

This Calendar Item No. 20
was approved as Minute Item
No. 20 by the State Lands
Commission by a vote of 3
to 0 at its 7-22-76
meeting.

MINUTE ITEM

7/22/76

GRII

W 5125.8

20. HEARING ON VOLUMETRIC RENTAL REGULATIONS

During consideration of Calendar Item 20, Mr. N. Gregory Taylor, Assistant Attorney General, explained that this hearing was authorized pursuant to a letter dated May 14, 1976, received from Western Oil and Gas Association, through their attorneys--McCutchen, Black, Verleger and Shea. At the May meeting, the Commission granted WOGA's request to treat it as a request for revocation of the regulations. Mr. Taylor explained that pursuant to the Commission's action on that date, legal notice was published in the Sacramento Union on June 8, 1976, advising of this hearing. In addition, Mr. Taylor set forth for the record other events which led up to the promulgation of the regulations and this subsequent hearing:

1. Prior to the adoption of the regulations by the Commission, similar legal notice was given in the Sacramento Union on April 18, 1975.
2. On April 8, 1976, copies of the proposed changes to the regulations were mailed to all parties who had expressed an interest or who would potentially be affected by the proposed amendments. Return receipts were received from recipients of these letters.
3. On June 3, 1976, notice by certified letter, was sent to all parties who requested information or who would be potentially affected by the regulations.
4. Notification of this meeting, with its regular calendar summary, was sent to those on State Lands Division Mailing List "C", revised 3/76.

All of the above referred to documents are on file in the office of the State Lands Commission and by reference made a part hereof.

Mr. David Destino with the law firm of McCutchen, Black, Verleger and Shea, appeared on behalf of Western Oil and Gas Association. Mr. Destino stated for the record that the notice of the meeting he received showed that the meeting was to be held in a different building--Room 2170, State Capitol. While waiting outside that room for the meeting to start, he was advised the meeting place had been changed to the Food and Agriculture Bldg.

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William F. Northrop, Executive Officer, then stated for the record that a person had been stationed at the room at the Capitol to divert people to this location. Mr. Taylor then inserted that a printed notice was also posted on the wall by the room. To avoid any possible problems, Mr. Taylor stated that an affidavit would be prepared by the person posted outside the room, together with a copy of the notice posted, attached as Exhibit "A" and by reference made a part hereof. At this time, Chairman Cory noted for the record that the time was 10:17 a.m. and he instructed a staff representative to go over to the room to make sure someone was posted outside.

Mr. Destino also pointed out that, as mentioned at the May 27, 1976 meeting, his law firm did request a subsequent hearing on behalf of WOGA. It was filed by WOGA to avoid a multitude of petitions by various members. However, even though he is appearing only on behalf of WOGA, that request should be sufficient for all members as well.

To clarify a possible misconception that it was their position this hearing would clear up any notice defect which may have existed in the original promulgation of this regulation, Mr. Destino stated that he sent a letter to Mr. Northrop, to which Mr. Taylor responded. Mr. Destino stated it is their position that if the regulations were improperly promulgated, it was void at the time it was adopted, and this hearing will not resurrect it. It is his understanding that it is Mr. Taylor's position this hearing will render that question moot. Mr. Destino brought this up to reiterate that they do not and have not waived that objection. Chairman Cory stipulated for the record that the Commission has seen the subject correspondence, on file in the office of the State Lands Commission and by reference made a part hereof.

Mr. Destino then set forth their objections to the subject regulations. His statement is incorporated in the written transcript of the July 22, 1976 meeting, on file in the office of the State Lands Commission and by reference made a part hereof. In summary, Mr. Destino's objections were as follows:

1. They object to the rule as being beyond the authority of the State Lands Commission to adopt. They contend Section 6503, of the Public Resources Code, requires that the rental be based on the appraised value of the land, and the subject regulations do not provide for that.

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2. They contend that U. S. law, as well as the Federal Constitution, prevents states from imposing undue burdens on interstate commerce.

He stated that case law is very clear in that the burden of any charge by a state must be based on the local incident of the activities and must bear some reasonable relationship between the services rendered by the state and the benefits foregone by the state. He contended this was not the case.

3. They contend the regulations are an unconstitutional duty on tonnage.
4. They contend that an Environmental Impact Statement is necessary, because they feel this regulation would likely result in a substantial change in transportation patterns for crude oil and refined petroleum products.

Mr. Destino also commented on the staff report which was distributed at the April 28, 1976 meeting. In conclusion, Mr. Destino stated the regulations as they now exist provide for arbitrary and discriminatory actions by the Commission, and should therefore be revoked.

Chairman Cory asked Mr. Destino if he felt the State Lands Commission has an obligation to lease property to him? He stated that Mr. Destino's arguments seemed to be based on the premise that they somehow have some inalienable rights to the people's property. Mr. Destino indicated their arguments are based on the fact that the State, in leasing the land, must do so in accordance with the California statutes and the Federal Constitution.

Mr. Taylor asked Mr. Destino if it is a fair characterization to say that his arguments presented at this meeting are a reiteration of the arguments made to the Commission previously. Mr. Destino responded by saying that, except for some specific comment on the staff report, his arguments were the same as before. Mr. Taylor then asked if there was any misunderstanding that the discussions being talked about are those discussions held at public hearings and at meetings and at the public hearing at which these regulations were adopted, at that time and prior thereto. Mr. Destino stated it was his opinion there was also a meeting in July, 1975, with some oil company representatives, which he did not attend. He stated, he is not sure what arguments were presented there, but it is his understanding they are included in the staff report. Mr. Taylor then asked if his statement at this meeting is a repetition of what was previously said prior to the Commission's adoption of the regulations. Mr. Destino stated he believed that was correct.

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Mr. Ed Taaffe, representing Standard Oil Company of California, appeared in opposition to the regulations. His statement is on file in the office of the State Lands Commission and by reference made a part hereof. Mr. Taaffe indicated that, except for minor corrections and additions, his statement essentially sets forth the same contentions presented at the April 21 hearing. In connection with the discussion between Chairman Cory and Mr. Destino concerning whether the State has the right to determine whether a piece of property should be leased, he stated that their comments, and those presented by Mr. Destino, relate to the subject of how the rent is to be computed, rather than whether or not a particular piece of land is to be leased. Chairman Cory agreed that Mr. Taaffe's statement was fair, but it tends to avoid the fundamental issue: Obtaining a fair rental for the public's land. Mr. Taaffe contended that the regulations, as drafted, are so vague and indefinite they cannot reasonably determine how the rent will be computed. Chairman Cory stated that what the Commission is saying is the contract will be finite and will conform to the terms of the regulations, and the lessee is not expected to sign the contract until it is finite. However, Mr. Taaffe stated that if the regulations are so vague and indefinite that they do not establish a good ground rule for the purpose of determining rental, then the negotiations are pretty much in the hands of the Lands Commission as to what they think should be charged. Chairman Cory went on to say that any prospective lessee can decide not to obtain a lease with the Commission if he is not satisfied with the conditions of the lease. Mr. Taaffe agreed that that was a valid argument, but when you have a situation where a person has already secured a lease, made a capital investment, and the time has come for renegotiations of the rent, he is there and is not then completely free, from an economic standpoint, to move his operation. Chairman Cory asked if that also applied to the State. He pointed out the State may come to the same conclusion that it is not in the public's interest to have the lease at that particular location.

Chairman Cory observed that it seemed Standard Oil acknowledged that these regulations are an appropriate mechanism on any new and future leases. At this time Mr. Taaffe stated for the record that he was not admitting to that. Commissioner Dymally asked Mr. Taaffe if this regulation would impose a financial hardship on Standard. Mr. Taaffe stated it would. Commissioner Dymally went on to say that if he felt this regulation would impose a financial hardship on the oil companies, he would be courageous enough to vote against it, but he sees no evidence of that.

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Mr. Taylor inserted that pursuant to the Chairman's request, Mr. Golden, Assistant Executive Officer, went to the Room where the meeting was originally to be held and found Mary Munso of the Division's staff posted outside the room. Mr. Golden also noted the sign which was posted indicating the change in the room. Ms. Munso stated to Mr. Golden that she had been there since 9:45 or 9:50 a.m. and would remain until the end of this meeting.

Mr. Paul Hughey, General Manager of the Contra Costa County Economic Development Association, appeared in opposition. In summary, Mr. Hughey objected to the regulations because they could turn away industry due to the potential high rental rates, increasing unemployment in the area. Mr. Hughey requested that the Commission reconsider the regulation and make the rates easier to calculate.

Mr. Hugh Earley, representing Western Airlines and the Air Transport Association, appeared in opposition. Mr. Earley requested that the Commission consider the impact the regulations will have on the airline industry. Chairman Cory asked if he had appeared before on this issue. Mr. Earley stated he had not. Chairman Cory then asked if his Association was not precluded from appearing earlier due to short notice. Mr. Earley stated that to his knowledge, that was not so.

Mr. Robert Leichtner, attorney from the law firm of McCutchen, Doyle, Brown and Enerson representing Pacific Refining Company, appeared in opposition. For the record, Mr. Leichtner stated he had not received notice of this meeting by the channels previously mentioned. He was notified of the meeting because he received the calendar summary distributed a week ago. He did state that it was possible the notice was directed to someone else. Mr. Leichtner objected to the illegality of the regulations, contended that the regulations violate both the laws of the State of California and the U.S. Constitution, and urged that they be repealed.

After Mr. Leichtner set forth his objections, Mr. Taylor asked him if he was one of the parties that negotiated the lease. Mr. Leichtner responded by saying he was not personally involved in the negotiations. Mr. Taylor then asked if a partner from his law firm was at the last Commission meeting, who appeared on behalf of Coastal States and argued in support of the Commission approving that lease. Mr. Leichtner said that was correct. Mr. Taylor asked if there was some corporate difference between the McCutchen San Francisco Office and Los Angeles Office. Mr. Leichtner stated they are two separate firms. Mr. Taylor asked if he ever requested notice of

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any of the hearings. Mr. Leichtner stated he was personally at the May meeting supporting the petition for repeal. However, he was not sure if he personally asked to be notified or not, but he did submit a statement at that meeting. Mr. Taylor asked if he had ever filed, pursuant to regulation, a request for notice. Mr. Leichtner stated he had not. Mr. Taylor asked if he had any knowledge of whether the people that actually negotiated the lease were aware of these hearings. Mr. Leichtner stated he believed they were aware. He also stated he was not complaining of not being notified of the hearing, but that he was not notified pursuant to the channels mentioned earlier. Mr. Taylor then asked if it was not correct that at least as of the last meeting, he had some notice that the meeting was going to be held and it was presumably discussed in the negotiations. Mr. Leichtner stated he did not know if it was discussed in the negotiations. Mr. Taylor asked if he had any knowledge of those negotiations; Mr. Leichtner stated that he did not. Mr. Taylor asked if he had any knowledge of the statement at the last meeting by his partner concerning the contention that this regulation is a tax. Mr. Leichtner stated that he did not. Mr. Taylor asked if he had any specific comments to make regarding the effect of the rental charge imposed in the Sequoia lease. Mr. Leichtner stated his partner's comments were quite thorough at the June 24 meeting. Mr. Taylor asked him if he knew what they were. Mr. Leichtner stated he could not recall exactly, but that he was present. Mr. Taylor asked if he had anything specific to offer regarding the specific rental schedule set forth in the Sequoia lease at the hearing today. Mr. Leichtner stated he believed that subject was closed at the meeting of June 24.

Chairman Cory inserted for the record a letter from Mr. T. B. Peacock, Manager of Right of Way and Land Department of Southern California Edison Company, on file in the office of the State Lands Commission and by reference made a part hereof.

Commissioner Dymally asked, for the benefit of the people in the audience, what the rates are in general. Chairman Cory stated that the only lease approved so far was at last month's meeting. Commissioner Dymally stated he wanted to have some assurances for himself and the public that the staff does not have arbitrary power to increase the rates or set the rates without the Commission's approval. Chairman Cory assured Commissioner Dymally that every lease must be approved by the Commission. Mr. Taylor then explained to him the rationale behind these regulations. He concluded by also assuring Commissioner Dymally all leases will be brought to the Commission for

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its consideration, whereupon the Commission has the option not to approve a lease. Mr. Northrop stated that by negotiating each lease individually, the staff feels it has not arbitrarily and capriciously decided on a rent that would be unfair.

Mr. Peter Baumgartner, attorney for Pacific Gas & Electric, appeared in opposition to the item. In summary, Mr. Baumgartner strongly urged the Commission's consideration of an exemption of throughput charges for California utilities. At this time Mr. Taylor asked if he had been at the last hearing on the subject prior to adoption of the rule (April 21 hearing). Mr. Baumgartner stated he has attended all the hearings on this matter. Mr. Taylor then asked if there was anything today that he has covered which was not covered at those prior discussions. Mr. Baumgartner stated there was not, but that it is now a degree of emphasis. Mr. Taylor asked if he had raised the points previously. Mr. Baumgartner indicated that as far as he knew, there is nothing new in his current presentation which was not raised previously.

Mr. Henry W. Simonsen, resident of Rio Vista, appeared in opposition to the regulations. Mr. Simonsen's comments were mainly directed to the possible increase in unemployment due to these regulations.

Mr. Hughey reappeared and presented a statement from Mr. F. R. Henrekin, Solano County Industrial Development Agency, in opposition. Mr. Henrekin's statement is on file in the office of the State Lands Commission and by reference made a part hereof.

Mr. Gerry Flannery, attorney with the Department of Defense, appeared, primarily to answer some questions raised by Messrs. Taylor and Northrop during the last hearing: How the \$100,000 figure was arrived at, and what the annual budget of the Department of Defense in California was, and rail rates in California. A brief discussion followed.

After all testimony was received, the hearing was concluded. Chairman Cory then indicated the Commission had three options to consider: 1) amend the adopted regulations; 2) repeal the adopted regulations; or 3) leave them unchanged.

Commissioner-alternate Sid McCatsland moved that the regulations remain unchanged. Chairman Cory stated for the record that the motion had a unanimous vote. To clarify the record, Mr. Taylor asked the Chairman if the petition would be deemed to be denied. Chairman Cory advised that was correct.

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Upon motion duly made and carried, the following resolution was adopted by the Commission by a vote of 3-0.

THE COMMISSION DENIES THE PETITION FOR RECONSIDERATION AND/OR REPEAL OF AMENDMENTS TO REGULATIONS OF THE STATE LANDS COMMISSION IN 2 CAL. ADM. CODE, ARTICLE 2, ADOPTED APRIL 28, 1976, RE: VOLUMETRIC RENTAL ALTERNATIVE.

Attachment: Calendar Item 20 (1 page)

EXHIBIT "A"

A F F I D A V I T

I, MARY MUNSO, do solemnly swear, under penalty of perjury, that the following is true and correct to the best of my knowledge and belief:

That on Thursday, July 22, 1976, between the hours of 9:40 - 9:45 a.m., I arrived at Room 2170 of the State Capitol in order to assist any persons wishing to attend the meeting of the State Lands Commission scheduled for that day. The location had been changed from Room 2170 of the State Capitol to Room 127 of the Food and Agriculture Building at 1220 N Street, Sacramento, California, which is located across the street from the Capitol.

Upon arriving at Room 2170 I erected a sign which stated:

"The State Lands Commission meeting has been
moved to the Food and Agriculture Building,
1220 N Street, Room 127, 10:00 a.m."

I stayed outside the entrance to Room 2170 until approximately 12:30 p.m. when Gary Horn, a staff member, came to tell me that I could leave. During that period of time I assisted between 8 and 10 individuals, giving them directions on how to reach the Food and Agriculture Building across the street.

During that time I checked in with my office, using the telephone in Assemblyman Kapiloff's office across the hall in Room 2165. I asked Irene Ishizaki, a staff member there, whether she had received any inquiries as to the State Lands meeting prior to my arrival. She replied that she had not and that people looking for meetings in Room 2170 usually inquire in that office because it is so close. Later I observed a lady who had seen the sign and myself earlier, stop a group

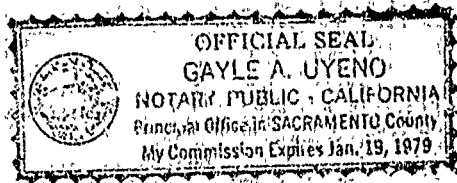
looking for the meeting. She told them that there was a sign in front of Room 2170 indicating a room change, and directed them to the new location.

Subscribed to this 30th day of August, 1976 at Sacramento, California.

Mary Munso
MARY MUNSO

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO)

On August 30, 1976, before the undersigned, a Notary Public for the State of California, personally appeared MARY MUNSO, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same.



Gayle A. Uyeno
GAYLE A. UYENO, Notary Public
in and for the State of California
County of Sacramento

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GRH

20.

HEARING ON VOLUMETRIC RENTAL REGULATIONS

At its meeting on April 28, 1976, the Commission, in response to a petition from the Western Oil and Gas Association to reconsider or repeal its recently-adopted volumetric regulations, instructed staff to take the steps necessary under the Administrative Procedures Act to conduct another public hearing on the regulations.

Accordingly, notice of the hearing was published in a newspaper of general circulation on June 8, 1976; in addition each company potentially affected by the regulations was sent a copy of the notice of the hearing together with a request for comments. A copy of the notice is on file with the office of the State Lands Commission and by reference made a part hereof.

The notice states that there will be a hearing on the regulations on July 22, 1976, and that "the State Lands Commission, upon its own motion or at the instance of any interested person, may thereafter amend, repeal or leave unchanged the regulations as set forth above without further notice."

As designated by the Commission this hearing is the time and place for interested persons to submit comments (written and/or oral) on the volumetric rental regulations.

EXHIBIT: A. Notice of Hearing