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MEETING  
STATE LANDS COMMISSION

CITY HALL  
CITY COUNCIL CHAMBERS  
915 I STREET  
SACRAMENTO, CALIFORNIA

WEDNESDAY, APRIL 29, 1981  
9:30 A.M.

EVELYN J. DUGGAN  
SHORTHAND REPORTER

MEMBERS PARENT

1  
2 Kenneth Cory, Chairperson, State Controller

3 Susanne Morgan, representing Mary Ann Graves,  
4 Director of Finance, Commissioner

5 David Ackerman, representing Mike Curb, Lieutenant  
6 Governor, Commissioner

STAFF PRESENT

7  
8 William Northrop, Executive Officer

9 James Trout

10 Mr. Thompson

11 Mr. Rump

12 Kent Dedrick

13 Carl D'Agostino

14 Diane Jones, Secretary

15 Harley Pinson

ALSO PRESENT

16  
17 N. Gregory Taylor

18 Sue Wylie, Deputy Attorney General

19

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P R O C E E D I N G S

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3 CHAIRPERSON CORY: I call the meeting to order  
4 to deal with the technicalities of the world. The official  
5 meeting will start in 35 minutes, at 10:00 o'clock as  
6 noticed. We will start certain informational and discussion  
7 items prior to that, but no official action of this body  
8 is contemplated until 10:00 o'clock. That is the officially  
9 noticed time. Because of some of the controversial items  
10 on the agenda, we may not be able to meet our time schedule  
11 if we wait until 10:00 o'clock to commence, so we cannot  
12 deal with the events, but we can have a report from the  
13 Executive Officer.

14 EXECUTIVE OFFICER NORTHROP: Thank you very  
15 kindly.

16 Pacific Gas and Electric Company has requested  
17 permission from the Commission to install a 12 kilovolt  
18 powerline across Whiskey Slough in San Joaquin County  
19 to serve irrigation pump on McDonald Island. The power-  
20 line is needed immediately in order to avoid a potential  
21 crop loss in this location. Pacific Gas and Electric  
22 requests a letter of permission in order to install this  
23 powerline. The company will, as quickly as possible, apply  
24 for a standard right-of-way lease for this facility.  
25 Staff requests the Commission's authorization to issue

1 a letter of permission for the temporary installation of  
2 this powerline pending application by PG&E for a formal  
3 lease.

4 The second item, Mr. Chairman and Members, is  
5 a letter of permission from Crowley --

6 COMMISSIONER ACKERMAN: Is there any opposition  
7 to this?

8 EXECUTIVE OFFICER NORTHROP: No inconvenience  
9 to the farmers in the area.

10 CHAIRPERSON CORY: Go ahead.

11 EXECUTIVE OFFICER NORTHROP: The Crowler Maritime  
12 Corporation has requested permission to construct and  
13 maintain a temporary mooring facility in the Sacramento  
14 River in Yolo County. Possibly Mr. Trout should have  
15 raised this point. The facility is to be used in conjunc-  
16 tion with the opening of the Old Sacramento Railroad  
17 Museum.

18 In response to the Applicant's design to have  
19 the facility in place by next week, I have issued a letter  
20 of permit authorizing the construction and maintenance  
21 of the facility, or I would have lost my Assistant Executive  
22 Officer.

23 The Applicant has agreed to obtain a general  
24 lease-commercial use as soon as possible in accordance  
25 with Commission rules and regulations. They have already

1 obtained a letter of permission from the U.S. Army Corps  
2 of Engineers, and staff assures me that the Department  
3 of Fish and Game has no concerns.

4 IF that's in keeping with your wishes, we'll  
5 proceed.

6 CHAIRPERSON CORY: All right.

7 EXECUTIVE OFFICER NORTHROP: That concludes  
8 my report. There is no report from the Coastal Commission,  
9 Mr. Chairman.

10 CHAIRPERSON CORY: The Consent Calendar items  
11 will be taken up shortly after 10:00 o'clock. They're  
12 on the calendar designated by the letter "C" numbering  
13 from numbers 1 through 15.

14 I would like to commence a discussion of Item  
15 16, consideration of a settlement proposal from representa-  
16 tives of the Jonathon Club, and I believe we have a  
17 Mr. Shiner?

18 MR. SHINER: That's correct.

19 CHAIRPERSON CORY: Would you come forth and  
20 tell us what you have in mind?

21 MR. SHINER: Thank you.

22 Mr. Chairman, Members of the Commission, my  
23 name's John Shiner. I'm representing the Jonathon Club.  
24 With me in the hearing room this morning as well is Mr.  
25 Taft, President of the Club, and Mr. Cross who serves on

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1 our Board of Directors.

2 I will dispense, if I may, with the preliminaries.  
3 I understand Mr. Cory's on a tight schedule this morning.  
4 I will simply get into our proposal.

5 We have studied at some lengths the recommenda-  
6 tions of the staff with whom we've been working at some  
7 length over the last several months in an effort to try  
8 to accommodate the concerns and interests of all sides  
9 to this litigation. We have a counterproposal which we  
10 would like to share with you this morning. We have indeed  
11 shared this proposal with the staff earlier this morning.

12 I think probably the best way to proceed, if  
13 I may, is to refer to the calendar item itself, and I  
14 don't know if your numbers coincide with mine, but my page  
15 number is page 4, and it begins "The last settlement  
16 proposal --"

17 CHAIRPERSON CORY: Page 70.

18 MR. SHINER: Thank you.

19 MR. TROUT: The staff recommendation is on 73.

20 MR. SHINER: There appear four items at that  
21 point. I would propose to simply comment briefly with  
22 respect to each item.

23 Item No. 1 appears to be acceptable to the club.

24 Item No. 2 as well is acceptable to the club.

25 Item 3 is acceptable to the club.

1           Item 4, the main part of Number 4 is acceptable  
2 with this suggested modification. We would request, in  
3 addition to 50 feet of exclusive use, an additional 25  
4 feet for exclusive use, leaving a balance of 20 feet  
5 between the 75 and 95 for the non-exclusive use. Of course,  
6 the non-exclusive use is conditioned only on the possibility  
7 that the bike path may intrude into that apron.

8           We would like the ability to build a parking  
9 facility, if approved by the applicable agencies, to that  
10 95-foot area on the condition that we would pull back if,  
11 indeed, the bike path intruded into that area.

12           This yellow portion of the map here purports  
13 to represent, as I understand it, 95 feet, seaward of the  
14 1921 line. Again, what we are proposing is a modification  
15 in Number 4, an additional 25 feet of exclusive use, and  
16 the balance would be 20 feet of non-exclusive use on the  
17 conditions set forth by the staff.

18           The staff has suggested that the lease term,  
19 an initial lease term, of 25 years. We would suggest that  
20 a lease term of an additional 10, or 35 years, would be  
21 appropriate under the circumstances of the case.

22           With respect to Paragraph 4(a), that is acceptable  
23 to the club with the exception that we would ask for an  
24 additional five years at nominal rent. Instead of 10  
25 years, it would be a total of 15 years at nominal rent

1 based on the code section denominated therein.

2 Paragraph 4(b) is likewise acceptable to the  
3 club, with this concern on our part. During our discussions  
4 this morning, we were unsure how the staff characterized  
5 fair market rental value. We had some discussions this  
6 morning to try to ascertain a common ground for the purposes  
7 of describing that particular term. Our thought was that,  
8 indeed, at the conclusion, if you will, of the original  
9 lease term, 15 years, certainly the club would have to  
10 pay more rent. We'll be willing to do so. How that rent  
11 is to be characterized, how it is to be computed, is a  
12 matter of some concern to us. I think, rather than waiting  
13 until the conclusion of the 10 or 15 years initially, we  
14 would like a formula, or a cap, or some kind of an agreement  
15 set forth in a lease at the front end so we know what kind  
16 of dollars we're looking at at the conclusion of the lease

17 Hypothetically, of course, what could occur  
18 if that were not the case at the conclusion of the 10 or  
19 15-year initial lease, it would be possible to come back  
20 with a figure that nobody could agree upon, and of course  
21 then we would be out of the premises at that particular  
22 point.

23 I believe that covers our counterproposal. Again,  
24 in fairness to the staff who has worked very hard on this  
25 particular issue, we've had many meetings with them in

1 the past over the last 5 or 6 months. This counterproposal  
2 was conveyed to them only this morning. I'm sure that  
3 they may have a comment or two on it.

4 If you have any questions, I would be delighted  
5 to entertain them at this point.

6 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Sue  
7 Wylie from the Attorney General's Office and Les Grimes  
8 from our staff have worked a lot on this.

9 CHAIRPERSON CORY: Tell us where we are this  
10 morning.

11 MS. WYLIE: Mr. Commissioner, I think the club  
12 has come very close to what we have proposed. Would the  
13 Commission like for us to briefly run through our proposal?

14 CHAIRPERSON CORY: Just comparing and contrasting,  
15 or something, so we can make sure all issues are on the  
16 table here.

17 MS. WYLIE: Both sides are in agreement on the  
18 95 feet. We have recommended 50 feet exclusive use, and  
19 a remaining 45 feet subject to the bike path. They would  
20 like to vary that by 75 feet exclusive use, with the  
21 remaining 20 feet subject to a bike path.

22 CHAIRPERSON CORY: Pardon me.

23 The question is that it is non-exclusive? The  
24 only intrusion to that would be a bike path, and if it  
25 is not a bike path, it is exclusive use?

1 MS. WYLIE: That's correct. In other words,  
2 they would have at least 95 feet exclusive use subject  
3 to pulling back. Under our proposal it was to 50 feet  
4 subject to, if we need to put the bike path closer in,  
5 rather than out here on the beach. That location has not  
6 been determined yet. That's why we've reserved in our  
7 proposal that option of having it come within here, if  
8 necessary, if the planning agencies find it necessary to  
9 place it there.

10 We have recommended --

11 CHAIRPERSON CORY: In the other settlements  
12 in the general area, what has been the amount of intrusion,  
13 at least, that we've permitted?

14 MS. WYLIE: The largest encroachment, other  
15 than this property, is 125 feet by the Beach Club, and  
16 the largest private encroachment is 50 feet.

17 We have recommended, or had recommended, in  
18 our last proposal a lease term of 25 years: 10 years  
19 nominal, 15 years at a fair rental value.

20 As I say, we did not discuss or recommend in  
21 our proposal an extension of a parking lot out into this  
22 area. However, we have agreed that the club, and this  
23 was with the agreement of Parks, that we could utilize  
24 this area right in here as part of the lease, because this  
25 is already paved and is used for parking. This extends

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1 out about 50 feet here. This is an asphalt area right  
2 in here which is currently used for parking.

3 Other than that, we have agreed to at least  
4 accommodate them in acquiring some sort of use of this  
5 parking lot, which is a Parks proprietary land, provided  
6 that the remaining public parking is maintained there so  
7 that there's no diminishment of public use to that parking  
8 lot.

9 And as I said, their offer which they have  
10 proposed this morning is very close and may merit considera-  
11 tion. I guess I would let Les respond better as to the  
12 staff's position.

13 COMMISSIONER MORGAN: The yellow area represents  
14 how many feet?

15 MS. WYLIE: Ninety-five feet.

16 COMMISSIONER MORGAN: And that, according to  
17 the legend, represents the area for the exclusive use of  
18 the club?

19 MS. WYLIE: Right, subject to pulling back if  
20 it is determined that the bike path has to go closer to  
21 the private property along the beach. From this point  
22 here out to the water there is somewhere between, probably  
23 about 350 feet of the beach area for public use.

24 COMMISSIONER MORGAN: All right.

25 MR. GRIMES: Mr. Chairman, Commissioners, this

1 offer has been a major stride forward by the club, I think,  
2 in that now we're talking about, perhaps, modifications  
3 to the staff's recommendations rather than modifications  
4 to the club's offer.

5 There are some questions that can't be resolved  
6 immediately in the deliberations. One of the problems,  
7 of course, is the long term of the lease, 35 years for  
8 what would be non-substantial improvements.

9 The second major problem is that the first 15  
10 years at a nominal rate would be inconsistent with what  
11 other people have seemed willing to talk about, and that  
12 is 10 years at a nominal rate.

13 The big problem is setting a rate at this time  
14 for 15 years that will become effective 15 years down the  
15 road, and will be good for another 15 years.

16 Thirdly, this is a multi-agency-agreed proposal  
17 here, involving Parks and the City of Santa Monica, the  
18 City Council of Santa Monica. The ultimate lease issued  
19 here will probably be passed on to Parks and Recreation,  
20 and then to the City of Santa Monica, and I would not like  
21 to recommend something that would be a turkey around their  
22 necks for 35 years without talking to them.

23 CHAIRPERSON CORY: You've not had any conversa-  
24 tions with the other agencies?

25 MR. GRIMES: No, we just got the latest proposal

1 this morning, about 8:30.

2 CHAIRPERSON CORY: Have you had prior conversa-  
3 tions with them to know what they think is acceptable or  
4 not acceptable? Did they have anything that you agreed  
5 to previously?

6 MS. WYLIE: In our private conversations, I  
7 know the 95 feet is acceptable, and I know the term at  
8 least of 25 years is acceptable, and I believe with Parks  
9 a longer term would also be acceptable. We have not discussed  
10 this offer with them.

11 CHAIRPERSON CORY: Any questions from the  
12 Commissioners?

13 COMMISSIONER MORGAN: I have a question of  
14 Mr. Shiner.

15 One of the things that's bothered me all along,  
16 I'm interested in resolving the conflict. It's nice for  
17 the public to be a good neighbor with private owners. But,  
18 it bothers me to have reached agreement with private owners  
19 in the area with one set of standards, and to apply a dif-  
20 ferent set of standards for the Jonathon Club.

21 Can you explain why the Jonathon Club should  
22 have a settlement that's different from the private owners'  
23 settlements in the area?

24 MR. SHINER: I can certainly try.

25 I might say at the outset that we have carefully

1 endeavored to avoid requesting anything special, or anything  
2 which, frankly, could not have been requested by any other  
3 property owner up and down the beach.

4         Seems to me what we're suggesting here is  
5 something which indeed could be offered to any other  
6 property owner that would be willing to accept it. We're  
7 paying for what we're asking for. There is a fixed term  
8 to the lease.

9         There certainly is a situation here from a  
10 factual standpoint, which, I think, differs substantially  
11 from, perhaps, other areas of the beach. As Ms. Wylie  
12 pointed out, the beach area which is available for public  
13 use here is quite extensive. Based on my own experience,  
14 I found that even on the heaviest days, the 4th of July  
15 and the summer months, the public pretty much confines  
16 itself to this area of the beach, and there's very, very  
17 little use in this particular area. And I would suggest  
18 that that very same factual situation indeed does not exist  
19 all the way up and down the beach.

20         I don't think that there's anything in the  
21 proposal that was shared with the Commission this morning  
22 which indeed could not be offered to any other property  
23 owner. Whether it has or not, I'm simply not sure.

24         There probably would be a third response to  
25 your question. That is, we seem to have a mutual problem

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1 in terms of parking accessibility at the beach. One of  
2 our concerns, to the extent that the applicable agencies  
3 would permit us to do so, is to extend our parking. To  
4 the extent that we're permitted to do so in an aesthetically  
5 acceptable manner, certainly with the approval of the  
6 applicable agencies, that hopefully would relieve parking  
7 congestion in the contiguous city and state lots.

8 So, there would be more parking available both at the North  
9 State Parking Lot and other parking lots, and hopefully  
10 this would be beneficial to the state, the city, and indeed  
11 the club as well.

12 CHAIRPERSON CORY: May I ask a question about  
13 the parking.

14 You're saying that because your members would  
15 not park in those public facilities, there would be more  
16 public parking. You're not contemplating that you would  
17 make your additional constructed parking available to the  
18 public?

19 MR. SHINER: Only to the extent that -- and  
20 I might add, in response to your question which you put  
21 a little earlier, I have discussed the parking situation  
22 with Mr. Bucher (ph.) from Parks and Recreation. His  
23 response was that they would not look askance to the  
24 possibility of combining the South State Lot and our lot,  
25 and moving those lots jointly at some point seaward to

1 1921 line, on the condition, that you just pointed out,  
2 that we maintain approximately 51 spaces, approximately  
3 51 spaces, or at least maintain the public capacity that  
4 currently exists in those lots, which we would be willing  
5 to do.

6 Again, my understanding subject to his  
7 rebuttal is that that proposition is acceptable to Parks  
8 and Recreation.

9 I hope that was responsive to your question.

10 COMMISSIONER MORGAN: Well, not really.

11 Sue, have we offered anything over 50 feet to  
12 any other private property owner?

13 MS. WYLIE: What we did try to do was to allow  
14 the private owners to keep the area that they had encroached  
15 on. It so happened that the farthest extent of that was  
16 50 feet. So we allowed them to keep their encroachment  
17 area, which is 50 feet.

18 The Jonathon Club, now, encroaches 135 feet. They  
19 are willing to pull back 40 feet, to 95 feet.

20 CHAIRPERSON CORY: The encroachment of 135 feet  
21 doesn't change the facts. Is there anything other than  
22 that?

23 MR. GRIMES: There's a flag pole, some trees.  
24 These are artificially induced trees.

25 MR. SHINER: Windbreak to the north.

1 MR. GRIMES: This fence, these bushes probably  
2 aren't yours.

3 MR. SHINER: No, I think that's the result of  
4 nature.

5 MR. GRIMES: Relatively minor improvements all  
6 around.

7 CHAIRPERSON CORY: In terms of encroachments,  
8 it seems to be significantly less encroachments than someone  
9 who has a swimming pool sitting there.

10 MS. WYLIE: The only substantial encroachment  
11 along the beach is the swimming pool, and one party has  
12 a paddle tennis court. The rest of the people basically  
13 have fenced areas of beach which they use for dog runs,  
14 or little walkway, or landscaping.

15 CHAIRPERSON CORY: If they want to put dogs  
16 in, I can't complain about that.

17 (Laughter.)

18 CHAIRPERSON CORY: So, what about the term?  
19 Do you have problems with the term?

20 COMMISSIONER MORGAN: I'm the one who thought  
21 anything over 4 years was too much in this political world  
22 that we deal in. I mean, who knows what the next group  
23 of people --

24 CHAIRPERSON CORY: I want to get the issues  
25 on the table.

1 COMMISSIONER MORGAN: And the staff has been  
2 working with them, which to me, is a long-term lease. To  
3 the Jonathon Club, it's not.

4 CHAIRPERSON CORY: Any other comments and ques-  
5 tions?

6 COMMISSIONER ACKERMAN: I guess my question  
7 is, at what point are we right now? Do we hold a hearing  
8 at this point on it to make a decision, or is the desire  
9 to refer this latest proposal back to staff for further  
10 analysis and report back to us after talking with the city  
11 and Parks Department? Are we in a position here to make  
12 the decision that has to be submitted to two other bodies  
13 before final ratification, or legally what's available  
14 to us right now?

15 MR. GRIMES: I think that the issue of how long  
16 the free rent, or nominal rent period, and how to set the  
17 rent for the remaining term of the lease is something that  
18 I couldn't give the Commission a recommendation on right  
19 now. It would take some study and some additional negotia-  
20 tion.

21 There are a number of ways it could be done.  
22 We're certainly sympathetic with it, and it's the best  
23 thing we've seen in the last four months.

24 CHAIRPERSON CORY: I have a question for the  
25 Jonathon Club.

1 Are you in a position to enter into a firm  
2 agreement as of this point in time, or do you need  
3 approval from your organization to enter into something?

4 MR. SHINER: Mr. Chairman, we would technically,  
5 yes, need the formal approval of our Board of Directors.  
6 I can say, and again, I have Mr. Taft, the President, in  
7 the hearing room today, and the counterproposal that was  
8 suggested this morning I would recommend to our Board of  
9 Directors, and I believe it would be looked upon favorably.

10 MS. WYLIE: To answer Mr. Ackerman's question,  
11 we are in litigation, and the Department of Parks and  
12 Recreation and the City are also plaintiffs with us, and  
13 any settlement would require their approval, ultimate  
14 approval.

15 COMMISSIONER ACKERMAN: Who should move first?

16 MS. WYLIE: I believe the State Lands Commission,  
17 because the lease part of it will be with the State Lands.

18 COMMISSIONER ACKERMAN: So, in any event, we  
19 should take initial action and then it will be ratified  
20 by the other two agencies?

21 MS. WYLIE: That is one way that we could go.

22 CHAIRPERSON CORY: I'm not so sure that we should  
23 actually take the initial action, but I think we owe it  
24 to the Jonathon Club to expose our hand in terms of where  
25 we sit as individuals.

1 I'm not so sure that it is not one of the  
2 unfortunate things that the Jonathon Club ought to commit  
3 itself to the proposal before we're required to. It's  
4 just a matter of public policy of invoking the public's  
5 business above private business. That's just sort of a  
6 thing, historically, we get into a bad precedent.

7 I think we owe it to you to say this is where  
8 we sit individually, as you have given us indications,  
9 but for us to go ahead, when there are other public agencies,  
10 commit ourselves to a program on which you have not gotten  
11 firm approval on your side is setting in motion several  
12 public agencies' time and effort, and that I question.  
13 I think we ought to give you a firm indication where we're  
14 thinking.

15 MR. SHINER: Mr. Chairman, that is not an unfair  
16 observation.

17 It is a situation that has been complicated  
18 by the fact that we have so many agencies, bodies, and  
19 individuals.

20 If it would be more acceptable to the Commission,  
21 I could obtain a formal verification of the counterproposal  
22 and submit it to you for review.

23 CHAIRPERSON CORY: I think we'd better find  
24 out in our own heads what people are thinking specifically  
25 in terms of the counterproposal to this Commission so that

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1 you know whether or not we're close enough. Because, my  
2 instincts sort of tell me that we're close, but no cigar  
3 yet. I don't think you've got two votes here.

4 COMMISSIONER ACKERMAN: Do you want to discuss  
5 it point by point?

6 CHAIRPERSON CORY: I think that's probably what  
7 we should do so you can get a feeling where we are, and  
8 you can argue, and the staff can tell us where we're coming  
9 with it wrong.

10 One of the difficulties is, basically, this  
11 Commission has been tougher than the staff. I want you  
12 to clearly understand that.

13 As Sue indicated, the staff has been coming  
14 in saying 10 years, and the Commission has not yet shown  
15 that there are two votes for the 10-year proposal, and  
16 you're asking for what?

17 MR. SHINER: Thirty-five years.

18 CHAIRPERSON CORY: So, there's some substantive  
19 difference from the people who have the vote. So the  
20 question of time, I think, ought to be laid on the table.

21 COMMISSIONER ACKERMAN: Let's go through point  
22 by point, then.

23 MS. WYLIE: Mr. Cory, the staff recommendation  
24 has been 10 years at a nominal rate, and an additional  
25 15 years at a fair rental value.

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1           CHAIRPERSON CORY: The staff is 10 nominal,  
2 15 full market value.

3           COMMISSIONER MORGAN: Kicking and screaming,  
4 we went along with that at one point, didn't we?

5           CHAIRPERSON CORY: But your basic position was  
6 you thought 4 years at nominal, and we're looking at  
7 nominal compared to 10 to 4, but if we could get it down,  
8 you'd agree with that?

9           COMMISSIONER ACKERMAN: My position's probably  
10 just the opposite direction, and my position's consistent  
11 with the private land owners, that leases should be longer  
12 than the time we approved at the last Commission meeting.  
13 So, I think where I'm coming from would be more in line  
14 with what the latest proposal is of the club. I think  
15 that initial proposal was 50 and 50.

16           MR. SHINER: Fifteen years nominal.

17           COMMISSIONER ACKERMAN: Your original --

18           MR. SHINER: Fifteen and fifty.

19           COMMISSIONER ACKERMAN: The State Lands  
20 Commission doesn't even have the authority, I believe,  
21 to issue anything in excess of 66 years, which we have  
22 done with commercial developments.

23           What I do is, I draw distinction between private  
24 use, and I would consider this either simply public use  
25 or commercial use to a club. In our discussions so far,

1 we have differentiated between a private land owner as  
2 an individual and the club situation. In fact, the clubs  
3 being beach clubs, and the Jonathon Club is a beach club,  
4 should be specifically pulled out to be handled separately.

5 So obviously, there's some reason, or some think-  
6 ing behind the staff's reason, to handle the situations  
7 because of their uniqueness in facts and circumstances.

8 So, we would lean more toward giving a longer  
9 lease period here because, and Sue correct me if I'm wrong,  
10 was the initial feeling of the staff not to include the  
11 lease provisions for the Jonathon, as a beach club, under  
12 the same terms as for private land owners, looking at longer  
13 terms for them because of the unique circumstances?

14 So, I would lean towards the longer lease.

15 COMMISSIONER MORGAN: Actually, my impression  
16 was that the reason they were separate was because we were  
17 getting some agreement out of the private land owners,  
18 and we weren't out of the Jonathon Club.

19 MS. WYLIE: We were trying to gauge the term  
20 to the use that was being made. We felt that for the beach  
21 clubs, that this is more of a commercial or a quasi-public  
22 use. There are a large number of members who use this  
23 area who are also members of the public, and the area itself  
24 gets more general use. However, I think it has been our  
25 aim also to try to treat all of the people along the beach,

1 whether homeowners or clubs, fairly, and it may be that  
2 we may want to include the same terms across the board.

3 COMMISSIONER ACKERMAN: Let me ask another  
4 question of staff.

5 What is the longest lease to a private facility  
6 that's been granted by the State Lands Commission?

7 MS. WYLIE: The lease that we just approved  
8 last month for 25 years was geared to the property with  
9 the swimming pool, and that was acceptable to the owner  
10 and it was 25 years.

11 As far as the others, we have recommended a  
12 period of 10 years nominal, 10 years fair rental value.

13 COMMISSIONER ACKERMAN: My question really was  
14 statewide.

15 EXECUTIVE OFFICER NORTHROP: A 100-year lease  
16 for C&H Sugar, and up at the crossing of the Martinez Bridge.  
17 You want to address that one?

18 MR. GRIMES: That was a legislative act back  
19 in 1896 or something.

20 COMMISSIONER ACKERMAN: As far as a Commission-  
21 approved lease, what's the longest?

22 MR. GRIMES: There are leases up to 40 to 45  
23 years, but those contain a provision for five-year rent  
24 review and resetting.

25 COMMISSIONER ACKERMAN: So each one, basically,

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1 has been structured for a certain circumstance.

2 MR. GRIMES: Yes, sir. Each lease, we try to //  
3 keep the term of the lease consistent with the economic  
4 life of whatever is to be constructed on the site.

5 CHAIRPERSON CORY: We have one 66-year lease  
6 or not?

7 EXECUTIVE OFFICER NORTHROP: A public agency  
8 66-year lease, yes. And I think -- what was the term on  
9 the Hyatt House in Long Beach?

10 MR. GRIMES: Fifty years, fifty years on the  
11 Hyatt lease in Long Beach, which we approved several meetings  
12 ago. But that was for multi-story hotel.

13 MS. WYLIE: Excuse me, but I think the Hyatt  
14 lease carried a provision that they could extend that 75  
15 years if the City Charter was amended, so that's 75 years  
16 for that.

17 EXECUTIVE OFFICER NORTHROP: That's a long time  
18 for a very expensive dwelling.

19 CHAIRPERSON CORY: So, you do have sympathy  
20 here. You have a fundamental four years, willing to go  
21 to 25, and I'm willing to look at 25, but not any longer.

22 So the question is, is there anything to gain  
23 by pursuing any of the other issues?

24 MR. SHINER: I'd suggest, if I might, if I'm  
25 not being presumptuous, that the approach you've begun

1 is probably a good one. Perhaps, as Commissioner Ackerman  
2 suggested, you might conclude by going through the rest  
3 of the issues so that we have a feel where the Commission  
4 is.

5 CHAIRPERSON CORY: I guess the other question  
6 is the amount of the lease, the distance. The staff is  
7 recommending 95. I've got some qualms about the 95.

8 It seems to me that 50 is basically where it  
9 is, and I just cannot, in my own mind, see that there is  
10 much encroachments that need to be protected as a matter  
11 of equity. To me, it's an equity claim at best.  
12 As I look at it, a flag pole, a fence, a couple of palm  
13 trees, don't establish a great deal of equity.

14 So, I'm having trouble seeing how we get to  
15 95 feet. I don't know where the other Commissioners are,  
16 but it's a question that you should be aware of that is  
17 bothering me in terms of the whole settlement.

18 COMMISSIONER MORGAN: I agree with that.

19 It seems to me that what you're reserving is  
20 use of the beach, which has been determined to be a public  
21 beach basically. And the question is, how much would we  
22 recognize based on the fact that you've been there such  
23 a long time? I don't really see that the commercial argument  
24 -- what you're doing at the club is providing access to  
25 a public beach through a club, it's true, through a club

1 that's been there a long time. But I don't really see  
2 reserving any more than has been offered to the private  
3 land owners.

4 MS. WYLIE: One point I want to clarify.

5 This has not been adjudged to be a public beach  
6 at this point. That is the subject of our litigation.

7 CHAIRPERSON CORY: In my view it is, because  
8 if they own it, then they should do whatever they want  
9 with it.

10 MS. WYLIE: That's just to clarify.

11 CHAIRPERSON CORY: If they lose the lawsuit,  
12 that doesn't bother me, because it's not my property. I  
13 have a different view of that in that I'm a trustee, and  
14 if we owned the property, then we've got an obligation  
15 to protect. If we don't own it, and the appropriate authorities  
16 decide we don't own it, so be it.

17 That's why I have to come to the conclusion  
18 that the only thing we have to talk about is, assuming  
19 that our side of the litigation is meritorious --

20 MS. WYLIE: I would also point out, but I don't  
21 want to influence the Commission's opinions, that the length  
22 of the original distance has been gone over with Parks  
23 and Recreation and the City, and they did not object to  
24 that. But this Commission, of course, has to make its  
25 own independent decision on it.

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1           COMMISSIONER ACKERMAN: I think we are again  
2 looking at not just this club, but within the entire settle-  
3 ment with Santa Monica, and what appears to be consistent  
4 across the board. If we were purely consistent, I think  
5 we'd be looking at a starting point of 135 feet, because  
6 any other parcel along Santa Monica Beach, we've come out  
7 to wherever they use that encroachment upon the seaward  
8 portion of the high tideline. In this case, I think no  
9 one would really buy that amount of encroachment. I think  
10 it appears to be unreasonable, so we're looking for some  
11 kind of compromise.

12           Since the City Council and the Department of  
13 Parks has settled with the 95 feet, I think I feel comfor-  
14 table with 95 feet. However, I'm probably still open to  
15 how the division within that 95 feet is handled for exclusive  
16 use, then some type of an easement to allow for the placement  
17 of a bike path that the City Planning Commission may ultimately  
18 put in there, whether it be 45 feet, 50 feet, whatever.

19           I think I'd like to get some feeling from the  
20 City as to how they would respond to that, because it's  
21 their planning commission that's going to do that type  
22 of location, as I understand it. I think that element  
23 is important, to get some feedback from them.

24           I think the 95 feet to me is all right. It's  
25 where we place the line within that 95 feet that I don't

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1 think we're really in a position, at least I'm not right  
2 now, in a position to buy off on that.

3 I think the staff recommendation was 45 feet  
4 of exclusive use.

5 CHAIRPERSON CORY: Fifty feet.

6 COMMISSIONER ACKERMAN: Plus --

7 MS. WYLIE: Forty-five feet subject to the bike  
8 path.

9 COMMISSIONER ACKERMAN: Your counter offer was  
10 75 feet?

11 MR. SHINER: The counter was 75 exclusive, and  
12 the balance of 95, 20 non-exclusive. Again, I'm not sure  
13 that is characterized accurately. The non-exclusive is  
14 to be subject, of course, to the bike path.

15 If I may comment on some of the comments I've  
16 just heard, certainly the alleged encroachments which  
17 intrude between the 1921 line are not as substantial as  
18 the swimming pool or something of that magnitude. But  
19 again, based on historical use of the property in question,  
20 which constitutes roughly about 135 feet seaward of the  
21 1921 line, out to about this point, that has been in use  
22 almost exclusively for in excess of 50 years.

23 This proposal pulls back from that point to  
24 95 feet, and back even further to 75 feet based on the  
25 exclusive use basis.

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1 I would suggest to the Commission that I think,  
2 under the circumstances and under the duration of the use  
3 of that property for those purposes, that that counter  
4 offer is not out of line.

5 CHAIRPERSON CORY: The other remaining point  
6 is what is the ratio of nominal-full market value.

7 MR. SHINER: That's correct. The staff -- pardon  
8 me.

9 CHAIRPERSON CORY: Well, the concept I tend  
10 to go along with, but I'm not sure what reason, with the  
11 10 and 15 ratio nominal to full market. I don't know where  
12 the other members are on this, but that's a point of  
13 contention, as I understand it.

14 MR. SHINER: That's correct, Mr. Chairman.

15 CHAIRPERSON CORY: David?

16 COMMISSIONER ACKERMAN: I don't really have  
17 a position yet, I think, but I would side with Mr. Shiner,  
18 with yourself, as saying I think you need some assurance  
19 from the Commission on that, whatever ratio we decide.

20 CHAIRPERSON CORY: That's the additional point.

21 COMMISSIONER ACKERMAN: And the next point is  
22 that you have some relative assurances as to what the basis  
23 the rent's going to be charged so you know what you're  
24 getting into at the outset. I think that's only fair.

25 MR. SHINER: It's good for you and good for

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1 us as well I think.

2 CHAIRPERSON CORY: Susanne, on the question  
3 of nominal versus --

4 COMMISSIONER ACKERMAN: I think fair market  
5 depends whether we're going 20 years, 25, 35, before I  
6 would make the split. Probably on nominal rate, I would  
7 opt for the same at the outset, maybe 10 years at the outset,  
8 and then the balance of whatever we mutually decide to  
9 extend the full market value.

10 COMMISSIONER MORGAN: To me, the total term  
11 is more important than how you split the nominal versus  
12 market value portion of it.

13 CHAIRPERSON CORY: An interesting concept to  
14 toy with.

15 COMMISSIONER MORGAN: Because we're not going  
16 to make money on this deal anyway. The point is not to  
17 milk the Jonathon Club dry.

18 MR. SHINER: I'm glad to hear that.

19 COMMISSIONER MORGAN: Surprise. We thought  
20 we'd tap into your reserve.

21 MR. SHINER: Isn't hard to do so.

22 CHAIRPERSON CORY: The question is the mechanism  
23 for establish fair market value.

24 The point I would like to understand is the  
25 discrepancy, because it seems to me like that's almost

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1 an arithmetic function, putting aside the question of  
2 what the appraised value of the property is. But if you  
3 agree to, you know, from even arbitration concept, of you  
4 name one, we name one, and they name one, and the three  
5 of them average their proposal and come up with a fair  
6 market value, at that point it's almost arithmetic, is  
7 it not, to calculate what a lease should be worth based  
8 on market value?

9 MR. SHINER: As I'm sure Sue will support, we  
10 have had appraisers there to go through this exercise for  
11 months. And between them, they couldn't agree.

12 I guess our concern is as follows. With respect  
13 to the property in question, at the conclusion of the nominal  
14 period, whatever that might be ultimately, that at the  
15 front end we should have some formula, some cap, something,  
16 which would indicate what we would have to pay. Obviously,  
17 we can see that we would have to pay more money at the  
18 conclusion of that initial period.

19 The appraiser-approach gives us some concern  
20 for the reason that customarily, obviously, appraisers  
21 get up there and appraise on highest and best use. We  
22 think that's a very strict construction to be applied,  
23 because we're talking about an isolated parcel of property.  
24 It seems to us that some other formula would be more  
25 appropriate.

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1           We're more than willing to sit down with staff  
2 and arrive at what that formula, whatever that might be.

3           CHAIRPERSON CORY: Just talking out loud at  
4 this point, I don't see how I could, as trustee for the  
5 public property, use anything other than highest and best  
6 use. That's what I was trying to get at. If that's a  
7 point of contention, you know, we're providing an exclusive  
8 use, and it seems to me we should consider all the alter-  
9 natives.

10           MR. SHINER: Even if that were the case, and  
11 I suggest that this argument has been made, the highest  
12 and best use would be, possibly, for condominiums. And  
13 the argument could be made further that, even though we  
14 had no intention of building condominiums up there, there's  
15 the density proposal with respect to this part of the property.

16           My suggestion, if you would, is to pursue an  
17 alternative that would have covenants or restrictions on  
18 the use of that particular parcel. We have no intention  
19 of constructing condominiums.

20           CHAIRPERSON CORY: But maybe we should.

21           MR. SHINER: That's entirely possible. You'd  
22 make more money under the lease.

23           But it just seems to me, with appropriate  
24 restrictions on the use of that piece of property, the  
25 highest and best use may indeed be something other than

1 condominium use, and I think it should be primarily  
2 recreation purposes, something like sun bathing, or whatever  
3 the lease term might be demonstrated to be. So, that would  
4 be another way to characterize highest and best use.

5 COMMISSIONER ACKERMAN: On the other leases  
6 that we have approved at the last meeting for the private  
7 property owners, on what basis was the second portion of  
8 their lease computed?

9 MS. WYLIE: The second 10 years would be a fair  
10 rental value to be established in the 10th year of the  
11 lease for the remaining 10 years.

12 CHAIRPERSON CORY: Fair rental or fair market  
13 rental? I thought it was fair market rental.

14 MS. WYLIE: It was my understanding the term  
15 was fair rental value. I'd have to check the actual lease  
16 to be certain.

17 Let me point out, though, in running these figures  
18 through with an appraiser, if you appraise this for the  
19 highest and best use, it might come up \$200 a square foot  
20 with the best use being condominiums. When you're looking  
21 at inflation at eight percent, that's \$8 a square foot  
22 the club would have to pay for 60,000 square feet, \$480,000  
23 a year for rent for beach purposes using that formula.  
24 Appraisers have suggested that condominiums might not --  
25 you know, if we're not going to lease it for condominiums,

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1 then it should be based upon its use.

2 CHAIRPERSON CORY: This is what I would like  
3 you to drop me a note on, because from the prior ones,  
4 the term fair market value, when I wear my hat as a member  
5 of the Board of Equalization, I've dealt with the pressure  
6 of appraising property, and I can stipulate that that formula  
7 is not a science. That's one of the greatest shocks I  
8 had when I sat down and tried to figure out how to try  
9 to appraise a utility company. But, I assume that we're  
10 talking about that kind of adjustment in terms of highest  
11 and best use standards. That's what we got when we approved  
12 those other ones.

13 I need to have that information. I am well  
14 aware why they're apprehensive about that. I think there's  
15 a J factor to put in there in terms of highest and best  
16 use based on as opposed to the tax standard, and what is  
17 practical as opposed to what the total Commission and various  
18 regulatory agencies would, in fact, allow in terms of use.

19 MS. WYLIE: I would also point out that that  
20 is in our other leases, and we would recommend the same  
21 restriction here. We do not allow any additional improve-  
22 ments to be placed on the property without your express  
23 approval.

24 CHAIRPERSON CORY: But that's a separate question.

25 MS. WYLIE: Which would affect --

1 CHAIRPERSON CORY: If we're at the end of the  
2 nominal, I think we have to be fair to the Jonathon Club,  
3 that if there were some public purpose, whether it's by  
4 making revenue for the state, or whether there's some other  
5 public purpose 10 years, 20 years, or 30 years from now,  
6 we have to deal with that question. They ought to clearly  
7 know what risks they're taking.

8 I think that's a fair request on their part,  
9 and I have to, in good conscience, tell you that I'm trying  
10 to reach for something.

11 MR. SHINER: I understand.

12 CHAIRPERSON CORY: If there were a tremendous  
13 need for public housing, and if that were the only parcel  
14 we had, that could cause you some serious problems, I realize.  
15 That's the kind of highest and best use, I think, that  
16 ought to be something that would be debated. If the public  
17 owns property, it's publicly owned property, and we ought  
18 to tell you the options you're competing against.

19 MR. SHINER: I think that the points of the  
20 Commissioners are well taken, and I really think they echo  
21 our concerns. I think we ought to be able to try to estab-  
22 lish some very concrete formula to place the fair rental  
23 value on it and try to evaluate it.

24 COMMISSIONER ACKERMAN: Consistent, too, I think  
25 is something. Wherever possible, try to treat each of

1 the beach clubs the same that we've treated the private  
2 property owners inasfar as the nominal as well as the exten-  
3 sion of the lease as well. I think to where we're treating  
4 each party the same way and applying the same criteria,  
5 I wouldn't like a person who has an encroachment of 50  
6 feet right next to the Jonathon Club to be treated differently,  
7 and say that their property's assessed for these high purposes.  
8 I don't think that's fair, either. I think you should  
9 be subject to the same type of assessment practices that  
10 the other land owners are.

11 CHAIRPERSON CORY: That's the reason for my  
12 question, why I treated the term fair market in the context  
13 of tax agencies, and that is the term of art.

14 MR. SHINER: I think, in fairness to the staff,  
15 that's what they intended. That's what they communicated  
16 to us.

17 Our major concern was how is that to be applied.

18 CHAIRPERSON CORY: Well, I think we've gone  
19 over the terms to try to give you the tenor of the Commission.  
20 I guess it's probably time for staff and you to try to  
21 work out such details and talk to your own members, and  
22 Board Members, to see what can be pieced together here.

23 It might be a question of on those various points  
24 you're going to have a different coalition on each point.

25 COMMISSIONER AGKERMANN: I think that they probably

1 have an offer or proposal from you that the staff could  
2 respond to it and make recommendations on each of the points  
3 for the Commission.

4 CHAIRPERSON CORY: You're going to need two  
5 votes here, and two votes here may be tougher to get than  
6 from the staff.

7 MR. SHINER: We appreciate your courtesy and  
8 consideration this morning.

9 I gather the next step, if I heard the Commission  
10 correctly, would be to have staff evaluate the counter-  
11 proposal that they received only this morning. We would  
12 be happy to continue meeting with the staff for the purposes  
13 of any clarification of the points that you felt need to  
14 be made more definitive.

15 CHAIRPERSON CORY: But at the same time, the  
16 staff should contact the City and other agencies to make  
17 sure that you know what pitfalls are there.

18 COMMISSIONER ACKERMAN: We wouldn't do you any  
19 service if we entered into an agreement which then was  
20 rejected by the other agencies or the City, and then you'd  
21 have to go back and start all over again.

22 MR. SHINER: That's a very good point of putting  
23 the cart before the horse problem. We didn't know where  
24 to start, even with this Commission. That point is well  
25 taken.

1                   COMMISSIONER MORGAN: I have one more question  
2 for the club.

3                   How old is the club?

4                   MR. SHINER: The club's approximately 50 to  
5 60 years old.

6                   COMMISSIONER MORGAN: How many members are there?

7                   MR. SHINER: Approximately 3400 members.

8                   COMMISSIONER MORGAN: Thank you.

9                   CHAIRPERSON CORY: Thank you very much for your  
10 time.

11                   MR. SHINER: Thank you very much.

12                   CHAIRPERSON CORY: We are now into out official  
13 agenda.

14                   Any corrections or additions to the minutes  
15 of April 7th?

16                   Without objection, the minutes will be confirmed  
17 as presented.

18                   The items currently now before us are the Consent  
19 Calendar. Are there any members of the audience that oppose  
20 the staff recommendations on the items C1 through C15?  
21 They will be taken up as one motion if there's no objection  
22 to the proposed staff recommendations.

23                   All in favor signify by saying ayes.

24                   (Ayes.)

25                   CHAIRPERSON CORY: The Consent Calendar is

1 carried.

2 Item 16 has been put over.

3 Item 17, the next item on the agenda, is the  
4 consideration of a Joint Powers Agreement for acquisition  
5 and construction of tidelands oil pumping and storage,  
6 et cetera.

7 I think we have some people who would like to  
8 speak on this.

9 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Harley  
10 Pinson from our staff will be making a presentation, legal  
11 points involved in the program, and I understand Mr. Buchanan  
12 would like to speak on it as well.

13 MR. PINSON: Mr. Chairman and Members, at your  
14 last meeting you asked the staff to look into the matter  
15 of the oil and gas operations of the submerged lands of  
16 the City of Newport Beach. The staff has done so.

17 Today we recommend approval of the Joint Powers  
18 Agreement between the City of Newport Beach and the State  
19 Lands Commission to conduct an eminent domain action to  
20 acquire facilities to resume oil and gas operation on the  
21 granted lands.

22 The staff makes this recommendation because  
23 we believe that it is the most -- that it is the fastest,  
24 and most efficient way to resume the operation and to maintain  
25 the rights of all parties, and any other litigation that

1 is now occurring, or that may occur.

2 CHAIRPERSON CORY: " Is the City of Newport Beach  
3 in favor of that proposal? Is there anybody representing  
4 the City of Newport Beach here?

5 MR. KUPERBERG: Yes, Joel Kuperberg, of the  
6 firm Rutan and Tucker, representing the City of Newport  
7 Beach.

8 The City Council, the City of Newport Beach,  
9 has adopted a resolution authorizing this Joint Powers  
10 Agreement, and they're in full accord with the provisions.

11 CHAIRPERSON CORY: What was the vote on it?

12 MR. KUPERBERG: The vote was, I believe, unanimous  
13 on the Consent Calendar.

14 CHAIRPERSON CORY: You have strong support in  
15 the local community?

16 MR. KUPERBERG: Yes, sir. We have very strong  
17 sentiment with the people of Newport Beach, the residents  
18 are particularly concerned that the oil pumping operation  
19 commence again as soon as possible.

20 COMMISSIONER ACKERMAN: How about a position  
21 from the County on that?

22 MR. KUPERBERG: The County of Orange has not  
23 taken any position at all in this matter. The County  
24 concerns really -- the County really doesn't have the concern  
25 here. They obtained certain mineral taxes which would

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1 not be affected by this, and their concerns really relate  
2 to the tax issue since it doesn't become involved in this  
3 type of acquisition. They're not all that concerned.

4 CHAIRPERSON CORY: Does Mr. Devlin, the  
5 utilities director, wish to say anything?

6 MR. DEVLIN: No, sir, not unless it's necessary.

7 CHAIRPERSON CORY: All right.

8 Mr. Buchanan.

9 MR. BUCHANAN: Good morning, ladies and gentlemen.

10 I'm Robert Buchanan, representing Armstrong  
11 Petroleum Corporation. I have with me Mr. Richard Del  
12 Gercio, who I have called as an expert in eminent domain.

13 Prior to asking him to come forth, Mr. Cory  
14 and Members, I want to repeat that there is litigation,  
15 a lot of litigation involved, pending between the City  
16 and Armstrong Petroleum about this matter. We feel that's  
17 the proper place for this dispute to be resolved.

18 We're also apprised that a bill has been intro-  
19 duced in the Legislature that presumably would be addressed,  
20 is addressed to this problem. As a consequence, we feel  
21 very strongly that any efforts by the City and the State  
22 Lands Commission for the item you're considering here is  
23 not only improper, but we think, perhaps, illegal.

24 With that, I will ask Mr. Del Gercio to come  
25 forward.

1 CHAIRPERSON CORY: Before you leave, I'm a little  
2 troubled at what I thought was an agreement, an offer  
3 and an understanding at the last meeting with your client  
4 as the way to resolve this problem.

5 Would you like to shed light upon that, because  
6 I think it bears rather significantly on the credibility  
7 of your client and his true motives.

8 MR. BUCHANAN: As you will recall, I was here  
9 as well as my client at the last meeting. I was quite  
10 surprised when I met with Mr. Northrop, I think, on the  
11 3rd of April or so, to understand from him that it was  
12 your view, and perhaps all of those Members of the Commission,  
13 that there was some kind of an oral agreement reached between  
14 you and Mr. Armstrong to the effect that the State itself  
15 would physically operate those wells.

16 I subsequently talked with Mr. Armstrong, and  
17 it surprised me, because I didn't read that conversation  
18 or the discussion that way. Nor did I understand it that  
19 way.

20 My understanding was, and Mr. Armstrong, who  
21 I've talked to at some length, his impression also was,  
22 that he understood you to be addressing yourself to the  
23 idea of the State taking over the position of the City  
24 as distinguished from the physical operation of the wells  
25 themselves. And to this extent, his view was, he didn't

1 care whether it was the City of the State, words to that  
2 general effect.

3 CHAIRPERSON CORY: That's an interesting approach,  
4 and all I can tell you, if that's the case, then you have  
5 put me on notice that I have to be extremely explicit,  
6 which I thought I was last time.

7 MR. BUCHANAN: Evidently Mr. Armstrong should  
8 be also, sir.

9 CHAIRPERSON CORY: Let's hear from your witness.

10 MR. DEL GERCIO: Mr. Chairman, Members of the  
11 Commission, my name is Richard Del Gercio. I'm an attorney  
12 at law. I specialize in eminent domain proceedings. My  
13 office is at 601 West Fifth Street, Los Angeles.

14 I think it might be helpful if I gave you a  
15 little historical background with respect to the proceedings  
16 that have been undertaken to date which led to the presenta-  
17 tion of a Joint Powers Agreement to you today, which concerns  
18 itself with the initiation of eminent domain proceedings.

19 In the latter part of 1980, after the contract  
20 between my client and the City of Newport Beach had expired,  
21 the City took certain actions designed to enable the City  
22 to acquire, through eminent domain proceedings, certain  
23 private property rights for which had -- were used in connec-  
24 tion with the production of crude oil from tidelands previously  
25 granted by the State to the City. The City sought to acquire

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1 this property so that it, as a government agency, might  
2 directly conduct the activity of oil production and storage  
3 with respect to these tidelands, which kind of activity,  
4 insofar as the City was concerned, and I believe typically  
5 counties as well as the State Lands Commission, historically  
6 has been performed by private contractors pursuant to agree-  
7 ment with public agencies.

8 In the course of public hearings before the  
9 City Council with respect to the City's action to initiate  
10 annexation and eminent domain proceedings, Armstrong  
11 Petroleum Company appeared before the City because it has  
12 a substantial property interest in the lands that are sought  
13 to be condemned, a property interest that's separate and  
14 apart from the contractual relationship that it previously  
15 had with the City and a contract to produce the crude oil  
16 on behalf of the City.

17 We lodged a formal protest with the City, pointing  
18 out that the City lacked any statutory power of eminent  
19 domain to acquire property for the purposes of its conducting  
20 a private oil production storage operation under the circum-  
21 stances, and also that the City lacked the power to initiate  
22 eminent domain proceedings to acquire property outside  
23 the City for these particular purposes.

24 Notwithstanding the objections, the City adopted  
25 the resolution of intention to initiate eminent domain

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1 proceedings, and also attempted to proceed further, to  
2 annex the property to the City.

3 The owners at that time were prepared to raise  
4 objections to the institution of the legal proceedings  
5 at such time, and they were brought forward. At some  
6 point in time after the City took its initial action, it  
7 apparently recognized that it lacked the authority to initiate  
8 the eminent domain proceedings to acquire private property  
9 for this particular use, and particularly to acquire private  
10 property outside of its city limits. Then it turned to  
11 the State Lands Commission for assistance.

12 If you'll recall the two prior occasions, this  
13 matter came before the Lands Commission, in which the City's  
14 lack of authority to proceed was brought to the attention  
15 of the Lands Commission, and the Lands Commission made  
16 a determination to provide some assistance to the City  
17 in an effort to resolve its problems and ostensibly in  
18 an effort to recommence the production of crude oil.

19 I understand from prior discussions that it  
20 has been made clear that Armstrong Petroleum Company is  
21 willing to allow the City to use these production facilities  
22 until these matters have been resolved without prejudice  
23 to the rights of any of the parties in the show of good  
24 faith.

25 CHAIRPERSON CORY: Would you explain to me what

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1 you mean by that, allow the City to use these facilities?

2 MR. DEL GERCIO: As I understand, there was  
3 a letter written by Armstrong Petroleum Company to the  
4 City, which has been referred to in prior proceedings before  
5 the Commission. I wasn't present at those proceedings,  
6 but Mr. Buchanan was. I think perhaps he could more properly  
7 answer your question, Mr. Cory.

8 MR. BUCHANAN: I think Mr. Del Gercio is referring  
9 to proposals made by Armstrong Petroleum to the City on  
10 an interim operation.

11 CHAIRPERSON CORY: An interim operating agreement  
12 which he would operate?

13 MR. BUCHANAN: Yes, that's correct.

14 CHAIRPERSON CORY: That's significantly different  
15 than allowing the City to use the facilities.

16 MR. BUCHANAN: It is dependent on trying to  
17 be concise, as you were suggesting earlier.

18 Since the contract has expired, I think Mr.  
19 Del Gercio is suggesting that, on an interim basis, continu-  
20 ing to operate the wells. But, you're right. Armstrong  
21 has always had in mind only they themselves.

22 CHAIRPERSON CORY: The distinction being he  
23 has the benefit from operating.

24 MR. BUCHANAN: Certainly, no question about  
25 that.

1 CHAIRPERSON CORY: That's something less than --

2 MR. BUCHANAN: Yes, he's in private enterprise.

3 CHAIRPERSON CORY: I wanted to clarify that,  
4 because it leaves the impression --

5 MR. BUCHANAN: As a gift or something, and that  
6 would be a wrong impression.

7 MR. DEL GERCIO: And I think it ought to be brought  
8 to the attention of the Commission --

9 CHAIRPERSON CORY: While we're defining things,  
10 I would like to state for the record here that I'm reading  
11 from the transcript of the prior meeting, which I'm quoting  
12 my question to Mr. Armstrong:

13 "CHAIRPERSON CORY: Would you be  
14 interested in allowing a third party,  
15 like the State, to come in and operate  
16 it during the interim?"

17 "MR. ARMSTRONG: Sure, let them  
18 operate."

19 So, I have trouble with Mr. Armstrong, an oil man as he  
20 claims to be, and I think the term "operate" is a term  
21 of art that's known to oil men, and that means operate.  
22 That doesn't mean that Armstrong would operate; it means  
23 the State would operate. I think that was explicit and  
24 clear.

25 I find it hard to believe, since he even used

1 the same terminology, that he misunderstood the meaning  
2 of what I was contending.

3 I wanted to make that clear. Go ahead.

4 MR. DEL GERCIO: I think there's probably a  
5 practical problem when you're trying to bring in a third  
6 party, because they have no property rights to use any  
7 of those facilities or lands as distinguished from Armstrong.  
8 From a very practical standpoint, he may be the only one  
9 that's in the position, that has the property rights avail-  
10 able.

11 CHAIRPERSON CORY: That's the heart of the matter,  
12 isn't it?

13 MR. DEL GERCIO: I think that's right. And  
14 his property rights, if I may digress for just a moment,  
15 extend far beyond the production of crude oil from the tide  
16 and submerged lands. He has property rights to produce  
17 from other lands which the City has absolutely no interests.  
18 So, those are substantial property rights he does enjoy.

19 Now, I'd like to now address myself to the specific  
20 proposal that's before you, which is a proposed Joint Powers  
21 Agreement. Simply put, it places the Lands Commission  
22 in the posture of being hired out, if you will, for the  
23 purpose of providing the authority to condemn private property  
24 for use of the City under circumstances where the City  
25 admittedly doesn't have any power to undertake the activity

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1 on its own behalf, because if they did, they wouldn't be  
2 before you asking for your assistance.

3 Now, the purpose here, insofar as this particular  
4 point is concerned, is not to engage in the argument as  
5 to whether Armstrong should be doing it or anybody else  
6 should be doing it, but to point out what I believe are  
7 some basic legal problems with the Joint Powers Agreement  
8 that's proposed to be entered into under these circumstances.  
9 I think it presents a serious question as to the fundamental  
10 power of the Commission and the City to make such an agreement.  
11 I will try to suggest what I think is a fair course of  
12 action to protect not only the interests of the Lands Commis-  
13 sion and the City, but also my client.

14 There's no question but what that public agencies  
15 may undertake, by the institution of a Joint Powers Agreement,  
16 activities where one party or the other will perform functions  
17 which each of them are authorized to perform. The fundamental  
18 premise upon which those joint power agreements are  
19 predicated is that power which is sought to be exercised,  
20 that is the power to condemn property outside of the city  
21 limits of the City of Newport Beach, must be possessed  
22 by the parties in common. This is an absolute requirement  
23 of the Government Code Section 6502, which is the basis  
24 for all joint powers agreements, and which is referred  
25 to in the draft agreement before you.

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1 CHAIRPERSON CORY: David, you had a question?

2 COMMISSIONER ACKERMAN: Does that mean the Joint  
3 Powers Agreement, in your interpretation, would have to  
4 be exercised between the City and the County?

5 MR. DEL GERCIO: No, I don't know that the City  
6 is a proper party to the Joint Powers Agreement, because  
7 the City lacks the power to undertake an eminent domain  
8 proceeding to acquire private property outside its historical  
9 limits for any particular purpose.

10 So what I'm saying is that, inasmuch if that  
11 is the case, merely going out and looking for some agency,  
12 which argueably does have the power to condemn private  
13 property to produce crude oil and store crude oil, doesn't  
14 fit the agreement within the scope of the statutory authori-  
15 zation.

16 The Supreme Court in this state has ruled on  
17 this question in the past, and has said that the power  
18 which is sought to be exercised under the joint powers  
19 agreement is one which independently could be exercised  
20 by the parties to the contract. And it's clear that the  
21 City does not have the power independently to do what they  
22 seek to accomplish under the Joint Powers Agreement. Now,  
23 I think that's one basic, fundamental substantial problem.

24 CHAIRPERSON CORY: How much longer will your  
25 presentation take?

1 MR. DEL GERCIO: Probably about three minutes,  
2 Mr. Cory.

3 I'm not here today to try to persuade you from  
4 a legal standpoint that I'm right and some other lawyer  
5 is wrong, because I don't think that's the way to proceed.  
6 What I propose to do is suggest to you that there are questions  
7 that ought to be resolved that haven't been resolved before  
8 you take an action on this particular agreement.

9 Let me suggest what I think is another problem  
10 with respect to the agreement.

11 I think there's a serious question with respect  
12 to the authority of the State Lands Commission to condemn  
13 property in connection with the production of crude oil  
14 as to granted tidelands. There's no question but that  
15 the State Lands Commission, pursuant to the provisions  
16 of Public Resources Code Section 6808 has the authority  
17 to condemn property for state-owned lands, and state-owned  
18 lands is the criteria.

19 These lands are not state-owned lands, because  
20 they previously were granted to the City of Newport Beach  
21 pursuant to an expressed statutory grant which granted  
22 all of the right, title and interest to the State of California,  
23 which passes all rights and title and interest with respect  
24 to minerals. I'm aware of the reversionary interest that  
25 the state has, but a reversionary interest in property

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1 doesn't make the property state-owned lands.

2 So, I think from a second standpoint, you have  
3 a significant defect with respect to the Joint Powers Agreement  
4 that you propose to enter into.

5 Beyond these legal arguments, I think you should  
6 be aware of one other factor, and that is what I think  
7 is perhaps a precedent that you would be setting here,  
8 perhaps without undertaking some specific basic policy  
9 determinations as to the propriety of that precedent.

10 It's my understanding that the State of  
11 California, through the State Lands Commission, with respect  
12 to ungranted tidelands, and with respect to granted tidelands,  
13 where the state has reserved the mineral rights, undertakes  
14 the production of those minerals through contracts with  
15 private contractors, because that is the only mode which  
16 the Legislature has prescribed presently for the engagement  
17 in that particular activity, the same is true with the  
18 City and County as to which tidelands have been granted  
19 by the state. That is the mode in which they exercised  
20 their power.

21 This particular Joint Powers Agreement will  
22 take a quantum step beyond that, because it will authorize  
23 and allow the City of Newport Beach to engage, as a city,  
24 in the production activities. That is to say, they will  
25 have the power to utilize these properties for the purpose

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1 of engaging in the production of crude oil, which is  
2 something that the State Lands Commission does not do on  
3 its own behalf. Now, whether that's a desirable objective,  
4 it was a legislative request to be answered, and I don't  
5 know that the State Lands Commission has taken a policy  
6 position with respect to that in connection with its dealing  
7 with cities and counties. I'm not aware of any prior  
8 practice of the State Lands Commission which recognizes  
9 that distinction, and places its stamp of approval on cities  
10 or counties engaging in that type of activity with respect  
11 to granted tidelands.

12 COMMISSIONER ACKERMAN: Let me offer a comment.

13 It was represented to me, and if the City wants  
14 to correct me they may do so, that at no instance has the  
15 City, other than the transcript you read, Ken, during an  
16 interim period, where the state may operate, never has  
17 it been the intent of either the state or the City to go  
18 in and actually operate for a long period of time both  
19 oil production facilities. The intent that has been  
20 represented to me, and I understood that you approved the  
21 action taken at our previous meetings, is that this would  
22 be a leased out operation, and it would not be directly  
23 run by either the state or the City. In fact, I've had  
24 discussions with Assemblywoman Bergeson concerning her  
25 legislation, and she would be receptive to amending her

1 bill to specifically state that. So, I would be willing  
2 to go along. It's been under that.

3 CHAIRPERSON CORY: It's my understanding of  
4 it, also.

5 COMMISSIONER ACKERMAN: There was never a point  
6 in time when either the City or the state was to be getting  
7 into the oil business down there.

8 MR. KUPERBERG: On June 26th, 1981, the City  
9 Council by unanimous vote, determined that the terms of  
10 the operation of these tideland wells would go out to public  
11 bid for a private contractor. One of the problems with  
12 renewing the contract with Armstrong on an interim period  
13 is that Armstrong Petroleum Corporation, of course, is  
14 not the subject of public bid. And not only is it the  
15 private operation that concerns the City Council, but it's  
16 the Council's feelings that it go to a public bid process.

17 COMMISSIONER ACKERMAN: I would concur with  
18 that.

19 MR. DEL GERCIO: That provision isn't in the  
20 proposed Joint Powers Agreement, and it conflicts with  
21 the initial resolution that the City adopted with respect  
22 to the proposed condemnation of the property previously,  
23 because, and I'm quoting from the resolution, the resolution  
24 said, in paragraph two, that the purpose of the project  
25 would consist of the acquisition, construction, operation,

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1 and maintenance by the City of the proposed production  
2 and storage facilities.

3 So this is a matter, which again as pointed  
4 out earlier, Mr. Cory, might be subject to different  
5 interpretations.

6 May I make a suggestion?

7 COMMISSIONER ACKERMAN: On that point, when  
8 we authorized the staff to support and assist in legislation  
9 dealing with this matter, the legislation was drafted,  
10 I believe, in concert with the City, with the staff of  
11 the City. The specific language stating the intent that  
12 it would not be the City operating was not included in  
13 that legislation.

14 Maybe this is an appropriate time to offer that  
15 as an amendment to the Commission's direction to the staff,  
16 to seek an amendment to the legislation currently before  
17 the Legislature that expresses the intent, either expressly  
18 in the statutory provisions of the bill, or in the intent  
19 portion of the bill, that neither the City nor the State  
20 operate the facilities, but be on a leased-out basis.

21 CHAIRPERSON CORY: The question that you get  
22 to is, the City could end up being the operator through  
23 a lease arrangement with a contractor. That is going to  
24 be a difficult thing. What you've stated, I think, might  
25 preclude certain forms of state operation, and I'm not

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1 sure you're wanting to do that.

2 It's my understanding that they're going to  
3 the private sector, engaging a contractor.

4 COMMISSIONER ACKERMAN: That's what I want to  
5 make sure gets done.

6 CHAIRPERSON CORY: But they don't have to have  
7 just one contractor, if midway in the operation  
8 they decide they should have the operation of, in essence,  
9 a series of subcontractors, if you take the analogy. I  
10 think that's why I'm hesitant with the way you worded that.

11 COMMISSIONER ACKERMAN: The City should have  
12 the option, but I don't want the City to actually produce  
13 the oil.

14 MR. KUPERBERG: If I might clarify.

15 The relation that Mr. Del Gercio refers to was  
16 really codicilled in that unanimous resolution that I  
17 previously mentioned. It occurred to the City subsequent  
18 to the adoption of this resolution that there may be that  
19 interpretation in terms of operation. It was not the  
20 intention of the City to operate the wells, but we realize  
21 that the semantics of the resolution were such that they  
22 seemed to say that. They passed the unanimous resolution  
23 in January of 1981 to make certain that the operation will  
24 be either by one contractor or a series of subcontractors,  
25 but all of the private sector.

1 CHAIRPERSON CORY: I think staff should sit  
2 down with the author of the bill and with people of the  
3 City and make sure that's our understanding of what we're  
4 working on, as opposed to them hiring only civil service,  
5 and any other problems or difficulties.

6 COMMISSIONER ACKERMAN: One more thing, once  
7 the Legislature passes something, it's a different thing  
8 to argue the intent three or four years down the road.

9 CHAIRPERSON CORY: Report back to the Commissioners.

10 EXECUTIVE OFFICER NORTHROP: We shall.

11 MR. DEL GERCIO: That really leaves two  
12 remaining problems with respect to the document. That  
13 is, the question of the basic validity of the Joint Powers  
14 Agreement, where one of the parties doesn't have the power  
15 that's sought to be jointly exercised.

16 May I suggest this, or at least inquire as to  
17 the feasibility in view of the fact that this is a substan-  
18 tial departure from the past practices of the State Lands  
19 Commission, and I think, indeed, it's a unique situation  
20 in that it's the first time that the State Lands Commission  
21 has been asked to lend its authority under the circumstances,  
22 or any circumstances, to a proposed acquisition by a city  
23 or a county, that a formal written opinion from the Attorney  
24 General's Office be secured to focus on the precise question.

25 If there are any questions on behalf of the

1 Commission, I'll try to answer them.

2 CHAIRPERSON CORY: Question?

3 COMMISSIONER ACKERMAN: Our whole point is that  
4 we're trying to be in a position to resume oil production.  
5 If we take the action that's recommended by the staff today,  
6 this is a rhetorical question, are we likely to subject  
7 ourselves to a lawsuit questioning the constitutionality  
8 or illegality, and rather than the production of oil, with  
9 the litigation the wells would get shut down for another  
10 six months or a year?

11 CHAIRPERSON CORY: It seems to me we've got  
12 litigation no matter what.

13 COMMISSIONER ACKERMAN: Where are we on this?  
14 My intent is to get those wells into production.

15 CHAIRPERSON CORY: That's right.

16 MR. PINSON: Harley Pinson.

17 I think that the first issue that would be tried  
18 in an eminent domain action would be whether or not there  
19 is power to condemn. That would be resolved very quickly,  
20 could be resolved very quickly.

21 CHAIRPERSON CORY: To wait for the formal written  
22 opinion just delays the question. It would seem to me  
23 that, even if the Attorney General said yes, in a formal  
24 written opinion, yes, that you have the power, the same  
25 question would have to be resolved by the court, because

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1 given what we see Armstrong Petroleum's position thus far,  
2 with all due respect to what's said by the parties, appears  
3 to me to be delay, obfuscation, and maintaining obstruction,  
4 and that's fine; I understand that. I don't see how, by  
5 any way, we can shorten the time frame. That's my  
6 difficulty with the proposal.

7 COMMISSIONER MORGAN: I have a question of the  
8 staff.

9 Did you consider the arguments that counsel  
10 is making today?

11 MR. PINSON: Yes, we did.

12 COMMISSIONER MORGAN: And you want us to proceed  
13 with the recommended action?

14 MR. PINSON: It is our advice that the power  
15 is there.

16 COMMISSIONER MORGAN: I move approval of the  
17 staff recommendation.

18 MR. TAYLOR: Before there's a vote, there's  
19 one additional item to be brought up.

20 This in examining the descriptions that would  
21 be used in the complaint, that they overlap into an area  
22 claimed to be granted to the City, and therefore it would  
23 be necessary to amend the Commission's understanding with  
24 the City to make sure that those issues are presented in  
25 that litigation.

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1 Many of the rights which Mr. Armstrong claims  
2 to hold may already be owned by the City, and that is known  
3 as Ox Bow Loop, which was the subject before in considerable  
4 negotiations between the surface owner of the property,  
5 and it was contemplated when Mr. Armstrong was granted  
6 the contract that he had prior, that by its terms, that  
7 he had no further rights under the lease with respect to  
8 the City's interests, because he was required, at the end  
9 of the lease, to surrender it peacefully and give the City  
10 the rights that he had acquired that were necessary to  
11 operate it.

12 CHAIRPERSON CORY: We have a motion and a second  
13 that the staff proposal be approved.

14 Any questions from the Commissioners? Anybody  
15 else in the audience on this item?

16 All those in favor, signify by saying aye.

17 (Ayes.)

18 CHAIRPERSON CORY: The motion is carried.

19 I have to excuse myself. Carl D'Agostino will  
20 sit in and take over from here. I wish you God speed in  
21 your deliberations.

22 (Thereupon Chairperson Cory left the  
23 meeting and Mr. Carl D'Agostino assumed  
24 the position of Temporary Chairperson.)

25 CHAIRPERSON D'AGOSTINO: Let's take a five-

1 minute recess

2 (Thereupon a brief recess was taken.)

3 CHAIRPERSON D'AGOSTINO: We reconvene the meeting.  
4 We're back to Item 18.

5 MR. TAYLOR: Mr. D'Agostino, I might just note  
6 how the meeting is proceeding.

7 Mr. D'Agostino, due to Mr. Cory's departure  
8 and the provisions of Section 7.6 of the Government Code,  
9 it has been agreed that you will participate and act as  
10 Chairman of the meeting without vote, and that the two  
11 voting members, for the rest of the meeting, will be  
12 Ms. Morgan and Mr. Ackerman.

13 CHAIRPERSON D'AGOSTINO: Proceed with Item 18.

14 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item  
15 18, as you recall, was brought to the Commission last week.  
16 It's an operational audit, by Deloitte, Haskins and  
17 Sells.

18 We are asking that the Commission accept for  
19 review this audit, to which the staff will respond at a  
20 subsequent meeting.

21 Deloitte, Haskins and Sells are here to make  
22 a report to the Commission, and if they would come forward  
23 at this time.

24 MR. STEVENS: My name is Paul Stevens, and I  
25 work with Deloitte, Haskins and Sells. In the audience

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1 with me is Mr. John Gedney (ph.), project manager for this  
2 work, and Mr. Bill Green, who was our lead consultant for  
3 the work.

4 In the interest of time, I would be happy to  
5 summarize this. It's rather lengthy.

6 If you would prefer, we could simply respond  
7 to any questions that you might have on it. I assume everyone's  
8 had a chance to at least partially read the recommendations.

9 COMMISSIONER MORGAN: I don't have any questions.  
10 I'm the one that held up the discussion at the last meeting  
11 because I wanted our auditor and staff to have a chance  
12 to look at it, and they have. Everyone says it's a good  
13 starting point for us. It gives us some new issues to  
14 deal with, and we appreciate the work that you did.

15 MR. STEVENS: Thank you.

16 COMMISSIONER MORGAN: Did you get paid yet?

17 MR. STEVENS: We have billed. We have not been  
18 paid, but we will be.

19 COMMISSIONER MORGAN: Do we have to move to  
20 accept the report?

21 EXECUTIVE OFFICER NORTHROP: To accept the report.

22 COMMISSIONER MORGAN: We did that the last time.

23 EXECUTIVE OFFICER NORTHROP: Accepted for review.

24 COMMISSIONER MORGAN: And to direct the staff  
25 to report back to us at a subsequent meeting, okay.

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1 CHAIRPERSON D'AGOSTINO: So moved.

2 EXECUTIVE OFFICER NORTHROP: Mr. Chairman,  
3 Item No. 19 is termination of a lease and replacement with  
4 a general lease for Paul L. Erman and Linda F. Erman.  
5 It brings the lease up to current regulations, and it's  
6 for the new owners.

7 COMMISSIONER MORGAN: I have a question.

8 Why was this not on the Consent Calendar? Is  
9 there some opposition?

10 EXECUTIVE OFFICER NORTHROP: There was no objec-  
11 tion to it. It was a change of lease, and it was with  
12 a commercial marina, so we decided to put it on this calendar  
13 in case there were surrounding neighbors that had comments.

14 COMMISSIONER MORGAN: I don't have any problems.  
15 Do you have any?

16 COMMISSIONER ACKERMAN: No.

17 CHAIRPERSON D'AGOSTINO: Without objection,  
18 it's approved.

19 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item  
20 No. 20 is a boundary line agreement with the City of Pittsburg  
21 which was the legislative grantee. The current boundary  
22 of the grant was never really defined. This defines that  
23 boundary line.

24 COMMISSIONER MORGAN: That's fine.

25 COMMISSIONER ACKERMAN: No problem.

1 CHAIRPERSON D'AGOSTINO: Without objection.

2 Item 21.

3 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item  
4 21 authorizes the Executive Officer to enter into a  
5 Memorandum of Understanding with the United States Bureau  
6 of Land Management on approximately 62.4 thousand acres  
7 of indemnity land, and 52.7 thousand acres of unassessed  
8 land. The state indemnity selections we will attempt to  
9 block up and to use, as we've outlined in previous reports  
10 to the Commission.

11 We would like the Commission's approval for  
12 my execution of that Memorandum of Understanding.

13 COMMISSIONER MORGAN: What exactly does this  
14 do for you, Bill?

15 EXECUTIVE OFFICER NORTHROP: This Memorandum  
16 of Understanding lays out the ground rules by which we  
17 will attempt to make and select the parcels of property  
18 involved.

19 COMMISSIONER MORGAN: It's a starting point?

20 EXECUTIVE OFFICER NORTHROP: It's a starting  
21 point for us as a followup to the Western States Land  
22 Commissioners Memorandum of Understanding in which all  
23 of the Western States came to an agreement that we were  
24 all going to try to work out these MOU's on a state-by-  
25 state basis. This is our basis. So far, the California

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1 State Office has been very helpful in putting this memorandum  
2 together, so it gives us a starting point. We made the  
3 specific exchange, then we will come back to the Commission.

4 COMMISSIONER MORGAN: All right.

5 COMMISSIONER ACKERMAN: Bill, do you anticipate  
6 that the current administration will facilitate this effort  
7 a little bit?

8 EXECUTIVE OFFICER NORTHROP: I will know better  
9 next week. I'm going to Washington to meet with the  
10 Secretary and with others, a group of us from the Western  
11 States are going to meet, and this is going to be one of  
12 the points we're going to address, the implementation of  
13 MOU's.

14 COMMISSIONER ACKERMAN: It might be a good item  
15 for the Executive Officer's Report at the next meeting.

16 COMMISSIONER MORGAN: We may be on the right  
17 side of an issue in Washington.

18 CHAIRPERSON D'AGOSTINO: Without objection.

19 Item 22.

20 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item  
21 No. 22 is a name change for the Ancient Marine; to the  
22 Rusty Pelican for reaffirmation of determinations of a  
23 lease.

24 The City of Long Beach has already made a deter-  
25 mination concerning this lease, and due to the name change,

1 it is necessary for the leasees to obtain financing, and  
2 they have asked that this reaffirmation be approved.

3 COMMISSIONER ACKERMAN: No problem.

4 COMMISSIONER MORGAN: Okay.

5 CHAIRPERSON D'AGOSTINO: Next Item 23.

6 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item  
7 23 is a return to the Commission calendar of an item we  
8 had last month, in which there was some concern over the  
9 bid on a sand and gravel permit, in which the percentage  
10 high bidder determined that they had, perhaps, bid on the  
11 wrong parcel.

12 Staff is working with them on that problem.  
13 The second bidder has rescinded his bid. So, we're left  
14 with the current bidder, Western-Pacific Construction  
15 Materials Company, who proposed a 10.51 percent of the  
16 gross selling price of sand and gravel. Staff points out  
17 that that is the sale directly to the retail trade, so  
18 we feel that the 10.5 percent would probably be higher  
19 than the other bid, because they were bid on a wholesale  
20 seller.

21 COMMISSIONER ACKERMAN: Is this the one where  
22 there was a question about returning?

23 EXECUTIVE OFFICER NORTHROP: Right. We're still  
24 working on that.

25 COMMISSIONER ACKERMAN: Was that involving the

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1 contractor who allegedly bid on he wrong parcel?

2 EXECUTIVE OFFICER NORTHROP: right.

3 COMMISSIONER MORGAN: I'm satisfied on this  
4 one.

5 CHAIRPERSON D'AGOSTINO: David?

6 COMMISSIONER ACKERMAN: No problem.

7 CHAIRPERSON D'AGOSTINO: No problem.

8 Item 24.

9 EXECUTIVE OFFICER NORTHROP: Mr. Chairman,  
10 Members, Item 24 is an exploratory well approval for the  
11 Shell Oil Company in Ventura County. They have done all  
12 of the EIR work, and the calendar item as proposed calls  
13 for one well, and if it looks promising, three exploratory  
14 wells in that location. And then, an additional well  
15 in another location, and if that looks promising, three  
16 exploratory wells off of that one.

17 Staff feels that we have completed the environ-  
18 mental work, and this is an exploratory drilling program  
19 and should if proved to be fruitful, the staff will return  
20 to the Commission for a drilling program for the field.

21 COMMISSIONER MORGAN: Okay.

22 COMMISSIONER ACKERMAN: No objection to this  
23 item.

24 EXECUTIVE OFFICER NORTHROP: Surprisingly, in  
25 our Santa Barbara hearing, it lasted less than 20 minutes.

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1 We had very few objections on it. The staff and Commission  
2 members had worked with people in that area.

3 COMMISSIONER ACKERMAN: All right.

4 CHAIRPERSON D'AGOSTINO: Without objection.

5 Item 25.

6 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item  
7 25 is a selloff of approximately 1100 barrels of Huntington  
8 Beach oil from a statewide bid of \$1.56125 per barrel over  
9 the base price. There were approximately 15 bidders on  
10 this, and Macmillan Ring-Free Oil Company was the high  
11 bidder.

12 In addition to that, we have a language change.  
13 We'd like to submit it at this time to the calendar item.

14 The original bid, or letter of credit we had,  
15 requested that the amount of security required under this  
16 contract be \$3 million. However, in receiving a letter  
17 from Macmillan and recalculating the exposure, we feel  
18 that two and a half million dollars better covers our exposure.

19 So, we ask that the following be used instead,  
20 or that you authorize the Executive Officer to reduce the  
21 amount of security required under Section 19 of the Royalty  
22 Oil Sales Contract from 3 million to \$2,500,000, and  
23 accept such security in the form of a bond or letter of  
24 credit.

25 COMMISSIONER MORGAN: Is that changing the bid

1 specifications?

2 EXECUTIVE OFFICER NORTHROP: That's changing  
3 the credit. Wait a minute, I'm getting a yes and no.

4 MR. WILLARD: My name is Al Willard.

5 The security requirements under the contract  
6 may be changed at the discretion of the State Lands Commission.  
7 So, under the terms of the contract, you are permitted  
8 to change the amount of bonds.

9 EXECUTIVE OFFICER NORTHROP: The idea is to protect  
10 the State to exposure should something happen to the company,  
11 which is a substantial company. And we don't -- we do  
12 require this on selloff buyers to protect the state.

13 COMMISSIONER MORGAN: But doesn't it cost the  
14 bidder money?

15 EXECUTIVE OFFICER NORTHROP: Yes, it costs the  
16 bidder money.

17 COMMISSIONER MORGAN: Might not it have affected  
18 his bid?

19 EXECUTIVE OFFICER NORTHROP: Certainly. On  
20 the other hand, when you look at a bidder, or somebody  
21 that is bidding, there are some of those about which  
22 we have very little information and nothing is available  
23 because they're closely held companies, or corporations,  
24 or even individuals. So, we need some protection to the  
25 state. The exposure is high when you're looking at 1100

1 barrels a day, or 80 days before we get our money. That  
2 is a horrendous cash flow that we have to cover ourselves  
3 for, and certainly does affect the bid. It's a cost factor.

4 COMMISSIONER MORGAN: You're saying that because  
5 that company --

6 EXECUTIVE OFFICER NORTHROP: No, because we  
7 had originally looked at 90 days exposure, and they have  
8 asked us, in lieu of the fact that it is 80 days exposure,  
9 to reduce it, because it is a cost factor to them and they  
10 were the high bidder.

11 COMMISSIONER ACKERMAN: My question, and perhaps  
12 the same as Susanne has asked, is really, if you had  
13 changed this bid spec, would it have changed the order  
14 in which your bidders ranked, high to low?

15 EXECUTIVE OFFICER NORTHROP: No, it didn't,  
16 because the break between this bidder and the other bidder  
17 was considerable, it was 30 cents difference between the  
18 top.

19 That wouldn't have affected the bid.

20 COMMISSIONER MORGAN: So, it's a savings to  
21 him?

22 EXECUTIVE OFFICER NORTHROP: It's a savings  
23 to him, correct.

24 COMMISSIONER ACKERMAN: The bidders, when they  
25 submitted the change, submitted them on the same specifics?

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1 CHAIRPERSON D'AGOSTINO: That's my understanding.  
2 My understanding was, if one of the other bidders was of  
3 potentially less substance --

4 EXECUTIVE OFFICER NORTHROP: We take the company  
5 into consideration when we make this change. We took the  
6 substance of the company into consideration before we made  
7 the change.

8 CHAIRPERSON D'AGOSTINO: If you're going to  
9 take the substance of the company, isn't that in the bid  
10 specs?

11 EXECUTIVE OFFICER NORTHROP: We don't know how  
12 to quantify a company. I think that may be a problem.

13 COMMISSIONER MORGAN: What happens if we don't  
14 approve this?

15 MR. WILLARD: They'll be obligated to submit  
16 \$3 million.

17 COMMISSIONER MORGAN: They don't drop out of  
18 the bid, though?

19 MR. WILLARD: No, they have deposited a good  
20 faith deposit also of 25,000, so I doubt that they would.  
21 They're interested in oil.

22 COMMISSIONER MORGAN: I would feel more comfor-  
23 table if you could give me something more objective. You're  
24 probably right, there are companies you can depend on,  
25 but there are some you don't know as much about. But,

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1 when you're dealing with public bids, it seems to me that  
2 we have to deal with objective factors, and not with what  
3 we know about how solid a company is.

4 In this particular case, it may not make any  
5 difference, because there is a wide spread.

6 MR. WILLARD: We based our original security  
7 on 90 days, a financing function of that. We came up with  
8 this 80-day number. It's really that our exposure is going  
9 to be approximately 80 days on this matter. That's the  
10 basis for this.

11 MR. EVERITTS: My name is Don Everitts.

12 One of the important points is, you're talking  
13 about 1100 barrels a day. Over a year's time, you're talking  
14 about 400,000 barrels, you're talking about maybe \$8 million  
15 dollars' worth of oil.

16 When you're talking about exposure, you're still  
17 talking about two or three million dollars.

18 That difference is not the cost difference in  
19 the cost to the bond. I mean, it just wouldn't make up  
20 that difference. I think that's pretty important to consider.

21 MR. WILLARD: One other factor is, you know,  
22 when we talk about the bid specifications, all of the  
23 bidders were aware of the fact that the contract provides  
24 that you may change that bond requirement at your discretion.  
25 So, it's not like they were coming in and being blind-

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1 sighted, the low bidders. So, they were aware that it  
2 could be changed.

3 MR. TAYLOR: I think it's important to look  
4 at the calendar item on page 129. You're accepting the  
5 bid and authorizing the Executive Officer to execute it,  
6 and you're also authorizing the Executive Officer to take  
7 the second action.

8 The third item, which Mr. Northrop has read  
9 to you, is under the contract immediately after it's  
10 signed. It's not changing the bid form, it's changing  
11 a provision of the contract, which is allowed to be done  
12 in the contract. So, we are not changing what went out  
13 on the other two items. It is a discretionary item.

14 This is still a very substantial bond. The  
15 difference is 500,000, but it's still a two and a half  
16 million dollar bond.

17 CHAIRPERSON D'AGOSTINO: It's from three to  
18 two and a half?

19 MR. TAYLOR: Yes. So in any event, one of the  
20 concerns seems to be, are you changing the bid form, and  
21 the answer to that is no. You're really changing something  
22 that's allowed to be changed by the contract immediately  
23 after it's signed, so there's no changes in operation.  
24 You're not doing that, if that satisfies your concerns  
25 on that point.

1 COMMISSIONER MORGAN: No, it has nothing to  
2 do with the form. It has to do with what you required  
3 when you went out to bid, that you changed one of the  
4 requirements of when you wrote the contract.

5 MR. TAYLOR: No, the contract has not been changed.  
6 The contract will be signed at \$3 million.

7 COMMISSIONER MORGAN: And then amended?

8 MR. TAYLOR: Then a letter of amendment will  
9 go out, which is provided for in the contract.

10 COMMISSIONER MORGAN: Which amounts to the same  
11 thing. I mean, in this case it may not make any difference,  
12 but as a matter of policy I don't like it. It's poor  
13 bidding practice to go out with one set of specifications,  
14 and immediately on determining who the bidder is, to change  
15 the specifications. It's not a very good approach, I think.

16 Dave, what do you think? I mean, in this case  
17 it may not make any difference, but I need some way to  
18 get the point across.

19 COMMISSIONER ACKERMAN: If things are very close  
20 on a bid, and afterwards the successful bidder makes some  
21 technical adjustment which would, in fact, may have allowed  
22 the second-place bidder to make a better bid, it just seems  
23 that you would make those at the time the bid is submitted.

24 EXECUTIVE OFFICER NORTHROP: May I point out  
25 that this isn't a unique situation. It's been done before.

1 COMMISSIONER MORGAN: That's what I'm afraid  
2 of.

3 EXECUTIVE OFFICER NORTHROP: The request of  
4 the company, as a matter of fact, is not an unusual request.

5 COMMISSIONER ACKERMAN: Does USA Petrochem know  
6 about this change? They were second.

7 MR. WILLARD: No, sir, I don't believe they  
8 do.

9 You'll be approving other contracts here shortly  
10 that they were successful with.

11 COMMISSIONER ACKERMAN: Would you do the same  
12 thing for them on the next one?

13 MR. WILLARD: No, because, again, our exposure  
14 is more close to the 90 days.

15 EXECUTIVE OFFICER NORTHROP: We're just trying  
16 to cover the exposure of the state, and that's really what  
17 a bond is. When we're not that exposed, the staff feels  
18 it's unfair to have them pay for the exposure.

19 MR. EVERITTS: Here's the situation. The 90  
20 days on this particular contract, we can return the oil  
21 immediately on demand to our lessees should something happen,  
22 should this Macmillan default under the contract. We can  
23 make immediate delivery on that oil to our lessees.

24 Under the next contracts, the ones you'll be  
25 looking at, we have to give 30 days notice. So, we would

1 have to be out on the street corner peddling this oil some-  
2 where or another if they defaulted.

3 COMMISSIONER MORGAN: So, the statement since  
4 this company is so solid, or the implication was, that  
5 is really not the reason for the change in the contract?

6 EXECUTIVE OFFICER NORTHROP: No, exposure was  
7 the reason.

8 MR. EVERITTS: We're fully covered on the 80  
9 days.

10 EXECUTIVE OFFICER NORTHROP: All we tried to  
11 do was cover our exposure.

12 COMMISSIONER MORGAN: I don't have a problem  
13 approving it on that basis. I did have problems if you  
14 change after receiving based on who sent it, who submitted  
15 the bid.

16 EXECUTIVE OFFICER NORTHROP: We're just looking  
17 at exposure.

18 CHAIRPERSON D'AGOSTINO: We would have, then,  
19 three recommendations.

20 COMMISSIONER MORGAN: And the third one we don't  
21 have.

22 CHAIRPERSON D'AGOSTINO: And two are on the  
23 agenda, and the third one you presented as an amendment.

24 EXECUTIVE OFFICER NORTHROP: Yes, it would be  
25 an amendment to the contract, to authorize me to amend

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1 the contract and not amend the calendar item.

2 COMMISSIONER MORGAN: With the understanding  
3 that the adjustment is made based on exposure.

4 COMMISSIONER ACKERMAN: I don't have any problem  
5 with that.

6 CHAIRPERSON D'AGOSTINO: There's no problem  
7 with that.

8 Item 26.

9 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item  
10 26 is approximately 600 barrels per day bid by USA Petrochem  
11 Corporation at a proposed site in Huntington Beach.

12 COMMISSIONER MORGAN: Is there a third item  
13 to be added here?

14 EXECUTIVE OFFICER NORTHROP: No, ma'am.

15 COMMISSIONER ACKERMAN: I don't have any problem.

16 COMMISSIONER MORGAN: No.

17 CHAIRPERSON D'AGOSTINO: Without objection.

18 Item 27.

19 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item  
20 27, USA Petrochem Corporation again, approximately 600  
21 barrels per day, but this time \$1,452 per barrel has been  
22 proposed.

23 COMMISSIONER MORGAN: Getting a lot of bids,  
24 wide range of bids, too.

25 CHAIRPERSON D'AGOSTINO: Same people.

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1 Without objection.

2 Item 28.

3 EXECUTIVE OFFICER NORTHROP: Mr. Chairman,  
4 perhaps you'd rather consider Items 28, 29 and 30 as a  
5 unit. It is a lease in Lindsey Slough for, in one item,  
6 86.27 acres, and Items 29 and 30, 152.22 acres and 175.52  
7 acres respectively.

8 In Item 28, 81.38 percent of the net profit  
9 was a 16 and two-thirds royalty and \$20 per acre.

10 The net profit changes to 79.50 percent in Item  
11 29 at 16 and two-thirds, and \$20 per acre per year rental  
12 on 29. So, those two phases remain consistent.

13 In Item 30, the net profit is 79 and a half  
14 percent.

15 It is the staff's opinion that this bid should  
16 be awarded. There has been a question about drill site,  
17 and staff assures me that there is adequate drill site  
18 available for the production of these fields.

19 CHAIRPERSON D'AGOSTINO: Where is Lindsey Slough?

20 We have couple of people from Seahawk in the  
21 audience in attendance.

22 MR. BRASSELTON: Mr. Chairman, Robert Brasselton.

23 I have no statement to make. It was in case  
24 there was any objections, I wanted to be on the record.

25 CHAIRPERSON D'AGOSTINO: Mr. Fenton is also

1 here. Do you have anything you want to present into the  
2 record?

3 MR. FENTON: Not at this time, no.

4 CHAIRPERSON D'AGOSTINO: Anyone else in the  
5 audience? Yes, sir.

6 MR. ERKEL: Mr. Chairman, I put my name in.  
7 Apparently you didn't get it.

8 I'm James L. Erkel, Staff Attorney in the  
9 Corporate Law Department of MCOR Oil and Gas Corporation.

10 With me is our senior land man with MCOR.

11 MCOR Oil and Gas Corporation is developing its  
12 oil and gas leasehold interests in and to Hastings Tract  
13 in Solano County, California. Lindsey Slough constitutes  
14 the southern boundary of Hastings Tract. Title to the  
15 surface and mineral estate in and to Hastings Tract was  
16 severed by deeds conveying the surface thereof excepting  
17 and recerving all interest in oil, gas and other hydro-  
18 carbons within or that may be produced from the property,  
19 and the right to drill and maintain oil and gas wells into  
20 and through the surface of the property.

21 We have received an oil and gas lease from the  
22 owners of the mineral estate which conveys the full and  
23 exclusive right to explore, drill for, produce, extract,  
24 mine, remove and market oil, gas, hydrocarbon substances,  
25 and other commercially valuable substances resulting from

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1 oil, gas, and hydrocarbon operations on or from said lands.  
2 The lease was intended by the parties involved to convey  
3 the entire interest and estate which the mineral owners  
4 have in this transaction.

5 The State Lands Commission has identified the  
6 bids submitted by Seahawk/Casex as having offered the  
7 highest bid factor in net profits. The bid proposals  
8 required bidders to provide evidence of their plan or ability  
9 to obtain all necessary drill sites, easements, and  
10 rights-of-way for drilling and production activity. This  
11 showing is crucial inasmuch as the proposed lease forms  
12 preclude the right to drill any well from the surface  
13 area overlying the leased lands or to use any portion of  
14 the surface area or the subsurface area within 500 feet  
15 of the surface for any purpose. Consequently, a bidder  
16 must establish its right to directionally drill a well  
17 from adjacent lands.

18 Although we have not been allowed to evaluate  
19 the bid package submitted by Seahawk/Casex, it is our belief  
20 that their showing of surface access is based on a contract  
21 with Knob Hill Mines, Incorporated, doing business as  
22 Hastings Island Land Company, which owns the surface  
23 estate in and to Hastings Tract. We believe the contract  
24 purports to convey to Seahawk/Casex, the right to locate  
25 a well pad on Hastings Tract and directionally drill and

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1 bottom a well under Lindsey Slough.

2 MCOR objects to the issuance of oil and gas  
3 leases to Seahawk/Casex covering Lindsey Slough on the  
4 grounds that Hastings Island Land Company cannot grant  
5 such a right, and, even if such a right could be conveyed,  
6 any such directional drilling would constitute a subsurface  
7 trespass as to our leasehold, notwithstanding the surface  
8 holder's.

9 Fundamentally, a grantor may not validly convey  
10 a right in real property greater than that which the grantor  
11 possesses. The deeds severing the surface and mineral  
12 estates in and to Hastings Tract allocated any and all  
13 rights to exploit oil, gas and hydrocarbon substances within  
14 or that may be produced from Hastings Tract to the owners  
15 of the mineral estate, who subsequently granted their right  
16 exclusively to MCOR.

17 Even assuming that Hastings Island Land Company  
18 had such a right to convey, the courts have held that the  
19 directional drilling by a third party of a well located  
20 on land subject to a valid and subsisting oil and gas lease  
21 and bottomed-in land leased by the third party constitutes  
22 a subsurface trespass as to the lessee, who may enjoy  
23 the drilling without regard to the lessor's consent. The  
24 salient point is that such a third party well would  
25 inevitably affect the lessee by draining its leased land.

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1           The possibility that a well directionally drilled  
2 by Seahawk/Casex would drain MCOR's leasehold is substantial.  
3 Any well drilled would immediately obligate MCOR to drill  
4 an offsetting well under its lease.

5           The issue is compounded by the possibility,  
6 which MCOR has already stated to Commission staff, that  
7 certain islands and dredger cuts in Lindsey Slough may  
8 actually constitute part of Hastings Tract and be subject  
9 to our lease.

10           We object to the issuance of oil and gas leases  
11 to Seahawk/Casex in the absence of any clearly delineated  
12 right of surface access, other than the right purportedly  
13 conveyed by Hastings Island Land Company.

14           Should the State Lands Commission accept the  
15 joint bids submitted to Seahawk/Casex as presently constituted,  
16 MCOR will consider all appropriate legal remedies to defend  
17 its leasehold interest in Hastings Tract.

18           Thank you.

19           COMMISSIONER MORGAN: I have a question of the  
20 staff.

21           Did the winning bidders, joint bidders, Seahawk  
22 and Casex, did they satisfy the requirement of having  
23 easement necessary to access?

24           EXECUTIVE OFFICER NORTHROP: Yes, I believe  
25 so.

1 I had staff recheck it as late as yesterday.  
2 Don, would you give us a reading on that, please?

3 MR. EVERITT: Our legal staff has reviewed  
4 the rights to Seahawk so that they have agreed that they  
5 have an easement through the upper 500 feet. A well could  
6 be drilled directionally, assuming that we can get close  
7 enough to the toe of the levee, which would require a  
8 variance, as I mentioned.

9 At this point, we have been talking to the  
10 Reclamation Board. There have been some wells drilled,  
11 in fact, MCOR's wells, but many of them are closer than  
12 the standard 250 foot of the levee. So, it's our plan  
13 that Seahawk does have access to the land.

14 EXECUTIVE OFFICER NORTHROP: May I point out  
15 that the draining that MCOR is worried about, it is our  
16 position that the drilling will not take place on their  
17 leasehold, and they do have rights of access.

18 MR. ERKEL: We understand the approach, and  
19 we require only that the drill not take place on our  
20 leasehold, and as long as this other right of access is  
21 established, we have no objection.

22 EXECUTIVE OFFICER NORTHROP: Perhaps --

23 COMMISSIONER MORGAN: It seems to me that the  
24 bid requires that you are able to get to the oil, and they  
25 have bid with the understanding that they will. And our

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1 staff believes that they have. I don't know if we need  
2 to go into it any further.

3 Do you have any questions?

4 COMMISSIONER ACKERMAN: Not really, other than  
5 it seems fairly clear that you're requesting that your  
6 leasehold not be used to gain the access, and as long as  
7 staff assures us that it's not, then your interests are  
8 being protected.

9 MR. ERKEL: We just want to reiterate our  
10 objection at this point. That's all we're doing.

11 COMMISSIONER MORGAN: We heard you.

12 COMMISSIONER ACKERMAN: All right.

13 CHAIRPERSON D'AGOSTINO: Anybody else in the  
14 audience wish to comment on this item?

15 COMMISSIONER MORGAN: Should we act on these  
16 as a group, 28, 29, and 30?

17 EXECUTIVE OFFICER NORTHROP: Yes.

18 COMMISSIONER MORGAN: I move approval.

19 COMMISSIONER ACKERMAN: Without objection.

20 CHAIRPERSON D'AGOSTINO: Without objection,  
21 28, 29, and 30.

22 Item 31.

23 EXECUTIVE OFFICER NORTHROP: Item 31, Mr. Chairman,  
24 we do not have the luxury at this time of a drill site,  
25 so we had to negotiate with Dow Chemical, an award of an

1 oil and gas lease under Deuel Vocational Institution in  
2 San Joaquin County. The bid was 16 and two-thirds royalty  
3 and \$20 per acre, and the net profit was 30 percent of  
4 the net profit.

5 COMMISSIONER MORGAN: I think our Chairman had  
6 some problems with this one, but we have a timing problem,  
7 don't we?

8 EXECUTIVE OFFICER NORTHROP: Right.

9 MR. RUMP: It's a special problem with the deadline.  
10 With the questions that have arisen, we would recommend  
11 at this time that the matter be denied without prejudice,  
12 and we'll bring it back to the Commission once those items  
13 have been explored.

14 CHAIRPERSON D'AGOSTINO: Is there anyone here  
15 from Dow?

16 COMMISSIONER MORGAN: What's your question?  
17 What's your problem?

18 CHAIRPERSON D'AGOSTINO: One of the problems  
19 that I have is that, apparently, Dow really is in a situation  
20 where they have the only drill sites other than Deuel.  
21 I think that situation means that we are at a very bad  
22 disadvantage, and as a result of that, we're getting only  
23 30 percent net profit, potentially, out of this well, or  
24 these drill sites.

25 It seems to me that this is still a very exploratory

1 area, and is not an area that has known potential for  
2 return. We ought to move a little more slowly. We ought  
3 to try and see if we can get access from Deuel.

4 Deuel is a State facility. We ought to be able  
5 to work with another State agency that would give us drill  
6 sites for a potential higher net return on profit if, in  
7 fact, they do find oil and gas. That was my main objection.

8 MR. DITZLER: May I make one comment?

9 My name's Clark Ditzler. I'm a manager of Dow  
10 Chemical involved in this project.

11 My only concern is that we have in good faith  
12 negotiated from this position with the State for over  
13 15 months to arrive in this position. We have held up  
14 our own activities in the area pending the outcome of this,  
15 which is considerable.

16 It was thought, until this morning, that we  
17 were informed that there may now be some question regarding  
18 a drill site, possible well, that changed the status of  
19 that lease. We have been in contact with the staff only  
20 on a monthly basis, numerous meetings in Long Beach, and  
21 having come to the last possible day this can be considered,  
22 and then we find ourselves in somewhat of a business position  
23 of, you know, we've waited a long time. We've held up  
24 activity on other property and paid rentals on them.

25 So, that's my only concern. It doesn't change

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1 the situation, but please appreciate where we have come  
2 from and how we got here.

3 It's quite surprising to find out that this  
4 may just be totally set aside now after this length of  
5 time.

6 CHAIRPERSON D'AGOSTINO: My understanding is  
7 that if we don't approve it today --

8 MR. TAYLOR: It's deemed approved.

9 CHAIRPERSON D'AGOSTINO: -- it's deemed approved.

10 Because of a problem that we have in terms with  
11 quorum and voting of members, I would suggest that we deny  
12 it but reconsider it. We could reconsider it.

13 MR. TAYLOR: We can deny it without prejudice  
14 and then renew it. You can renew the item at the next  
15 meeting.

16 CHAIRPERSON D'AGOSTINO: That would be my sugges-  
17 tion.

18 MR. DITZLER: In other words, we're getting  
19 an additional month's extension? That would put this  
20 beyond --

21 MR. TAYLOR: Not an extension in that sense.  
22 It's a denial.

23 COMMISSIONER MORGAN: From a business point  
24 of view, it's an extension. From a legal point of view,  
25 it is not.

1 MR. DITZLER: I had the impression that, legally,  
2 if it was not acted upon today, that the project was  
3 terminated.

4 EXECUTIVE OFFICER NORTHROP: No.

5 CHAIRPERSON D'AGOSTINO: Let's go off the record.

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

8 CHAIRPERSON D'AGOSTINO: Can we get back on  
9 the record.

10 COMMISSIONER MORGAN: Before he leaves, the  
11 staff's been involved with the Institution for some time,  
12 I assume?

13 EXECUTIVE OFFICER NORTHROP: Yes.

14 COMMISSIONER MORGAN: Do you know if they looked  
15 into the question that Carl is raising about location of  
16 the well?

17 EXECUTIVE OFFICER NORTHROP: We had communication  
18 dated September 21, 1980. It's a response dated that time.  
19 I thought there was a copy here in which they indicated  
20 at that time -- here's a copy of that communication we  
21 got back.

22 COMMISSIONER MORGAN: There were no drill sites  
23 available, is that your answer to the question?

24 EXECUTIVE OFFICER NORTHROP: That was the answer  
25 the staff received when we first initiated that program.

1 We've proceeded on that basis and negotiated.

2 COMMISSIONER MORGAN: So, you don't know if  
3 there are some reasons why drill sites cannot be located  
4 there?

5 EXECUTIVE OFFICER NORTHROP: No, ma'am.

6 COMMISSIONER MORGAN: On their grounds.

7 EXECUTIVE OFFICER NORTHROP: It seems reasonable  
8 that it could be, if they wanted it to be located there.  
9 It's not impossible, the fencing --

10 COMMISSIONER MORGAN: Is another month going  
11 to give us a chance to look into this or not?

12 MR. RUMP: Unfortunately, consultation with  
13 staff as been that the environmental situation as well  
14 as with the Department of Corrections and so forth, it  
15 would probably a longer period than 30 days to get back  
16 on this.

17 MR. EVERITTS: We're thinking four to six months.  
18 We'd have to go through the environmental process again,  
19 and certainly have to consult with the agency.

20 COMMISSIONER MORGAN: You're assuming that they  
21 can drill on their own property?

22 MR. EVERITTS: No, what I'm saying, first of  
23 all, as a matter of law, we have asked the agency, and  
24 the agency owns the surface rights.

25 We were initially granted a 90-day extension.

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1 Now, in denying this thing today, you've got  
2 to go through a new application. You'll have to go through  
3 all the affected agencies, ask for their common consent,  
4 and that involves actual in-house work. So, we would  
5 estimate a minimum time of three months, and then with  
6 all those other factors, it's going to be four months.

7 COMMISSIONER MORGAN: Waiting for that, it would  
8 be four months?

9 MR. RUMP: For us.

10 COMMISSIONER MORGAN: But there still is a  
11 possibility that we could expect them to wait that long?

12 MR. EVERITTS: If, in fact, we can't get a drill  
13 site, if they're still interested in our proposal, they  
14 can proceed. If you could get a drill site, then you probably  
15 don't have the option to go out into the competitive bid,  
16 and that could be a long, long time.

17 COMMISSIONER MORGAN: Interesting.

18 COMMISSIONER ACKERMAN: Is there any way to  
19 put a little pressure on Deuel Vocational Institution and  
20 still approve this? That way they could go ahead and proceed  
21 with their work. Somehow we put pressure on Deuel to put  
22 the circumstances --

23 MR. DITZLER: It seems to me we're in a position  
24 of doubting what Deuel has told us exists. We've covered  
25 that.

1 MR. EVERITTS: They're suggesting they might  
2 have a little more leverage than I had.

3 CHAIRPERSON D'AGOSTINO: I can't understand  
4 why the staff, why we haven't explored the possibility  
5 of sites at Deuel. I don't know if they're worried about  
6 environmental reasons for Deuel. I look at the map, and  
7 I don't see where there would be any particular objections  
8 to the drill site next to the disposal pond, for example.

9 COMMISSIONER MORGAN: They may be worried about  
10 bringing people into a secure area.

11 MR. EVERITTS: That's basically it.

12 Fish and Game won't let us go into some of their  
13 land areas because they don't want us to scare the birds.

14 CHAIRPERSON D'AGOSTINO: It just seems that  
15 the objection that I have is that we're getting a situation  
16 where we're basically entering into a negotiating agreement  
17 with basically no competition because of the absence of  
18 a drill site. I do not see any compelling need to rush  
19 into this.

20 MR. EVERITTS: I guess, if it's a compelling  
21 need, that somebody is able to explore a private land,  
22 and we want to be able to tie the package together. This  
23 is an exploratory well. There are no known reserves in  
24 the area.

25 CHAIRPERSON D'AGOSTINO: I understand that you

1 want to explore, and they would like to put together a  
2 total package. But I don't see a compelling reason for  
3 the State to accept a very significantly lower figure than  
4 we're accepting in other leases all over. What sort of  
5 net profits? In the leases earlier, we were looking at  
6 79, 80 percent.

7 MR. EVERITTS: That's the difference. That's  
8 why I say if in fact a discovery is made near this facility.  
9 Obviously we wouldn't be selling for 30 percent or 35 percent  
10 of the net, either.

11 The thing that makes the waterways valuable  
12 is that there is production on both sides of the river,  
13 so undoubtedly there's something in the middle. People  
14 don't mind paying a bit of royalty for valuable property.

15 That's not the same thing here. The number  
16 that we negotiated is probably fair to both sides for a  
17 wildcat prospect, a minimum wildcat prospect. In our  
18 judgment, this is a minimal wildcat project. If there is  
19 a discovery, it wouldn't be minimal.

20 COMMISSIONER MORGAN: How long does it take  
21 to find out?

22 MR. EVERITTS: I don't know what the program  
23 is. I presume they'll go ahead if we don't, eventually.  
24 They'll also drill as far away from us as they can on their  
25 place so we won't own any more than we can get.

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1 COMMISSIONER MORGAN: In your plan, how long  
2 would it be?

3 MR. EVERITTS: One year, and one year drilling  
4 time.

5 MR. DITZLER: Yes, the lease provides for dilling  
6 within a period of one year or we surrender.

7 COMMISSIONER MORGAN: I don't understand why  
8 the staff says it would take four months before the item  
9 could be brought back.

10 MR. TAYLOR: Because we denied it. It's a new  
11 application.

12 What we have overlooked in our answer to you  
13 is the fact that they have to comply with the environmental  
14 requirements.

15 MR. RUMP: It certainly requires that length  
16 of time.

17 EXECUTIVE OFFICER NORTHROP: This is the last  
18 meeting.

19 MR. TAYLOR: When does the time run out?

20 MR. EVERITTS: Somebody said tomorrow.

21 He states four months, and I agree with him.  
22 No question about it.

23 MR. SANDER: My name is Dwight Sander.  
24 Assembly Bill 884, Chapter 1200, provides for the processing  
25 of applications, and provides 105 days for notification

1 of agency approval of the document for the lead agency  
2 to make a decision. That is within the available one year.

3 The Commission has received a one-time permissible  
4 up to 90 days extension, which will run out April 30th,  
5 which is tomorrow.

6 If the project is not acted upon by this  
7 Commission today, as has been said before, it's deemed  
8 approved. If the Commission denies it without prejudice,  
9 the applicant must, in effect, start the process once again.

10 So, even though there's an existing application  
11 as of today, with the proper verbage and proper information,  
12 even if there's a Negative Declaration that's been circulated  
13 to the proper channels and in the proper manner, that process  
14 must again be repeated with the same material. Unfortunately,  
15 the law does not provide for a short end or a recirculation  
16 that is less than the one time. That's basically what  
17 we're faced with.

18 COMMISSIONER MORGAN: All right.

19 COMMISSIONER ACKERMAN: We lose four to six  
20 months with the reviews during the period that you're  
21 waiting to get a lease underway.

22 MR. EVERITTS: You'd lose four to six months.  
23 If it turned out we could get a drill site, then we'd have  
24 to do a little bit different kind of program. Well, the  
25 bidding process.

1 CHAIRPERSON D'AGOSTINO: Is it \$20 an acre we're  
2 renting?

3 MR. EVERITTS: That's average.

4 EXECUTIVE OFFICER NORTHROP: That's the revenue  
5 loss.

6 MR. EVERITTS: Yes, immediate loss.

7 CHAIRPERSON D'AGOSTINO: If you get the production,  
8 you're losing a lot more if you look at the difference  
9 between 30 percent and 80 percent on net profit. That's  
10 the point I'm making, that I think we're better off to  
11 lose \$20 an acre rental for the possibility of getting  
12 a competitive bid that would give us something more than  
13 30 percent on that profit.

14 MR. EVERITTS: You're deferring \$20 an acre  
15 anyway. That's no real loss.

16 COMMISSIONER MORGAN: What's the going rate  
17 for our exploratory wells?

18 MR. EVERITTS: This is a going rate. It's a  
19 six plus 30 percent of net profit, which is about the same  
20 as 35 percent of the gross. That's about what we've had  
21 on other exploratory leases.

22 CHAIRPERSON D'AGOSTINO: If we had other drill  
23 sites available, what would you expect them to be?

24 MR. EVERITTS: I'd expect it to be darn near  
25 the same thing, honestly. It's a statistical approach to

1 what we think it's worth, and I think we do it the same  
2 way anybody else would.

3 We gave the thing a four and a half probability,  
4 and that discounts your reserve quite a bit.

5 COMMISSIONER ACKERMAN: You mean if we had our  
6 own drill sites on the institution ground, likely you would  
7 come up with the same figures?

8 MR. EVERITTS: I would guess. I don't really  
9 know. It could be higher. I know we've had some higher.  
10 It seems logical that you're going to get something higher.  
11 I don't know what it would be.

12 COMMISSIONER MORGAN: Is it possible to have  
13 the test drill sites in one location, and if they find  
14 something, to move to Deuel, to move on a site at Deuel?

15 MR. TAYLOR: That doesn't correct the problem.

16 CHAIRPERSON D'AGOSTINO: We've already given  
17 up the leases at this point.

18 MR. TAYLOR: We've already leased the property.

19 COMMISSIONER ACKERMAN: How long is the term  
20 of the lease, one year?

21 MR. EVERITTS: No, the lease is usually three  
22 years, just exploratory.

23 COMMISSIONER MORGAN: I thought this lease,  
24 this gentleman said the lease --

25 MR. EVERITTS: No, the drilling requirement.

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1 EXECUTIVE OFFICER NORTHROP: The drilling require-  
2 ment, you must drill within one year.

3 MR. EVERITTS: Yes, but he may want the site  
4 for one year or two years.

5 COMMISSIONER MORGAN: Is there any reason why,  
6 six months from now, they should continue to participate  
7 in this agreement? Is there enough hint of oil there that  
8 they would be interested in coming back after they've had  
9 a chance to look at that?

10 MR. EVERITTS: That's something you'd have to  
11 ask them. As he pointed out, they've waited a long time  
12 to develop their interests. They may want to go out and  
13 do that. If they don't get a chance, all we've got is  
14 20 bucks an acre, which isn't any big deal.

15 COMMISSIONER MORGAN: Well, assume that they  
16 stick with the same deal?

17 MR. EVERITTS: Yes.

18 COMMISSIONER MORGAN: And I don't know why they  
19 should. I'm trying to figure out some way -- these guys  
20 aren't much help -- to continue the matter without  
21 instituting a new four-month period.

22 MR. TAYLOR: There's already an extension of  
23 time given under the statute of 90 days. That's all that  
24 the statute provides for. The party could give an additional  
25 extension of time that would be beyond the statute, which

1 the statute, what the statute constituted. And I would  
2 have a problem at this point, then, as to whether or not  
3 it was deemed approved, or whether the waiver would preclude  
4 us from raising that issue. That would be your gamble  
5 if he would give you the waiver.

6 MR. TROUT: Perhaps one more alternative, and  
7 I know Dow is unprepared for this, but perhaps they could  
8 offer a higher percentage.

9 CHAIRPERSON D'AGOSTINO: What I have objected  
10 to is the fact that there is no competitive bidding from  
11 the other side. I think that I might object that we're  
12 now --

13 MR. DITZLER: The terms of the lease were  
14 essentially proposed by the State Lands Commission and  
15 agreed to by Dow after much analysis of the situation.

16 I think Mr. Everitt posed a statistic which  
17 is well worth considering. He said the probability of  
18 success, of finding commercial valuable hydrocarbons on  
19 this property, is four and a half percent, which says that  
20 the chance of facing nothing is 95 and a half percent.  
21 And we feel the same way. It's highly exploratory, a  
22 high risk situation.

23 The 30 percent, to us, seemed like very high  
24 net profit under the circumstances, considering the fact  
25 that the property value, estimated from all the technology

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1 we have right now, the prospects there are certainly not --  
2 we have drilled three drill holes in the vicinity of this.  
3 None immediately offsetting the property, but --

4 CHAIRPERSON D'AGOSTINO: What's your pleasure?

5 COMMISSIONER ACKERMAN: What's your pleasure?

6 COMMISSIONER MORGAN: Our pleasure is to avoid  
7 six months and coming back with the same issue before us,  
8 which is a possibility, it seems to me, since we have not  
9 had a response to the substantive question that was requested  
10 last fall, about whether the agency had considered using  
11 their own property.

12 Is it possible to approve this with the under-  
13 standing that the agency prove to the Commission's satisfac-  
14 tion that it does not have a site available, and if it  
15 cannot prove that, then it's denied?

16 MR. TAYLOR: I think you've still got the problem  
17 of the statute. You've got to act within that period of  
18 time.

19 I think the only alternative you have, which  
20 is a risky one for you if you want the matter put over,  
21 is to get a waiver from Dow for another 30 days, with the  
22 caveat to you that, in litigation, we would assert that  
23 it was a knowledgeable waiver, and they're estopped from  
24 the provisions of the statute, and they would raise whatever  
25 arguments they have as to their ability to give that kind

1 of a waiver.

2 Our position would be that a party can waive  
3 benefit of any statute, and that's what they're doing here.  
4 The question is, since the statute does address the question  
5 of extension of time, and only provides for one up to 90  
6 days, whether you can give that kind of a waiver, and there  
7 would be a risk in the Commission taking that. The down-  
8 side of that risk could be a deemed approved.

9 EXECUTIVE OFFICER NORTHROP: May I make just  
10 a comment or suggestion.

11 In light of the fact that tomorrow is the deadline,  
12 perhaps you could authorize the Executive Officer to  
13 complete this negotiation with Dow, if Dow indicated they  
14 did want to have it, to allow me to execute it tomorrow.  
15 If not, if Deuel wanted to do it, then --

16 MR. DITZLER: In other words, you're saying  
17 we could resolve the question by tomorrow?

18 EXECUTIVE OFFICER NORTHROP That is what I'm  
19 trying to do.

20 MR. DITZLER: Does it give a preference --

21 EXECUTIVE OFFICER NORTHROP: We can't get the  
22 Commission together in a body tomorrow. That's what I'm  
23 trying to get around.

24 MR. DITZLER: There are obvious business concerns.

25 MR. TAYLOR: You could word the matter this

1 way, that you could vote to approve this, provided that,  
2 by the close of business tomorrow, the Executive Officer  
3 has obtained confirmation from the Department of Corrections  
4 that no drill site is available. If, in the event that  
5 he finds that there is a drill site available, by the  
6 close of business tomorrow, then the action of the Commission  
7 would be to deny without prejudice this application.

8 I'll have to work up language, but I think it  
9 gives you the thought.

10 MR. DITZNER: That would be our preference,  
11 rather than having an extension of time of any sort.

12 MR. TAYLOR: It'll be self-executing. Self-  
13 executing one way or the other. The Executive Officer  
14 must contact the Department of Corrections and get an answer  
15 by tomorrow. If he gets a negative answer or no answer,  
16 then the matter is approved. If he gets an answer that  
17 they're willing to provide a site, the matter is automatically  
18 disapproved without prejudice.

19 CHAIRPERSON D'AGOSTINO: If nothing happens  
20 by tomorrow, it's automatically approved anyway.

21 MR. TAYLOR: Yes, that's also true, but what  
22 we're directed by this motion is the fact that, if the  
23 Commission does not want it to go automatically but wants  
24 to put a hold on it, if there's a possibility of getting  
25 a site, that would kill the project. That's the advantage

1 of the motion that's been proposed.

2 COMMISSIONER ACKERMAN: I'm reluctant in  
3 disapproving it if there's no chance of getting drill site.  
4 If there's a chance of getting a drill site there, then  
5 I think we should explore that to the fullest extent. I'm  
6 receptive to the language that was just outlined.

7 COMMISSIONER MORGAN: That would give them a  
8 day to try to verify.

9 COMMISSIONER ACKERMAN: If we can verify we  
10 can get a drill site, or hopefully we can negotiate one  
11 very quickly, then that's the direction we ought to go.

12 MR. TAYLOR: Then the permit would be denied.

13 COMMISSIONER ACKERMAN: If we don't do it, I  
14 don't know whether it's fair to deny Dow because basically  
15 the facts haven't changed, and they've missed the  
16 opportunity to drill their exploratory well. I don't think  
17 that's fair to them.

18 MR. DITZLER: That is acceptable to us, because  
19 it gives us -- by tomorrow, we'll know where we stand.  
20 We may move ahead one way or another then.

21 COMMISSIONER MORGAN: All right.

22 MR. TAYLOR: Mr. Northrop will give you a call.

23 EXECUTIVE OFFICER NORTHROP: Don will probably  
24 give you a call tomorrow.

25 MR. DITZLER: Thank you.

1 CHAIRPERSON D'AGOSTINO: Where will you be around  
2 midnight tomorrow night?

3 MR. DITZLER: Call me earlier, please.

4 CHAIRPERSON D'AGOSTINO: Item 32.

5 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item  
6 32 is approval of the award of a geothermal resources lease  
7 with a 12.5 percent royalty, net profit of 70 percent for  
8 the Geysers Steam Field in Sonoma County.

9 COMMISSIONER MORGAN: This was bid?

10 EXECUTIVE OFFICER NORTHROP: Yes, ma'am.

11 COMMISSIONER MORGAN: Sounds good.

12 CHAIRPERSON D'AGOSTINO: Without objection.

13 Item 33.

14 EXECUTIVE OFFICER NORTHROP: Mr. Chairman,  
15 Item 33 is an assignment by the Domenichellis to Aminoil  
16 USA. The Domenichellies were the land owners, and they  
17 matched a 12 and a half percent plus 55 percent net profit  
18 bid. They're coming before us now to sign this geothermal  
19 lease to Aminoil USA. Staff recommends the assignment.

20 COMMISSIONER MORGAN: Okay.

21 CHAIRPERSON D'AGOSTINO: Without objection.

22 Item 34.

23 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item  
24 34 is the Eleventh Modification of the Long Beach Operations  
25 Plan of Budget.

1 Mr. Thompson, would you speak to this, please.

2 MR. THOMPSON: This is a ratification of executive  
3 action of approving a well be redrilled from one zone to  
4 another zone. It has no augmentation of funds transferred  
5 from within the budget.

6 CHAIRPERSON D'AGOSTINO: Any problem with that?

7 COMMISSIONER ACKERMAN: No problem.

8 CHAIRPERSON D'AGOSTINO: Without objection.

9 Item 35.

10 EXECUTIVE OFFICER NORTHROP: Mr. Chairman,

11 Item 35 is the 1981-82 Plan and Budget for \$181,142.

12 Mr. Thompson is going to show us how he's going to spend  
13 the money.

14 MR. THOMPSON: I believe you've all received  
15 the booklet of the budget which is the brown one. You  
16 have also with you a set of copies of this red-covered  
17 back here. These curves are identified in the lower right-  
18 hand corner with numbers in case we care to enter those  
19 on.

20 The plan of development and operation budget  
21 over \$181 million, there's almost \$48 million in this  
22 capital investment, \$128 million for expenses, and \$6  
23 million administrative overhead.

24 In this first graph in your book with the brown  
25 cover, you can see these breakdowns in the cross-hatched

1 area. The present year is the second one from the right,  
2 and the budget runs to the far right. The expense portion  
3 is down here in the open cross-hatched area, and the  
4 investment and administrative overhead.

5 In the current year, it is represented on the  
6 cross-hatched area, it is estimated to carry out to be  
7 about 25 or \$30 million, and continues into the next year's  
8 budget.

9 The next curve you have in your book is  
10 operating expenses. That's the \$104 million. That has  
11 no investment taxes or administrative overhead. This is  
12 your direct operating costs from your wells.

13 Now, in the plan and budget, there are economic  
14 projections in Items C1 through C4. They're in the brown  
15 book that you have here. They're after page 51. These  
16 are the estimates of production of oil, gas and water,  
17 costs such to that. Then you can see the difference of  
18 the net revenue you get. There is consideration of windfall  
19 profits tax. That's the curve in your book again, and  
20 you see \$660 million anticipated gross revenue with your  
21 \$180 million budget fund. Again, this \$660 million is  
22 without consideration of the windfall profits tax and within  
23 the various parties.

24 Now, this in the past has been prepared jointly.  
25 We have a little difference of opinion as to the amount

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1 of gross value and increased royalties projected on this  
2 one.

3 Over on the right-hand side there, on the wall,  
4 you can see some curves and trends of the way costs have  
5 been going here. The one on the far left is translated  
6 in dollars to barrels. And the gross revenue is up in  
7 red there, and you can see, when we prepared this year's  
8 budget, we anticipated the revenue would look like the  
9 broken line there. The reason for the difference for that,  
10 primarily, is that oil price is not going up as fast as  
11 we estimated. You can see the difference in the slope.  
12 We had thought that the oil price would shoot up to ten  
13 percent per year. That has not quite reached that.

14 You can see the drop of the line here again,  
15 where we've estimated 10 percent in this coming year's  
16 budget, and we may have difficulty reaching that. Again,  
17 it provides an adjustment in which they may come all within  
18 one time, or we may get 50 cents or a dollar, which made  
19 for a stair-step reflection there. So, it's a little hard  
20 to estimate.

21 On a dollar-per-month basis, we can see the  
22 second curve there, both in revenue and costs. Again,  
23 you see the projections for the budget we're anticipating  
24 on the broken line. The biggest part of this, of course,  
25 is in drilling expenditures. Then we come to the question

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1 of justification of these wells. Here's a curve which  
2 shows the drilling structure, the dollars here, number  
3 of rigs, and basically over the past year, this again is  
4 an estimated production of simply laying the pipe. This  
5 is part of the production of the wells. This is the  
6 estimate, then, in 1979, if they had not been drilled  
7 or redrilled. That's the extrapolation of that. We took  
8 that and transferred that over into the rate curve. That's  
9 this right here.

10 Here are the wells since 1977. Had we not drilled  
11 or redrilled those, this is the course we would have gotten.  
12 At the current time, we're producing about 15,000 barrels  
13 a day more. That is the message.

14 I think in this point in time I'll wrap this  
15 up. The power curve up there shows where the electrical  
16 energy has been going. Increase in that.

17 I think that's about all the recommended approval  
18 of that budget. We think the funds are adequate. There  
19 are surplus funds in a couple of accounts, depends on how  
20 much gross value is limited and ingested.

21 COMMISSIONER MORGAN: What happens if we decide  
22 to continue our current wells and didn't reopen any of  
23 the old ones?

24 MR. THOMPSON: We're back to the same situation  
25 that took place before, that you would start

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1 dropping off the rate. You would again start to come down  
2 like this. You can see that as a trend, this one over  
3 here on the far right, what's happened in the past when  
4 you stopped drilling. You have some reduction in the amount  
5 of drilling to repair those wells, then your production  
6 rate falls off.

7 COMMISSIONER MORGAN: Are you opening new wells?

8 MR. THOMPSON: Yes, a combination of new wells,  
9 and drilling, and repairing old wells.

10 COMMISSIONER MORGAN: What would happen to the  
11 revenues to the State if you held up on drilling new wells  
12 for one year?

13 MR. THOMPSON: You would not spend approximately  
14 \$50 million. It's not really \$50 million, because there's  
15 overhead. Those people will still be there, drilling  
16 crews, everything else. You have to pay that, the engineers,  
17 the project supervisors, things like that. So, only your  
18 direct costs for the crews that you would lay off and the  
19 extra rigs. So, by the time you scale that down, you would  
20 now be down closer to maybe \$20 million, and you would  
21 pay a penalty of that for every year in the future.

22 MR. TAYLOR: I should remind the commission  
23 that there is a lawsuit pending against the state during  
24 a period when there was allegedly no production, no increase  
25 of new wells. And the contention of the oil companies

1 that are suing the State in that case is that good oil  
2 field practice requires taking a field out to its maximum  
3 potential development in an orderly process.  
4

5 The existence of that litigation, and the potential  
6 if you're considering just letting things, you know, just  
7 pulling off some of the new drilling, of an additional  
8 claim by the oil companies in those situations, that should  
9 be factored into your thinking in connection with that.

10 MR. THOMPSON: It should rebate now that service  
11 is underway, to see how many drillings on the wells have  
12 been necessary, and the economic justification. Therefore,  
13 some range of estimates, like now there may be as many  
14 as 14 drilling rigs might be required in the unit to drill  
15 these 50 wells up within a certain period of time. That's  
16 probably a little on the high side. Again, you may still  
17 be drilling 7 or 17 years from now. Most studies are finished  
18 within four or five months.

19 COMMISSIONER ACKERMAN: No problems.

20 CHAIRPERSON D'AGOSTINO: Without objection.  
21 Next item.

22 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item  
23 36 is a sell-off of approximately 250 barrels a day from  
24 the Long Beach Tract No. 2 of the Long Beach Unit. The  
25 highest bidder was Fletcher Oil and Refining Company at  
1.75. The staff recommends approval.

1 MR. THOMPSON: That is important. The bond  
2 posted there is \$500,000.

3 CHAIRPERSON D'AGOSTINO: How many barrels a  
4 day?

5 MR. THOMPSON: Two hundred fifty.

6 EXECUTIVE OFFICER NORTHROP: Two hundred fifty;  
7 12.50, it's a percentage figure.

8 CHAIRPERSON D'AGOSTINO: Any problem with that?

9 COMMISSIONER MORGAN: No.

10 CHAIRPERSON D'AGOSTINO: Item 37.

11 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item  
12 37 on Capital Improvement Project Shoreline Aquatic Park,  
13 Mr. Thompson also has a member of the City of Long Beach  
14 here, I believe.

15 MR. THOMPSON: This is a notification from the  
16 City of Long Beach. We're going to spend their money for  
17 the operating fund. The Commission finds that this is  
18 authorized under Chapter 128/'64, Section 6. We recommend  
19 the approval.

20 COMMISSIONER MORGAN: What is this?

21 MR. THOMPSON: This is off setting the shoreline  
22 there, and there should be a map there. If you look at  
23 the map there, you'd see a new marina, downtown marina,  
24 that's being constructed. It's just right off the downtown  
25 park there.

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1           You can see Island Grisson off to the right  
2 of that, right of that lagoon area, and the convention  
3 center.

4           CHAIRPERSON D'AGOSTINO: There's no State monies?  
5 We're just finding --

6           MR. THOMPSON: Making a finding that it is allow-  
7 able under Chapter 138. If you take no action, it's going  
8 to go right through anyway. You have to do something.

9           CHAIRPERSON D'AGOSTINO: Without objection.  
10 item 38.

11           EXECUTIVE OFFICER NORTHROP: Item 38, Mr. Chairman  
12 will be addressed by Mr. Rump.

13           MR. RUMP: Item 38 is authorization to file  
14 a disclaimer. Essentially this is a disclaimer ascertaining  
15 that the State Lands Commission has no interest in the  
16 property.

17           COMMISSIONER MORGAN: Okay.

18           COMMISSIONER ACKERMAN: Okay.

19           CHAIRPERSON D'AGOSTINO: Item 39,

20           EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item  
21 39 is off calendar, I'm sorry.

22           CHAIRPERSON D'AGOSTINO: Item 40.

23           EXECUTIVE OFFICER NORTHROP: Item 40 is the  
24 Marine Terminal Safety Program, and Mr. Kent Dedrick, who  
25 was the director of our Terminal Program, will make a

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1 presentation on this briefly.

2 MR. DEDRICK: My name is Kent Dedrick. National  
3 Safety Coordinator.

4 You've just been given an enormous volume of  
5 material, and you really don't have to read it. The big  
6 fat one is the training manual that we produced in coopera-  
7 tion with the California Maritime Academy in order to train  
8 operators of terminals consistently across the board so  
9 that we all know that all of the terminal operators are  
10 getting solid training in every aspect. A lot of the  
11 terminals presently have existing training programs, but  
12 they seem to be spotty. Some of them appear to be very  
13 good, and others are a little short. So, we've set this  
14 up, but in cooperation with the Maritime Academy.

15 The Maritime Academy thinks this sort of training  
16 program will fly. It will be the first one in the United  
17 States on a public basis, so that any member of the public  
18 can go.

19 I think if you do go look at that big, horrible  
20 thing, you know, the manual you've been handed, you could  
21 probably just pick out the table of contents and just get  
22 an idea as to the depth of material that's given. That  
23 was one of our tasks in this whole project.

24 Another one is to inspect a lot of terminals  
25 that are under lease from the State Lands Commission and

1 see how they're operating. That inspection process is  
2 still going on. It started last July. We've perhaps done  
3 about 150 inspections by this time.

4 Of course, after you start looking at a terminal  
5 time and time again, the terminal itself becomes kind of  
6 a known quantity, because you know every pipe and bolt  
7 in the place. But, the ships coming in are different,  
8 and of course that's where a lot of the action is, and  
9 where some of the more important problems can occur, such  
10 as explosions and spills.

11 I think in the interests of brevity, I can just  
12 wrap this up by telling you what the other task was, and  
13 that deals with the standard operations manual. Now, what  
14 an operations manual is is nothing more than a document  
15 that is prepared by the terminal firms that require them.  
16 It says what we're going to do in the transfer of oil.  
17 Every time they transfer oil, they're going to go through  
18 the procedures in the manual. There's a white official  
19 document that requires the Coast Guard to review these  
20 lease covenants. So, in order to see to it that these  
21 terminal manuals, which will be due next January for  
22 our leased areas, in order to see that there's some consistency  
23 in department coverage, we've prepared these guidelines,  
24 and that's that smaller document I've given to you.  
25 They have not been distributed yet. As soon as we can

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1 get them distributed in enough quantity, why, they'll go  
2 out to all the terminals.

3 Incidentally, in terms of deadlines of work  
4 going on, we now expect that that training class, the Maritime  
5 Academy will be giving in September of this year for the  
6 first time. They want a little time to advertise it through  
7 all the maritime trades, and get a brochure out, and all  
8 those matters.

9 I think that more or less wraps up what I have  
10 to say, except we're out of money.

11 MR. EVERITT: Legislation.

12 MR. DEDRICK: Yes, legislation.

13 We're presently dealing with 23 terminals in  
14 the State of California. Those are the ones on leased  
15 lands.

16 Now, there are a total of 58 or 60, depending  
17 on how you count the State totally. That means there are  
18 about 35 we're not looking at. The most important are  
19 the Port of Los Angeles, Port of Long Beach, Port of  
20 Richmond.

21 With our program, I think we've hit an area  
22 that hasn't received much attention in the past. That  
23 is, the terminals along the Carquinez Straits in San Francisco  
24 Bay, and also the offshore terminal in the Southern California  
25 coast.

1           Now, the legislative analyst, he'd love us to  
2 have a nice, consistent program that covered everybody,  
3 took care of everybody. Unfortunately, well, we don't  
4 have that.

5           Now, one thing we can do is sponsor legislation  
6 that would bring in these other terminals, these other  
7 35 or so terminals. It could at least require that they  
8 prepare their operations manuals in accordance with these  
9 guidelines that we've prepared. Again, I think that would  
10 be a very helpful thing to do, and it wouldn't be too much  
11 of a burden on anybody, as you can see.

12           EXECUTIVE OFFICER NORTHROP: Thank you, Kent.

13           As Kent has indicated, we've run out of budget  
14 funds to operate this program. The Legislature has indicated  
15 they would not renew the funding source.

16           COMMISSIONER MORGAN: Have we finished our work?

17           EXECUTIVE OFFICER NORTHROP: We have finished  
18 the work as far as the manuals, as far as the training  
19 is concerned. However, I don't think, as long as there's  
20 a potential for a blowup because of not following these  
21 kinds of regulations, that I don't think our work is  
22 finished. Someone has to pick the work up from there.  
23 It's us or someone else.

24           MR. EVERITT'S: Something we have to add, though,  
25 we have just now, through negotiations with the companies,

1 renegotiated terminal leases requiring this type of thing,  
2 requiring a manual, certain checkoff list. If we lost  
3 our funding, lost our program, there's no way we're going  
4 to know whether they're following the lease terms  
5 or not. I don't know what we're going to do. If they  
6 say we don't have a program, we've wasted our time messing  
7 around with those leases, I think.

8 COMMISSIONER MORGAN: Have they already  
9 acted on this?

10 EXECUTIVE OFFICER NORTHROP: On the subcommittees.  
11 The resource agency supported, the Governor's Office  
12 supported it. But the subcommittees on both sides indicated  
13 that -- Senator Boatwright has 15 of the 23 terminals in  
14 his district, and he was not present at the subcommittee  
15 hearing when it was discussed. So, it was acted on by  
16 Senator Briggs and Senator Presley, but Senator Boatwright  
17 didn't have any input. So right now, it's out on both  
18 sides.

19 COMMISSIONER MORGAN: What happened in the LA  
20 area? Wasn't there a spill recently?

21 EXECUTIVE OFFICER NORTHROP: There was a spill  
22 as of last Friday.

23 MR. THOMPSON: Yes, it was. I don't know what  
24 the size of it is.

25 MR. EVERITTS: It was around 4,000 barrels,

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1 pretty good sized one. Turns out it was mostly -- it was  
2 in the terminal. Very few, approximately 50 barrels in  
3 the water, something like that. Their line parted in the  
4 tank battery in the uplands just while they were transferring.  
5 They noticed it before they could catch it.

6 EXECUTIVE OFFICER NORTHROP: It was 168,000  
7 gallons.

8 COMMISSIONER MORGAN: Would your program have  
9 presented that from happening?

10 MR. EVERITTS: A full program might very well  
11 have, because with a full program, we would be inspecting  
12 that. We've been doing makeshift with a very small program.

13 EXECUTIVE OFFICER NORTHROP: Starting at page  
14 257 and 8 in the calendar, it gives a sample of just one  
15 man's inspection.

16 Thank you very kindly. That was very informative.

17 CHAIRPERSON D'AGOSTINO: Anything else on the  
18 agenda?

19 EXECUTIVE OFFICER NORTHROP: The closed session,  
20 there is no closed session. The agenda is complete as  
21 far as staff is concerned.

22 COMMISSIONER MORGAN: How come Sue's still here?  
23 Are they coming back?

24 CHAIRPERSON D'AGOSTINO: We stand adjourned.

25 (Thereupon this meeting before the

1 State Lands Commission was adjourned  
2 at approximately 12:50 p.m.)

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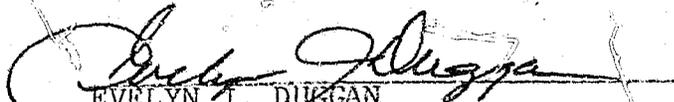
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I, EVELYN J. DUGGAN, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing State Lands Commission meeting was reported in shorthand by me, Evelyn J. Duggan, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 6<sup>th</sup> day of May, 1981.

  
EVELYN J. DUGGAN  
Shorthand Reporter