

MINUTE ITEM

6. REQUEST FOR WAIVER OF MINIMUM EXTRACTION REQUIREMENTS, MINERAL EXTRACTION LEASE P.R.C. 2616.1, MONTEREY BAY, MONTEREY COUNTY; SEASIDE SAND AND GRAVEL CO., INC. - W.O. 4718.

After consideration of Calendar Item 14 attached, and upon motion duly made and unanimously carried, the following resolution was adopted:

THE EXECUTIVE OFFICER IS AUTHORIZED TO WAIVE THE MINIMUM EXTRACTION REQUIREMENTS UNDER MINERAL EXTRACTION LEASE P.R.C. 2616.1 FOR THE LEASE YEARS ENDING JULY 27, 1961, JULY 27, 1962, AND JULY 27, 1963, ALL OTHER TERMS, CONDITIONS, AND OPERATING REQUIREMENTS TO REMAIN IN FULL FORCE AND EFFECT. THE CONSIDERATION FOR THIS WAIVER OF OPERATING REQUIREMENTS IS THE FULFILLMENT BY THE LESSEE OF MINIMUM LEASE OPERATING REQUIREMENTS IN THE NEXT LEASE YEAR AND IN SUCCESSIVE LEASE YEARS, OR THE LEASE SHALL BE TERMINATED.

Attachment

Calendar Item 14 (2 pages)

CALENDAR ITEM

14.

REQUEST FOR WAIVER OF MINIMUM EXTRACTION REQUIREMENTS, MINERAL EXTRACTION LEASE P.R.C. 2616.1, MONTEREY BAY, MONTEREY COUNTY; SEASIDE SAND AND GRAVEL CO., INC. - W.O. 4718.

On July 28, 1960, Mineral Extraction Lease P.R.C. 2616.1 was issued to Seaside Sand and Gravel Co., the highest qualified bidder, in accordance with the provisions of Division 6 of the Public Resources Code. The lease covers approximately one acre of tide and submerged lands in the vicinity of Marina, Monterey Bay, Monterey County. The lessee is the littoral owner.

Paragraph 10 of the subject lease provides "That the Lessee shall extract at least 25,000 cubic yards of sand from the demised premises during each year of the term of this lease." During the lease years ending July 27, 1961 and July 27, 1962, approximately 11,291 and 8,736 cubic yards of material were extracted from the leased area, and a royalty of six cents per cubic yard has been paid. Lessee was notified at the end of each year that the minimum extraction requirements had not been completed.

A severe storm during the lease year ending July 27, 1961, and recurring, though milder storms, in subsequent lease periods, resulted in damage to facilities and inability on the part of the lessee to meet minimum extraction requirements. He has now requested a waiver of the minimum requirements for the three lease years ending July 27, 1963. The damage sustained was between \$35,000 and \$40,000. The president of the firm stated that much sand had to be moved by heavy equipment during the storm periods to prevent complete washout by wave action, and that some costly equipment had to be replaced. In addition, a local area price war forced sale of the product at very low prices. A recent inspection of the operation by a staff engineer has substantiated the above claims.

The lessee also reports that plans are presently being drawn to expand the plant to enable the company to produce plaster and aggregate sands, and that an annual minimum volume of approximately 30,000 cubic yards from this source may be expected.

The office of the Attorney General has advised: "...a waiver of the minimum extraction requirements...is possible when a combination of acts of God and business conditions has prevented the lessee from fulfilling his entire obligation under the lease. This waiver would not constitute such an amendment of the lease as would violate the competitive bidding requirements of Public Resources Code Section 6897." Also, "In the instant case the sand and gravel not extracted remains an asset of the State, the revenue therefrom being only deferred and not obliterated."

The Attorney General also advised: "...lessee is the littoral owner...and sole bidder...and no information is presented which indicates...any other lessee exists who could carry forward the extraction of such sand and gravel

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in a manner more advantageous to the State." And, finally: "...the Commission has authority to approve...waiver of the minimum extraction requirements... and that such an amendment of the Lease does not violate any provisions of the Public Resources Code or other applicable State law."

IT IS RECOMMENDED THAT THE COMMISSION AUTHORIZE THE EXECUTIVE OFFICER TO WAIVE THE MINIMUM EXTRACTION REQUIREMENTS UNDER MINERAL EXTRACTION LEASE P.R.C. 2616.1 FOR THE LEASE YEARS ENDING JULY 27, 1961, JULY 27, 1962, AND JULY 27, 1963, ALL OTHER TERMS, CONDITIONS, AND OPERATING REQUIREMENTS TO REMAIN IN FULL FORCE AND EFFECT. THE CONSIDERATION FOR THIS WAIVER OF OPERATING REQUIREMENTS IS THE FULFILLMENT BY THE LESSEE OF MINIMUM LEASE OPERATING REQUIREMENTS IN THE NEXT LEASE YEAR AND IN SUCCESSIVE LEASE YEARS, OR THE LEASE SHALL BE TERMINATED.