stated that the County of Santa Barbara had withdrawn its objection to the geophysical explorations requested.

Messrs. J. F. Goux, Curtis Johnson, and H. C. Bemis appeared before the Commission to give their reasons as to why a geophysical exploration permit should be issued.

Mr. Curtis Johnson was asked if the Humble Oil and Refining Company would go ahead with exploration operations (if a permit was granted) even though they might not later be able to drill. He said "Yes", and explained why. He was then requested to write a letter to the Commission to that effect.

Mr. H. C. Bemis, Chief Geophysicist of the Standard Oil Company of California, asked that he be furnished with a copy of this minute item, to be addressed to him c/o Standard Oil Company, P. O. Box 278, Oildale, California.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, ACTION UPON THE REQUEST OF THE HUMBLE OIL AND REFINING COMPANY FOR A PERMIT TO CONDUCT SUBMARINE GEOPHYSICAL EXPLORATION OPERATIONS ON THOSE TIDE AND SUBMERGED LANDS UNDER THE JURISDICTION OF THE STATE LANDS COMMISSION LYING WESTERLY OF THE EASTERLY LIMITS OF THE CITY OF SANTA BARBARA, AS EXTENDED, EASTERLY OF THE WESTERLY LIMITS OF THE CITY OF SANTA BARBARA, AS EXTENDED, AND SOUTHERLY OF AN EAST-WEST LINE TWO MILES OFF-SHORE FROM THE OLD SANTA BARBARA LIGHTHOUSE, IS TO BE HELD IN ABEYANCE PENDING A SPECIAL MEETING OF THE STATE LANDS COMMISSION.

8. (TORRENS TITLE SYSTEM - W.O. 252.) At the meeting on December 5, 1952 (Minute Item 31, Page 1678), a discussion was had of a draft of the SUMMARY AND RECOMMENDATIONS of a report prepared on the Torrens Title System, as required by the Budget Act of 1949. At that meeting it was decided to defer action pending further discussion and revision.

As a result of an exchange of correspondence and further informal discussion at the meeting of the Commission on December 18, 1952, certain revisions have been made to the draft of the SUMMARY AND RECOMMENDATIONS that was under consideration at the meeting of December 5, 1952. These were submitted to the Members of the Commission by letter dated December 29, 1952.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, A RESOLUTION WAS ADOPTED APPROVING THE SUMMARY AND RECOMMENDATIONS OF THE TORRENS TITLE REPORT AS ATTACHED HERETO, AND AUTHORIZING THE PRINTING OF THE ENTIRE COMPOSITE REPORT AND ITS REFERRAL, TOGETHER WITH THE SUMMARY AND RECOMMENDATIONS, TO THE STATE LEGISLATURE.

REPORT ON LAND TITLE LAW OF CALIFORNIA

PART I

SUMMARY AND RECOMMENDATIONS

by

STATE LANDS COMMISSION

January, 1953

Chapter 1: INTRODUCTORY.

A. AUTHORITY.

For some years past the Assurance Fund established under the provisions of the previously enacted laws for the certification of land titles has been overdrawn as the result of a court decree. Applications for original certificates of title have ceased to be made, and the holders of a large number of certificates have found themselves with no financial protection as far as the registration system is concerned. Feeling that the circumstances warranted remedial action and that the participants in the State's land title registration system were possibly entitled to some form of relief, the State Legislature directed that the survey on which this report is based be made and provided funds for the purpose. This was accomplished by the following item contained in the Budget Act of 1949:

> "For comprehensive survey and report with recommendations to the Legislature on the land title law, commonly called the Torrens Title Law, Division of State Lands, Department of Finance, payable from the State Lands Act Fund ---------- 10,000"

Section 6211 of the Public Resources Code of the State of California reads as follows:

> "Land titles: Inspection and investigations: Reports and recommendations. The Commission may, not more often than once in two years, inspect and investigate conditions in the various counties in respect to land titles. It shall annually report thereon to the Governor and shall, prior to each regular session, report to the Legislature, making such recommendations as it deems proper and necessary. The commission may consult with and advise county registrars of land titles and make such suggestions and recommendations to them as it deems desirable."

Therefore, under the authority and by direction of the two foregoing legislative enactments, this report is submitted.

B. PROCEDURE IN REGISTRATION OF TITLE.

The procedure followed in registering real property in California and in obtaining a certificate of title therefor is similar to that used in an ordinary civil court action. It requires the filing of a petition, similar to a complaint, the giving of notice to interested persons by personal service or by publication, a court hearing similar to those in ordinary court actions, and a decree rendered by the court and entered in the same manner as a judgment. A decree results which purports to be a conclusive determination of all persons' interests in the property.

The decree orders the Registrar of Titles to issue a certificate of title which states who owns the property and what interests others have in it. It lists all proven liens, encumbrances and other charges against the land.

After property has once been brought under the provisions of the Land Title Law, subsequent transfers of that property are made by filing the deed with the Registrar, together with the duplicate of the certificate of title, and having a new certificate issued by the Registrar.

C. LEGISLATIVE HISTORY.

In 1893 the State Legislature provided for a Legislative Commission of five members, with instructions to examine and report on the Torrens land title act of Australia. As a result there was approved on March 17, 1897, an act "for the certification of land titles and the simplification of transfer of real estate." This law lay dormant for eleven years, the first certificate thereunder being issued in 1908.

The "McEnerny" or "Burnt Records" Act of 1906 accounts for some of the inertia that prevailed, as this law provided a means of establishing ownership of land by judicial procedure where the public records had been destroyed by the San Francisco fire.

The registration system did not really become active in California until a new Land Title Law became effective in 1915 as the result of an initiative measure enacted at the general election of November 3, 1914. While this act has been supplemented in certain minor respects, it has been amended only once. Chapter 293 of the Statutes of 1949, providing for the withdrawal of lands from the registration system, was approved at the general election of 1950. Since the basic law is the result of an initiative measure, amendments likewise require a vote of the people at a general election. The enactment of amendments is thus slow and cumbersome.

D. PRESENT STATUS OF LAND TITLE SYSTEM.

The constitutionality of California's original Land Title System was sustained in the courts in the case of Robinson vs. Kerrigan, 151 Cal. 40, 90 P. 129 (1907). Subsequent cases have appeared to assume the applicability of the decision in that case to the new statute of 1915. There have been a number of court decisions, however, which have tended to weaken the validity of a certificate of title. With reference to this situation, Professor Richard R. Powell, in his book entitled "Registration of the Title to Land in the State of New York", states that:

> "...reliance upon a certificate of title was unsafe if (a) some holder of a record interest at the time of registration had not been joined; or (b) the petition failed to reveal that the lands were tidelands so as to make the joinder of the state a necessary

act; or (c) an inspection of the premises would put one upon notice as to outstanding rights; or (d) if there were irregularities in the registration proceeding. . . ."

The almost complete cessation of activity in the California Land Title System came as the result of the case entitled Gill vs. Frances Investment Company. A certificate of registration had been issued on certain property which had appeared to be unincumbered. A mortgage had existed, however, which was later enforced against a subsequent transferee who brought suit against the State Assurance Fund. A judgment was obtained against the fund in 1937 in the amount of $48,000, plus interest at 7%, which not only exhausted the fund but also left a deficit which, with accrued interest, amounted to $7,921.21 on June 30, 1952. Reports have indicated that between 1937 and 1949 only four original certificates of title had been issued in the entire state, the latest registration being in 1945.

On January 10, 1952, the Division of State Lands advised the Governor (pursuant to the provisions of Section 6211 of the Public Resources Code) that reports of activities from the twenty-one counties of the state in which the registration system was in effect showed total issuances of certificates of title as follows:

Alameda	213	San Bernardino	17,617
Fresno	131	San Diego	11,168
Humboldt	452	San Francisco	34
Imperial	80	San Luis Obispo	9
Inyo	5	Santa Barbara	1,629
Kern	227	Santa Cruz	693
Los Angeles	219,222	Sierra	8
Merced	1	Sonoma	1,307
Mono	5	Tulare	142
Orange	14,582	Ventura	7
Riverside	453		

Thirty-seven counties have reported as having had no transactions whatever under the Land Title Law.

E. CONDUCT OF SURVEY.

Item 26 of the minutes of the meeting of the State Lands Commission of December 21, 1949, reads in part as follows:

"The Commission was informed that in accordance with the authority granted the State Lands Commission by way of a special legislative appropriation for the purpose, the Executive Officer recommends that the Commission's mandate to make a 'comprehensive survey and report on the Torrens Title Act of California' to the Legislature, be carried out by means of written reports to the Commission by qualified experts in the field of land registration and recording systems.

"For this purpose it is proposed that the surveys be conducted and the reports be prepared as follows:

1. Field surveys and compilation of statistical and procedural data will be conducted:

   a. State of California, by Division Staff.
   b. Cook County, Illinois, by Illinois Attorney.
   c. State of Massachusetts, by Massachusetts Attorney.

2. Consultation and general supervision over field surveys and compilations, by Massachusetts Attorney.

3. Compilation of legislative history, and review and analysis of laws and court decisions:

   a. For California, by School of Law, University of Southern California.
   b. For Illinois and Massachusetts, by Massachusetts Attorney.

4. Conclusions:

   a. Main features of good forms of recordation and registration systems, by Massachusetts Attorney.
   b. Applicability to California, by School of Law, University of Southern California.

5. Recommendations: by State Lands Commission and Division Staff.

"To effectuate the foregoing program, it is proposed to contract for the services of Mr. James C. Short of Chicago, Illinois, an attorney of over 20 years' experience in Cook County where the Torrens system has been used extensively. To him will be assigned the field survey and compilations for that area.

"The field surveys and compilations for the State of Massachusetts and the operations called for in Items 2, 3b, and 4a above are proposed to be contracted for with Mr. Nathaniel C. Bidwell of Boston, Massachusetts. Mr. Bidwell is a former Assistant Attorney General of that State and has had a long experience in land title matters there. The State of Massachusetts is known to be outstanding in its land title laws and their administration.

"At the suggestion of the Commission at its meeting of November 21, 1949, conferences were had with the Dean of the School of Law, University of Southern California, with regard to what portions of the entire study it might undertake. As a result the assignments in Items 3a and 4b were tentatively agreed upon."

By resolution the State Lands Commission approved the program and authorized the negotiation and execution of the necessary contracts. The studies assigned were duly made, and reports rendered. The report of the University of Southern California, School of Law, was prepared by Miss Gertrude Greengard, Attorney at Law, and edited by Professor Moffatt Hancock; all of it is reproduced in this report. The other reports have been thoroughly reviewed and form the basis of some of the conclusions made.

Chapter 2: CONCLUSIONS.

A. RECORDING SYSTEM.

In the reports made by the School of Law, University of Southern California, and by Mr. Nathaniel C. Bidwell it has been emphasized that no registration system could operate successfully and efficiently in the absence of a good recording system. This is for the reason that the latter forms the basis for the title search and the preparation of an accurate abstract of title which is a most important prerequisite to the issuance of a certificate. The following conclusions may be drawn from the material in these two reports regarding the more important defects in the California system of recording:

1. Grantor-grantee index books in use by Recorders require exhaustive and cumbersome searches through a chain of transactions and former owners to determine with reasonable accuracy the history of title to a piece of property and encumbrances of record against it. The chances of errors and omissions are many.

2. No legal description is contained in the index, making it necessary for each document given by any one in the chain of title to be examined to determine its effect, if any, on the property in question.

3. Important records are kept separately in various offices other than that of the Recorder. The County Clerk's office must be consulted, and the County Tax Collector's office; also the records of the Probate and Bankruptcy Courts, and the assessment offices. This situation leads to omissions and inaccuracies, and is cumbersome.

4. A grantee is required to search all deeds in the record executed by the grantor which convey neighboring lands to discover restrictions against the land the grantee acquires.

5. The records in the Recorder's offices in the larger counties are bulky and voluminous, making the title search process a cumbersome one.

6. Adverse possession, lack of capacity, and fraud are not a matter of record.

B. REGISTRATION SYSTEM.

As to the registration system, the reports of those employed to make the survey lead to the following conclusions as to its important defects:

1. The State Assurance Fund has been proven to be vulnerable and will continue to be so as long as it attempts to insure the original certificate of title as well as errors that occurred following

original registration, as long as it has to cope with increased valuation with no increase in contribution to the Fund, and as long as determination of the issuance of a certificate of title rests upon abstracts that are based upon a faulty recording system.

2. The Land Title Law provides for inadequate fees to support the system, thus contributing to the tendency to employ insufficient and unskilled personnel to operate it.

3. The statutory requirement of a contribution of one one-tenth of one per cent of the assessed valuation of the property at the time of its registration resulted in an assurance fund that was too small to carry the obligations that it was called upon to meet.

4. Sufficient doubt exists about the validity of a certificate of title to have resulted in examinations of title going back of the last certificate even though the Land Title Law is to the contrary.

5. The Land Title System entails the filing of more documents in a transaction than does the Recording System, and more elaborate records must be kept in the Registrar's office; consequently the probability of occurrence of errors is greater.

6. A certificate of title merely shows a summary of encumbrances; in many instances reference to the actual documents (on file with the Registrar) and their interpretation by an attorney is necessary.

7. Property may not be acquired by adverse possession under the registration system once it has been registered. The Massachusetts Land Title Law permits such form of acquisition.

8. Through fraud and defects in the original registration proceedings a purchaser of registered property may be subject to interests which do not appear on the certificate. He may also suffer loss through a forgery of his certificate of title.

9. A certificate of title issued subsequent to an initial certificate cannot have the legal status of the first one, which has the backing of a court decree, because it is based upon an interpretation by the Registrar of documents filed with him.

10. Costs to the owner of a parcel of land that is under the registration system, for services and protection equivalent to that afforded by the recordation and land title insurance system, are equal to and often greater than the costs of the latter; in addition there is a substantial subsidy of public funds.

Chapter 3: RECOMMENDATIONS.

It is apparent that in equity to the large number of holders of certificates of title issued under laws which created a faulty system, some action should be taken by way of a remedy. Only two alternatives appear to be practical: Either abolish the Land Title System entirely, by appropriate means; or provide for a new system, with the defects in the present one removed, to which certificate holders under the existing system could transfer. What are believed to be appropriate steps to accomplish either alternative are discussed in what follows.

A. ABOLISHMENT OF LAND TITLE SYSTEM.

The existing Land Title System has resulted in the issuance of over 270,000 certificates of title, both original and subsequent, with probably about 70,000 parcels of property involved. Voluntary withdrawal from this system has been provided for by Chapter 293, Statutes of 1949. By following the procedures set forth in that act, paying the Registrar a fee of $10 for services rendered by his office, plus the Recorder's fees for recording and indexing a certificate of discharge and the cancelled last certificate of title, an owner will have withdrawn his property from the Land Title System and the fact thereof will have been recorded. Whatever protection the Land Title System afforded parties of interest in the property up to the time of recording of the withdrawal is to remain unimpaired. Withdrawals are being made at the rate of approximately 2000 parcels per year currently.

This process may be considered to be the equivalent of a voluntary transfer to the Recording System. If nothing further is done by way of legislation and a referendum it may reasonably be expected that a complete transfer to the Recording System would result in perhaps fifteen to twenty years. This would be the simplest solution to the problem of abolishing the Land Title System, but it cannot be recommended because of the large loss in public funds resulting from continuing the present system over that length of time. Annual losses are currently well in excess of $100,000.

The mechanics of abolishment of the Land Title System might best be put into operation through passage of a bill by the State Legislature and its subsequent approval by the voters of the State at a general election. Such a bill should provide for the act to become effective at some date well into the future, perhaps five years after the date of the general election at which it is approved. This is for the purpose of providing ample notice to all parties at interest and to allow sufficient time for the processing of all withdrawals from the system.

Making such withdrawal or transfer mandatory might be claimed to have deprived holders of certificates of title of rights or privileges without just compensation. However, in view of the condition of the Assurance Fund and of the other defects previously noted in this report, it is difficult to see how any future transactions under the existing system can be proven to possess anything more of value than would be the case were that system abolished.

Actual termination of the system might be effected by a provision in the bill which would discontinue completely the issuance of certificates of title

of all kinds as of the selected effective date. Care should be taken not to impair or diminish rights of all parties of interest in the properties involved as such rights existed at the time of withdrawal.

B. TRANSFER TO REVISED LAND TITLE SYSTEM.

Consideration has been given to correcting the defects in the existing Land Title Law by amendment of that law itself. It might be possible to do this, but there appear to be too many practical difficulties. If, for instance, the law were to be amended so that the Assurance Fund would protect only against errors arising subsequent to the issuance of the original certificate of title, it might well be claimed that certain present holders of certificates had been deprived of protection against errors in the original certificate. A change in the schedule of fees or in the amount required to be paid into the Assurance Fund might be handled by amendment, but there would result the problem of what to do with present certificate holders.

These and other similar complications lead to the conclusion that it would be better to provide for termination of the present Land Title System in the manner suggested in "A" of this chapter, above, and for transfer to the Recordation System or to a new Land Title System at the option of the holders of existing certificates. All new registrations would come directly under the new system.

If this alternative is to become a reality, an entirely new land title law should be drafted. It could contain many of the provisions of the existing law, and should incorporate the following changes or additions:

1. The Assurance Fund should be applicable only for errors or omissions occurring after issuance of the original certificate of title.

2. There should be a limit as to the amount of liability in any one case, probably the assessed valuation of the interest or estate concerned at the time the loss occurred.

3. A charge should be made upon the issuance of each subsequent certificate of title for augmenting the Assurance Fund. This charge should be related to the assessed value of the property at the time of issuance of the subsequent certificate.

4. Fees for services performed by the Registrar's office should be more closely related to the costs of such services.

5. Examiners of title should be appointed by the Court, and should be paid out of funds accruing to the county out of fees for services rendered in the Registrar's office.

6. There should be a State Inspector of Land Title Registration in the Division of State Lands to carry out the specific duties assigned to the State Lands Commission in Section 6211 of the Public Resources Code and in particular to consult with county registrars of land titles and make such suggestions and recommendations to them as deemed desirable with a view to improving methods used and assigning adequate and competent personnel.

7. Provision should be made for referendum elections in each county so that the voters in each can decide for themselves which alternative should prevail within the county.

In the report of Mr. Nathaniel B. Bidwell it was recommended that consideration be given to the creation of one or more Land Courts in California similar to that which has been in existence for over fifty years in Massachusetts. The jurisdiction of such a court is confined solely to land titles, and the members of the court and its staff are skilled and experienced in land title matters. While the principal activity of such a court is with respect to procedures related to land title registrations, all types of judicial actions involving land titles are handled, such as quiet title actions, foreclosure and redemption proceedings relating to tax titles, etc.

The creation of one or more Land Courts in California would require a major reorganization of the judicial system of the State, and it is believed that the results that would be obtained would not justify such action. Accordingly their establishment is opposed.

C. CHANGES IN RECORDATION SYSTEM.

As stated previously, no land title system can operate satisfactorily without a good recording system. Therefore, whether either of the foregoing alternates is ultimately adopted, certain changes are indicated in the laws of California pertaining to the recording of deeds and other instruments relating to real property. These changes can be accomplished without recourse to a referendum, as the basic laws were legislative enactments only. The changes recommended are:

1. Grantor-grantee indexes should show a legal description of the property involved.

2. Tract indexes should be provided so that all transactions involving a specific parcel of property would be listed on a page containing a legal description of the property involved.

3. All records of transfers of or encumbrances on property should be recorded in the same office, i.e., the Recorder's.

D. IN CONCLUSION.

Even though a new land title system is adopted with the revisions suggested in Section B of Chapter 3, above, it is not believed that it can be made to operate as effectively and economically as can the recordation system. It would be unwise to attempt to remedy the present unsatisfactory conditions by appropriating State monies to restore the Assurance Fund; the vulnerability of the fund would still exist. It is therefore recommended that the Land Title System of California, as provided for by the iniative enactment of November 3, 1914, be abolished, and that the State Legislature recommend to the electorate the adoption of a measure that will accomplish this end.

It would appear that those who own property for which certificates of title have been issued are not fully aware of the defects in the Land Title System and of the fact that the costs of supporting this system are greatly in excess of any benefits received. It is accordingly recommended that the SUMMARY AND RECOMMENDATIONS of this report be given wide distribution.

STATE OF CALIFORNIA
STATE LANDS COMMISSION

James S. Dean, Chairman (Date)

Goodwin J. Knight, Member (Date)

Robert C. Kirkwood, Member (Date)