3. (SUBSIDENCE IN LONG BEACH AREA - W. O. 2064, AND OIL LEASE APPLICATIONS UNDER SECTION 6871.3 OF THE PUBLIC RESOURCES CODE, LONG BEACH AT ORANGE COUNTY BOUNDARY, LOS ANGELES AND ORANGE COUNTIES - W. O. 1898.) The following reports were presented to the Commission:

"Attention of the Commission is brought to the letter of September 13, 1955 of Mr. Lloyd C. Leedom, President of the Long Beach Chamber of Commerce, wherein it was requested that the State take precautions to prevent subsidence from the oil production offshore from Seal Beach. Studies made by the staff indicate that the Seal Beach oil structure is fundamentally different from that in the Long Beach area in that there is considerably greater depth of consolidated sediments at Seal Beach than in the Wilmington-Long Beach area.

"In order to be fully advised at the earliest possible moment of any subsidence, engineering data is being recorded periodically of the levels of the Monterey Island as well as of the contiguous shore. Of course it is too early for the records to disclose any subsidence, but certainly if there is subsidence it would be first noticeable at the Monterey Island.

"The Commission's attention is called to the fact that in the Alamitos field adjoining Seal Beach and at Signal Hill there has been only slight evidence of subsidence. In both of these fields the production of oil has continued since the 1920's, so, comparatively, the mere extraction of oil is not necessarily the determinate factor that there will be subsidence."

"Applications have been received from Apex Petroleum Corporation, Ltd., and from American Shelf Oil Company requesting that the State Lands Commission proceed, pursuant to the Cunningham-Shell Act, to issue a lease on approximately 800 acres of tide and submerged lands seaward of the Alamitos Bay State Park. The area involved is also adjacent to the State Oil and Gas Lease P.R.C. 186.1 now being developed by the Monterey Oil Company from the artificial island offshore from Seal Beach. At the present time there are nine wells producing on the area leased under P.R.C. 186.1. The production history of these wells and the geological and geophysical data covering the subject lands have been reviewed by the staff, with the conclusion that submerged lands adjoining the existing offshore oil and gas lease should be leased pursuant to competitive public bidding in accordance with the Public Resources Code. In addition to the usual problems with respect to leasing of tide and submerged lands, it is now necessary to consider the Cunningham-Shell Act and the fact that the City of Long Beach may claim any oil in the tide and submerged land area which was quitclaimed to the State for park purposes.

"Historically, this area is part of the tide and submerged lands granted to the City of Long Beach by the State of California pursuant to Chapter 676 of the Statutes of 1911, as amended. On October 15, 1932, this area was quitclaimed to the State of California. The document states:

'This conveyance is made upon the express condition that the property conveyed hereby shall be used for a park, playground, recreational center and/or beach used for recreational purposes, and for no other purposes whatsoever, and should said property or any portion thereof be used for any other purpose, then, in that event, the property hereby conveyed shall immediately revert unto the grantor herein, its successors or assigns.'

"The deed was accepted by the State and the area included in the State park system.

"With respect to the ownership, the Attorney General, by Opinion No. 46/215, dated January 3, 1947 (copy of which is attached hereto as Exhibit 'A'), concluded with the following language:

'Question No. 1. The state did acquire fee title, including minerals, by the quitclaim deed to the lands in question.

'Question No. 2. The state still holds fee title to the lands involved, and the 1935 Act did not reconvey the lands to Long Beach.

'Answering Question No. 3, my opinion is that the state, through your Commission, has the legal right to lease the land for the extraction of oil and gas, and that, without forfeiting title to the land because of a use contrary to the terms of the quitclaim deed which conveys the land to the State.'

"The City of Long Beach has taken the position that they quitclaimed the area for park purposes exclusively. This matter was discussed with city officials of the City of Long Beach by the Commission at its meeting on May 10, 1946, at which time a resolution was adopted authorizing the request to the Attorney General for the opinion referred to above. No leasing of the area has been considered by the Commission since 1946, for two reasons: First, by reason of the U. S. v. California case, and, secondly, by reason of the prohibition contained in the Public Resources Code prior to September 7, 1955."

Attachment: Exhibit "A" - Attorney General's Opinion No. 46/215

EXHIBIT "A"

(COPY)

OPINION NO. 46/215

Robert W. Kenny
Attorney General

STATE OF CALIFORNIA
Legal Department

600 State Building
San Francisco 2
January 3, 1947

State Lands Commission,
State Building,
Los Angeles 12, California.

Attention: Mr. J. Stuart Watson,
Acting Executive Officer.

Dear Mr. Watson:

I have your inter-departmental communication requesting an opinion on matters discussed in your letter of June 10 last, which letter reads as follows:

"On October 15, 1932 the City of Long Beach by quitclaim deed, a copy of which is attached hereto, quitclaimed to the State of California for specified purposes and with specified reservations, certain areas of tide and submerged lands. This quitclaim deed was received upon behalf of the State by resolution of the State Park Commission. These lands among others, had originally been granted to Long Beach by the State under Statutes of 1911, Page 1304 and Statutes of 1925, Page 235. The same class and general extent of lands were also similarly granted under Statutes of 1935, Page 793.

"A proposal has now been advanced by the City of Long Beach relative to the development of oil and gas from beneath the area conveyed in the aforementioned quitclaim deed. This proposal makes a definite determination of title to such oil and gas mandatory, in order that the State Lands Commission may have a proper foundation for action thereon. Therefore, an opinion is respectfully requested as to the following:

"1. Did the State acquire fee title, including minerals, to the area described in the quitclaim deed by virtue of said deed?

"2. Does the State still hold complete fee title to the area in question or was there a reconveyance to the City of Long Beach under Statutes of 1935, Page 793, Chapter 158?

"3. In the event that the circumstances required by Section 6872

Public Resources Code should exist (i.e. threatened or established drainage on adjacent lands) could the State Lands Commission lease the area received under the quitclaim deed of October 15, 1932 for the extraction of oil and gas without forfeiting title to the land because of a use contrary to the terms of the quitclaim deed?"

The deed referred to in that letter, in its essential parts, reads as follows:

"The CITY OF LONG BEACH, a municipal corporation, organized and existing under and by virtue of the laws of the State of California and located in the County of Los Angeles therein, in consideration of the sum of Ten Dollars ($10.00) to it paid, receipt of which is hereby acknowledged, hereby remises, releases and forever quitclaims to the STATE OF CALIFORNIA, for a park, playground, recreational center and/or beach used for recreational purposes, all of its right, title and interest in and to all tidelands and submerged lands, whether filled or unfilled, included within the following described parcels of land situated in the County of Los Angeles, State of California, to wit:

(Land as described)"

In the year 1911 the State Legislature made a certain grant to Long Beach of tide and submerged lands within the then City of Long Beach. At that time the lands here in question were not within the City of Long Beach and hence the 1911 act of the legislature is not involved herein.

Between the year 1911 and the year 1925 the area adjacent to Alamitos Bay was brought into the City of Long Beach and in 1925 the legislature passed the act to be found at page 235 of the laws of that year, by which the grant from the state to the City of Long Beach was brought about and title passed from the state to the city. (The Act of 1935 which you mention was amendatory only and did not convey additional area.)

Title thereafter remained in the city until October 15, 1932 when the city conveyed by quitclaim deed to the state all of its right, title and interest in the tide and submerged lands involved, "for a park, playground, recreational center and/or beach used for recreational purposes." That deed contains not only the language quoted but carries provision reading as follows:

"This conveyance is made upon the express condition that the property conveyed hereby shall be used for a park, playground, recreational center and/or beach used for recreational purposes, and for no other purposes whatsoever, and should said property or any portion thereof be used for any other purpose, then, in that event, the property hereby conveyed shall immediately revert unto the grantor herein, its successors or assigns."

The deed was accepted by the state and the area included in the State Park System by act of legislature appearing as Chapter 765 in the Laws of 1927.

Martin v. Busch, 112 So. 274;

Opinion No. 46/215

City of Los Angeles v. Pacific Land Corp.,
41 Cal. App. (2d) 223.

The conveyance of the lands in question by the city to the state by quitclaim deed accomplished the transfer of title as effectively as a grant deed, including therein transfer of fee title, subject, of course, to any servitudes - in this instance the right of the people to fish and to access for that purpose.

Biaggi v. Ramont, 189 Cal. 675;

City of Long Beach v. Marshall, 11 Cal. (2d) 609;

Dunn v. Carroll, 101 Cal. App. 209;

Beach v. Faust, 2 Cal. (2d) 290.

The quitclaim deed mentioned contains a provision that the lands shall be used for park, playground and recreational purposes and that title shall revert to the grantor should the property be used for any other purpose.

Your letter states that development subsequent to the deed in question has disclosed that bodies of oil and gas are found in adjacent property, and hence you desire to ascertain what the legal effect would be if the state leases the lands in question for the production of oil and gas.

A condition involving forfeiture must be strictly interpreted against the party for whose benefit it is created. (Section 1442, Civil Code.)

Conditions subsequent are not favored in the law and are construed strictly because they tend to destroy estates.

9 Cal. Jur., page 341.

It appears that profitable quantities of oil and gas are contained in the said lands deeded to the state by the city, the existence of which were not known at the date of the deed and could not, therefore, have been in contemplation of the parties in making the deed. Oil and gas is fugacious in nature and can be drained from the land by oil wells on contiguous or adjacent land. Such will occur unless wells drilled by authority of the state penetrate the oil and gas areas in state land and take the state-owned oil and gas.

Public policy requires that the state possessing an asset of value as in this instance, may expect its officials to realize the most possible for the state.

> "The usual test for determining whether a statute or contract is against public policy is whether it is injurious to the public or against public good or good morals."

Brown v. Brown (Conn.) 89 Atl. 889.

We reach the conclusion that representatives of the state may not

stand idly by and see oil and gas drained from the state lands simply because the deed carries the provision mentioned relating to forfeiture. Furthermore, if oil and gas wells are drilled with due regard to the use to which the quit-claim deed ascribes the land, that is, for park and other surface use, there is no substantial violation of the conditions subsequent embodied in the deed. Wells drilled with care will not be violative of the purpose of the grant.

The case of Central Land Company v. City of Grand Rapids, 4 N. W. (2) 485 (Mich.) is a similar case and appears to be determinative of the question mentioned. In that case a deed conveyed to the defendant city certain land for park, street and boulevard purposes. The deed contains the provision:

> "This conveyance is given upon the express condition that the two parcels of land above described shall be used solely for park, highway, street, or boulevard purposes; and if any part thereof be not used for any of such purposes, or at any time cease to be used for such purpose, or at any time be used for any other purpose, said part or parts shall immediately revert to the grantor, its successors or assigns; and it shall be lawful for the grantor, its successors, or assigns to reenter and repossess the same or any part or portion thereof, and thereafter to peaceably hold and enjoy the same as if these presents had not been made."

Subsequently, the defendant city entered into a contract with an oil company whereby the latter was to drill for oil on the land which plaintiff had conveyed to the defendant city for park, street and boulevard purposes. The plaintiff immediately took steps to protect its claimed rights under the above condition in the deed. The main questions involved were: Did the title to the oil and gas under the land of plaintiff conveyed to the defendant vest in the city? and second, was there a breach of the condition above quoted which has caused a reverter of all the land, or of the parts actually used in drilling operations?

The court in deciding that question says: (p. 487)

> "At first blush it might seem that the maintenance and operation of one or more oil wells on this park property would be in violation of the restricted purposes for which the land was conveyed to the city; but in determining whether there has been such a real and substantial violation of the condition in the deed to the city, consideration should be given to the purpose obviously sought to be accomplished by the condition embodied in the grant. This park land was so located and of such a character that it might have well been used for commercial or industrial sites. Plaintiff and the railroad company had nearby acreage of like character. Obviously, and we think primarily, plaintiff and the railroad company were interested in having the grant to the city limited in such a way that the property conveyed to it could not be developed as commercial or industrial sites in competition with like property owned by plaintiff or the railroad company. It also seems reasonably certain that in a strict sense it was not contemplated by the city's grantor that the land in suit should be used only for boulevard, street and park purposes. . . ."

In that case it was held that the operation of oil wells upon land conveyed to the city for park purposes was not of such "substantial breach" of

condition subsequent upon which land was conveyed as to work a reversion of title to grantor, where condition was imposed to prevent development of land for commercial or industrial sites.

The principle of estoppel is also involved herein as that principle is developed and discussed in the case of Wedum-Aldahl Co. v. Miller, 18 Cal. App. (2d) 745. In that case certain lands were conveyed with the restriction that intoxicating liquors should not be sold on the premises, and that, if sold, title should revert to grantor. Subsequently, the grantor conceded to the sale of liquor on other lands similarly situated. In the case last mentioned it was held that a grantor may waive the right to enforce a restriction with respect to the use of land by its acts and conduct and thus estop himself from asserting its future validity.

The condition as set forth in the case involving the sale of liquor is parallel to the drilling for oil. The City of Long Beach claims the right to forfeit the title of the state if it grants leases for production of oil and gas although the city itself grants such leases on similar lands. That being true, the estoppel recognized in the Wedum case is applicable to the situation now under consideration, and we believe that the City of Long Beach is estopped by its own conduct from contending that there is reversion of title to the lands in question.

The law protects beneficial uses of property, and therefore, there has arisen in the law the principle of permitting the land to be applied to any additional beneficial use beyond those described in a deed, with due regard to the surface uses described in the deed. That principle has been upheld in the following cases:

Los Angeles University v. Swarth (C.C.A. 9th 101, 1901), 107 Fed. 798;

Humphreys v. City and County of San Francisco, 92 Cal. App. 69;

City and County of San Francisco v. Linares, 16 Cal. (2d) 441.

If and when a lease or leases are granted for production of oil and gas from the lands in question, you will, of course, provide in such contracts for least possible invasion of the uses described in the quitclaim deed.

We answer your questions as follows:

Question No. 1. The state did acquire fee title, including minerals, by the quitclaim deed to the lands in question.

Question No. 2. The state still holds fee title to the lands involved, and the 1935 Act did not reconvey the lands to Long Beach.

Answering Question No. 3, my opinion is that the state, through your Commission, has the legal right to lease the land for the extraction of

oil and gas, and that, without forfeiting title to the land because of a use contrary to the terms of the quitclaim deed which conveys the land to the state.

Very truly yours,

(Signed) Robert W. Kenny

ROBERT W. KENNY,
Attorney General

(Signed) L. G. Campbell

L. G. CAMPBELL,
Deputy Attorney General.

LGC:KB

STANDARD B & P "NOTEAR"

The Chairman reported receipt of a telegram dated October 7, 1955 from Lloyd C. Leedom, President of the Long Beach Chamber of Commerce, informing him that Darrell Neighbors would appear at the meeting on behalf of that group.

Appearances were made by the following:

Mr. Joseph B. Lamb, Assistant City Attorney for the City of Long Beach
Mr. Darrell Neighbors, representing the Long Beach Chamber of Commerce
Mr. Lewis D. Reese, City Councilman, representing the First District of the City of Long Beach

During the discussion that followed, Mr. Peirce asked if Opinion No. 46/215 of the Attorney General, dated January 3, 1947, had been reviewed recently by the office of the Attorney General, and if that office still concurs with the conclusions therein, particularly in light of the Mallon case and recent legislation. The Executive Officer said this had not been done. Mr. Lamb urged the Commissio to request the Attorney General to review this opinion. Mr. Watson offere the suggestion that perhaps the Attorney General would be reluctant to put forth any more opinions because of the effect they might have on litigation now pending or on possible litigation on the Long Beach picture as a whole.

The Chairman summed up the problem before the Commission as follows: (1) Should the Commission proceed at all on the applications to issue an oil lease on approximately 800 acres of tide and submerged lands seaward of the Alamitos Bay State Park; and (2) If the Commission does proceed, are there questions to be worked out on the problem of subsidence?

There was a general discussion on the question of the State already being protected on drainage, for the reason that all drainage was by wells from which the State is receiving royalties. The Executive Officer was asked if development of the area under discussion would bring in greater income to the State. The answer was in the affirmative, the staff pointing out that any drainage might adversely affect the ultimate total production from a field because of the resulting loss of pressure.

Before any definite action is taken towards leasing the land, Mr. Lamb urged that the situation between the State and the City of Long Beach as to ownership be resolved, as otherwise any lease issued probably would not be as remunerative as it should be because of the possibility of the lessee being involved in a lawsuit and therefore not being willing to bid the maximum bonus and royalties that might otherwise be realized. Mr. Lamb indicated that Long Beach feels it has title to the mineral resources in the area under discussion, and that while it is the ultimate desire of the city to develop the resources and he believed that there should be development, no matter who undertakes it, this should not be done until such time as it could be definitely ascertained that the interests of the people who own property in that area would not be endangered. He felt that there was no hurry for action, that any action at this time would be premature, and that it is more important first to consider the serious threat of subsidence with which Long Beach is faced. Further, he believed that the City of Long Beach was better qualified to administer such a development, being in a position to make the necessary restrictions to prevent subsidence and to protect the interests of the property owners.

The question of impounding the royalties on any lease issued, until the question of ownership could be determined, was brought up, but Mr. Lamb stated that Long Beach would never let anyone start a drill in the area until the question of ownership is determined. Long Beach would welcome institution by the Attorney General of an action for declaratory relief, or perhaps a suit to quiet title.

Mr. Reese presented two pictures to the Commission of the Alamitos Bay State Park area, showing the valuable type of property in the section under consideration, and stating that a letter had been written to Governor Knight asking for his support and advising him that Long Beach is going to seek legislation to permit mandatory repressurization and unitization. Long Beach wants this legislation to cover the entire offshore area, not only the 800 acres presently under consideration.

Mr. Lamb asked if there was any evidence of subsidence in the Long Beach portion of the Wilmington field soon after the first well was drilled. The staff stated that there was not, but that this was the reason for continuous observation at present. Mr. Lamb was interested in preventive measures that could be taken, and was informed that the Monterey Oil Company had indicated willingness to maintain pressure if necessary.

Mr. Neighbors expressed the appreciation of the Long Beach Chamber of Commerce for the cooperation of the Commission, and stated that the Chamber wants all the help it can get in meeting the problem of subsidence. They are aware of the fact that subsidence did not become evident for several years after oil production commenced, and asked that the State do everything reasonable to anticipate and prevent subsidence in the area being drilled by the Monterey Oil Company.

Mr. Hortig reported that the engineering staff of the Commission is fully aware of the problem, and is watching carefully for any microscopic differences which might indicate the onset of subsidence; and, in response to a question by Mr. Lamb about whether it would be possible to impose conditions on the Monterey Oil Company in connection with preventing subsidence, he pointed out that inasmuch as the lease requires all operations to be in accordance with best engineering practice, there is a likelihood that the State could require a reasonable preventive program, even though the lease has no specific clause covering the problem. The staff is to consider amending the lease to cover this point.

Mr. Reese referred particularly to the Naples area, where at present they have less than six inches of safety at high tide, stating that they cannot afford to wait until subsidence sets in as it would then be too late. He gave as another reason for wanting to avoid subsidence, the sewage problems that would be created.

The staff was requested to present the following points to the Attorney General for consideration:

1. Suggest review of Opinion No. 46/215 of January 3, 1947 to determine if a current opinion would be the same in the light of later litigation and legislation.

2. Request an opinion as to the possible results of any action by the Commission in connection with authorizing the Executive Officer to proceed with publication of a notice about its consideration of a lease; i.e., would the Commission, by such action, lose discretion to discontinue such proceedings; furthermore, when does the discretion of the Commission cease under the word "may", as used in Section 6871.3 of Chapter 1724, Statutes of 1955?

3. Request advice as to the advisability and method of clearing the State's title to the land in question before proceeding with a lease offer, through declaratory relief or other court action.

4. Request the drafting of lease provisions to be included in new leases that would require the lessee, at the option of the State, to conduct production operations through pressure maintenance, either through gas or water injection or other means.

5. Request assistance in working out an agreement with the lessees to modify P.R.C. 186.1 to provide for pressure maintenance as under 4 above.

No formal action was taken by the Commission. The matter is to be set for hearing as soon as the necessary information can be obtained from the Attorney General, with a representative from the Attorney General's office to be present at the hearing. Long Beach is to be furnished a copy of any opinion or information received from the Attorney General and given an opportunity to review it in advance of such hearing.

4. (OIL LEASE APPLICATION UNDER SECTION 6871.3 OF THE PUBLIC RESOURCES CODE, SANTA BARBARA COUNTY - W. O. 2046.) The following report was presented to the Commission:

> "Application has been received from the St. Anthony Oil Corporation requesting that the State Lands Commission proceed pursuant to the Cunningham-Shell Act to issue a lease on approximately 1,670 acres of tide and submerged lands seaward of the ordinary high water mark and easterly of but adjacent to the excluded area in Santa Barbara County (Section 6871.2(b) of Chapter 1724 of the Statutes of 1955). The area involved includes in part the tide and submerged lands in the Summerland area upon which oil was produced in 1895 and upon which the last lease (Lease 16 under Chapter 303 of Statutes of 1921) was cancelled in 1940. Specifically, the area for which the application has been made extends from the easterly boundary of the area excluded in Santa Barbara County under Section 6871.2(b), easterly along the ordinary high water mark a distance of 4,700 feet and seaward a distance of three miles. For a number of years the Commission's staff has considered the area applied for as being possibly productive of oil; in fact, approximately 3,650,000 barrels of oil was produced from the area heretofore, and at the present time there is one well producing on the upland landward of this described area."