but there is nothing in the
18 bid package.

19 MR. McCAUSLAND: Oh, I'm sorry.

20 CHAIRMAN CORY: There are documents here indicating
21 that Mr. Holmes --

22 MR. TAYLOR: Mr. Chairman, perhaps so that we can
23 have the entire matter before the Commission, we have here
24 the bid package which is in dispute, and we can hand it up to
25 you. It has written on it -- and I think we will identify

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1 later -- that it has written on the back side of the envelope
2 underneath what would normally be covered by the flap, a
3 statement:

4 "Submitted one, late, 11:05 a.m.; at least
5 two bids opened before being submitted; two,
6 unsealed; three, bid changed; and four, financial
7 statement not certified." "Not certified," I guess
8 that's the statement on the back.

9 MR. MCGUIRE: Are you saying there is no power of
10 attorney to make those changes?

11 MR. TAYLOR: There's none in the package.

12 MR. HILL: Well, might I ask whether or not a
13 power of attorney is required by any regulations of the
14 State Lands Commission?

15 MR. TAYLOR: I believe the question is whether
16 it's required as a matter of agency law.

17 MR. HILL: None is required in my judgment.
18 Mr. Post is willing to affirm the fact that Mr. Holmes had
19 the authority to do that. And I believe one of the
20 declarations indicates that Mr. Post, in fact, orally
21 confirmed the fact that Mr. Holmes had that authority from
22 a representative from the Division.

23 MR. TAYLOR: Mr. Chairman, I think the bid
24 package should be made part of the record.

25 CHAIRMAN CORY: The bid package is a part of the

1 record.

2 I have some questions, I guess, in terms of people
3 who were there from State Lands at bid opening. If that
4 would be appropriate, I guess, we should have them explain so
5 we can get on the table what the factual differences are or
6 are not.

7 MR. McCAUSLAND: Mr. Chairman, I just have one
8 question, and if it's out of order I'd like to be so advised.

9 Could you advise me as to why Mr. Holmes could not
10 be present to discuss this with him today?

11 MR. HILL: I saw no reason to bring Mr. Holmes up
12 here. We had his declaration.

13 As I said, if you so desire, I'd be happy to
14 produce Mr. Holmes at any convenient time. If you would
15 like, I'm sure we could get him up here this afternoon.

16 MR. TAYLOR: Mr. Hill, we might determine -- we
17 asked if the second bidder was here. I believe there's, at
18 least, a representative of Aminoil here who was the low
19 bidder, but who also informed us they have the surface --
20 whatever rights the surface owner has, they have acquired
21 those rights from the surface owner. And I don't know
22 whether Aminoil wants to make a statement here today or
23 whether there is anyone else in the room, any of the other
24 bidders --

25 CHAIRMAN CORY: Is there anyone from Aminoil in the

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1 room?

2 Do you wish to make any statement to the Commission?
3 Did you wish to participate in this since it may affect your
4 rights and interests?

5 MR. WOODS: Certainly, it could in some manner
6 affect our interests, but I don't think we would be prepared
7 to make any statement today.

8 CHAIRMAN CORY: And you are, sir, for the record?

9 MR. WOODS: I am Bill Woods.

10 CHAIRMAN CORY: Bill Woods.

11 MR. WOODS: I'm representative of Aminoil U.S.A.,
12 Inc.

13 CHAIRMAN CORY: Is there any other interested
14 party that would like to declare their presence here?

15 Yes, sir. Would you come forward so we can hear
16 you.

17 MR. MEMBRENO: My name is Robert Membreno. I'm
18 representing the City of Santa Clara.

19 EXECUTIVE OFFICER NORTHROP: Mr. Membreno, could
20 we get your card with the spelling of your name?

21 (Thereupon a brief recess was taken.)

22 MR. TAYLOR: Mr. Chairman, we have given you two
23 declarations, one of Charles P. Priddy, and the other of
24 Lovia Miller. We'd ask that those be included in the record.
25 Those two people are not here today. The other witnesses

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1 are here, Mr. Everitts, can take it from that point with
2 people he has here. The first one is -- the Miller
3 declaration is the receptionist who was on duty on the day
4 of the bid opening on November the 3rd. This is a photocopied
5 declaration that she signed. The original I've asked the
6 Commission to substitute into the record when it's transmitted
7 to Sacramento.

8 Priddy's statement concerns the fact that
9 Mr. Holmes was taken to his office by someone that was sitting
10 at the receptionist desk, with the first declaration.

11 I think that sets the stage of the two people of
12 the State Lands Division staff that are not here today.

13 MR. EVERITTS: Did you want to put me under oath?

14 CHAIRMAN CORY: Yes. Just let me see these.
15 Have you seen these?

16 MR. HILL: Yes. I have a copy, thank you.

17 CHAIRMAN CORY: Don, you were at the bid opening?

18 MR. EVERITTS: Yes. I conducted the bid opening.

19 CHAIRMAN CORY: Okay. Would you raise your right
20 hand.

21 (Thereupon Mr. Donald Everitts was, by the
22 Chairman, sworn to tell the truth, the
23 whole truth, and nothing but the truth.)

24 THE WITNESS: I do.

25 ///

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1 packet from you, and we've had the bid package itself, and
2 then we have the other two -- and you, with ink, start
3 marking those so we know, in fact, they are in the record
4 and what they are. And I guess that would presume some
5 indication, the number of each separate piece of the bid
6 package.

7 MR. TAYLOR: I think the first item that was
8 identified which ought to be Number 1 is the Proposal of the
9 State Lands Commission. So, we will mark --

10 CHAIRMAN CORY: If that's agreeable to all
11 parties, I think we should ought to clarify that because
12 somebody may want to make future reference to them.

13 MR. HILL: I think Mr. Taylor also indicated that
14 he wished the files of the Division to be made part of the
15 record as well. We have no objection to that.

16 MR. TAYLOR: Fine.

17 CHAIRMAN CORY: I think they're available, I'm not
18 so sure --

19 MR. TAYLOR: I think we better put them in -- I
20 think in order to avoid confusion as to what is in or out of
21 the file, if you want time to look at the file --

22 MR. HILL: Well, I --

23 MR. TAYLOR: Well, virtually everything is here.
24 My only problem is what might be -- I did say that at the
25 beginning. I think it would be safer, because the Commission

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1 will not have considered that if we're going to make it on
2 this thing. We can do it on whatever is here. If there's
3 anything you think that we have in our records with us --

4 MR. HILL: I have no idea what is in your records.

5 CHAIRMAN CORY: If you believe that you need to
6 look at those records, this item can be continued, and you
7 can be granted sufficient time to do that.

8 I am hesitant to cavalierly say that everything's
9 over there in the file is in the record when it's not
10 physically present in the room if, in fact, things get lost
11 inadvertently then it's a question of --

12 MR. HILL: I think we would like to take a look at
13 the entire file.

14 CHAIRMAN CORY: Well, let me know before we
15 conclude and reach a decision on this if you wish to do that.

16 MR. McGUIRE: If they were subject to a lawsuit
17 that's a lot of prediscovery.

18 MR. HILL: We're going to get it anyway.

19 CHAIRMAN CORY: I think it's probably public
20 record at this point anyway.

21 MR. TAYLOR: I would say this, Mr. Chairman, that
22 I would believe the Commission can indicate -- I don't think
23 the Commission has seen anything more than what it is being
24 shown here and what was given to you in the Commission
25 Calendar on this item, to my knowledge, is that correct?

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1 CHAIRMAN CORY: That is correct.

2 MR. HILL: I think it would be appropriate for the
3 Commission to base its decision on the broadest possible
4 scope of evidence, and therefore, to the extent that the
5 Division files can be made available, I would appreciate it.
6 I think it's an excellent suggestion.

7 MR. BRADY: Everything that's relevant is here.

8 CHAIRMAN CORY: The key something that I overheard
9 that may not be on the record is that everything that is
10 relevant is salient. The point being, that I don't want to
11 undertake the obligation to make that determination, not
12 having looked at everything. And I don't want to mislead
13 anybody, and that's why I'm hesitant about the record.
14 I think we should, if anybody knows of anything that's
15 relevant, if anybody that is sworn -- if I can make a
16 Reinecke admonition -- it's the whole truth that we're asking
17 for. And if anybody that is presenting testimony, that means
18 if you have something that is relevant or might possibly be
19 relevant, you're under the obligation to disclose it. If it
20 is a staff member, I just want you on notice that that's
21 what we expect. As far as I'm concerned, I don't have any
22 strong feelings one way or the other on the outcome of it.
23 I just want to find out what the facts are and make the
24 appropriate decision.

25 So, we are on a fact-finding mission, not tacking

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1 hides to the wall. So, if we've got, at least, an under-
2 standing now of what is currently in the record, and at some
3 future point we can get to a juncture where we need to delay
4 and get more information, we will take that necessary time.
5 So, if we can go back to Mr. Everitts who started, the staff
6 is proceeding with the documentation of those exhibits.

7 MR. TAYLOR: We have exhibits marked for the
8 reporter's benefit. We can give them to her after the
9 hearing and have them incorporated as part of the record.
10 The numbers have been designated so that she can have them
11 clear.

12 MR. EVERITTS: I might insert at this time that
13 present with me from State Lands staff was Matt Brady, Al
14 Willard, Supervising Mineral Resource Engineer, and Don
15 Hoagland from the Sacramento office, and Chuck Priddy.

16 CHAIRMAN CORY: That is in the conference room at
17 the bid opening?

18 MR. EVERITTS: In the conference room at the bid
19 opening.

20 EXECUTIVE OFFICER NORTHROP: At 10:00 o'clock. All
21 of those people were there.

22 CHAIRMAN CORY: And all of them were there at 11:00
23 o'clock until the meeting concluded?

24 MR. EVERITTS: Yes.

25 CHAIRMAN CORY: In other words, none of them left

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1 the room?

2 MR. EVERITTS: You came in after?

3 MR. BRADY: I came in after.

4 For the record, I came in after he had completed,
5 or had just about completed, his opening address before
6 opening any bids.

7 CHAIRMAN CORY: Mr. Brady came in before any bids
8 were opened.

9 MR. EVERITTS: I proceeded to open the bids,
10 identified who the bid was from, reading off of the envelope
11 and reading the time that was stamped in. We got to the last
12 bid --

13 CHAIRMAN CORY: Pardon me, Don. Was there a
14 recorder, court reporter or any tape of the proceedings of
15 the meeting?

16 MR. EVERITTS: No.

17 CHAIRMAN CORY: Go ahead.

18 MR. EVERITTS. We got to the last bid. I picked
19 it up, and I said, "This bid hasn't been stamped in." I
20 turned it over, and I said, "It's also not sealed."

21 At that time Matt Brady commented that the
22 Commission could waive defects such as that, and advised me
23 to proceed to read the bid, which I did.

24 CHAIRMAN CORY: Can you identify that package
25 we've entered into the record as Mr. Post's bid packet?

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1 MR. EVERITTS: That is the packet.

2 CHAIRMAN CORY: You've looked it over?

3 MR. EVERITTS: The word "Post" is on it, is my
4 writing on the front in pencil.

5 CHAIRMAN CORY: Okay.

6 MR. EVERITTS: Matt, maybe you want to take it
7 from there?

8 CHAIRMAN CORY: Do you have any knowledge or
9 recollection -- you say you were in the room shortly before
10 11:00, commenced 11:00, at about one minute after eleven,
11 and you made a statement and started opening bids. Do you
12 have any recollection of how that packet got into the stack?

13 MR. EVERITTS: I do not have any recollection
14 how the packet got in. I was surprised. I was busy reading
15 other bids, and I went running through a pile and it just
16 appeared.

17 CHAIRMAN CORY: Who can help us with how the bid
18 packet got to where it is?

19 MR. HILL: Can I ask one question, sir?

20 CHAIRMAN CORY: Yes, sir.

21 MR. HILL: You have no knowledge of whether or not
22 the bid was, in fact, sealed when it entered the stack that
23 you were processing the bids from?

24 MR. EVERITTS: It was unsealed when I picked it
25 up.

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1 MR. HILL: Was the flap open?

2 MR. EVERITTS: It was loose.

3 MR. HILL: It was loose, but was the flap down?

4 MR. EVERITTS: Yes.

5 MR. HILL: Well, I suppose this is a question of
6 what does sealed mean at this point. We could really make
7 this point technical.

8 MR. McCAUSLAND: We don't have to make it technical.
9 Did the flap stick to the body of the envelope?

10 MR. EVERITTS: The flap did not stick to the body
11 of the envelope. That's one of the reasons I objected to
12 opening the bid.

13 MR. McCAUSLAND: Then, it's not a technical matter
14 of whether it was sealed or unsealed. It's a matter that the
15 envelope was open.

16 MR. HILL: No, no. Excuse me. It may be that,
17 one, the envelope was, in fact, sealed when it was handed
18 in and became unsealed during the process of being handled.
19 I don't know. Mr. Holmes --

20 MR. McCAUSLAND: I'll grant you that I don't know
21 that.

22 MR. HILL: There is a question as to what sealed
23 means. Generally, colloquially, I suppose sealed means that
24 it is closed with some sort of adhesive substance. Sealed
25 also means, if I'm not mistaken, that it is encased in such

1 a manner as to be obfuscated from view, so that if the flap
2 were closed, although not fixed to the back of the envelope,
3 I suppose it's possible that it would be sealed.

4 CHAIRMAN CORY: I would hope that I won't have to
5 read any case law on that.

6 MR. HILL: Well, we're looking for some.

7 (Laughter.)

8 CHAIRMAN CORY: Do we have another member of the
9 staff?

10 Would you identify yourself for the record.

11 MR. WILLARD: My name is Al Willard. I'm Supervisor,
12 Mineral Resources Division.

13 CHAIRMAN CORY: Would you raise your right hand.

14 (Thereupon Mr. Al Willard was, by the
15 Chairman, sworn to tell the truth, the
16 whole truth, and nothing but the truth.)

17 THE WITNESS: I do.

18 TESTIMONY OF

19 AL WILLARD,

20 a witness being duly sworn, testifies as follows:

21 THE WITNESS: I was in the conference room at the
22 time the meeting took place. I was on Mr. Everitts' right,
23 and had assembled the bid packages for him. At approximately
24 11:00 o'clock, he did as he indicated, make the opening
25 address, and then he commenced opening the bid packages.

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1 During this time, after, at least, two bids had
2 been opened, and at approximately five minutes after eleven,
3 a gentleman came in -- I presume it was this Mr. Holmes --
4 and handed the bid package over to me. And I noted at that
5 time that it was not sealed, and I placed it in with the
6 group of packages -- actually inserted it on the bottom
7 because there were still other packages to be opened.

8 CHAIRMAN CORY: Do you have any recollection as
9 to which bids had been opened at that point in time?

10 THE WITNESS: No, sir. I don't recall the order
11 of their opening, only that at least two bids had been
12 opened.

13 MR. EVERITTS: I made a note of which ones had
14 been opened.

15 CHAIRMAN CORY: But, can you place with any
16 precision where you were on that list when that was handed
17 to you?

18 MR. EVERITTS: If I had opened two bids when the
19 package was brought in --

20 CHAIRMAN CORY: He says at least two, and I want
21 to ascertain whether or not it was two, three, four, or five.

22 MR. HILL: I believe Mr. Holmes has indicated it
23 was two.

24 MR. McGUIRE: The next highest bid, did that get
25 read yet or is that later on? One of the questions being

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1 asked is whether there was advantage, and if the next highest
2 bid was the one that had been read --

3 MR. EVERITTS: One of the higher bids had been
4 read. There was a 41.1 percent bid by Republic Geothermal.

5 MR. McGUIRE: Is that the second highest?

6 MR. EVERITTS: Third highest.

7 MR. McGUIRE: The second highest had not been given?

8 MR. EVERITTS: No.

9 CHAIRMAN CORY: When was Gates and Fox Company,
10 Inc., bid opened?

11 MR. EVERITTS: Fourth bid opened.

12 MR. HIGHT: For the record, Mr. Chairman, perhaps
13 we can get the order in which the bids were opened so we can
14 get some kind of perspective on this.

15 CHAIRMAN CORY: Can you give us that, Don, for the
16 record, and if you have some notes there, we probably ought
17 to mark that document, too.

18 MR. EVERITTS: My records show that Aminoil was
19 the first bid opened with twelve and a half percent;
20 Republic Geothermal was the second bid opened with 41.1
21 percent; the third one opened was the City of Santa Clara,
22 30 percent; the fourth one was Gates and Fox with 45 percent;
23 fifth was Union Oil, 12.55 percent; and the sixth was George
24 Post at 47.77 percent.

25 For the record, I should say that I made this order

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1 of bidding up after the bid opening. I was not doing it --
2 that's how I remembered it immediately after the bid opening,
3 the order of the opening.

4 CHAIRMAN CORY: Wally?

5 MR. McGUIRE: How soon before 11:00 o'clock were
6 you or your company informed about this error, the error in
7 the way you computed -- I mean, was it told to the person
8 as he walked in the building, or was there a call that
9 morning or what?

10 MR. HILL: No, sir. I think it is covered in one
11 of these declarations, if I'm not mistaken.

12 MR. McGUIRE: Does State Lands remember when they
13 notified?

14 MR. McCAUSLAND: It should be here in the
15 affidavit.

16 MR. HILL: Yes. It must have been somewhere around
17 10:20, 10:25 of the day of the bid.

18 MR. McGUIRE: You mean, in other words --

19 MR. WILLARD: Excuse me. I think the question --
20 when they were notified of the irregularity of the bid?

21 MR. McGUIRE: No, no, no.

22 CHAIRMAN CORY: That's not the question.

23 MR. McCAUSLAND: Let me read the sworn statement,
24 and you can tell me if you don't agree with it. It's page 2,
25 Item 9 of David R. Wilson's declaration. It says:

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1 "At approximately 9:30 a.m. on November 3,
2 1976, I received a telephone call from Mr. Brady
3 at the offices of McKenna and Fitting; Mr. Brady
4 stated that the information he had given me
5 concerning the interest payments was incorrect
6 and that interest payments would not constitute
7 proper direct charges against the net profits
8 account; Mr. Brady expressed his hope that the
9 misinformation given by him had not affected
10 the amount of the bid to be submitted by
11 Mr. Post."

12 And then, skipping down to Item Number 11:

13 "At approximately 10:25 a.m., I conferred
14 by telephone with Mr. Albert T. Holmes, Mr. Post's
15 agent for purposes of submitting the bid; I
16 informed Mr. Holmes that Mr. Brady had misinformed
17 us about the chargeability of the interest
18 payments; and I requested that Mr. Holmes call
19 Mr. Jeffrey Sultan of McKenna and Fitting for
20 further instructions."

21 So, Mr. Holmes was apparently aware of this at
22 approximately 35 minutes prior to bid opening?

23 MR. HILL: That's correct.

24 MR. TAYLOR: Well, there may be a dispute on the
25 timing of that.

1 CHAIRMAN CORY: Mr. Brady, would you raise your
2 right hand.

3 (Thereupon Mr. Mathew Brady was, by the
4 Chairman, sworn to tell the truth, the
5 whole truth, and nothing but the truth.)

6 THE WITNESS: I do.

7 CHAIRMAN CORY: Did you make such a call, and do
8 you have any recollection of the time of the call?

9 TESTIMONY OF

10 MATHEW BRADY,

11 a witness being duly sworn, testifies as follows:

12 THE WITNESS: I made a telephone call at
13 approximately 9:30 that morning to Mr. David Wilson.

14 CHAIRMAN CORY: Approximately when?

15 THE WITNESS: Approximately 9:30. I agree with the
16 declaration time here. I called Mr. Wilson as soon as I
17 was aware of the difficulty.

18 CHAIRMAN CORY: Didn't the question become --

19 MR. TAYLOR: The question was when was the man --

20 MR. McGUIRE: Mr. Holmes.

21 MR. TAYLOR: -- Mr. Holmes informed of it?

22 MR. McGUIRE: You see, the receptionist's
23 declaration talks about right about 10:00 o'clock, as I
24 remember it. I don't see it. But, he asked to meet with you
25 or to go to the phone.

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1 MR. TAYLOR: Right.

2 MR. McGUIRE: And I don't know if he needed to call
3 Mr. Sultan or whoever, that would conflict a little bit,
4 that would mean shortly after 10:00.

5 MR. HILL: I think that's covered in these
6 declarations as well.

7 MR. McGUIRE: I'm suggesting there's a conflict --
8 well, I'm not suggesting there's a conflict --

9 THE WITNESS: My recollection was that I told
10 Mr. Holmes of the difficulty at about 10:10, to 10:15, at
11 about the time he walked in. And we had a little bit of
12 time in Mr. Priddy's office. I remember it was not 10:30,
13 it was earlier than that, because I was looking for whomever
14 was there representing Mr. Post to inform him of the
15 difficulty, and that I talked with Mr. Wilson and that
16 Mr. Wilson, the representative.

17 MR. HILL: Some of this ties, because Mr. Holmes
18 says, "At approximately 10:25," on page 2 of his declaration
19 that he talked to Mr. Wilson. So, that would leave what, ten
20 minutes, maybe, between the time you told him and the time
21 he talked to Wilson.

22 CHAIRMAN CORY: I'm not sure of the relevance of
23 that.

24 MR. McGUIRE: Let me tell you why -- it was why it
25 was relevant to me. Was Mr. Holmes the person who then

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1 recalculated the changes, or did he make that phone call
2 just to get the new figures? In other words, was his a
3 mechanical job of changing it, in which case I don't see
4 why he waited a half hour to change it, or did they over
5 the phone have to work out the new figures?

6 MR. HILL: No. The alternative figures had been
7 worked out earlier.

8 MR. McGUIRE: So, if he called in at 10:00 --

9 MR. HILL: He called in, a series of telephone
10 calls transpired during this time, during which Mr. Post
11 authorized the change to be made.

12 MR. McCAUSLAND: I don't find that in the affidavits.
13 I find Mr. Post being in communicado from 10:20 -- well,
14 sometime after 10:20 when Mr. Holmes talked to Mr. Post.

15 Mr. Post left for a meeting where he couldn't be
16 reached until after the bid opening. Mr. Holmes talked to
17 Mr. Wilson; Mr. Wilson said to talk to Mr. Sultan. Mr. Holmes
18 called Mr. Sultan, and Mr. Sultan authorized him to change
19 the bid, according to the affidavits.

20 MR. HILL: Yes. Mr. Post was contacted about 10:15,
21 at that time he authorized Mr. Holmes to change his bid.

22 MR. McGUIRE: Did he give him the new figures at
23 that time?

24 MR. HILL: I don't know. You can ask Mr. Post if
25 you so desire.

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1 MR. McCAUSLAND: The affidavit suggests that
2 Mr. Post was apprised of the problem. The affidavit suggests
3 that Mr. Post was contacted because there was a technical
4 deficiency in the bid, because Mr. Post did not sign one of
5 the documents. Mr. Priddy had suggested that Mr. Post needed
6 to sign that, and the affidavit suggests that Mr. Post didn't
7 know anything about the change in the ground rules until
8 following the bid opening.

9 I guess we can accept that as stipulated.

10 I have a line of questioning I'd like to pursue.

11 CHAIRMAN CORY: You're concerned about this time
12 thing.

13 MR. McGUIRE: Let me get mine out, and then I'll
14 be quiet.

15 The various legal questions, as I understand them,
16 is one, this material, whatever it is, whether it was sealed,
17 whether there was a power of attorney and whether it was
18 two minutes late or five minutes late or something -- you
19 are contending it's not material, and maybe I'm persuaded
20 on that.

21 The other question is was it excusable, and that
22 goes to the matter of time. I mean, if he, in fact, had
23 made those changes at 10:30, waited for a half hour, and
24 then came in late, that goes to the question of excusable,
25 was the delay excusable and what not. And that's the only

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1 reason I'm asking.

2 The next question was, was there advantage involved
3 In other words, was that delay -- whether or not it was late
4 and excusable -- was a material advantage and I don't
5 know whether or not that person -- could he hear outside
6 the room those first two bids, was the door closed, was the
7 sound amplified? And those are questions that seem to be
8 relevant. And if he could not hear outside the room, then
9 there's no advantage. If he could, then there's a question
10 that has to be answered.

11 MR. McCAUSLAND: I think that the --

12 MR. McGUIRE: Well, the power of attorney question
13 I would rely on Greg Taylor on that. And the final question
14 I'd like to ask later is what are the consequences of the
15 three courses of action? Are we liable to a suit from the
16 second highest bidder if we choose the first or from the first
17 if we choose the second? And if we reopen them all, do we
18 get sued by them all or get sued by nobody?

19 MR. TAYLOR: If you go out and readvertise, there
20 will be no lawsuit.

21 Mr. Hill has informed us if he is unsuccessful in
22 his persuasive ability with you this morning, that he will
23 sue us tomorrow. So, we know of that for certain. We don't
24 have the second bidder in, and we don't know about any of
25 the other bidders who might raise a problem.

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1 It's my understanding that the remedy in Court
2 would be to direct us to hold another bid.

3 MR. McGUIRE: Everybody has put their cards on the
4 table, now, and yet no one can contend that having a second
5 bid -- they have already showed their hands, I mean,
6 everybody knows what the second and third person is going to
7 bid.

8 MR. TAYLOR: We never know. There have been
9 rebids, and you just never know.

10 MR. McGUIRE: That's all the questions I have of
11 the facts.

12 MR. TAYLOR: Do you want to ask them again?

13 MR. McGUIRE: Was there advantage? Does anybody
14 know whether or not Mr. Holmes could have heard outside that
15 room, the first two bids that were read, because that seems
16 to be the question right now.

17 MR. HILL: Excuse me. If you were going to be
18 late, and you were dillying around as you may imply, there's
19 no point in waiting for two bids, he should have waited for
20 five bids and then come rushing in.

21 I assume, talking to them, no, he says he did not
22 hear anything.

23 CHAIRMAN CORY: It depends upon how he plays
24 Blackjack. If he counts cards, you don't really know what's
25 coming up, but you know you've got the odds against you.

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1 (Laughter.)

2 CHAIRMAN CORY: There might be some reason.

3 MR. HILL: Possible. Then, he'd be running back
4 changing it again, taking a half hour. It really doesn't
5 make sense to me, then.

6 MR. McGUIRE: I guess I asked really, if we chose
7 your client and the first people sued, their legal question
8 becomes advantage? That's what I'm asking.

9 MR. HILL: Yes. I honestly don't know what the
10 sound transmission characteristics are of that room. I don't
11 even know if a door was open or closed.

12 MR. BRADY: One of the doors was opened.

13 MR. HILL: Then, you know, conceivably he could
14 have heard. He could have been running into the darn thing,
15 I don't know.

16 The question is does that give him a substantial
17 advantage if he did hear, and what we're saying is, no, it
18 didn't make any difference because he couldn't change his bid
19 at that point. What could he do? He was running in, handing
20 in the bid without any way of knowing what the next ones
21 are.

22 MR. McGUIRE: Unless he stopped on the way in.
23 I'm through.

24 CHAIRMAN CORY: Sid.

25 MR. McCAUSLAND: I've read through the extracts

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1 from case law which you presented. I found cases where there
2 were numerous technical deficiencies in the bid documents.
3 I only found one case in that documentation where there was
4 a procedural defect in the sequence of events. And in that
5 instance, the bid was submitted after the closing time, while
6 the other bids were being sorted.

7 And as I read the case I found no reference to any
8 bid being opened prior to the submittal of that bid. I find
9 it hard to believe that case law would support the concept
10 of accepting bids after other bids had been opened, be that
11 bid sealed, unsealed, or in any way, shape, or form. And
12 I'm not persuaded that a court of law would find this
13 Commission acting capriciously if we upheld that portion of
14 our procedure which calls upon us to have all bids in hand
15 before we commence opening, and not to accept any after we
16 started them.

17 MR. HILL: That's problematical at this point.

18 What we are suggesting, of course, is that a court
19 would just as easily uphold the undertaking of Mr. Post's
20 bid, that there really is no difference about --

21 MR. McCAUSLAND: What is the purpose of -- I'm
22 sorry for interrupting.

23 MR. HILL: There really is not difference,
24 substantively, if a bid is submitted while other ones are
25 being sorted or one other being opened.

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1 MR. McCAUSLAND: Oh, substantively, there is.

2 MR. HILL: Not necessarily, no, no. The question,
3 again, is whether or not anyone else was prejudiced upon that
4 fact. That's the question.

5 I can conceive of a situation where one has a
6 blind-deaf man carrying in a bid and he stumbles and he gets
7 it in late. No one is hurt by that.

8 MR. McCAUSLAND: You can also conceive of a
9 situation which has taken place in college classrooms, where
10 one individual is electrically wired and another individual
11 isn't. And I'm not casting any dispersions on anybody in
12 this instance, but I'm suggesting that the reason for the
13 ground rules is to treat all individuals equitably and with
14 the same basic information from the start of the process.

15 MR. HILL: Right. And that's why the point is
16 whether or not there's been prejudice against anybody else
17 by this technical deficiency. That's really the point, not
18 the fact that there's been a minor deviation from the
19 established pattern.

20 MR. McCAUSLAND: It's not a minor deviation to
21 submit a bid after other bids have been opened. That is
22 a significant deviation.

23 CHAIRMAN CORY: That's what we're here to determine,
24 I guess.

25 MR. McCAUSLAND: All right.

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1 MR. HILL: That's precisely what we are here to
2 determine.

3 MR. TAYLOR: Mr. Chairman, it might be pertinent
4 to ask the various parties who were present if they would
5 look at the bid package and compare its condition now to
6 its condition at the time they first saw it. That would be
7 one question, I think, that would be pertinent to be asked.

8 CHAIRMAN CORY: You have the bid package, would
9 you identify it, please?

10 MR. WILLARD: Yes. My name is Al Willard.

11 MR. TAYLOR: This is a bid package.

12 MR. WILLARD: This is the bid package of George P.
13 Post.

14 MR. TAYLOR: And the number on the right-hand
15 corner is?

16 MR. WILLARD: Number 14.

17 CHAIRMAN CORY: Number 14.

18 MR. WILLARD: And, indeed, it's in the same
19 condition that it was in when it was handed in.

20 MR. HILL: May I ask why it's number 14?

21 MR. TAYLOR: Mr. Brady has been sitting here, and
22 we have gathered these things up in some order and numbered
23 them.

24 MR. HILL: Oh, I'm sorry. I'm sorry. I thought
25 it was the number of the --

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1 MR. TAYLOR: No, just for this proceeding.

2 CHAIRMAN CORY: Just as an exhibit.

3 MR. BRADY: In the order received.

4 MR. EVERITTS: Don Everitts. As far as I can tell
5 it's the same envelope that I received in the same condition,
6 just like this when I picked it up off the table, with the
7 exception of the penciled notes that were made on top
8 (indicating).

9 CHAIRMAN CORY: Mr. Brady, can I see the packet for
10 a minute?

11 MR. TAYLOR: Mr. Chairman, I also would like to ask
12 Mr. Everitts if whether or not he received any requests for
13 a delay in the start of the bid opening?

14 MR. EVERITTS: I did not receive any requests for
15 a delay in the bid opening.

16 CHAIRMAN CORY: I just want to ask, was that the
17 condition it was in (indicating)?

18 MR. EVERITTS: No. It was flapping loose.

19 CHAIRMAN CORY: Okay. I just want to point out the
20 frail thing that we are dealing with here, because earlier
21 I had pressed across it and one corner was sealed and the
22 major portion didn't.

23 MR. EVERITTS: It was laying on the table like
24 this, and I picked it up and the first thing I said was that
25 it hadn't been stamped in. I turned it over to start to open

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1 it up, and I said, "It's already opened."

2 CHAIRMAN CORY: What does that phrase stamped in
3 mean?

4 MR. EVERITTS: When they bring it in there's a
5 time stamp on it.

6 MR. WILLARD: Date and time.

7 CHAIRMAN CORY: Where should that have been
8 affixed to that document?

9 MR. EVERITTS: At the front desk when we bring them
10 in. The normal procedure is --

11 CHAIRMAN CORY: The receptionist?

12 MR. EVERITTS: -- the receptionist does it.

13 MR. HILL: Do you know why she didn't do it in this
14 instance?

15 MR. EVERITTS: I sure don't.

16 MR. HILL: Mr. Post said that he made the
17 receptionist, I think, aware of the fact that he was there
18 for the purpose of --

19 CHAIRMAN CORY: Mr. Holmes?

20 MR. HILL: Mr. Holmes, I'm sorry.

21 May I ask if anyone was aware of the fact that
22 Mr. Holmes was in the office at that time for the purpose
23 of submitting a bid?

24 MR. BRADY: We knew he was there, yes. We didn't
25 know where he was.

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1 MR. HILL: Is the office very big?

2 MR. BRADY: It's not an insubstantial office.

3 MR. HILL: How many offices?

4 CHAIRMAN CORY: Entire floor, as I recall.

5 MR. BRADY: Yes.

6 MR. HILL: Nobody thought to inquire as to why he
7 wasn't at the opening?

8 We had this rather protracted series of
9 discussions by telephone. He was in Mr. Priddy's office.
10 But, nobody thought to find out where Mr. Holmes was?

11 MR. BRADY: If I can back up for a second, for the
12 record, I told Mr. Holmes when I went into the office which
13 I was using at the time, that there was two minutes to go
14 before the bid opening to begin. And he said, "Fine," and
15 waved me off, and I went out the door.

16 Also, I'd like to point out that there is an
17 affidavit of Lovia Miller, which is Declaration 15, and she
18 states that she was the one that did all of the typing on
19 the bid offers, and she remembers the times and things like
20 that.

21 And she indicated that whenever anybody came to
22 the office, she informed them -- she inquired as to whether
23 they were there for a bid opening, and all of the individuals
24 who said they were there for the opening were informed that
25 the bid opening would take place in the conference room down

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1 the hall to her left. And that further -- I'll just continue
2 reading this -- and that she remembers an individual coming
3 through the office; she inquired whether he was for the bid
4 opening and he indicated that he was.

5 "I informed him that the bid opening was down
6 the hall to my left. He then indicated that he
7 needed to use a telephone to call his office. At
8 that time Beth Longstreth led him to Charles
9 Priddy's office."

10 "At approximately 11:03 a.m., I saw this
11 same individual coming from the direction of
12 Priddy's office. He walked past the
13 receptionist's desk and down the hall into the
14 conference room. He did not inquire of me as
15 to where the bid opening would take place, and
16 he walked past the receptionist's desk."

17 He knew where the bid opening would take place,
18 at least, this is our position. And he was aware that at
19 10:58 that there was two minutes to go before the bid
20 opening would begin.

21 MR. HILL: Does she state in her affidavit why she
22 didn't stamp in his bid?

23 MR. BRADY: He asked to go to the phone. I do not
24 have any idea why.

25 CHAIRMAN CORY: You had some questions you would

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1 like to pursue?

2 MR. McCAUSLAND: (Shakes head.)

3 I'd like to see us get as much money as we can,
4 but I'd like to make our process be preserved.

5 CHAIRMAN CORY: Having outlined mutually exclusive
6 goals, do you have a preference, a weighted average?

7 (Laughter.)

8 MR. McCAUSLAND: I move that we adopt the staff
9 recommendation.

10 CHAIRMAN CORY: We have a motion to adopt the
11 staff recommendation.

12 Before we do that --

13 MR. McGUIRE: Would you repeat the staff
14 recommendation?

15 CHAIRMAN CORY: The staff recommendation was to
16 accept the number two bid.

17 MR. HIGHT: Do you want to give Mr. Hill a chance
18 to look at the file?

19 MR. HILL: May I just peruse that thing quite
20 quickly?

21 CHAIRMAN CORY: Are all of the documents here or --

22 MR. BRADY: We have all of the respective bid
23 packages submitted in the room here today.

24 MR. HILL: Excuse me. I'm not interested in bid
25 packages at all.

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1 MR. BRADY: We do not have the Division file. It
2 is in Long Beach. We do not have it here with us.

3 CHAIRMAN CORY: Your preference would be to have an
4 opportunity to peruse that file?

5 MR. HILL: I have no idea what's in it. I assume
6 it contains some memorandums or something of that nature.

7 Are there any memoranda respecting this problem,
8 acceptance of Mr. Post's bid?

9 MR. BRADY: I'm unaware that any have been put
10 into the file.

11 MR. HILL: Are you the custodian of the file?

12 MR. BRADY: No, I'm not. It is in Long Beach, as
13 I say.

14 CHAIRMAN CORY: But, the question is, have any
15 been made, do any exist, not whether or not any are in the
16 file. And that raises the question of client privilege and
17 potential litigation, and that's one that, I think, we can
18 stipulate that there may be certain working documents of
19 lawyers that you're not asking about?

20 MR. HILL: That's correct. I'm talking about the
21 contents of the Division's file.

22 MR. EVERITTS: I'm not aware of anything in the
23 file that even relates to the problem, Calendar item.

24 CHAIRMAN CORY: Don, now the question is not what
25 may, in fact, physically be resting in the file. The

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1 gentleman wants a straight answer as to whether or not any
2 letters have been drafted, interoffice things, other than
3 that which will be protected by attorney-client privilege
4 on the subject. And I think we owe him a direct, straight-
5 forward answer to that question.

6 If they exist, that doesn't really mean that he
7 has the right to look at that to know what his case is or
8 isn't. I don't know about the other Commissioners.

9 MR. HIGHT: Mr. Chairman, to my knowledge and to
10 the best of my knowledge, there is only one letter that has
11 been written on this subject, and that was the letter by the
12 Executive Officer to --

13 MR. BRADY: Two letters.

14 MR. HIGHT: Two letters?

15 MR. BRADY: There are two letters, one written to
16 the five other bidders, and one written to Mr. Post through
17 Mr. Sultan and Mr. Dave Wilson of McKenna and Fitting.
18 Those are the only two letters I am aware of that have been
19 written pre the date of the bid opening -- or post opening.

20 MR. HILL: There's no memranda or anything like
21 that in the file with respect to directing somebody to write
22 that letter, anything of that nature?

23 MR. BRADY: I'm unaware of anything that was
24 written to the file. I'm unaware of anything that has been
25 written, let's put it that way.

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1 CHAIRMAN CORY: Mr. Everitts, you aren't aware?

2 MR. EVERITTS: No. There is a file memo written
3 after the deadline which is a standard file memo.

4 CHAIRMAN CORY: Do you have a copy of that?

5 MR. EVERITTS: Yes.

6 MR. HIGHT: Have you had a chance to see that?

7 MR. HILL: No, I have not.

8 CHAIRMAN CORY: Let us take a five-minute recess
9 at this point to take care of some pressing problems and
10 to enable you people, off the record, to try to disclose
11 as openly as you can what is there so we know whether or not
12 it needs to be put over.

13 MR. TAYLOR: I have a question on one document I
14 would like to at.

15 CHAIRMAN CORY: Okay. So, we'll take a five-
16 minute break for that purpose.

17 (Thereupon a recess was taken.)

18 CHAIRMAN CORY: Are we ready to proceed?

19 MR. TAYLOR: Mr. Chairman, I have a document
20 which bears file reference number W9583. It's written in
21 orange crayon on it, Confidential, on the top, and has
22 Rough Draft in capital letters, each letter of the word
23 roughed out and spaced and underlined.

24 I placed in the upper right-hand corner number 18.
25 We have Mr. Hoagland here, who is a member of the State Lands

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1 Division staff, and you can swear him in, Mr. Chairman, then
2 he can identify this document.

3 CHAIRMAN CORY: Having known Mr. Hoagland for some
4 time I'm not sure that swearing him in would do any good.

5 (Laughter.)

6 (Thereupon Mr. Donald Hoagland was, by the
7 Chairman, sworn to tell the truth the
8 whole truth, and nothing but the truth.)

9 THE WITNESS: I do.

10 CHAIRMAN CORY: Proceed.

11 MR. TAYLOR: Would you look at number 18 and tell
12 me whether you can identify it?

13 THE WITNESS: Yes.

14 MR. TAYLOR: And what is it?

15 THE WITNESS: It is a memorandum, rough draft
16 memorandum I prepared after the bid opening on November 3rd.

17 CHAIRMAN CORY: You were at the bid opening?

18 THE WITNESS: Yes.

19 MR. TAYLOR: Okay. Would you show that to
20 Mr. Hill.

21 Do you know of any other memoranda that we have
22 in connection with this bid opening?

23 THE WITNESS: No, I do not.

24 MR. TAYLOR: Mr. Chairman, off the record Mr. Brady
25 prepared on a slip of paper an inventory of the contents of

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1 the file, and has read that list to Mr. Hill. And I'll
2 ask him to prepare a sheet and put in the exhibits after this
3 hearing the documents which he identified to Mr. Hill. We
4 represented to him that those are the only files, the only
5 items that we know of in that file since the bidding was
6 announced.

7 And we've also represented to him that there is no
8 other memoranda concerning this transaction with regard to
9 individuals on the staff that any of us know of, whether it's
10 in or out of the file. And we have some scratching of cases
11 and different things that we have been looking at as we have
12 been discussing with Mr. Hill and his people and among
13 ourselves as to what the applicable law is on this subject.
14 I don't think those are pertinent, and I think Mr. Hill
15 agrees with me on that, as long as they don't have discussions
16 in them of our position.

17 And we represent to him that we do not have any
18 such information in our possession.

19 MR. HILL: That's fine. I accept your representation.

20 MR. McCAUSLAND: Mr. Chairman, just to clear up the
21 record I'd like to withdraw my earlier motion since it never
22 got to the second stage --

23 CHAIRMAN CORY: We're now back to ground zero
24 without a motion.

25 (Thereupon a discussion was held off

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1 the record.)

2 MR. HILL: Fine. Okay.

3 CHAIRMAN CORY: Has that been added into the record?

4 MR. TAYLOR: Yes. It's number 18.

5 Would Commission care to look at this?

6 CHAIRMAN CORY: Don, you have read this, and are
7 you willing -- this is a memorandum, rough draft, which was
8 prepared. Have you gone over it, are you willing to
9 stipulate under oath that this is the best recollection that
10 you have that these are the facts --

11 MR. HOAGLAND: Yes.

12 CHAIRMAN CORY: -- the best you can recall them?

13 MR. HOAGLAND: Yes.

14 CHAIRMAN CORY: So that we can, in essence, accept
15 this as Mr. Hoagland's recollection under oath rather than
16 asking him to go through all of the details.

17 MR. HILL: That's fine, Mr. Chairman.

18 CHAIRMAN CORY: Now, specifically your recollection
19 was that when Mr. Holmes appeared, at approximately 11:05,
20 two bids had already been opened?

21 MR. HOAGLAND: That's right.

22 CHAIRMAN CORY: No more?

23 MR. HOAGLAND: I believe the only two bids had been
24 opened.

25 CHAIRMAN CORY: And do you have any recollection

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1 as to the order in which they were opened or not?

2 MR. HOAGLAND: I'm not certain. But, I believe
3 that it was in the order that Mr. Everitts read earlier.

4 MR. McCAUSLAND: I'd like to read one sentence,
5 Mr. Chairman. On the second page there is a sentence which
6 reads -- this is relating:

7 "Holmes appeared and placed his bid package
8 on the table. Brady motioned to push it aside,
9 and the remaining bids were opened. After all
10 the bids were opened, Brady stated the remaining
11 bid was delivered earlier, but because of some
12 confusion caused by information supplied by him
13 a delay had been caused. He noted the Commission
14 reserved the right to waive technical bidding
15 deficiencies. He said they would open the bid."

16 Mr. Brady, would you be willing to support the
17 statement which said:

18 "Brady stated that the remaining bid had
19 been delivered earlier, but because of some
20 confusion caused by information supplied by him
21 a delay had been caused"?

22 MR. BRADY: At that time I was unaware that there
23 were any defects in the bid as it arrived.

24 What I said at that time was that the, "The bid
25 is late, the bid is defective."

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1 The Commission, under its discretionary authority,
2 reserves the right under the bid proposal to waive any
3 technical defects.

4 MR. McCAUSLAND: Would you be willing to say that
5 you made a statement to the general end result of saying that
6 the bid had been delivered earlier but was revised after it
7 had been delivered on the basis that there was a change in
8 the information?

9 MR. BRADY: The bid had been handed to Mr. Priddy,
10 and Mr. Priddy said, you know, "It's light." And then they
11 took it back. The bid could be technically said to have
12 been delivered at that time, but if the bid had been
13 delivered at that time it would have been considered
14 insufficient and in defective condition at that time.

15 MR. McCAUSLAND: Thank you.

16 MR. HILL: The fact remains, though, that one of
17 the motivating factors in changing the bid, and one of the
18 more significant factors in delaying the final deposit of
19 the bid, was the fact that Mr. Holmes had been misinformed
20 as to the chargeability of certain expenditures, is that not
21 correct?

22 MR. BRADY: I would like this -- I think I have to
23 address this issue in its entirety, and basically said --
24 Mr. Chairman?

25 CHAIRMAN CORY: Yes.

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1 MR. BRADY: If I may, I have a fairly detailed
2 statement regarding the information which apparently caused
3 some difficulty. At 4:10 on November 2nd, the day before the
4 bid opening, I received a call from Mr. David Wilson who
5 indicated that he was representing a client whose intention
6 was bidding the next day on the proposed geothermal lease
7 sale.

8 Mr. Wilson had a question to me relative to the
9 accounting procedures to be followed, specifically, to the
10 deduction of interest charges for money borrowed to finance
11 the operations under the lease. It had been a substantial
12 period of time since I had reviewed the lease, and at that
13 time I had indicated to him that I did not know the answer
14 at the time, although I had been familiar with the lease
15 covenants, and specifically, the accounting procedures.

16 I indicated to him that I would have to contact
17 the accounting staff to specifically find out what they
18 intended to include on what I would consider a catch-all
19 phrase based on a reference to industry standards.

20 At that time I made a call to one of the
21 accountants in the Long Beach office and I made the -- asked
22 the question of him. He said he was not specifically sure
23 about that. He wanted to talk with one man additional. So,
24 we went to the third man to find the answer. He was not in
25 the office at that time, and was not there until the following

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1 morning.

2 I was so informed by the accountant. The
3 accountant said it's a normal business expense for the
4 accounting purposes, for tax purposes, "It seems reasonable
5 to me." I then, in turn, called Mr. Wilson and informed
6 him in a telephone conversation. The substance of that
7 conversation, basically, was that Mr. Wilson was aware of
8 the fact that I could not give him a definitive answer on a
9 question, specifically, because I did not have all of the
10 information. I could not talk with the person who had the
11 information at that late date as the individual who's
12 responsible, or who was the most knowledgeable in that
13 matter, was not available.

14 Mr. Wilson was made aware of this problem, and I
15 suggested to him that I could not give him a definitive
16 answer. He recognized this, and said, "Thank you. We'll
17 proceed based on what we think is reasonable." And I said,
18 "That sounds like a reasonable idea."

19 That's basically where we left it.

20 The next morning, I flew to Long Beach and
21 arrived at about 9:30 and contacted the individual who's the
22 most knowledgeable about 9:15, got the information, got the
23 answer, and the first opportunity called Mr. Wilson.

24 CHAIRMAN CORY: Okay. Do you have any last pitch
25 to make?

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1 MR. HILL: Well, Mr. McCausland indicated that he
2 is concerned about the fact that we may have prejudiced
3 other parties by the delayed handing in of the bid. If it
4 would be helpful to him --

5 MR. McCAUSLAND: No. Let me put my statement in
6 context.

7 I'm quite concerned about the integrity of the
8 bidding process. I think that it's been -- it's served the
9 public well. My statement referred to a belief on my part
10 that it was fairly important to not begin establishing a
11 precedent that could spill over into other even more
12 substantial bids in the future. I'm convinced that equity
13 considerations in this matter may be more substantial than
14 the procedural problems, particularly, on the basis of the
15 most recent memorandum that I have just reviewed. So, I
16 don't think we can go into that at this point.

17 CHAIRMAN CORY: Mr. Taylor, do you wish to comment?

18 MR. TAYLOR: Mr. Chairman, I think to summarize
19 this, one, there is a question as to whether we owe any duty
20 under any circumstances to any perspective bidder. The next
21 situation that --

22 CHAIRMAN CORY: It's the clear position of
23 Government we don't owe anything to anybody, right?

24 (Laughter.)

25 MR. TAYLOR: I think that part of that may be

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1 inherent in the kind of bidding process. These bids were
2 sent out the latter part of August and the first part of
3 September. Then, you have a situation, irrespective of that
4 question, that the correct information was supplied, and
5 apparently a decision was made with regard to the bid that
6 was going to be ultimately endeavored to be submitted at
7 11:00 o'clock. And that seems to be completely different
8 to the first situation, because it seems to cast some
9 question on the relevance of the prior discussions on
10 Friday, if that were, in fact, the case.

11 We then have a situation of the admitted late
12 arrival and the fact that the bids had already begun to be
13 opened. I have found no case where the bids disputed at this
14 time were accepted and sustained or not sustained, and I
15 don't think that Mr. Hill has either from the materials he
16 submitted to us.

17 We have found one case in the situation where in
18 the exercise of the discretion of the body awarding the bids,
19 they accepted a second bid where there had been some
20 confusion about designating the group with which the person
21 was to go, and the court held that the discretion was
22 handled -- that irrespective of that the discretion was
23 correctly, or was sustained, in taking the second bid,
24 second highest bid.

25 We are going to be representing you whatever

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1 decision that you're going to be making, and so rather than
2 -- I guess we're going to do a good job of soldiering whatever
3 way we go on this particular one. So, I think those are
4 the choices, and I've just tried to lay them out.

5 Again, in order for you to find for the first bid,
6 you must find in your discretion that you can waive any
7 defects, and that they have not given any other bidder --
8 haven't given this bidder any substantial advantage over any
9 other bidders.

10 And, again, the paragraph which is pertinent in
11 this Lease Proposal says that:

12 "No deviation from any requirements or
13 provisions included within the form of the
14 bid-lease, or from the requirements or
15 provisions which are specifically set forth
16 hereafter in this proposal shall be permitted;
17 provided, however, that the State Lands
18 Commission may, in its discretion, waive any
19 technical defect which does not give the
20 bidder any substantial advantage over other
21 bidders."

22 In order for you to make a finding that is
23 recommended -- in order for you to find for the first or the
24 highest bid submitted you must make the finding in
25 accordance with this paragraph. Otherwise, your acceptance

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1 of the staff recommendation of the second one would find that
2 there would be no waiver of any of the defects which have
3 been mentioned, and you would so exercise your discretion
4 that way. The highest, then, would be the second bid.
5 And that's just about where it comes down to.

6 There is a third alternative. The third
7 alternative is to readvertise for new bids.

8 CHAIRMAN CORY: Wally?

9 MR. McGUIRE: I would just agree with what you
10 said that I would like to maintain the process, the integrity
11 of the process, but I only would want to do so if we have
12 clean hands, and I don't think we do. And thus, I would
13 make a motion that we go against the staff recommendation
14 and approve Mr. Post's bid as the highest bid. And that's
15 it.

16 CHAIRMAN CORY: With the finding that there is
17 no substantial advantage due to the technical defects?

18 MR. McGUIRE: That's right. I don't think the
19 technical defects that occurred are substantial, and I
20 incorporate that paragraph in that motion.

21 MR. McCAUSLAND: Second.

22 CHAIRMAN CORY: We have a motion and a second.

23 Is there anybody in the audience who wishes to
24 address the Commission?

25 For the record, let me state that I find, given the

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1 facts presented here, that the technical defects could not
2 have given any substantial advantage to the Post bid, and
3 therefore, I think they were the high bid at the time and
4 will vote accordingly.

5 All of those in favor of the motion signify by
6 saying aye?

7 (Ayes.)

8 CHAIRMAN CORY: Opposed?

9 The motion is carried.

10 MR. HILL: Thank you.

11 CHAIRMAN CORY: The only other item we have is
12 the next meeting will be January --

13 EXECUTIVE OFFICER NORTHROP: 26th in Sacramento.

14 CHAIRMAN CORY: January 26th in Sacramento.

15 If there is no further business before the
16 Commission, we stand adjourned.

17 (Thereupon the December 15, 1976 meeting
18 of the State Lands Commission was
19 adjourned at 1:00 p.m.)

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1 STATE OF CALIFORNIA)
 2 COUNTY OF PLACER) ss.

3

4 I, DIANE LYNN WALTON, C.S.R., a Notary Public in
 5 and for the County of Placer, State of California, duly
 6 appointed and commissioned to administer oaths, do hereby
 7 certify:

8 That I am a disinterested person herein; that
 9 the foregoing State Lands Commission Meeting was reported
 10 in shorthand by me, Diane Lynn Walton, a Certified
 11 Shorthand Reporter of the State of California, and
 12 thereafter transcribed into typewriting.

13 I further certify that I am not of counsel or
 14 attorney for any of the parties to said meeting, nor in
 15 any way interested in the outcome of said meeting.

16 IN WITNESS WHEREOF, I have hereunto set my hand
 17 and affixed my seal of office this 10th day of January,
 18 1977.

19

20

Diane Lynn Walton CSR
 DIANE LYNN WALTON, C.S.R.
 Notary Public in and for the County
 of Placer, State of California
 C.S.R. License No. 3067

21



OFFICIAL SEAL
 DIANE LYNN WALTON
 NOTARY PUBLIC CALIFORNIA
 COUNTY OF PLACER

My Commission Expires January 18, 1980

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