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TRANSCRIPT OF
MEETING
of

STATE LANDS COMMISSION

Los Angeles, California
March 23, 1967

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MEETING OF
STATE LANDS COMMISSION
Los Angeles, California
March 23, 1967

PARTICIPANTS:

THE STATE LANDS COMMISSION:

Hon. Houston I. Flournoy, Controller, Chairman

Hon. Gordon P. Smith, Director of Finance

(Hon. Robert H. Finch, Lieutenant Governor, absent)

Mr. F. J. Hortig, Executive Officer

OFFICE OF THE ATTORNEY GENERAL:

Mr. Jay L. Shavelson, Assistant Attorney General

APPEARANCES:

(In the order of their appearance)

Mr. Edward Farrell, Assistant Attorney for
the City of Los Angeles, Harbor Department

Mr. Leslie E. Still, Deputy City Attorney
for the City of Long Beach

I N D E X

(In accordance with Calendar Summary)

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1 MARCH 23, 1967 - 10:05 A.M.

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MR. FLOURNOY: The meeting of the State Lands Commission will come to order and we will proceed along with the agenda.

It is the understanding at this point that the only item on which individuals have indicated an interest to express themselves is 9(b). Unless that is a mistaken impression, we will proceed on that assumption.

The first item is to confirm the minutes of the meeting of February 23, 1967. If there is no objection, those minutes of that meeting will stand confirmed.

Item Number 3 on the agenda deals with permits, easements, and rights-of-way to be granted to public and other agencies at no fee, pursuant to the statutes if the consideration is the public benefit. We have under that item some five specific applications, and unless there is objection we will proceed to authorize those permits, easements and rights-of-way as outlined in the calendar summary.

Is there an objection on any of those items? (No response) Without objection, they will be approved.

Item 4 pertains to two road easements with regard to the application of the U. S. Department of Agriculture, Forest Service; easements to last forty-nine years or further, so long as they are used for road purposes, which requires our authorization. Is there any objection to the issuance of these road

1 easements? (No response) Without objection, they will be
2 approved.

3 Item Number 5 relates to permits, easements, leases,
4 and rights-of-way issued pursuant to statutes and established
5 rental policies of the Commission -- involving some seven
6 applications for particular types of permits, easements, leases
7 and rights-of-way. Is there any objection on those items?

8 (No response) As there is no objection or discussion on any
9 of them, they will be approved and issued as indicated.

10 Item Number 6 involves oil-and-gas and mineral leases
11 and permits issued pursuant to statutes and established poli-
12 cies of the Commission, with regard to some ten different
13 applications -- four involving extensions of terms; one, an
14 issuance of a permit; five involving deferments of drilling
15 operations in different cases; and there is an authorization
16 to publish notice of intention to offer for oil-and-gas lease
17 2,530 acres of tide and submerged land underlying the bed of
18 the Sacramento River, Solano and Contra Costa counties.

19 Is there any discussion or objection to the approval
20 of those actions under Item Number 6?

21 MR. HORTIG: Mr. Chairman, item 6(k) in other drafts
22 of the agenda before you has been corrected to read authoriza-
23 tion to offer these lands underlying Suisun Bay, rather than
24 the Sacramento River -- the same lands, but an incorrect desig-
25 nation. There has been confusion as to whether the area is
26 properly underlying the Sacramento River or Suisun Bay. The

1 U. S. Board of Geoeographic Names has determined it is Suisun
2 Bay.

3 With respect to item 6(a), may I report that the
4 Boards of Supervisors of all the counties from San Diego to
5 Mendocino were notified of the intent to issue a new geo-
6 physical exploration permit. Only the counties of San Mateo,
7 Santa Barbara and Marin responded, acknowledging receipt of
8 the notification, and all three stated no objection.

9 MR. FLOURNOY: I notice also on the later agenda
10 item 6(j) is a deferment of operating requirements, not of
11 drilling.

12 MR. HORTIG: That is correct.

13 MR. FLOURNOY: With those corrections as indicated,
14 and clarifications, is there any further objection or discus-
15 sion on these items? (No response) Without objection, then,
16 the authorizations will be undertaken for those permits, defer-
17 ments and extensions.

18 Item Number 7 deals with the approval of certain
19 expenditures by the City of Long Beach from tidelands revenues
20 as well as some modifications in the 1967 Plan of Development
21 to increase from \$170,000 to \$240,000 the cost of general stor-
22 age and transfer facilities; and an additional item of changing
23 the estimated expenditure on the project authorization for
24 subsidence maintenance due to high tides, dike fills, sand-
25 bagging, water pumping and utility costs.

26 I'd like to point out at this time that in approving

1 these expenditures by the City of Long Beach we are acting
2 within the authority of the State Lands Commission to deter-
3 mine and approve that the projects are authorized by law.
4 In conjunction with that, we have an Attorney General's find-
5 ing and opinion that each of the particular projects as re-
6 quested by the City of Long Beach are, in fact, authorized by
7 the statutes and are actually a determination that these ex-
8 penses are in accordance with those provisions.

9 With that clarification, is there any objection or
10 discussion on these items relating to the Long Beach operation?
11 (No response) Without objection, we shall so find and approve
12 the five items on the calendar.

13 Item Number 8: Land acquisitions -- some two items,
14 both involving exchanges of lands with the Federal Government;
15 one in San Luis Obispo County, as well as other lands.

16 I wonder if you would just briefly, Mr. Hortig,
17 clarify the situation with regard to that eighty acres in San
18 Luis Obispo County and the County's position that has been
19 voiced to the Commission with regard to their objection to the
20 sale of such lands, if and when the State Lands Commission
21 does go through with this exchange and acquires title.

22 MR. HORTIG: Yes, Mr. Chairman. Based upon applica-
23 tions filed many years ago, wherein private parties requested
24 the State to consider exchanging certain State lands for other
25 Federal lands which the private parties desired to acquire and
26 purchase from the State -- a procedure fully authorized by law.

1 but on which operations have been suspended as to further
2 applications for at least the last five to eight years by a
3 State Lands Commission directive -- this action before you to-
4 day is the result of the completion and allowance by the Feder-
5 al Government and approval of such a proposed exchange.

6 In the interim, these many years having elapsed,
7 San Luis Obispo County in evaluating future public recreation
8 projects in San Luis Obispo County now feels, and has so
9 notified the State Lands Commission to consider, that even
10 though the State is accepting these lands in exchange to ac-
11 quire title from the Federal Government, further consideration
12 should be given to the retention of these lands in public
13 ownership.

14 San Luis Obispo County has no preference as to
15 whether title is vested in the Federal Government or the State,
16 so long as the lands are retained in public ownership, in
17 anticipation of their development or retention for public
18 recreation, rather than having them sold into private owner-
19 ship.

20 So the problem presented by San Luis Obispo County
21 will come before the Commission at a later date, after con-
22 summation of this exchange with the Federal Government, and a
23 determination made at that time whether the lands should be
24 retained in State ownership or sold into private ownership.
25 That question is not before the Commission today -- only the
26 approval of the completion of the exchange to receive title

1 from the Federal Government as to the listed lands.

2 MR. FLOURNOY: Can you give us any indication as to
3 when this exchange might be consummated if we authorize you to
4 go ahead on this basis?

5 MR. HORTIG: Immediately.

6 MR. FLOURNOY: Immediately?

7 MR. HORTIG: Yes, sir.

8 MR. FLOURNOY: When would the consideration, then,
9 of the sale or retention of this property come before the
10 Commission?

11 MR. HORTIG: Probably by the May meeting.

12 MR. FLOURNOY: Is it not true that the County would
13 have a preferential right with regard to the purchase of this
14 property if they saw fit to undertake that?

15 MR. HORTIG: This is also correct. However, the
16 County has not suggested that they are interested in purchas-
17 ing -- but merely that it be held in public ownership and be
18 withheld from private ownership; so that total program will
19 have to be discussed with the County.

20 MR. FLOURNOY: I am trying to anticipate what would
21 be involved; but they indicated they have no interest in pur-
22 chasing the property?

23 MR. HORTIG: No. They have not stated any interest
24 in purchasing; they haven't declined an invitation.

25 MR. FLOURNOY: I see. I wanted to clarify that
26 status.

1 MR. SMITH: Mr. Chairman, I would like to have a
2 further explanation on item 8(b) regarding the exchange of
3 property in San Bernardino County.

4 MR. HORTIG: Yes, sir. This is really basically at
5 the request and for the benefit of the Joshua Tree, a National
6 Monument, in that there are certain State Lands which were ac-
7 quired by the State under the original vacant State School
8 Land Grant that are within the exterior boundaries or close to
9 the Joshua Tree National Monument; and also other lands which
10 are situated within the Twenty-Nine Palms Marine Corps Base,
11 which was established subsequent to the time the State acquired
12 title to the land.

13 The Federal Government is, of course, interested in
14 obtaining any holdings within national monuments; and as to
15 those lands within the Marine Corps Base, these are on the
16 books of the State as an asset of the State but totally un-
17 available to the State of California for development, leasing,
18 or any other consideration because they have a fence around
19 them, with a Marine guard that keeps everybody from getting in.

20 So these lands have been offered in exchange to the
21 Federal Government for other Federal lands which are in areas
22 where it is felt that either by management, leasing, or other
23 type of development, the lands that can be acquired from the
24 Federal Government can be administered by the State to the
25 advantage of the State of California -- an advantage from which
26 we are foreclosed completely with respect to the lands which

1 are being offered to the United States.

2 MR. SMITH: Now, the 3,332 acres which would be
3 acquired from the Federal Government -- you are requesting an
4 appraisal of this land if it is approved. Where are these
5 3,000 acres and what are the potential uses of the lands?

6 MR. HORTIG: Starting on page 44 of your agenda
7 copy, Mr. Smith, are the details -- including maps reflecting
8 that.

9 MR. SMITH: If you would summarize it?

10 MR. HORTIG: Yes, sir. The very last map following
11 the series, indicating "Apple Valley, California," indicating
12 three areas of Federal land -- this Apple Valley is not to be
13 confused; these lands are not in Apple Valley but are in
14 North Lucerne Valley, and they have a potential for develop-
15 ment and sale at the present time. These are the Federal lands
16 that would be acquired by the State.

17 The balance of the lands individually listed consist
18 of the parcel to be surrendered, and which are predominantly,
19 as I stated, within the Twenty-Nine Palms Marine Corps Base,
20 where they are unavailable for administration by the State of
21 California.

22 MR. SMITH: What would be their potential use upon
23 sale?

24 MR. HORTIG: Recreational, residential, subdivision
25 development, desert home sites. The Commission is still in a
26 position to require the sale, and would under the rules and

1 regulations require the sale, at not less than the appraised
2 value; and the sale is not mandatory, but could still be re-
3 jected by the Commission on insufficiency of consideration for
4 these lands.

5 MR. FLOURNOY: I might direct attention to the fact
6 that the procedure and initiating and development of this ex-
7 change is not the same as the prior one. This was not ini-
8 tiated by the request of a private party?

9 MR. HORTIG: Yes. "... to proceed with sale of
10 said lands under the application of three private individuals
11 ... " on a competitive bidding basis. These three private
12 individuals many years ago filed an application.

13 MR. FLOURNOY: Are they in three parts?

14 MR. HORTIG: Scattered.

15 MR. FLOURNOY: It would be at the appraised value?

16 MR. HORTIG: Appraised value as a minimum.

17 MR. FLOURNOY: The lands' equivalent value is on the
18 basis of appraisal?

19 MR. HORTIG: The exchanged lands are exchanged on an
20 equal value basis, not on an equal acreage basis; and, again,
21 there is the matter of approval. In other words, by action on
22 this item today the Commission does not authorize anything be-
23 yond completing the exchange with the Federal Government. The
24 further transaction -- the approval of whether these lands are
25 sold, in fact, and so forth -- is subject to subsequent appro-
26 val or rejection by the State Lands Commission.

1 MR. SMITH: The 3,000 acres which we are receiving
2 from the Federal Government under this exchange -- would we
3 consider these more developable than the 10,000 acres we are
4 giving up?

5 MR. HORTIG: Well, they are of equal value as ap-
6 praised to those lands being surrendered. In addition to that
7 fact, the lands being surrendered are mostly in the Twenty-Nine
8 Palms Marine Corps Base and are totally unavailable for devel-
9 opment by the State of California, although title record is
10 in the State of California. As I say, the Marine Corps has
11 a fence around them and the State can't get to its own lands
12 to look at them without permission of the Marine Corps; so
13 this puts them in a difficult category for any effective
14 administration to the State's advantage.

15 MR. FLOURNOY: Is it also true that the Federal
16 Government had issued condemnation proceedings with regard to
17 some of that land?

18 MR. HORTIG: This is also correct and, therefore, it
19 is advantageous to eliminate the need for condemnation litiga-
20 tion and eliminate the need for any litigation with the Federal
21 Government under these circumstances.

22 MR. FLOURNOY: Any further discussion with regard to
23 these two items of land exchanges with the Federal Government?
24 (No response) Without objection, we will authorize the Execu-
25 tive Officer to proceed with this exchange.

26 Now we come to Number 9 -- major litigation.

1 Mr. Hortig?

2 MR. HORTIG: Other than the record for the Commis-
3 sion on the status of the major litigatory items in which the
4 Commission is a party, for your files and your reference,
5 there is no need for further comment.

6 The item requiring discussion -- in view of the
7 request that the parties thereto be permitted, at least one
8 of the parties be permitted to comment to the Commission --
9 is item 9(b), involving an action which has been brought by
10 the City of Los Angeles versus the City of Long Beach, et al;
11 the "et al" including, among others, the State Lands Commis-
12 sion.

13 The Office of the Attorney General has reviewed this
14 and you have a report from the Attorney General in your agenda,
15 suggesting that while the State Lands Commission might con-
16 sider demurring and not being involved in this action even
17 though it involves operations on granted tide and submerged
18 lands, that it appears preferable and desirable that the State
19 Lands Commission waive any objections and remain a party to
20 the action; but that, in order that the Attorney General may
21 be fully informed and the Commission may direct that its inter-
22 est be properly protected, information will be required which
23 can only be obtained through the services of an expert economic
24 analyst and consultant, particularly versed in rate structure
25 applications, in connection with four operations -- which is
26 the principal bone of contention, if I may phrase it that way,

1 in this litigation.

2 MR. FLOURNOY: Perhaps we had best proceed to that
3 item then and hear from whoever wishes to appear.

4 MR. STILL: I am not sure whether Los Angeles, as
5 the plaintiff, would like to be heard first. We would be happy
6 to answer to Los Angeles.

7 MR. FARRELL: Gentlemen, my name is Edward Farrell.
8 I am an Assistant Attorney for the City of Los Angeles and I
9 am assigned to the Harbor Department as attorney for the Har-
10 bor Commission. I suppose, as much as anyone else, I am
11 responsible for the litigation before you today.

12 I cannot emphasize too much how important this liti-
13 gation is to the City of Los Angeles. I am sure the report
14 you have before you sets forth the background and history on
15 the phases that bring this matter before you.

16 What we have done, simply, is to bring an action for
17 declaratory relief and to strip the matter back to its barest
18 essentials. We just want to get down to the essentials and
19 this is why we petitioned the court.

20 The first question is a simple question of law and
21 fact -- whether or not these lease agreements that have been
22 entered into by Oakland and by Long Beach with Sea-Land and
23 Matson -- whether those agreements are lawful or whether they
24 constitute a breach of contract with the Los Angeles Port
25 Authority.

26 Now, your board is not a party to that agreement,

1 but the State Board of Harbor Commissioners in San Francisco
2 is.

3 The second question involved in the litigation also
4 is a question of law and fact and that is what you are most
5 interested in -- whether or not the lease-type agreements that
6 have been entered into in the past constitute violations of
7 the tideland grant.

8 These two matters are vitally important to the City
9 of Los Angeles.

10 If it is finally determined that these agreements
11 are lawful, then the City of Los Angeles intends to go out and
12 enter the same type of agreements that Oakland and Long Beach
13 have entered into before. One reason for that is that we feel
14 that we are the leading port in the State.

15 Now, the second thing is -- we want this declaration
16 so we will know whether or not these things are lawful before
17 we get into them. Long Beach and Oakland have entered into
18 these agreements. Five years ago they walked down the path
19 that has no return. The only position they can take now is that
20 these agreements are lawful.

21 I might point out to the members of this Commission
22 (it is probably in your file) that the City of Los Angeles and
23 your State Board of Commissioners both tested these agreements
24 before the Federal Maritime Commission; and the Federal Mari-
25 time Commission has limited jurisdiction in this connection --
26 and that is whether or not the agreements constitute violations

1 of the Shipping Act of 1916.

2 Now, in the Federal proceedings, two other ports
3 before the F.M.C. took the position they had no jurisdiction
4 over those matters, but the Federal Maritime Commission fol-
5 lowed the position urged by Los Angeles and by your State
6 Board, and found that the parties to those agreements were
7 subject to the Shipping Act and the agreements called for
8 approval by that board.

9 The third issue is whether these agreements fall
10 under the Shipping Act. This question we filed in the Superior
11 Court. Again, Long Beach and Oakland have taken the position
12 that a determination is not necessary. We definitely feel
13 that it is. These matters are very important to us.

14 Now, a third question is presented by this litiga-
15 tion. The first two questions are mixed questions of law and
16 fact. The third question is a question of law, fact, and
17 political science; and that is, if these lease-type agreements
18 are lawful, will you, the State of California, tolerate cut-
19 throat and open competition among your public trustees on the
20 basis of who can offer the best deal? That is the question
21 you will have to answer.

22 It is for these reasons these matters have gone on
23 for five years. We have yet to have a day in any court. We
24 filed our action in August, served the State of California in
25 November, and are still not in issue yet; and are anxious to
26 get going.

1 MR. FLOURNOY: This third question you are raising
2 is not a question you are asking the courts to decide --
3 whether or not the State will tolerate cut-throat competition?

4 MR. FARRELL: We are not asking the question, but
5 it is there.

6 MR. FLOURNOY: It presumes a determination on the
7 other two might be adverse to you.

8 MR. FARRELL: That is so. I don't know - - the
9 court might look at that and decide it is a matter of policy.

10 MR. SMITH: Mr. Chairman, I'd like to ask Mr.
11 Farrell to briefly describe why he considers the possibility
12 of these agreements being a problem to the City of Los Angeles
13 and lease agreements being illegal; and, two, what is his
14 information as to how these lease agreements affect the Port
15 of Los Angeles. In other words, what is the effect on the
16 Port of Los Angeles and the City of Los Angeles?

17 MR. FARRELL: I'll answer your first question first,
18 as to why we think there is a problem here. As far as you
19 are concerned, your only legitimate interest today is the ques-
20 tion of the provision in the tideland grant. I assume the
21 Attorney General has set forth this in his letter to you.

22 Just recently, there was brought down an initial
23 decision by a hearing examiner of the Federal Maritime Commis-
24 sion, in Docket 66-A, which involved the matter of the agree-
25 ment between Sea-Land and Long Beach. That decision is now
26 pending before the Federal Maritime Commission. That body

1 will either adopt the opinion of the hearing examiner or re-
2 ject it or modify it. But, basically, the hearing examiner
3 said this with regard to the discriminatory aspects, which is
4 what you are concerned with, on page 8 of the hearing examiner's
5 proposed decision:

6 "This brings us unavoidably to the question of the
7 contract." (By contract, he means the minimum-maximum arrange-
8 ment Long Beach entered with Sea-Land.)

9 "To the extent it provides that one carrier or shipper
10 shall pay nothing for service, while other carriers or shippers
11 pay something for service, this is certainly unfair. Cer-
12 tainly, it is discrimination per se. No evidence other than
13 the agreed fact that all other carriers directly or indirectly
14 will pay for services is necessary to support that finding."

15 That, as I say, has not become final, but that is
16 certainly a very strong indication that there is a discrimina-
17 tory factor in these agreements. Basically, you are putting
18 everyone on two different tariffs. Basically, some are not
19 under tariff; some are under minimum and maximum agreements.

20 On your second question, how it affects us -- we are
21 public trustees. We don't want to do anything unlawful. We
22 strongly suspect these agreements are unlawful. We are peti-
23 tioning the court to know if they are unlawful. As I say, if
24 they are lawful, we will engage in this business to our elbows.

25 MR. SMITH: How does this affect the Port of Los
26 Angeles economically in your operation -- this agreement between

1 Sea-Land and Long Beach?

2 MR. FARRELL: Well, its immediate effect is this:
3 As you know, for a hundred years or more the ports in the
4 State operated under a tariff, wherein certain tariffs were
5 assessed for passing over a public facility under the basis
6 of the charges set forth in that tariff. With the Oakland and
7 Long Beach agreements, the tariff agreement has at least been
8 cracked.

9 Right now, Los Angeles is engaging in negotiations
10 with Japanese shippers. The first thing we have encountered,
11 and it is still going on, is an indication from the Japanese:
12 "Wait, we don't want to do business all on the basis of a
13 tariff. We want something like Long Beach gives Sea-Land."

14 We want something under tariff rates. We don't know
15 whether these agreements are lawful or not. We don't want to
16 attempt anything that is not lawful.

17 Does that answer your question?

18 MR. SMITH: Is there in effect now a ruling on this
19 special agreement between Oakland and Long Beach and Sea-Land;
20 and what is the impact to Los Angeles? Have you lost some
21 trade in the Los Angeles Port Authority?

22 MR. FARRELL: I can't answer that definitively.
23 You asked as to the status of these things. The Oakland-Sea-Land
24 case has been concluded by the Federal Maritime Commission.
25 That is on appeal to the U. S. Court of Appeals in Washington,
26 D.C. The Long Beach-SeaLand case was just recently argued and

1 it now stands submitted before the Federal Maritime Commission,
2 so they have not started operations under that yet. On the
3 third arrangement, the Oakland-Matson arrangement, the hearing
4 on that was completed last week. That has been submitted and
5 we don't expect to hear the final result from the Federal Mari-
6 time Commission until perhaps the fall.

7 As to an actual dollar loss, whether or not we can
8 show it now, I don't think we can; but the problem being raised
9 is that people come to us to negotiate. We feel we can only
10 negotiate on the basis of a tariff. So when another port holds
11 its facility out under a different basis, certainly some of
12 those people are going to go elsewhere. That's why we are in
13 a hurry.

14 MR. SMITH: What is the distinction in your opinion
15 between cut-throat competition, which you mentioned, and healthy
16 competition?

17 MR. FARRELL: Well, first let me say I think a little
18 healthy competition between public bodies is a good thing. It
19 shakes off some of the lethargy that seems to seep into our
20 systems. When you have someone across the bay working a little
21 harder, you have to do the same. Up to now, it was on that
22 basis. The tariffs were in many cases identical. They were
23 substantially the same. We had an objective basis on which to
24 sit down and deal with people and an objective basis to assess
25 charges.

26 To get into the cut-throat end of it, that is to me

1 where there is no guidelines to determine what is fair, what
2 is unfair, what is lawful, what is unlawful -- a catch-as-can
3 deal as to who can get most business into the port. I don't
4 think public bodies ought to deal with one another in that
5 fashion.

6 MR. FLOURNOY: These agreements -- Have they been
7 stayed by the Federal Maritime Commission?

8 MR. FARRELL: Yes, as to the latter two agreements
9 they have.

10 MR. FLOURNOY: The one with the Port of Oakland is
11 the only one in effect?

12 MR. FARRELL: It has been approved by the Federal
13 Maritime Commission. I don't know if the parties in fact have
14 started to operate under that agreement. I think Mr. Rooney
15 from the Port of Oakland can answer that.

16 MR. FLOURNOY: The other two are being stayed?

17 MR. FARRELL: Yes.

18 MR. STILL: My name is Leslie E. Still, Deputy City
19 Attorney for the City of Long Beach. We didn't anticipate we
20 would have to argue and re-argue the Sea-Land cases here. I
21 have been involved in this series of litigation for about five
22 years and it is running into the second team now. The men are
23 actually retiring from the service in the Los Angeles City
24 Attorney's office and they are bringing their bright young
25 attorneys in.

26 MR. FLOURNOY: We are not suggesting that the case is

1 going to be re-argued, but we are trying to clarify the infor-
2 mation and some of the questions that are raised in the liti-
3 gation, and our relationship to it.

4 MR. STILL: I have a remark or two to make. We feel
5 it is entirely proper and helpful for the State to take part
6 in this action. The tidelands are involved and the lands in
7 trust are involved.

8 Of course we feel the rulings of the Federal Maritime
9 Commission are proper -- they have the expertise in this.

10 Mini-max agreements -- agreements with a minimum and
11 maximum -- are those where after he pays the tariff all the
12 way to the ceiling, then the compensation is cut off. I would
13 like to say these are not wild and wooly agreements. They are
14 very sound agreements. They are not cut-throat agreements.
15 We have found them to be entirely compensatory by the Federal
16 Maritime Commission -- which, as I say, has the expertise in
17 that.

18 We urge that the State should keep certain factors
19 in mind when you are considering your actions, not only now
20 but as to the future, as to the precise position to take, and
21 we would urge the State take a position in our favor. We think
22 Oakland and Long Beach have administered very well. We think
23 Los Angeles is wrong -- their approach is wrong. They place
24 too much sacredness on the west coast on the tariff. We don't
25 think this is particularly controlling.

26 These agreements are in effect on the east coast of

1 the United States and on the Gulf coast; and there is nothing
2 wrong with them. The Port of New York Authority, a recognized
3 authority in the terminal industry, feels that agreements of
4 this type are satisfactory. We think they should be compli-
5 mented for their progressive thinking.

6 One more fact I would like to mention, also. It has
7 been concluded here that the agreements with Sea-Land are mini-
8 max agreements. Sea-Land has flat agreements with Long Beach
9 and Oakland, as well as similar agreements with the Ports of
10 Seattle and Sea-Land, and agreements between Sea-Land and
11 Alaska, which have been held to be lawful under the Shipping
12 Act.

13 One of the main issues that the Maritime Commission
14 has to consider is whether or not such agreements are unjustly
15 discriminatory. From our point of view we feel that the tide-
16 landstrust requirement -- that they be administered as to the
17 marine terminal site without discrimination -- that that par-
18 ticular mandate has been met; that the Federal Maritime Com-
19 mission with its expertise will find that such agreements are
20 not unjustly discriminatory.

21 We obviously can't be operating in a vacuum. There
22 are certainly certain areas of discretion. These are contained
23 in the Los Angeles tariffs and it would seem to me that they
24 have taken an anomalous position when they are maintaining you
25 have to have absolute lack of discrimination.

26 All cargo is not handled the same way. You have

1 cargo handled in containers that will be handled five or six
2 times faster than other cargo and it is paying the same rate
3 for the facilities as wharf cargo. A ship could be two or
4 three days in a container berth and a ship could be five or
5 six days in a wharf cargo berth. There is no difference in the
6 charge.

7 We like a progressive method of moving goods via
8 containers. If you have been reading the trade journals or
9 the financial papers, you will note that almost every steam-
10 ship company is now going into the container trade. Matson's
11 attorney is here; he may wish to make a comment or two. Mat-
12 son is one of the pioneers on the west coast. I might add
13 Matson is a non-subsidized operator.

14 Sea-Land epitomizes the best in non-subsidized opera-
15 tors. We are down to two lines -- the Calmar Line eastbound
16 from the west coast and we, of course, have Sea-Land; and if
17 Los Angeles continues to insist that we do things by this old
18 sacred cow approach, we could lose this movement.

19 We think there is a lack of progressive thinking.
20 I have mentioned before there are agreements of the type that
21 Los Angeles is complaining about that are now in effect through-
22 out the rest of the country, and we feel this would be depriv-
23 ing your State's tideland trustees of the right to engage in
24 the type of constructive competition that we have engaged in
25 for years. Unless we can meet agreements that are being
26 offered elsewhere in the United States, we are going to lose

1 some of this business, particularly the container business.

2 Mr. Foster (sic) has referred to the Japanese
3 negotiations. The Japanese are moving into the container
4 business in a big way and the government, I think, is shaping
5 this up pretty well, from last reports, by shaping up into
6 two massive container operations. They will have two fleets
7 coming to the west coast and other fleets to the rest of the
8 world.

9 They, of course, because of the economic aspect of
10 their operation are very keen about this and when Los Angeles
11 says they cannot enter into this type of agreements, we ask
12 you why is it -- if our information is correct, and we have
13 no reason to doubt it -- why has Los Angeles offered the Japan-
14 ese at the present time a mini-max type arrangement? They
15 have offered these and we really doubt the sincerity of the
16 Port of Los Angeles in making the statements they have over
17 the years and then turning around and offering the Japanese
18 this type of agreement. I think the Lands Commission is en-
19 titled to know as to the City of Los Angeles's position in
20 this.

21 I might also add, to get it right out on the table --
22 we are always accused in our agreements of giving the tide-
23 lands assets away by not charging enough. What better example
24 of how economically fair these agreements are than in the
25 various decisions of the Federal Maritime Commission -- and we
26 have had a number of cases as you know -- all the agreements

1 between Sea-Land and Long Beach have been found to be compen-
2 satory. They return better than - - I think the last one was
3 a gross rate of return of about 9½%; and that includes, when
4 you take away all your costs, and so forth, you will get a
5 capital recovery of about 6½ to 7%. There is no give-away in
6 that kind of agreement.

7 To get back to the point -- we understand Los
8 Angeles is operating mini-max arrangements with the Japanese
9 at a less favorable return and, as a tideland trustee, we are
10 seriously concerned. We can't compete with such "wild and
11 wooly" deals they are offering. They not only say they are
12 going to offer them; we think they have.

13 We note in the second item here that it is recom-
14 mended that the Executive Officer retain the services of an
15 expert economic analyst and consultant. I would like to make
16 a comment or two about that.

17 Los Angeles has always operated under a tariff sys-
18 tem; we operate under the tariff system now, also. The Sea-
19 Land agreement is not being carried out because it has not
20 received final approval of the Federal Maritime Commission.
21 We feel that the operation under the tariff is appropriate.
22 You can have the so-called special arrangements here and you
23 can have operations under the tariff right next to it; and in
24 order to provide facilities for all users, you have to operate
25 in that fashion with the tariff.

26 One of the strong advocates of the tariff system and

1 the so-called freeze formula is a consultant in San Francisco
2 who has been retained by Los Angeles and San Francisco to
3 testify in this last proceeding involving the Sea-Land - Long
4 Beach agreement. We urge that the State Lands Commission not
5 retain that particular consultant because of his self-serving
6 interest. You can get the best consultants in the business
7 who will not be restricted by the traditional outlook on the
8 marine industry.

9 If the steamship companies are willing to go the
10 container route, I think the ports must meet the challenge;
11 and Long Beach certainly has met that challenge.

12 I think that concludes my comments. I would like to
13 say that we don't feel this is cut-throat competition. We
14 feel - - if I might go into the history of it -- we wanted to
15 go the tariff route, whether we used wharfage rates or con-
16 tainers, and there was a very unhealthy atmosphere that pre-
17 vailed at that time. Mr. Rooney of the Oakland Port Authority
18 is here and he may wish to make comments.

19 We feel goods moving in containers should have
20 special consideration. They move much faster. They wanted to
21 go the tariff way and we wanted to put in a container rate.
22 It was completely justified in a court proceeding and this was
23 protested by San Francisco and Los Angeles, and particularly
24 Encino Terminal. The reason they fought this was a self-serving
25 interest in Matson navigation. Matson was paying Encino ter-
26 minals last year three-quarters of a million dollars. They

1 could see the handwriting on the wall. If they couldn't con-
2 tinue with the tariff their economic position would not be
3 very good.

4 So they were literally forced by this antiquated,
5 non-economic approach to either build their own terminal or
6 some other method; and they have negotiated a flat-rate lease
7 arrangement with the Port of Oakland and, of course, this has
8 caused all kinds of consternation on the waterfront. But it
9 is the economic fact of life in this country -- the guy that
10 can give the service for the cheapest rate is going to get the
11 business.

12 Thank you.

13 MR. FLOURNOY: I think you have pretty well sketched
14 the details here and the problems. I think I would like to
15 make a brief statement at this point, lest there be any mis-
16 understanding as to what the position of the State Lands Com-
17 mission may be.

18 We have been posed with some interesting choices
19 here between wild and wooly cut-throat competition and healthy
20 competition; progressive and antiquated thinking; clean dis-
21 crimination on one hand or unreasonable discrimination on
22 another; Long Beach on one hand, Los Angeles on the other.

23 I think we shall in all likelihood avoid all these
24 elements at this time and point out that the State Lands Com-
25 mission, by virtue of its responsibility in the tidelands
26 under the law, has a statewide interest -- and that is somewhat

1 different than the interests of either of the contesting
2 parties in the particular various issues in the litigation.
3 I think it is in this context that the recommendation has been
4 made that the State Lands Commission retain a position in the
5 law suit; that we do not attempt to avoid becoming a party
6 in the law suit; that we move ahead with our own investigation
7 in order to determine what the statewide interest is in this
8 litigation and what the appropriate position of the State
9 would possibly be.

10 Unless there is further discussion or objection with
11 regard to the recommendation, we will so authorize the Execu-
12 tive Officer to proceed in accordance with the recommendation
13 made in the calendar summary; and let me say we do appreciate
14 the representations from the attorneys for the City of Los
15 Angeles, as well as Long Beach, and the others who were here
16 on this matter, so we can get a better picture of just what
17 the situation is.

18 Is there any objection? (No response) Without
19 objection, it will be so ordered.

20 Now, I understand that we have a supplemental calendar
21 item with regard to the agreements pending and involving liti-
22 gation between the County of San Luis Obispo and the City of
23 Morro Bay -- with a recommendation that the Commission approve
24 the "Stipulation and Agreement" and the "Final Settlement Agree-
25 ment" on file in the office of the State Lands Commission,
26 which are made a part hereof by reference, and which dispose

1 of all the outstanding litigation between the County of San
2 Luis Obispo and the City of Morro Bay; and (2) authorize the
3 Executive Officer to sign said agreements on behalf of the
4 Commission.

5 I gather that we become a part of these agreements.
6 How did we become a party to these agreements?

7 MR. HORTIG: Mr. Chairman, if I may summarize --
8 In view of the litigation that was pending and the potential
9 expanded litigation that might have become incorporated be-
10 tween the City of Morro Bay and County of San Luis Obispo with
11 respect to questions arising out of the administration of the
12 tideland grant by the Legislature to the County of San Luis
13 Obispo, to which the City of Morro Bay succeeded by virtue of
14 incorporation into that City, the Joint Legislative Committee
15 on Tidelands conducted a series of conferences with the County
16 of San Luis Obispo and the City of Morro Bay, looking toward
17 a basis for agreement, obviating the necessity for any liti-
18 gation.

19 The Committee was successful in this respect in
20 developing a basic form of agreement between the County and
21 the City, eliminating the need for continuing to litigation;
22 and in the process of these conferences, the Chairman of the
23 Joint Legislative Committee had requested participation for
24 staff expertise on behalf of the Attorney General with respect
25 to the legal questions relating to the tidelands grant and by
26 the State Lands Division as to any questions involving the

1 remaining jurisdiction that the State Lands Commission has.
2 Whatever jurisdiction remains under tideland grants in the
3 State is under the jurisdiction of the State Lands Commission,
4 and also questions with respect to boundaries.

5 In the process of developing the agreement, it was
6 felt because of the participation by the Office of the Attor-
7 ney General and the State Lands Division, while neither really
8 was a party to the agreement, that it would be desirable --
9 in view of an additional operating agreement which the Commit-
10 tee felt was advisable to clearly reflect what we considered
11 assets of the tideland trust -- that the Office of the Attorney
12 General and State Lands Division be invited to approve the
13 agreements, in order that there be no remaining question that
14 the chief legal officer of the State of California, the Attor-
15 ney General, or the Lands Commission with respect to some
16 residuary authority under the tidelands grant, had not been
17 informed and might raise questions subsequently, with the
18 initial hope that the agreement that is before you here today
19 would resolve this very knotty problem that has been under dis-
20 cussion for a number of years.

21 In that connection I can report that the participa-
22 tion by the Office of the Attorney General was under the direc-
23 tion of Assistant Attorney General Jay Shavelson, who partici-
24 pated personally; and I participated personally with staff of
25 the State Lands Division.

26 Also, if the Commission has any further questions as

1 to the viewpoint of the position of the City of Morro Bay,
2 Mayor Surfluh and the City Administrator of Morro Bay, Mr.
3 Ted White, are present here today.

4 MR. FLOURNOY: As I understand our position,
5 basically we are being called upon to determine whether or
6 not we have any objection to this agreement, and not being a
7 party to the actual agreement. It is a question of whether
8 we approve or disapprove of it, basically.

9 Has the Attorney General taken a position on it?

10 MR. SHAVELSON: Yes -- although we are formally a
11 party to the litigation by the City of Morro Bay against the
12 County that there has been certain maladministration of the
13 trust. When such maladministration is alleged, the State
14 Lands Commission -- with its residuary jurisdiction under 5301
15 of the Public Resources Code -- does, in our opinion, have the
16 responsibility of investigating the allegations; and if there
17 is any substance to them, that it has authority to take action

18 The State Lands Commission would be a party to the
19 agreement. We believe it is entirely proper that they be a
20 party because they would have a power to step in between the
21 two controverting parties. This way, the full controversy
22 could be wound up by making the State a party to the agreement

23 MR. FLOURNOY: Has the Attorney General's Office
24 approved the agreement?

25 MR. SHAVELSON: Yes, we have.

26 MR. FLOURNOY: Is there any objection or discussion

1 on that? (No response)

2 You say there are representatives here from both
3 the City and County?

4 MR. HORTIG: No, sir -- just the City.

5 MR. FLOURNOY: The one who initiated it was the
6 City.

7 MR. SMITH: Has the County of San Luis Obispo
8 recognized the results of this?

9 MR. HORTIG: Yes, sir. There are two agreements.
10 One is between the County and City. That has been formally
11 approved by the Board of Supervisors, by the County. The
12 other is a supplemental agreement, in which the County is not
13 involved -- although they did have knowledge of it; and that
14 is an agreement between the City and the State as to certain
15 land that will be administered as part of the tidelands trust.

16 MR. SMITH: Then the contentions have been resolved?

17 MR. HORTIG: It requires only approval by the
18 State Lands Commission.

19 MR. FLOURNOY: Well, then, without objection, on the
20 part of the State Lands Commission we will approve the recom-
21 mendations here to approve the "Stipulation and Agreement"
22 and the "Final Settlement Agreement" and authorize the Execu-
23 tive Officer to sign the agreements on behalf of the Commission.

24 Is there any further business to come before the
25 State Lands Commission at this time? (No response)

26 We will then reconfirm the date, time and place of

1 the next State Lands Commission meeting -- Thursday, April 27,
2 1967, ten a.m., Sacramento.

3 No further business being before us, we will adjourn.

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ADJOURNED 11:05 A.M.

CERTIFICATE OF REPORTER

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2
3 I, LOUISE H. LILICO, reporter for the Office of
4 Administrative Procedure, hereby certify that the foregoing
5 thirty-two pages contain a full, true and accurate transcript
6 of the shorthand notes taken by me in the meeting of the
7 STATE LANDS COMMISSION OF THE STATE OF CALIFORNIA held at
8 Los Angeles, California, on March 23, 1967.

9
10 Dated: Los Angeles, California, April 4, 1967.

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12 Louise H. Lilico
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