

20. PROSPECTING PERMIT FOR MINERALS OTHER THAN OIL AND GAS AND GEOTHERMAL RESOURCES, TIDE AND SUBMERGED LANDS IN SAN DIEGO COUNTY; 4M COMPANY - W 9878.

During consideration of Calendar Item 20, Chairman Kenneth Cory raised the question of whether the Commission has the right not to issue a mineral lease if minerals are discovered. Mr. N. Gregory Taylor, Assistant Attorney General, advised that the Commission has certain options as set forth in the permit. However, if a lease is let, the applicant would have the preferential right to that lease.

Mr. Stan Gordon of the law firm of Tuohy, Barton & McDermott, representing 4M Company, appeared in favor. Mr. Gordon stated it was their understanding that if substantial economic minerals are determined to exist within the proposed lease area, they have the right to convert over to a lease. Chairman Cory then stated in that case, he would not be willing to approve the item until this question has been clarified.

Chairman Cory stressed that he does not want to get the Commission in a contractual position where it does not have control over its mineral leases, as has happened in the past. He stated all conditions of the lease should be clearly delineated before coming before the Commission.

Mr. Matthew Brady, Legal Counsel for the Division, assured Chairman Cory 1) the lease is an exploration permit only; and 2) if minerals are found at the expiration of the lease, the applicant is entitled to a preferential lease, subject to environmental impact report requirements.

Commissioner Roy Bell asked if the Commission can refuse the lease at the time minerals are discovered. Mr. Taylor advised that the Commission's discretion is limited, but it does have the discretion to refuse it -- however, only for reasons set forth in the permit.

Due to the questions which were raised, the Commission deferred the item for one month.

Attachment:

Calendar Item 20 (8 pages)

CALENDAR ITEM

20

4/76
W 9878
JFS

PROSPECTING PERMIT FOR MINERALS
OTHER THAN OIL AND GAS
AND GEOTHERMAL RESOURCES

APPLICANT: 4M Company
c/o Tuohy, Barton & McDermott
1200 North Main Street, 8th Floor
Santa Ana, California 92701

TYPE OF LAND: Tide and submerged lands.

AREA AND LOCATION:
19,996 acres of tide and submerged lands, San
Diego County.

MINERALS: Offshore heavy minerals.

PREREQUISITE ITEMS:

1. Statutory filing fees and permit fees have been deposited by the applicant.
2. Application has been approved by the Office of the Attorney General pursuant to Sections 6818 and 6890 of the Public Resources Code.
3. Proposed royalty schedule has been approved by the applicant.
4. Area is not known to contain commercially valuable deposits of minerals and has not been declared to be within a known geothermal resources area.
5. Pursuant to Section 6818 of the Public Resources Code, application has been submitted to the Director of Parks and Recreation for examination and report.
6. This project is situated on State land identified as possessing significant environment values, pursuant to Public Resources Code 6370.1, and is classified in a significant use category, Class I.

Staff review indicates that there will be no significant effect upon the identified environmental values.

A 79, 80

S 40

CALENDAR ITEM NO. 20 (CONTD)

PERTINENT INFORMATION:

Proposal: The AM Company has submitted an application to prospect by dredging on State tide and submerged lands extending from Point Loma to the Mexican Border and from the ordinary high water line to 3 miles offshore. The area of approximately 19,996 acres has been divided into 4 parcels.

Purpose: Determine if heavy metal concentrations such as gold, platinum, zirconium and titanium, etc. exist in commercial quantities and if so to devise an economical recovery method that would make it feasible to mine such minerals.

Method of Exploration: The applicant proposes to remove and test approximately 1 cubic yard of sand per acre of permit area. This shall be accomplished by developing a shallow profile of the area by dredging in a pattern per acre of 2 perpendicular strips, each 207 feet long and 8 inches wide and 2 inches deep with occasional and infrequent samples being taken at a maximum depth of 2 to 3 feet, only when determined to be necessary and justified based on previous sampling and testing. The sand will be gathered by means of a low velocity portable suction dredge mounted on a mobile sled, and having an 8-inch wide-pipe and drag head with one quarter inch mesh screen over the intake part. Dredged material will be deposited on a tending vessel where the water will be removed by centrifugation. The remaining material will then be taken ashore and shipped to the lab for testing.

REVIEWED BY: The proposed prospecting permit has been reviewed by the following agencies:

1. Department of Army Corps of Engineers circulated Public Notice No. 75-213 dated November 24, 1975, and on February 9, 1976, issued Permit Number 75-213 to the applicant, with the effective term being 3 years from the date of issuance, terminating on December 31, 1979.

CALENDAR ITEM NO. 20 (CONTD)

2. Department of Fish and Game commented on November 18, 1975 and recommended the permit be subject to 6 conditions.
3. Pursuant to Section 6818 of the Public Resources Code, the Department of Parks and Recreation has reviewed the application.
4. San Diego Regional Water Quality Control Board commented by letter of October 22, 1975, and offered no objections to the project and will not adopt waste discharge requirements to regulate the project.
5. San Diego Coast Regional Commission issued a certificate of approval, No. F 3047, dated December 5, 1975, subject to 9 conditions.

The applicant has acknowledged and agreed to comply with all terms requested by the Department of Fish and Game and the San Diego Coast Regional Commission and such conditions, as specified in attached Exhibit "C", will be made a part of the permit.

The Division, in accordance with Article 10, Section 2906(b), has conducted an initial study and has determined that the project will not have a significant effect on the environment, and in accordance with subsection (c) of such Section 2906 has prepared and filed with the State Clearinghouse a Negative Declaration, EIR ND 190.

- EXHIBITS:
- A. Legal Description.
 - B. Location Map.
 - C. Special Terms and Conditions Applicable to Permit.
 - D. Negative Declaration.

IT IS RECOMMENDED THAT THE COMMISSION:

1. DETERMINE THAT A NEGATIVE DECLARATION HAS BEEN PREPARED BY THE DIVISION.
2. CERTIFY THAT NEGATIVE DECLARATION EIR ND 190 HAS BEEN COMPLETED IN COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970, AS AMENDED, AND THE STATE GUIDELINES, AND THAT THE COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED THEREIN.
3. DETERMINE THAT THE PROPOSED PROJECT WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT.

CALENDAR ITEM NO. 20 (CONTD)

4. FIND THAT GRANTING OF THE APPLICATION WILL HAVE NO SIGNIFICANT EFFECT UPON ENVIRONMENTAL CHARACTERISTICS IDENTIFIED PURSUANT TO SECTION 6370.1 ET SEQ. OF THE PUBLIC RESOURCES CODE.
5. DETERMINE THAT THE LANDS DESCRIBED IN THE PERMIT ARE NOT KNOWN TO CONTAIN COMMERCIALY VALUABLE DEPOSITS OF MINERALS AND ARE NOT WITHIN A KNOWN GEOTHERMAL RESOURCES AREA.
6. FIND THAT THE PROPOSED OPERATIONS WILL NOT UNREASONABLY INTERFERE WITH THE MAINTENANCE OR USE OF THE LANDS INVOLVED FOR RECREATION PURPOSES OR PROTECTION OF SHORE PROPERTIES.
7. AUTHORIZE THE MODIFICATION OF THE STANDARD FORM OF THE PROSPECTING PERMIT AS APPROVED BY THE OFFICE OF THE ATTORNEY GENERAL.
8. AUTHORIZE A BOND FROM THE PERMITTEE, PURSUANT TO SECTION 1904, OF THE CALIFORNIA ADMINISTRATIVE CODE, IN FAVOR OF THE STATE OF CALIFORNIA IN THE SUM OF \$10,000 TO GUARANTEE FAITHFUL PERFORMANCE OF PERMITTEE OF THE REQUIREMENTS, TERMS AND COVENANTS AND OBSERVANCE OF THE CONDITIONS OF THIS PERMIT AND THE CONDITIONS CONTAINED IN EXHIBITS "C" AND "D", ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND BY REFERENCE MADE A PART HEREOF, AND OF THE PROVISIONS OF THE PUBLIC RESOURCES CODE AND THE RULES AND REGULATIONS OF THE STATE.
9. AUTHORIZE THE ISSUANCE OF A PERMIT TO THE 4M COMPANY TO PROSPECT FOR A TERM OF 2 YEARS FOR ALL MINERALS OTHER THAN OIL AND GAS AND GEOTHERMAL RESOURCES IN SAID LAND, DESCRIBED ON EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF, IN ACCORDANCE WITH THE STANDARD FORM OF PERMIT, AS MODIFIED WITH THE APPROVAL OF THE ATTORNEY GENERAL, SUBJECT TO THE CONDITIONS CONTAINED IN EXHIBITS "C" AND "D", ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND BY REFERENCE MADE A PART HEREOF.

ROYALTY PAYABLE UNDER ANY PREFERENTIAL LEASE ISSUED UPON DISCOVERY OF COMMERCIALY VALUABLE DEPOSITS, FOR ANY AND ALL MINERALS PRODUCED, EXTRACTED OR REMOVED FROM SAID PREMISES FOR SALE OR STOCKPILING TO BE DETERMINED AS FOLLOWS:

$$R = P (G - C)$$

WHERE P = PERCENTAGE RATE OF ROYALTY TO BE APPLIED OF AT LEAST 10% BUT NOT TO EXCEED 20%. THE EXACT PERCENTAGE FOR P SHALL BE FIXED AND ESTABLISHED AT THE TIME OF THE NEGOTIATION AND EXECUTION OF THE LEASE DESCRIBED ABOVE, BASED UPON A CONSIDERATION OF THE THEN AVAILABLE MINERAL DATA AND OTHER INFORMATION DERIVED FROM THE PROSPECTING OPERATIONS HEREUNDER.

CALENDAR ITEM NO. 20 (CONTD)

G - THE GROSS VALUE OF ALL MINERALS OR METALS RECOVERED PER TON OF MINERAL EXTRACTED AND/OR PROCESSED.

FOR PURPOSES OF THIS FORMULA, "GROSS VALUE" SHALL BE DEFINED AS FOLLOWS:

- A) FOR ALL MINERALS SMELTED, CONCENTRATED OR PLACED INTO SOLUTION DURING EACH MONTH WHICH HAVE BEEN SOLD BY THE END OF THAT MONTH, "GROSS VALUE" SHALL EQUAL THE GREATER OF (1) THE GROSS AMOUNT OF THE SALE PRICE EXCLUSIVE OF COSTS OR EXPENSES, OR (2) THE PRICE SPECIFIED FOR EACH SMELTED MINERAL, BASED UPON THE NEW YORK SPOT CLOSING QUOTATION FOR THAT MINERAL ON THE LAST DAY OF THE MONTH IN WHICH THE MINERAL WAS SOLD, OR (3) THE PRICE SPECIFIED FOR EACH CONCENTRATED MINERAL OR MINERAL IN SOLUTION BASED UPON THE APPLICABLE INDUSTRY PRICE FIXING FOR THAT MINERAL ON THE LAST DAY OF THE MONTH IN WHICH THE MINERAL WAS SOLD;
- B) FOR ALL MINERALS SMELTED DURING EACH MONTH, WHICH HAVE NOT BEEN SOLD BY THE END OF THAT MONTH, "GROSS VALUE" SHALL EQUAL THE PRICE SPECIFIED FOR EACH SMELTED MINERAL, BASED UPON THE NEW YORK SPOT CLOSING QUOTATION FOR THAT MINERAL ON THE LAST DAY OF THE MONTH IN WHICH THE MINERAL WAS SMELTED;
- C) FOR ALL MINERALS MADE INTO CONCENTRATE OR SOLUTION FORM DURING EACH MONTH, WHICH HAVE NOT BEEN SMELTED NOR ARE IN THE PROCESS OF BEING SMELTED BY THE END OF THAT MONTH AND WHICH HAVE NOT BEEN SOLD BY THE END OF THAT MONTH, SUCH MINERALS IN CONCENTRATE OR SOLUTION FORM SHALL BE ASSAYED AND SEGREGATED FROM ALL OTHER MINERALS ALREADY SMELTED OR IN THE PROCESS OF BEING SMELTED. "GROSS VALUE" SHALL THEN EQUAL THE PRICE SPECIFIED FOR EACH MINERAL IDENTIFIED IN THE ASSAY, BASED UPON THE HIGHER OF THE NEW YORK SPOT CLOSING QUOTATION OR THE APPLICABLE INDUSTRY PRICE FIXING FOR THAT ASSAYED MINERAL ON THE LAST DAY OF THE MONTH IN WHICH THE MINERAL WAS ASSAYED. THE FOREGOING SHALL APPLY ONLY TO MINERALS BEING STOCKPILED AND SHALL NOT APPLY TO MINERALS ALREADY SMELTED OR IN THE PROCESS OF BEING SMELTED.

CALENDAR ITEM NO. 20 (CONTD)

C = ALLOWABLE COSTS LIMITED EXCLUSIVELY TO THE FOLLOWING AND NO OTHERS, WHERE SUCH COSTS ARE APPLICABLE:

- 1) ONE-WAY TRANSPORTATION FROM POINT OF LAND FALL TO THE SMELTER.
- 2) CONCENTRATION COSTS (EXCLUDING OVERHEAD AND AMORTIZATION).
- 3) SMELTING COSTS.

If the parties hereto fail, in good faith, to agree to a percentage rate of Royalty [P], or is provided for above, the percentage rate of Royalty [P] shall be 20%.

Attachment: Exhibit "A"

EXHIBIT "A"

W 9878

Four parcels of tide and submerged land in the Pacific Ocean, San Diego County, lying generally southerly of the City of San Diego and westerly of the ordinary high water mark of the Pacific Ocean and more particularly described as follows:

PARCEL 1

COMMENCING at the ordinary high water mark of the Pacific Ocean at the most southerly point of Point Loma; thence S 30° E to a line every point of which is distant three (3) geographical miles from the ordinary high water mark of Point Loma; thence northeasterly along said line a distance of 2700 feet more or less to the POINT OF BEGINNING of the herein described parcel, being a point that is distant three (3) geographical miles from the ordinary high water mark of the Pacific Ocean along the westerly side of Silver Strand, said point also being three (3) geographical miles distant from the ordinary high water mark of Point Loma; thence in a northwesterly direction 5400 feet, more or less, along a line every point of which is distant three (3) geographical miles from the ordinary high water mark of the Pacific Ocean on the westerly shore of Silver Strand, to a point which bears S 48° W from the intersection of the ordinary high water mark of the Pacific Ocean with southerly boundary of the City of San Diego, as approved and described by the California Legislature Section 1, Chapter 20, Statute 1849, page 643, being a line drawn westerly from the southwest corner of the Pueblo of San Diego to the lighthouse on Point Loma; thence N 48° E to the ordinary high water mark of the Pacific Ocean; thence in a southeasterly direction along the ordinary high water mark of the Pacific Ocean to a point which bears N 83° E from the point of beginning; thence S 83° W a distance of 21,000 feet more or less to the point of beginning, containing 5011 acres more or less.

EXCEPTING THEREFROM that portion thereof, if any, which may have been granted in trust to the City of San Diego by act or acts of the California Legislature.

PARCEL 2

BEGINNING at the most easterly corner of the above described Parcel 1, being a point on the ordinary high water mark of the Pacific Ocean; thence southerly along the ordinary high water mark of the Pacific Ocean to the International Boundary Line between the United States and Mexico, hereinafter referred to as "International Boundary Line"; thence westerly along the International Boundary to a point thereon that is distant one (1) geographical mile from the ordinary high water mark of the Pacific Ocean; thence northerly along a line, every point of which is one (1) geographical mile distant westerly from the ordinary high water mark of the Pacific Ocean, to the southerly line of the above described Parcel 1; thence N 83° E to the point of beginning, containing 4960 acres more or less.

PARCEL 3

BEGINNING at the northwesterly corner of the above described Parcel 2; thence southerly along the westerly boundary of said Parcel 2 to the southwesterly corner thereof, being a point on the International Boundary Line; thence westerly along said boundary to a point thereon that is distant two (2) geographical miles from the ordinary high water mark of the Pacific Ocean; thence northerly along a line every point of which is distant westerly two (2) geographical miles from the ordinary high water mark of the Pacific Ocean to the southerly line of the above described Parcel 1; thence N 83° E to the point of beginning, containing 5010 acres more or less.

PARCEL 4

BEGINNING at the northwesterly corner of the above described Parcel 3; thence southerly along the westerly boundary of said Parcel 3 to the southwesterly corner thereof, being a point on the International Boundary; thence westerly along said boundary to a point thereon that is distant three (3) geographical miles from the ordinary high water mark of the Pacific Ocean; thence northerly along a line every point of which is distant westerly three (3) geographical miles from the ordinary high water mark of the Pacific Ocean to the point of beginning of the above described Parcel 1; thence N 83° E to the point of beginning, containing 5015 acres more or less.

END OF DESCRIPTION

Prepared

Donald Butterfield Checked

Reviewed

F. J. Kelly

Date

11/9/76