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MEETING

STATE LANDS COMMISSION

CIVIC CENTER BUILDING

22300 Foothill Boulevard

Hayward, California

TUESDAY, MAY 27, 1975

10:00 A.M.

ORIGINAL

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MEMBERS PRESENT

- Hon. Kenneth Cory, State Controller, Chairman
- Hon. Mervyn M. Dymally, Lieutenant Governor
- Hon. Roy Bell, Director of Finance

MEMBERS ABSENT

NONE

STAFF PRESENT

- Mr. William F. Northrop, Executive Officer
- Mr. R. S. Golden, Assistant Executive Officer
- Mr. R. C. Hight, Staff Counsel
- Ms. Lu Kunkle, Executive Secretary
- Mr. James F. Trout, Manager, Land Operations
- Mr. Walter Cook, Staff Counsel
- Mr. W. M. Thompson, Manager, Long Beach Operations

ALSO PRESENT

- Mr. Jay Shavelson, Assistant Attorney General
- Mr. N. Gregory Taylor, Deputy Attorney General

P R O C E E D I N G S

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CHAIRMAN CORY: We will call the meeting to order.
First of all the Chairman would like to apologize for his tardiness. If it weren't for the 55-mile-an-hour speed limit, it might have been avoidable. I wish to assure you I abided by it.

The first item of business is to confirm the minutes of the previous meeting. Are there any changes?

COMMISSIONER BELL: I have no problems.

COMMISSIONER DYMALLY: No.

CHAIRMAN CORY: Without objection we have confirmed those minutes as presented to us.

Status report of the Executive Officer.

MR. NORTHROP: I have a few informational items, Mr. Chairman and Members.

First is the Long Beach Oil and Gas. The Long Beach City Manager, Mr. John Mansell, and I, have scheduled a meeting in Long Beach on Friday, May 30th, to discuss resolution of some long-standing problems on the valuation of Long Beach dry gas. I will report to you the results of that meeting at the next meeting.

The second item is the Coastal Zone Preliminary Plan. The staff has completed its analysis of the Coastal Zone Plan preliminary draft. Written comments have been

1 submitted to the Executive Director of the Coastal Zone
2 Conservation Commission.

3 I will present a verbal synopsis of the staff
4 critique in Santa Rosa, May 29, at a public hearing scheduled
5 jointly by the State Commission and the Regional Commission.
6 This is the last of the public hearings which are being
7 conducted on a statewide basis.

8 The next item I would like to bring to your
9 attention is Donner Lake. Item 9 on your Agenda --

10 CHAIRMAN CORY: Pardon me, Mr. Executive Officer.

11 MR. NORTHROP: Yes, sir.

12 CHAIRMAN CORY: What are you going to say? Do you
13 like the Coastal Plan or don't you?

14 MR. NORTHROP: As a matter of fact, I am not
15 prepared with written comments to comment, but we don't
16 really care for the plan because it is really a shell of a
17 plan and has not dealt in detail with some of the problems
18 staff feels should be dealt with.

19 And for that reason we are going to --

20 CHAIRMAN CORY: Lack of specificity?

21 MR. NORTHROP: Very much so. Lack of specificity
22 in the plan and they are criss-crossing areas of jurisdiction
23 of various already-established State agencies in the
24 establishment of what appears to be another level of
25 bureaucratic management of that area, rather than trying to

1 meld it in with the existing operation.

2 CHAIRMAN CORY: When will the outline of your
3 statement be available?

4 MR. NORTHROP: It will be probably available this
5 afternoon, Mr. Chairman.

6 CHAIRMAN CORY: Okay. Can you get copies of that
7 to the Commission Members so they can have reference to that?

8 MR. NORTHROP: Certainly.

9 CHAIRMAN CORY: Okay. Go ahead.

10 MR. NORTHROP: Item 9 on the Agenda today concerns
11 preliminary maps prepared to show the boundary of state-
12 owned lands in the bed of Donner Lake.

13 The maps that we will see today will be used
14 immediately to begin the first State Lands Commission
15 management program at the Lake Donner. The staff has also
16 developed a unique catalogue of each individual shoreline
17 parcel to supplement the maps and to make it easier for non-
18 engineering Division staff, as well as private property
19 owners, to understand the work.

20 The catalogue will help to cut lease processing
21 time and will substantially reduce the time normally spent
22 in writing land descriptions on a piecemeal basis.

23 Along the same line of special projects, the
24 Colorado River. For your information the Area Projects
25 Group has started a field survey along an 11-mile section

1 of the Colorado River to determine and identify State-owned
2 property in that area. This is the first survey ever to be
3 conducted in the Colorado River area by the State Lands
4 Commission.

5 These river lands are important fish and game
6 habitat, and may be used by many people for boating, skiing,
7 and fishing. Results of the survey will help the Commission
8 to preserve and protect this resource for all the people of
9 the State.

10 And one last item, Mr. Chairman and Members, is
11 the staff of the State Lands Commission has been asked to
12 assist the Energy Commission in evaluation of the Federal
13 Outer Continental Shelf information provided by the Interior
14 Department.

15 And the Commission Member, the Executive Officer
16 and the Chairman, has indicated that he would like to
17 establish an on-going relationship with the technical members
18 of our staff to give the Energy Commission the necessary
19 technical advice to carry out their function.

20 This concludes my comments, Mr. Chairman.

21 CHAIRMAN CORY: Okay. The next item is to open
22 consideration on Calendar Item 1, is that correct?

23 MR. NORTHROP: That is correct, Mr. Chairman.

24 CHAIRMAN CORY: Who will be giving the presentation?

25 MR. NORTHROP: Mr. Walter Cook from the staff will

1 be giving the presentation. He has asked me to make this
2 preliminary statement to the Commission. The staff is
3 recommending that the Commission formally exercise the
4 public trust on the tide and submerged lands of San Francisco
5 Bay which were included within the perimeter descriptions
6 of State tidelands patents of the last century. Should the
7 Commission adopt the staff recommendation, it will be the
8 first instance in which the State Lands Commission has taken
9 such a step.

10 It is believed that the affirmation of the
11 Commission's responsibility as guardian of existing public
12 property rights in this estuary is not only necessary to the
13 preservation of the public tidelands, but it will also
14 constitute a major step in the direction of clarification of
15 public and private ownership in the area of present confusion
16 and uncertainty.

17 The presentation of the Calendar Item will be made
18 by Walter Cook, one of our staff counsel.

19 Mr. Cook.

20 MR. COOK: Mr. Chairman, we have several technical
21 changes, unfortunately, in the Calendar Item. If I may go
22 through those to get them out of the way first.

23 On page 2 of the Calendar Item, in the second
24 paragraph, line six, the reference to Exhibit B should be
25 changed to read Exhibit A. That is paragraph two on line six.

1 On page 5-- I beg your pardon, page 7 -- the
2 reference to Exhibit 2 should be to Exhibit B. That is at
3 the bottom of the page, bottom of page 7.

4 COMMISSIONER DYMALLY: It has already been changed.

5 CHAIRMAN CORY: Is that "B"?

6 MR. COOK: It should be to change Exhibit 2 to
7 Exhibit B. It should be "B" when it is changed.

8 MR. NORTHROP: It is completed already.

9 MR. COOK: On page 9 at the end of the third para-
10 graph there should be a reference added stating "Parcels 1,
11 2 and 3 are located in Alameda County, California, and are
12 particularly described in the attached Exhibit A which is
13 made a part hereof for all purposes."

14 And on page 19, there should be reference to
15 Exhibit A, Parcels 1, 2, and 3 descriptions, Exhibit B,
16 vicinity map, and Exhibit C, index map.

17 The State Lands Division, as a result of a number
18 of things, has been conducting some rather detailed title
19 studies in the Hayward shoreline area. This has come about
20 as a result of a number of things, one of them being the
21 fact that Leslie Salt Company, the claimant to large amounts
22 of land in this area, has asked that some method or something
23 be done to clear certain titles that Leslie claims in what
24 is called the Baumberg area.

25 As a result of that we have had negotiations with

1 Leslie which have been unsuccessful. But in any event, that
2 was one of the requirements of our studies.

3 In addition to that, for the past few years, the
4 Hayward Area Shoreline Planning Agency, HASPA, has been
5 conducting studies as to the public needs and uses for the
6 future in the Hayward shoreline area.

7 As a result of their studies, it will be necessary
8 that certain acquisitions be made by some of the local
9 agencies.

10 Because of the uncertainty between the private title
11 claims and the State sovereign titles, it is very difficult
12 for any acquisition program to move without clearing that
13 title thing. As a result of that we have also been doing what
14 we could to study the titles in this area.

15 In addition to that we had the litigation in the
16 westerly part of the Bay from which we gained a considerable
17 amount of information over the Bay in general with respect to
18 titles, and much of the information that we have gained on
19 the other side of the Bay has been very helpful in this
20 particular area.

21 There are several other things pending in this
22 area such as, I believe, some type of transportation corridor,
23 some type of sewage corridor and so on.

24 In any event, we have found, as a result of our
25 recent studies, that much of the Hayward shoreline area is

1 unresolved, unresolved in title as between the lands held
2 by the State of California in its sovereign capacity and
3 private claims of underlying sea owners or private parties
4 claiming title as a result of patents issued by the State
5 some hundred years ago.

6 We have found that in certain areas it has required
7 litigation or it will require litigation to clear up some of
8 the disputed questions. As you recall, at the last Commission
9 meeting, the Commission authorized the filing of certain
10 suits, of suits in a certain area. As a result of that
11 authorization, we have in fact filed three suits. In addition
12 there has been one suit filed by Leslie Salt Company against
13 the State in the same area.

14 There is another possible alternative when it is
15 determined that the public trust, in fact, exists. When the
16 evidence is clear that the public trust exists, it is
17 probable that the formal exercise of the trust is a valid and
18 viable alternative, which we strongly urge and suggest to
19 the Commission that it consider at this time.

20 I would like to go through some of the maps, if I
21 may, up on the board. For purposes of orientation, this is
22 on a scale of one to 10,000 of a USGS quad sheet, one of the
23 standard quad sheets in the area. It is a compilation. It
24 combines several quad sheets together. But it is in a scale
25 of one to 10,000.

1 I would like to show for orientation the San Mateo-
2 Hayward Bridge, the Toll Plaza, Jackson Street, City of
3 Hayward, the railroad, the freeway, and the airport, and, of
4 course, the shoreline, Mount Eden Creek, and this area which
5 is called sometimes the Baumberg parcel, this general area in
6 here in particular, and the general shoreline in particular,
7 as well as the outer edge, as shown by this particular map,
8 of the mud flats.

9 We have prepared a map at the same scale, and this
10 map represents several things. In the yellow it represents
11 the perimeter descriptions of the original State surveys by
12 which the patents were issued. The surveys were made by the
13 Alameda County Surveyor and passed to Sacramento. Ultimately,
14 in this instance, patents were issued. We do not concede
15 necessarily that these represent the true amount of land that
16 was patent. There are some serious issues.

17 But in any event, the yellow lines represent these
18 patent description perimeters.

19 I'd like to point out at this time that -- perhaps
20 I should wait -- I should show you first the red line. The
21 red line, Mr. Chairman, represents the area in which you last
22 month authorized the litigation.

23 Just prior to that, as you recall, Leslie Salt had
24 filed suit against the State, and we have shown that in this
25 orange line, with this orange line up to the northerly part.

1 This is Mount Eden Creek and this is the northerly part of
2 what is called the Baumberg parcel.

3 Leslie has filed a quiet title action against the
4 State. Since the last Commission meeting, the State, on be-
5 half of the Commission, has filed a quiet title action with
6 respect to Swamp and Overflowed Lands Survey No. 1725, which
7 is right here.

8 The State has also filed a quiet title in a
9 separate quiet title action concerning Swamp and Overflowed
10 No. 242, No. 243, and No. 244. Numerous issues are involved
11 in that. All the issues in these various cases are separate
12 but these particular ones involve the rejection on the part
13 of the Federal Government of the State's application for that
14 as swampland on the ground that this all was in fact tidelands.

15 It also can be seen that Mount Eden Creek went
16 through these and wasn't excluded from the swampland patents,
17 patents which were designated swampland in any event.

18 We also filed a third quiet title action with
19 respect to Tideland Survey 75, Tideland Survey 76, and the
20 intervening area of Mount Eden Creek which this one solitary
21 surveyor in this whole area showed that Mount Eden Creek did
22 in fact exist.

23 He has excluded it from these particular ones.

24 Now, the green area represents the area in which we
25 are asking the Commission to formally exercise the public

1 trust today. These two parcels were formerly patented under
2 Tideland Survey 83. There was a large patent over a large
3 area. One patent included a number of surveys, but this
4 particular one survey that we are talking about is within the
5 description of Tideland Survey 83.

6 This particular parcel, and in addition to
7 Tideland Survey 88, immediately to the south, this particular
8 parcel and this particular parcel are owned by the Division
9 of Highways, by Caltrans, and are held by them in a
10 proprietary capacity subject to this public trust easement
11 on behalf of the public. They have been declared excess back
12 in 1972. As a result of that we are asking that the green
13 areas have the trust exercised.

14 I should point out that there is an exception to
15 the north, a line across here, which is in separate ownership.
16 And because of the fact that we are conducting our studies
17 on a parcel-by-parcel basis, we are not jumping ahead of
18 anything until we are prepared. This has been excluded from
19 our suits and there is nothing that has been done with
20 respect to this. We are only asking that the exercise be on
21 those parcels within the Highways descriptions themselves.
22 We have used the Highways descriptions based upon their maps
23 supplied to us.

24 We also have excluded from the trust exercise, the
25 area of the toll exercise, which Highways continues to need,

1 of course, for purposes of the toll plaza.

2 This area down here in green is primarily a matter
3 of mud flats. There is some amount of marsh in this area.
4 This is basically the map of Mount Eden Creek. This is what
5 is left of it at this time, a relatively small creek, passing
6 through some grass. This is all mud flats, and it is all,
7 as you can see, outside the levees of the present salt
8 evaporators.

9 There are however, as the pictures will show in a
10 few minutes, there are some abandoned salt works in this area.

11 The white dots represent the point on which the
12 parties were standing that took certain pictures. We have a
13 few pictures to show on the end here, and these white dots
14 will represent the position from which the pictures were
15 taken.

16 Acreages are shown on the map. The upper portion
17 of the Parcel 1, which is this TLS 83 up here, is 29 acres.
18 The lower portion of Parcel 1 is 43 acres. The upper portion
19 of Parcel 2, Parcel 2 being that area here, is 30 acres. And
20 the lower portion is 23 acres.

21 Parcel 3, which is this area down here, is a
22 hundred thirty-five acres.

23 We have also then expanded to the same scale as the
24 underlying maps, and we have compared the horizontal place-
25 ment by the topography on the ground, the various hills and

1 a number of other things. And we have placed this 1857
2 topography, based on the U. S. Coast and Geodetic Survey
3 Chart, I believe it's T-635, 1857.

4 And as you can see from this 1857 shoreline, that
5 this trust area, Parcel 1 and Parcel 2, from the time of
6 1857 until the present date, have been out and they have
7 been mud flats.

8 We can see that substantially all of this parcel
9 down here has been mud flats. That's this Parcel No. 3.
10 We can see that Parcel No. 3 is located at the mouth area of
11 Mount Eden Creek. Mount Eden Creek had a large mouth at that
12 time. Mount Eden Creek then proceeded back in this direction.
13 Also, this creek went to Union City, and this was called in
14 some cases the south branch of Mount Eden Creek, and in some
15 instances Alameda Creek, and in this map it is shown as
16 Union Creek, Union City Creek for the whole map.

17 This is the north branch in any event of what is
18 known today as Mount Eden Creek. The dotted lines represent
19 the deeper water, the channel of Mount Eden Creek, which, as
20 can be seen, will pass directly through this Parcel No. 3.

21 The shoreline configuration is substantially along
22 this yellow line where the original survey showed it to be.
23 And I should point out, then, that there is some slight
24 problem as can be seen here. There is a slight gap between
25 Tideland Survey 101 -- Tideland Survey 101 is this entire

1 parcel. The only portion that we are asking that the trust
2 be exercised on is this particular portion of the west half.
3 But as far as this upper boundary line is concerned, and this
4 line, they should probably coincide. There are some problems
5 survey-wise with the fact that this, by the surveyor, of
6 243, showed it to be not 40 ^{chains} ~~change~~ but 30 ^{chains} ~~change~~. It is a
7 long, technical problem of engineering, but I should point
8 out there is some problem.

9 I should also point out that what we are not talking
10 about today is a boundary line. We are talking primarily
11 about areas. We are talking about areas that were patented
12 and we are talking about that we need to know enough about
13 the boundary to know what the character is, what their
14 character has been historically and what the character is
15 today.

16 And I think we have very adequate information for
17 that particular purpose.

18 We have located, based upon our studies, what we
19 feel to be a very substantial close placing of this township
20 over in this area.

21 Now, we feel that the questions to be decided and
22 the question before the State Lands Division and its title
23 studies, are whether the trust exists and if the trust does
24 exist, what in fact are the public needs with respect to the
25 area and what is the State Lands Commission jurisdiction?

1 And we feel that in all instances the answer is yes, that
2 the trust does exist. We feel that the public need is well
3 demonstrated by the studies of HASPA, BCDC, and others, and
4 by actual observation of the area itself. We feel there is
5 no question about the State Lands Commission jurisdiction.
6 We feel that if there is a question that we believe requires
7 settlement by the Court, we will proceed to litigation.

8 However, if there is a question we feel, such as
9 this one, which it would be as we see it virtually impossible
10 to sustain any burden of proof that these parcels which were
11 in fact patented as tidelands, which have been tidelands,
12 which the applicant applied for as tidelands, which in fact
13 had a certificate of purchase which was for tidelands, which
14 everything indicates tidelands, we think the burden would be
15 so great on the part of any private party to contend that
16 these were in fact something other than tidelands, we see no
17 reason for litigation in these particular parcels.

18 We think that the affirmative action on the part
19 of the Commission to merely proceed with this formal exercise
20 will tend to establish the Commission's approach to this type
21 of thing. It will help to begin clarifying something that
22 has been very confusing over the years.

23 There are a number of other things I could say.
24 Our time is limited. We do have a very brief slide show.
25 I would like to, if I may, introduce Ms. Janice Delfino, who

1 is a member of the Citizens Advisory Committee of the
2 Hayward Area Shoreline Planning Association. She has
3 several slides which I am certain that the Commission would
4 be somewhat interested in looking at. We also then have
5 several slides that we have taken toward the end of the
6 presentation.

7 CHAIRMAN CORY: Okay.

8 MR. COOK: Ms. Delfino.

9 MS. DELFINO: I want to acquaint you with the
10 northern boundary. This is the Hayward shoreline, the
11 northern boundary, looking south, Hayward-San Mateo Bridge
12 and on down to the new South Bay Wildlife Refuge. This
13 entire area is the Hayward shoreline, thousands of acres, and
14 I would like you to envision this as it looked a hundred
15 twenty-five years ago, thousands of acres of lush salt marsh.

16 However, we cannot turn back the clock and there
17 are areas --

18 --oOo--

19 MS. DELFINO: -- that we feel can be open and
20 perhaps salt marsh re-established, such as along in this
21 area, about three to four hundred acres that could be salt
22 marsh again, opening this dike.

23 And I will just go on down the shoreline. I
24 presume you flew over this this morning and enjoyed the
25 beauty of the Hayward shoreline.

--oOo--

1 MS. DELFINO: There is a salt marsh being
2 established on its own right along in this area.

3 --oOo--

4 MS. DELFINO: Another dike area, dry dike area,
5 that could support new salt marsh is along here.

6 --oOo--

7 MS. DELFINO: This entire area includes Parcel 1
8 and 2. Just looking back over that area this is where the
9 dike could be opened and salt marsh re-established. These
10 are the mud flats going out towards the Bay.

11 The Citizens Advisory Committee to the Hayward
12 Shoreline Planning Agency would like a nature center in this
13 area with boardwalks over the marsh similar to the one at
14 Palo Alto, opening up this area, perhaps, to allow this
15 dry dike area to flood again with Bay waters. This particular
16 area is not used for salt ponds. There is no need for
17 salt ponds. It cannot support industry or the underlying
18 Bay cannot support industry, so therefore this could be
19 open and could be used for wildlife preservation and public
20 recreation.

21 --oOo--

22 MS. DELFINO: The boundary or the distinction
23 between north of San Mateo Bridge and south of San Mateo
24 Bridge. This is Jackson Street looking east toward Hayward,
25 the hills of Hayward.

1 --oOo--

2 MS. DELFINO: We are just south of San Mateo
3 Bridge and this is the area of Mount Eden Creek which at
4 one time in the mid-1850's was a barge canal and the scows
5 and schooners came up here and out into the Bay.

6 --oOo--

7 MS. DELFINO: It was diked, I am not sure how long
8 ago, and no longer was there an opening into the Bay, but
9 the barges did come in this way and up into the Mount Eden
10 Creek and several landings.

11 You can't see the marsh in this picture but there
12 is, because of the high tide, there is a very good marsh.

13 MR. COOK: May I interrupt for a minute?

14 MS. DELFINO: Yes.

15 MR. COOK: May I point out to the Commission that
16 the area, if you can see that light, that area in there is
17 part of the area that we are asking the Commission to
18 exercise the trust on today. That's at a very high tide, it
19 appears to be, and the marsh grass that shows up otherwise
20 is apparently covered. That is within the area of Parcel
21 No. 3 toward the mouth of Mount Eden Creek.

22 MS. DELFINO: Yes. This is a December tide and
23 those are the high tides so it did cover the marsh.

24 --oOo--

25 MS. DELFINO: Just south of Mount Eden Creek is

1 Union City, back here, and old Alameda Creek. And there is
2 a beautiful marsh out along that waterway that has been
3 changed, the waterway has been changed, but there still is a
4 good salt marsh.

5 And these are Leslie Salt evaporating ponds and
6 the dikes are used by the bird population. They have
7 adapted to this.

8 You must remember that this whole area was at one
9 time all lush salt marsh and it supported millions of birds,
10 Whistling Swans, Snow Geese and Canada Geese, which we just
11 very seldom see here. But perhaps if the area can be re-
12 established, they will return, and in some fresh water areas
13 established also.

14 --o0o--

15 MS. DELFINO: This is just looking beyond old
16 Alameda Creek to Turk Island and Coyote Hills and on beyond
17 to the new South Bay Wildlife Refuge, and I want to talk a
18 little bit about that particular marsh.

19 ---o0o--

20 MS. DELFINO: It is about 400 acres and it is the
21 largest marsh between Richmond and Fremont. I consider it
22 original marsh. It has not been diked. The dikes are back
23 here. Mount Eden Creek is back up in here, and that is that
24 marsh, Mr. Cook, that you talked about, where the opening
25 now comes out into the Bay.

1 They are two other plants that live just landward of the
2 cord grass.

3 --o0o--

4 MS. DELFINO: And here are some of our endangered
5 species. The Clapper Rail spends its entire lifetime in the
6 salt marsh. The reason it is endangered is because the salt
7 marsh is endangered.

8 --o0o--

9 MS. DELFINO: And here is a salt marsh Song
10 Sparrow, another endangered species.

11 --o0o--

12 MS. DELFINO: And the Red-Bellied Harvest Mouse
13 which was found by one of our teachers in the Hayward area.
14 He took his class to Hayward Landing. In that area he found
15 a pink blanket. Inside this pink blanket was this Red-
16 Bellied Harvest Mouse.

17 He quickly picked up the blanket and mouse and
18 took it back to his school two miles away and photographed
19 it in a cage. Now, we know that endangered species do not
20 belong in cages but he just wanted to photograph it, and he
21 quickly took it back to the shoreline in the pink blanket.

22 --o0o--

23 MS. DELFINO: This is the area between the marsh
24 and the open Bay, and this is the tideland, the valuable
25 area, the food area, the dinner table for the birds on the

1 But this marsh is valuable and it supports a
2 tremendous amount of wildlife right now.

3 --oOo--

4 MS. DELFINO: This is what it looks like when the
5 tide is out, the organisms are decomposing, the cord grass,
6 and it is a lush area for the marine life. The cord grass is
7 one of the fine producers of oxygen and it tends to cleanse
8 the air of pollutants. And I would hope that some day there
9 would be more studies on the cord grass' ability to control
10 pollutants in water. I mean, perhaps that is why we need
11 more salt marsh. We have lost, along the Hayward shoreline,
12 we have lost 95 percent of the salt marsh.

13 So that's why we treasure our five percent.

14 --oOo--

15 MS. DELFINO: The marsh has its seasons also and
16 we think this is quite a beautiful area. And an indication
17 of a good salt marsh is what it supports, and I will show
18 you that in a few minutes.

19 --oOo--

20 MS. DELFINO: This is the cord grass. It is in
21 bloom. As you can see, the little crystals along here are
22 salt crystals. It is able to excrete them through the blade
23 of the grass. It lives in Bay water.

24 --oOo--

25 MS. DELFINO: And this is Pickleweed and Dodder.

1 shoreline. The most visible creatures are the birds but we
2 know that there are mammals and insects and other creatures,
3 but this is what we want to say. These are the tidelands.

4 --o0o--

5 MS. DELFINO: And the little mud snails along here
6 with the new growth of cord grass. And out here, this is in
7 the area of Parcel 1.

8 --o0o--

9 MS. DELFINO: This is some of the plants and the
10 food chain or the algae.

11 --o0o--

12 MS. DELFINO: And this is the Bay Lettuce. If you
13 were to lift up those rocks you would find little crabs
14 scurrying around to hide.

15 --o0o--

16 MS. DELFINO: All these come out during high tide.
17 Here are birds resting on the mud flats. This is between
18 Johnson Landing and the toll plaza. This is that large mud
19 flat area.

20 --o0o--

21 MS. DELFINO: And as soon as the tide is out, there
22 go the birds, Sandpipers and Avocets.

23 --o0o--

24 MS. DELFINO: And just, well, 94 species of birds
25 on the shoreline. So here are just a few.

1 --o0o--

2 MS. DELFINO: And Hayward has a large population
3 of Marbled Godwits. At the last count there were 18,000
4 recorded along Parcel 1. And they wait on the dikes, on the
5 salt dikes, until the tide is out and out they go --

6 --o0o--

7 MS. DELFINO: -- with that long bill probing into
8 the mud flats for food, Crustacens, Mollusks, Worms. This
9 is a beautiful bird. It winters here and then it goes north
10 to nest.

11 --o0o--

12 MS. DELFINO: And some of the other creatures are
13 the Black-Necked Stilt. You can tell that is a shore bird.
14 There is also the interesting combination of marsh grass,
15 birds, mud and open Bay waters.

16 --o0o--

17 MS. DELFINO: And that's a good combination.
18 That's a powerful combination.

19 These are Avocets in breeding plumage --

20 --o0o--

21 MS. DELFINO: -- and Avocets in winter plumage.

22 --o0o--

23 MS. DELFINO: And the little Ruddy Duck. And there
24 are those mud snails, eating the decaying cord grass.

25 --o0o--

24
1 MS. DELFINO: And the Egrets. And all these birds
2 are there. The reason so few of us have seen them is because
3 it's not open to the public, but we do know they are there
4 and we feel a certain protection for them --

5 --o0o--

6 MS. DELFINO: -- as we do for the White Pelicans
7 which are there. They have gone north and east to nest at
8 Pyramid Lake and the Great Salt Lake in Utah and other in-
9 land lakes.

10 But they do come back to the south end of the Bay
11 and we must protect them also.

12 --o0o--

13 MS. DELFINO: And the Rock Louse,

14 --o0o--

15 MS. DELFINO: And the beautiful shells that give
16 a certain texture to the shoreline and beauty. And I think
17 we need more of this type of slough because at one time I am
18 sure there were Harbor Seals along the Hayward shoreline.

19 --o0o--

20 MS. DELFINO: And we want them to return. We
21 don't want channelized areas but we want nice sloughs to
22 encourage the Harbor Seals to come back again.

23 --o0o--

24 MS. DELFINO: And there were birds. The Oakland
25 Bay birds do come up the slough to probably Mount Eden Creek

1 and old Alameda Creek at high tide.

2 --o0o--

3 MS. DELFINO: And this is the end of the south end
4 of the shoreline, of the Hayward shoreline. There is marsh
5 restoration going on right in this area. Dr. Newcomb is
6 trying to re-establish cord grass. And you can see how
7 nicely our Hayward shoreline joins with the South Bay
8 Wildlife Refuge. This is all part of the Pacific Flyway,
9 the famous bird migration area. Some birds nest here. Some
10 birds rest here. Some birds eat here and then they go on in
11 turn.

12 But we know that the Federal Government is spending
13 millions of dollars to save that area so I think we should be
14 very anxious to save our own area.

15 That is it.

16 MR. COOK: We have several other, about 15,
17 pictures, Mr. Chairman, that we have taken ourselves for the
18 purpose of this meeting, that we can get through fairly
19 quickly.

20 --o0o--

21 MR. COOK: This is from the toll plaza looking
22 north across the trust Parcel No. 1. This is at high tide.
23 This is a tide of 6.5 which is five-tenths of a foot, one-
24 half foot below mean high tide.

25 As you will notice, the water extends all the way

1 up to that particular levee. As we flew over this morning
2 that was at a very low tide. It was 1.1 feet below mean low
3 tide which is an excessively low tide.

4 But this shows at a high tide, that area right in
5 there is the part of Parcel 1 that extends on out there.
6 We are asking that the trust be exercised over that land.

7 Would you show the next one?

8 ---o0o---

9 MR. COOK: This is merely a telephoto shot of the
10 same thing. It merely shows the water up to the edge of the
11 levee.

12 ---o0o---

13 MR. COOK: This is a shot a little bit more north
14 than the last one, and showing the same area. That is trust
15 Parcel No. 1 up there, the upper part of it.

16 ---o0o---

17 MR. COOK: This is looking from the toll plaza
18 south and it's looking somewhat diagonally toward the shore.
19 The mouth of Mount Eden Creek is off in that direction.
20 There is Turk Island. The water is over along the shore,
21 the edge of the levee there. There is some marsh grass over
22 here. This tide is somewhat lower than mean high tide but
23 it is a higher tide than the low tide today.

24 The trust Parcel No. 1, the lower part of it, is
25 in that area right there.

1 --o0o--

2 MR. COOK: This is a telephoto lens of the same
3 shot, the same area, looking down towards the levee, and that
4 is part of the parcel that we are asking the trust be
5 exercised on, this area out in here, which today is well out
6 into this water. Of course, at low tide it is mud flat.

7 This is the mouth of Mount Eden Creek, over in that
8 direction. This is a pumping plant for water pumping at the
9 mouth of Mount Eden Creek. The levee goes around in that
10 direction. That pole line, by the way, extends over the
11 pumping plant from the north up here.

12 --o0o--

13 MR. COOK: This is standing on the levee below the
14 toll plaza, looking almost due north up the levee. This
15 area is landward of the parcels we are asking the trust be
16 exercised on. In fact this is part of the area that is in
17 present litigation that we filed as a result of the last
18 Commission meeting. We are right in this area right here.

19 --o0o--

20 MR. COOK: This is moving around slightly from
21 where we were a little more northwesterly, and it will show
22 a corner of what is the parcel we are asking the trust be
23 exercised on. This is along the edge there. That is marsh
24 grass. This, by the way, is at low tide. This was at a
25 tide of nine-tenths below mean low water, when it was taken.

1 So here we have a very low tide. These pictures with the
2 numbers, Number 2 here, is at low tide as distinguished from
3 those previous ones, the A, B, C, D, E, which were at a
4 higher tide.

5 --o0o--

6 MR. COOK: This is the same view. This is looking
7 out across the parcel we asked the trust be exercised on.
8 It is a little bit more to the west.

9 --o0o--

10 MR. COOK: That is looking due west from this area
11 right here, and if we run a line down through the middle of
12 the picture, on the one side we are asking that the trust
13 be exercised and on the other side is what was conveyed as
14 swamp and overflowed land, where we have the litigation.

15 --o0o--

16 MR. COOK: That's in the area of the mouth of
17 Mount Eden Creek showing some abandoned salt-making
18 operations. That's down in this area right in here, just to
19 the northerly portion of Parcel No. 3.

20 --o0o--

21 MR. COOK: That is looking from that particular
22 spot outward across the area of Parcel 3 in which we are
23 asking the trust be exercised.

24 --o0o--

25 MR. COOK: And that's looking south from this

1 direction down along the edge of some of this salt marsh
2 and through part of Parcel No. 3.

3 --o0o--

4 MR. COOK: That is what Mount Eden Creek looks
5 like today at its mouth. The picture was taken from the
6 mud flats themselves back toward the creek. That is looking
7 back into the mouth of the creek. At one time the creek was
8 capable of handling the paddle wheel steamers, but it's not
9 now.

10 --o0o--

11 MR. COOK: And this is looking from the exact same
12 spot at the mouth of Mount Eden Creek looking toward the
13 Bay, looking due west, and across the parcel where we are
14 asking the trust be exercised.

15 --o0o--

16 MR. COOK: And this is from the complete south end
17 of the area and it is looking north all the way up to the
18 toll plaza which is up in there, and the bridge is up in that
19 direction.

20 Thank you.

21 Thank you very much, Ms. Delfino.

22 [Thereupon a short discussion was held off
23 the record.]

24 MR. COOK: Mr. Chairman, I will cut this as short
25 as possible. Actually there are several items referred to

1 on page 2 of the Calendar Item, certain exhibits which
2 previously have been filed with the Commission. I believe
3 you have copies of these and have had an opportunity to
4 consider them.

5 The maps on the wall, I didn't show every one of
6 them. This is an aerial photograph, infrared, prepared by
7 NASA in 1974. It shows the general area. We have the area
8 in which the other authorization was given and we have the
9 area in which the trust exercise is asked.

10 Next to it we have a map that is called the Trust
11 for Public Lands, Options 1 and 2. That is a map that was
12 supplied by the Trust for the Public Lands to the State and
13 it has to do with an option between Leslie Salt Company and
14 the Trust for Public Lands. The Baumberg parcel is part of
15 the area to the north and there is an area in which Leslie
16 was hoping to clear its titles.

17 Now the other area, the blue area, was what the
18 Trust for Public Lands, I assume, would be acquiring. It
19 can be noted that the land that we are talking about is
20 shown as being owned by Leslie. The Parcel 3, that is, of
21 the trust exercise is shown as being owned by Leslie here
22 at the mouth of Mount Eden Creek on the Trust for Public Lands
23 map.

24 I think that will conclude our presentation. If
25 there are any questions?

1 I think there may be some other parties that would
2 like to comment.

3 COMMISSIONER DYMALLY: No.

4 COMMISSIONER BELL: No.

5 CHAIRMAN CORY: Okay.

6 MR. NORTHROP: Mr. Chairman, I would like to
7 introduce Mayor Weinreb of Hayward, who would like to
8 comment on this.

9 MAYOR WEINREB: Thank you very much. I'd like to
10 officially welcome you to Hayward.

11 CHAIRMAN CORY: Thank you very much for your
12 hospitality.

13 MAYOR WEINREB: This is something we have been
14 looking forward to for a long time. We have actually been
15 officially studying the shorelines since 1971, and out of
16 that study has come the photos that you saw, the slides,
17 prepared by a very excellent Citizens Advisory Committee.
18 They are now preparing a movie and television show of the
19 shoreline.

20 I have here, and Ms. Delfino does have some
21 copies, of a very brief description, a brief four-page
22 description of the shoreline, and on the inside is the map.
23 And up here is the northernmost portion of San Leandro
24 where it meets Fremont, and the South Bay Wildlife Refuge
25 area. And in the green you will see these are areas that

1 we intend to restore as marshes.

2 This one down here, which was pointed out to you
3 already, is the mouth of the old Alameda Creek. It has
4 already re-established in part naturally.

5 There are several unique things about this shore-
6 line, this portion of the shoreline. For one thing, unlike
7 most of the shoreline of the Bay Area, it is relatively
8 undeveloped. You can restore parts of it. Whereas, in other
9 areas, it really is an impossible kind of situation. As
10 Janice pointed out, the cord grass and the Pickleweed that
11 grows along the shoreline in the marsh, and what can be
12 restored as marsh, is extremely important both for the
13 fish and the bird population.

14 In this time when we are thinking and knowing that
15 we are going to be facing some rather drastic worldwide
16 food shortages, it is really imperative that land which is
17 important for production, in this case of fish life, be
18 maintained, particularly where what could be established
19 here, would and can be established elsewhere. Industry,
20 commerce, all of that can go elsewhere. Nothing else can
21 replace the marsh land as far as food production for fish
22 and birds.

23 One of the other things that is unique about this
24 shoreline is its closeness to large areas of population.
25 It can be enjoyed by the youngsters, thousands of youngsters.

1 who live within a ten- or 15-minute bike ride. So that it
2 is a recreation area that is not miles and miles away. It
3 is something that is readily accessible on a Saturday
4 morning, once it is open to the public, so that it can be
5 enjoyed by people, can be enjoyed free, can be enjoyed with-
6 out a great deal of time and trouble in traveling to it.

7 One of the things that I will just point out to
8 you, and is in the process of being planned, is a transporta-
9 tion corridor which, if established, will separate the
10 industrial area and the recreation shoreline area. And what
11 is really unique about this, as far as I know, is the first
12 time that the Department of Transportation has joined with
13 some local communities in doing a transportation corridor
14 which is multi use and which will have different rights of
15 way. There will be the ordinary right-of-way for the trucks
16 and cars. In addition to that, we are talking about a
17 separate right-of-way for bikes, for just walking, and also
18 some places where it widens out so that people can just park
19 and then walk along to the shoreline.

20 There are other kinds of potential, recreation and
21 wildlife potential, on the shoreline that we are still
22 exploring. But the City of Hayward, the Hayward Recreation
23 and Park District, has, as a first step in acquiring this
24 land, pledged all of our Z'berg-Collier bond money for
25 acquisition along this shoreline.

1 In addition to that, other agencies, the Flood
2 Control Agency, wants to buy some land here for areas for
3 silt disposal. And there are some upland areas which cannot
4 be restored and the silt would be suitable there and they
5 would then become active recreation areas after that.
6 So we have almost a million dollars already pledged for
7 acquisition of a portion of this land and all the agencies
8 that have really anything to do with this part of the Bay
9 and shoreline have pledged themselves and have worked with
10 us very carefully on the plan for the Hayward shoreline.

11 And with a little help and some luck and some
12 time this will all become open, it will be easily accessible,
13 it will be productive, both as far as food is concerned and
14 the recreation and leisure of the people of the Bay Area.

15 We very much appreciate your interest in helping
16 us get that started and thank you very much for coming to
17 us today.

18 CHAIRMAN CORY: Thank you very much.

19 MR. NORTHROP: We now have comments from
20 Mr. Robert Gill from the Department of Fish and Game on
21 this project, Mr. Chairman.

22 MR. GILL: Mr. Chairman and Members of the
23 Commission, I think the wildlife potentials of this area
24 have been presented quite admirably today by Ms. Delfino.
25 I can only say that the Department of Fish and Game has

1 placed its number one priority on the preservation of
2 coastal wet lands, mud flats and marshes. It is the one
3 habitat in this State which has suffered the most
4 degradation.

5 There is fortunately in this area scientific
6 studies to support the value of these mud flats as far as
7 supporting populations of birds, water fowl and shore birds.
8 And the Department feels that this area would best serve
9 the public and the wildlife interests if it were to be kept
10 in open space.

11 CHAIRMAN CORY: Questions?

12 COMMISSIONER DYMALLY: None.

13 COMMISSIONER BELL: None.

14 CHAIRMAN CORY: Thank you.

15 Mr. Wilmar.

16 MR. WILMAR: Mr. Chairman and Members of the
17 Commission, my name is Michael Wilmar and I am the Deputy
18 Director of the San Francisco Bay Conservation and
19 Development Commission.

20 I'd like to preface my remarks by saying that they
21 have not been formally authorized by the Commission. How-
22 ever, they are based on the San Francisco Bay Plan and I
23 am sure they reflect the views of the Commission. I'd like
24 to say that we fully support the State Lands Commission's
25 exercise of the public trust totally on these parcels.

1 The major reason for our supporting this action is
2 that the exercise of the trust in this area would be fully
3 consistent with the San Francisco Bay Plan.

4 As your Calendar material points out, the San
5 Francisco Bay Plan does encourage and in fact urge the
6 preservation to the maximum extent feasible of marshes and
7 mud flats around the margins of the Bay. Clearly, these
8 areas are primarily mud flats and therefore ought to be
9 preserved.

10 Secondly, the Plan does call for the exercise of
11 the public trust wherever possible. This is particularly
12 important to the Commission, our Commission, because it
13 provides an additional way of preserving important areas in
14 the Bay in addition to the Commission's own police power.

15 Thirdly, the third reason for supporting your
16 action today, is the plan itself, at least our plan, calls
17 for the preparation of a specific and detailed plan for this
18 particular area. That plan has been prepared by the
19 Hayward Area Shoreline Planning Agency. And incidentally,
20 I might point out that instrumental in the preparation of
21 that plan was Ms. Weinreb, who played a very active role
22 in the preparation of that plan.

23 The exercise of the trust in this particular case
24 does appear to be consistent with that plan. We fully
25 supported the preparation of that plan and therefore support

1 this action in that respect as well.

2 The Attorney General has pointed out to us and
3 has asked me to bring to your attention that under the
4 McAteer-Petris Act, which is the BCDC's co-authored
5 legislation, BCDC also exercises trust powers in San
6 Francisco Bay. And I think we'd appreciate it if, in
7 addition to the findings that are already in your
8 resolution, that you could add a finding to the effect that
9 nothing done today is in derogation of BCDC under the
10 McAteer-Petris Act, which also exercises trust powers.

11 And finally, I'd like to close by saying that
12 I think one of the most important aspects of our --

13 CHAIRMAN CORY: Go back a minute. You are
14 suggesting that there be a change in the wording of the
15 resolution?

16 MR. WILMAR: Just the addition of a clause that
17 would indicate that your action today in exercising the
18 public trust on these parcels would not in any way affect
19 or derogate BCDC's authority to exercise a trust under the
20 McAteer-Petris Act.

21 MR. TAYLOR: I think that is understood,
22 Mr. Chairman.

23 CHAIRMAN CORY: Without amendment?

24 MR. TAYLOR: Yes. I don't think we need the
25 amendment. We understand that there is a difference of

1 opinion between the State Lands Commission and BCDC as to
2 the fact of the coequalness or superiority of one or the
3 other in this area.

4 CHAIRMAN CORY: I just wanted to point out where
5 we are on that issue before we went off the record.

6 Go ahead.

7 MR. WILMAR: Finally, I'd like to conclude by
8 saying that I think one of the key elements in BCDC's
9 success in protecting the Bay so far has been the State Lands
10 Commission and its very excellent staff.

11 The West Bay lawsuit is obviously extremely
12 important for preservation of tidelands in the western part
13 of the Bay. This historic exercise of a public trust on
14 property on the east side of the Bay clearly is another
15 significant step toward protection of the Bay as a Statewide
16 resource. And therefore I'd like to conclude by saying that
17 we do appreciate the work that the State Lands Commission
18 and the State Lands Commission staff has done with us and
19 hope that it will continue in the future.

20 CHAIRMAN CORY: Thank you very much.

21 MR. NORTHROP: Mr. Chairman, we have Caltrans in
22 our notes here and no one has indicated that they are here
23 from Caltrans. Is there anyone here from Caltrans?

24 Okay.

25 Mr. Chairman, we have in the audience Mr. Ed

1 Washburn and Mr. John Lillie. Mr. Washburn is counsel and
2 Mr. Lillie is President of Leslie Salt Company. They have
3 indicated that they would care to address some remarks to
4 the Commission.

5 MR. LILLIE: Thank you. I am John Lillie,
6 President of Leslie Salt Company. Members of the Commission,
7 Mr. Chairman, ladies and gentlemen, I'd like to make just a
8 couple of comments on our general land policies and then
9 also address myself to the resolution that is before you
10 today.

11 Leslie recognizes that a substantial portion of
12 its lands are lands that have high social values, such as
13 for environmental purposes, recreational purposes, open
14 space, and wildlife. Fortunately, the realization of these
15 values, we believe, is consistent with Leslie's primary
16 objective which is to remain in the salt business in the
17 Bay Area on an economical basis.

18 Therefore, it is our policy to sell lands which
19 are surplus to salt production, and rights on salt ponds
20 which will allow on-going salt production on those salt
21 ponds with the first priority to public or quasi public
22 agencies.

23 This policy is reflected in the options with the
24 Trust for Public Land which are referenced here on the map
25 in blue. It is also reflected in our support for the

1 creation of the San Francisco Bay Natural Wildlife Refuge.
2 And particularly it is reflected today in the support for
3 the program which has been developed by the Hayward Area
4 Shoreline Planning Agency, and specifically the portion of
5 that program which calls for the addition of the Hayward
6 salt ponds, marshes and mud flats to the San Francisco
7 Natural Wildlife Refuge. We support that program.

8 We also would like to commend Mayor Weinreb and
9 the many individuals who worked on the development of the
10 HASPA program for the very devoted and extraordinary effort
11 and cooperation in the public interest.

12 Specifically as to the resolution before you,
13 Leslie has no objection at this time to the resolution before
14 the Commission concerning the exercise of the trust over a
15 portion of Tidelands Survey No. 101, subject to our verify-
16 ing the property descriptions. We recognize the lands below
17 the current ordinary high water mark are subject to the
18 public trust for commerce, navigation and fishing.

19 Although Leslie does not agree with the character-
20 ization of a small portion of marsh contained within the
21 description of Parcel 3, which would be the upper corner
22 there, Mr. Northrop, in the lower parcel, the eastern corner
23 on the map there -- the lower green portion. Now, up in the
24 right-hand corner. Although we do not agree with that as
25 being subject to the trust, there is no necessity for making

1 an issue out of that point at the present time based upon
2 our right to continue its use and the reserve right of the
3 Commission to review the situation at a later date.

4 As regards other Leslie lands covered by the
5 HASPA Shoreline Program, Leslie does not agree with the
6 conclusions of the State Lands Commission staff, and
7 unfortunately we have not found a basis, as indicated by
8 Mr. Cook, for successful settlement negotiations. Further-
9 more, unfortunately, this has required that Leslie and the
10 State initiate filing a series of quiet title actions, which
11 have been previously mentioned, to help clarify these
12 differences.

13 We hope that these issues can be resolved
14 expeditiously so that implementation of the HASPA Program
15 will not be unduly delayed.

16 Thank you for the opportunity to present these
17 views. I will be happy to answer any questions.

18 CHAIRMAN CORY: I am not really sure what your
19 position is with respect to our exercising the public trust
20 of those three parcels.

21 Should or shouldn't we do it?

22 MR. LILLIE: We are in agreement with the
23 resolution.

24 CHAIRMAN CORY: You are in agreement?

25 MR. LILLIE: Yes.

1 CHAIRMAN CORY: But we have some other things
2 which we are trying to negotiate or resolve as to the rest
3 of the area?

4 MR. LILLIE: We have differences as reflected in
5 our quiet title actions which still need to be resolved,
6 yes.

7 CHAIRMAN CORY: We appreciate it very much.
8 Are there any further comments on this Calendar
9 Item?

10 MR. NORTHROP: Yes. We have a Sandra Way who
11 represents herself and who has requested a chance to speak,
12 as well as another party.

13 MS. WAY: I have a statement that I'd like to
14 read.

15 CHAIRMAN CORY: Go ahead.

16 MS. WAY: Thank you, Mr. Chairman.

17 MR. NORTHROP: Excuse me. For the record, would
18 you state your name, please?

19 MS. WAY: Yes.

20 My name is Sandra Way and I live on tidelands in
21 Marshall on Tomales Bay. On behalf of many of those, who
22 like myself have their homes on tidelands throughout the
23 State, I would like to take this opportunity to voice the
24 following concerns regarding the proposed resolution.

25 While Tomales Bay is a long way from Hayward, the

1 Tomales Bay tidelands have been sold by the State pursuant
2 to the same Act of March 28, 1868, as the tidelands under
3 consideration here today have been sold. Therefore I feel
4 that any action taken here today will affect me in Marin
5 County, as well as many others throughout the State.

6 I recognize the fact that the proposed resolution
7 includes a provision that would allow existing private uses
8 on tidelands to continue. However, the provision is vague
9 and leaves many questions unanswered. Specifically, I would
10 like to ask you to include in the proposed resolution a
11 statement that would make it clear that an owner of lawfully
12 constructed improvements on tidelands has the right to re-
13 build these improvements in case they are destroyed by fire,
14 old age, or other causes.

15 In case it would be in the best public interest
16 that the destroyed improvement should not be rebuilt, then
17 the property owner who in turn is denied continued private
18 use of his lands should be properly compensated.

19 Likewise, if the State wishes to exercise the
20 public trust easement by requiring a property owner to
21 remove his or her improvement from tidelands, then the
22 owner in question should not only be compensated for the
23 value of the improvements, as provided for in Paragraph
24 6312 of the Public Resources Code, but also for the value
25 of the underlying land. If the State should deny the

1 private owner of tidelands any private use of his land, then
2 they should repurchase the land.

3 In the early days of California's history the
4 State sold these tidelands in order to raise money and
5 stimulate commerce. It would be truly unfair, and would
6 create many personal hardships if the State would take the
7 entire use of these tidelands back without due compensation
8 to the present owners. Many individuals have invested
9 their life savings in their homes and in the tidelands
10 their homes are located in. I am one of these individuals.

11 I thank you for the opportunity to express my
12 views and feelings.

13 COMMISSIONER DYMALLY: Are you saying that the
14 tidelands belong to the private owners or are you saying
15 that consideration ought to be given because they have
16 property on the tidelands?

17 MS. WAY: I am saying both, is what I am saying.

18 CHAIRMAN CORY: You purchased some property in
19 the Tomales Bay?

20 MS. WAY: Yes. I have a home which is situated
21 on tidelands.

22 COMMISSIONER DYMALLY: And you have the title
23 to the land?

24 MS. WAY: And we have the title to the land.

25 CHAIRMAN CORY: Title to fee simple property or

1 patent right?

2 MS. WAY: Sorry?

3 CHAIRMAN CORY: Is it patent land or is it fee
4 land?

5 MS. WAY: I am sorry, I don't know the difference
6 between that.

7 CHAIRMAN CORY: Mr. Taylor.

8 MR. TAYLOR: Mr. Chairman, they have a fee simple
9 title subject to an easement of commerce, navigation and
10 fisheries.

11 MS. WAY: We are subject to that easement. Is
12 that what you are saying?

13 CHAIRMAN CORY: Yes.

14 MR. TAYLOR: That easement has been historically
15 expressed in most title policies, although not all, and it
16 has been the law of this State as far as the reported cases
17 are concerned. And the most recent interest in the
18 existence of this easement arose out of a dispute between
19 two private parties in Tomales Bay, which is the case of
20 Marks versus Whitney.

21 MS. WAY: Marks versus Whitney.

22 MR. TAYLOR: That is where it all was recently
23 renewed. There are different kinds of title in the State
24 of California. Some of those titles are better than others
25 of those titles.

1 The State of California received this property
2 not outright but they received it in trust for all people.
3 Where the State can determine that private use can be made
4 without harm to the trust, then private use is permissible.
5 Existing private improvements are protected by case law in
6 the case of Oakland versus Oakland Waterfront Company, and
7 by a recent statute that said that if the State exercises
8 the public trust and there are improvements, we must pay
9 for them.

10 There is a serious constitutional problem beyond
11 the question of improvements as to what the value of private
12 title is if the State determines that it is necessary to
13 exercise the property. I think that is a very serious
14 question. We aren't doing anything about that today, or
15 we aren't doing anything about the question of destruction
16 of improvements and whether there is a right to rebuild.
17 And I think that those should be addressed on a case-by-case
18 basis.

19 The action that is being taken today is very
20 carefully drawn and very carefully defined and is limited
21 to three parcels of property. But, as you have noted in
22 your title reports and as you would note from the reading
23 of any cases going back to the beginning or the admission
24 of California to the Union, we got this property primarily
25 to use it for public purposes. And the State is more or less

1 in the same position that you are in, in that we hold this
2 subject to a public trust.

3 One time the City of Chicago or the State of
4 Illinois tried to sell its entire waterfront and found it
5 was in a very serious problem and the sale was voided. So
6 between the dilemma in that case and the problem you are
7 presenting, we all have an interesting situation and problem
8 to work out in the specifics of each situation as it is
9 presented.

10 I think that's about where we are.

11 COMMISSIONER DYMALLY: For all practical purposes,
12 an individual has no cause to worry as of now. Is that
13 right?

14 MS. WAY: I see that I have a great deal of cause
15 to worry personally, because it seems that this is the
16 beginning of a resolution that will be affecting, it seems
17 to me, all tidelands in the State of California. And I
18 know that two years ago I purchased a piece of property that
19 is located on tidelands, and I, right now, with various things
20 that are happening, I have no real security if my house
21 burns down that I can rebuild that and protect the land
22 that I supposedly partially have title to with the public
23 trust.

24 MR. TAYLOR: I wish to make one thing clear.
25 This isn't any new principle. The Supreme Court originally

1 held that sales of tideland of the sort that you are
2 occupying were void. In 1912, they decided that they
3 couldn't say they were void so they said that they would
4 sustain the sale subject to a trust upon commerce, naviga-
5 tion and fisheries.

6 In the 1920's, a Ms. Newcomb's property was used
7 as one of the channels of our Newport Bay. Ms. Newcomb was
8 not paid anything for that.

9 I think you have already indicated that you had
10 an indication at the time that you purchased your property
11 that there was an easement of commerce, navigation and
12 fisheries over it. I think that there have been people
13 who have lived on tidelands in this State, and that that
14 use has not been found to conflict with the public's use
15 of the area. I think you are just going to have to go back
16 to a case-by-case situation, but we are all stuck with the
17 law the way it is, and the protection of its natural assets.

18 MS. WAY: I am just saying on a personal level
19 that there is a whole community, where I live, of people
20 right now that are very concerned about the security of
21 their homes and their property and their rights, and I think
22 that it is something that really has to be considered and we
23 need to think in those terms of a lot of private people
24 that I feel eventually will be affected by this, and there
25 could be a precedent set for a whole statewide program.

1 And if my house burns down and I can't build it
2 back up, then I don't want the State to just pay me a
3 partial value for an improvement or for the structure, I
4 want to be able to rebuild it and I also want to be able to
5 get the value of the property as well.

6 COMMISSIONER DYMALLY: It might be helpful, and I
7 am quite sure the Attorney General's Office would make
8 available some free counsel --

9 MS. WAY: Well, I admit I am not a legal person.

10 COMMISSIONER DYMALLY: Wait a minute.

11 MS. WAY: I am a layman. I am a teacher. I
12 really have just barely gotten into this in the past year,
13 and I do need counsel.

14 COMMISSIONER DYMALLY: I don't think we can
15 resolve this right now.

16 MS. WAY: I am not trying to resolve it. I just
17 want you to consider what I have said and I want to submit
18 this to you so you can look at it.

19 COMMISSIONER DYMALLY: As one teacher to another,
20 all he is saying is that a precedent was set before this
21 resolution and this resolution has no bearing on your
22 situation.

23 MS. WAY: I don't see that because I am seeing
24 tidelands --

25 CHAIRMAN CORY: Let me put it to you this way,

1 Ms. Way, there is a dilemma to which there may not be a
2 solution that is acceptable to you, and that may be
3 unfortunate. But the Courts have held that we cannot make
4 a gift of public funds, and to compensate you -- and we are
5 talking about down the road at some point where someone may
6 want to exercise the trust over the parcel of land in which
7 your home is situated -- the statute does provide that you
8 be compensated for the structure. That is clear. But, the
9 property itself, the State already has the right for commerce,
10 navigation and fisheries over that property.

11 Therefore, to compensate you for that land, we
12 could not do, because the Constitution says we can't give
13 away the public's money. We already have the right to use
14 it for that purpose.

15 MS. WAY: But I am paying all kinds of taxes on
16 the land and the structure.

17 CHAIRMAN CORY: Now, if the system were working
18 properly, your assessor would be taking into account a
19 slightly different value for that property based upon the
20 State's easement. The assessor may or may not be doing that.
21 There is not much that this Commission can do in terms of
22 that relief. But that rather lengthy title report that
23 most people don't read when they purchase a piece of
24 property probably made reference to that.

25 If it didn't, you may have recourse in the worse

1 situation to your title insurance company. But probably it
2 made reference to that and you are going to have to sit
3 there and worry and hope.

4 And there is not a great deal that this Commission
5 or anybody else can do, unfortunately.

6 MS. WAY: There is nothing that can be added or
7 amended or --

8 CHAIRMAN CORY: Because we are sitting here with
9 a constitutional provision that we have to live with in terms
10 of the gift of the public's funds, and that's where we are,
11 between a rock and a hard place.

12 MR. TAYLOR: Mr. Chairman, the staff has been
13 working on regulations which may speak to her problem but
14 which aren't before the Commission today, which are rules
15 and regulations for tidelands. Because, as a result of the
16 fact that tidelands became a very scarce commodity in the
17 State of California, and because these conflicts now have
18 become much more dramatic in some instances, there needs to
19 be an entire permit system where the State would give some
20 kind of assurance in these situations.

21 We are working on that. Now that situation isn't
22 before us today, but there is a system and we are working on
23 it because of comments that we have been receiving. So that
24 will be before the Commission and if you will ask to be
25 given copies of the Commission's minutes and our notices of

1 meetings, you will see when it comes up. It will not be for
2 another couple of months.

3 But there will be a regulation system which can
4 include the kind of situation which you are talking about.

5 COMMISSIONER DYMALLY: One comment. I hope that
6 when we discuss this matter again, that we invite the
7 assessors to give some observation about their practices in
8 having people pay for land that they don't own.

9 MR. TAYLOR: Mr. Chairman, I understand there was
10 an adjustment made in Marin County as a result of Marks
11 versus Whitney.

12 COMMISSIONER DYMALLY: I don't like assessors.

13 [Laughter.]

14 CHAIRMAN CORY: I am sorry we don't have a solution
15 but your comments will be a part of the record.

16 MS. WAY: Okay. Can I submit this to you?
17 I am speaking for -- this isn't a signed petition but I am
18 speaking for a lot of people.

19 CHAIRMAN CORY: The fact that you are here makes
20 a difference.

21 MS. WAY: In fact the only reason I am here is
22 because we called, a group of us called the State Lands
23 Commission, and voiced our concern, and the person suggested
24 that if we were concerned and it was dealing with tidelands,
25 that someone be here today.

1 The rest of the community is attending County
2 hearings on an ordinance that is trying to be passed that is
3 really putting us in jeopardy, which I think is not going to
4 be passed because it's illegal.

5 That clearly states that we could not rebuild our
6 homes.

7 Thank you very much.

8 CHAIRMAN CORY: Thank you.

9 MR. NORTHROP: Mr. Chairman, along that line, the
10 Marin County Board of Supervisors today has this on their
11 Agenda and because we have it on ours, they have, I under-
12 stand, postponed action until later.

13 MS. WAY: Yes. They have delayed action until
14 July, but it still is a public hearing that maybe I will
15 attend later this afternoon.

16 CHAIRMAN CORY: Thank you very much.

17 MR. NORTHROP: Speaking on the same subject,
18 Mr. Chairman, I would imagine that Mr. Herbert H. Angress,
19 he is a real estate broker from Tomales Bay Realty, is here
20 and I assume he is talking to the same subject.

21 MR. ANGRESS: Mr. Chairman and Members of the
22 Commission, I was made aware, as Ms. Way was, by your own
23 staff of this meeting here today, and basically it came to
24 my attention through the Marin County Board of Supervisors
25 who are considering today regulations pertaining to titles

1 subject to the public trust easement. And it became very
2 clear that it would be extremely difficult to rebuild a
3 home that would burn down in Marin County if more than 75
4 percent of the structure was destroyed.

5 All I would really like to ask you and urge you is
6 to recognize that many improvements have been built on
7 tidelands in the Marin County area and I think there are
8 other areas in the State that it also has occurred.

9 People are confused, and I myself am confused.
10 Most of the real estate that I am selling consists of
11 improved homes on tidelands. There are about a hundred homes
12 on Tomales Bay, I would say, that are on tidelands. And the
13 first question people ask me, you know, with Marks versus
14 Whitney and the Coastal Commission, "Can we rebuild our
15 homes?"

16 And my answer always has to be "I don't know."

17 After Marks versus Whitney was passed, County
18 Counsel wrote all the property owners that had homes on
19 tidelands and he flatly stated that in general terms this
20 land cannot be used for buildings, lands subject to Marks
21 versus Whitney. The result of that was, and I was the lucky
22 guy that had a house in escrow on tidelands, and the Title
23 Insurance and Trust Company simply refused to issue title
24 insurance. The people that owned the house and were trying
25 to sell it had to make other commitments and they are faced

1 with foreclosure. And it took the Attorney General's
2 intervention to change the Title Company's mind.

3 Subsequently, Marin County's representative,
4 Representative Bear, introduced the bill and that resulted
5 in 5312, which would compensate people for their losses in
6 case the State tells them to remove buildings. County
7 Counsel originally interpreted that the State had the perfect
8 right to tell them to take your house off here without
9 compensation. Then, later on at a meeting in Marin County,
10 the annual meeting of the Tomales Bay Association on
11 August 22, 1974, the question was raised about rebuilding
12 improvements of losses due to fire, and the Marin County
13 Counsel replied that the current attitude of the Attorney
14 General's Office was that a property owner does have the
15 right to rebuild using the same area as long as it doesn't
16 interfere with public access.

17 Now Marin County is considering an additional
18 regulation pertaining to Marks versus Whitney, where that
19 clearly is not the case. And I just ask you to statewide
20 give us some guidelines so that we know that if I have a
21 client who asks me "Can I rebuild or can't I rebuild,"
22 that I can give him some reasonable answer, yes or no, which-
23 ever.

24 CHAIRMAN CORY: Okay. The staff has indicated
25 that there will be some hearings on regulations in the

1 relatively near future on that. I cannot speak to you as to
2 what the law is but I would strongly suggest that if you are
3 selling property subject to the tideland's easement, you have
4 a rather strong moral obligation, it would seem to me, to
5 inform the prospective purchaser that they are really in a
6 very difficult position.

7 And I would guesstimate, not as an attorney, but
8 having some experience in the Legislature and having
9 attorneys talk to me a lot, that the cold, hard facts are
10 that you have got a shot at getting compensation for
11 property, the actual improvements, but you aren't going to
12 get anywhere in terms of getting anything for that land if
13 the State feels the public needs to take it.

14 That is a bitter pill but it seems to me that the
15 moral obligation rests rather clearly with the realtor in
16 this situation to inform the prospective buyer.

17 Now, I don't know how you close a deal with that
18 kind of a problem, but therein I think is the rub of
19 professional ethics.

20 The title companies have -- I have never been
21 impressed with bond counsel or title companies, frankly, but
22 that is what they are supposed to do. But you have to have
23 a pretty good staff of lawyers to end up with the type of
24 policy that is worth a tinker's damn in terms of really doing
25 anything for you. And that's the tough part of this business.

1 But we appreciate your comments and we will make
2 sure that you are contacted with respect to the regulations
3 concerning tidelands property so that the area in Tomales
4 Bay which affects your life can be aware of what we are
5 doing.

6 MR. ANGRESS: Thank you. That's all I wanted.

7 COMMISSIONER DYMALLY: Just a little historical
8 background on this. It was this incident that gave birth
9 to the Lands Commission. An appointee of the Governor sold
10 some land in Southern California and the title company gave
11 title to the land. When it was discovered that they gave
12 title to State land, they were faced with bankruptcy and the
13 Legislature in that instance gave title to the land to Long
14 Beach. And as a result of which in that scandal, this
15 Commission was born.

16 So we have to be sure that we don't get into
17 another scandal.

18 [Laughter.]

19 MR. NORTHROP: Mr. Chairman, that completes the
20 staff's presentation on this.

21 CHAIRMAN CORY: Did the Attorney General have
22 anything to say?

23 MR. TAYLOR: We worked with the staff in the
24 preparation of this item and we concur in the staff's
25 recommendation, Mr. Chairman.

1 [Thereupon Commissioner Bell left the room.]

2 CHAIRMAN CORY: Do you think Roy Bell is trying to
3 tell us something?

4 [Laughter.]

5 CHAIRMAN CORY: We are ready for action.

6 COMMISSIONER DYMALLY: So moved.

7 CHAIRMAN CORY: Governor Dymally moves and I will
8 second that the resolution, as presented to us, be adopted
9 without amendment.

10 Without objection, such will be the order.

11 The record will show that Mr. Bell is out of the
12 room and there are two votes for it.

13 Moving on on the Agenda to Agenda Item 5, Permits
14 and Easements. Item (A), the Shell Chemical Company.

15 MR. NORTHROP: Mr. Chairman and Governor, the
16 Shell Chemical Company has a lease in excess of 20 acres
17 and they are asking that that lease to be reduced to 2.72
18 acres and the rental be reduced from \$1764 per year, to
19 \$1,026.90 per year.

20 And we accept the quit claim deed from the
21 lessee.

22 COMMISSIONER DYMALLY: So moved.

23 CHAIRMAN CORY: Without objection, such will be
24 the order.

25 Item (B), Recreational Permits.

1 MR. NORTHROP: Mr. Chairman, these recreational
2 pier permits are in line with the recommendations made by the
3 Governor at the meeting before last. These are for five years
4 and all the piers comply with Building Codes of the area in
5 which they are constructed.

6 COMMISSIONER DYMALLY: So moved.

7 CHAIRMAN CORY: Without objection, such will be the
8 order.

9 MR. NORTHROP: Mr. Chairman, the next item is a
10 Burmah Oil and Gas Lease. It is a redrill of an area in an
11 on-shore location. The increase in revenue to the State is
12 considerable on this particular lease.

13 COMMISSIONER DYMALLY: So moved.

14 CHAIRMAN CORY: Governor Dymally moves and without
15 objection, such will be the order.

16 6 (B).

17 MR. NORTHROP: Mr. Chairman, this is a dredging
18 permit by the Port of Oakland for dredging some 49,000 cubic
19 yards. All spoilage will be deposited at the Army-approved
20 site near Alcatraz Island and becomes the property of the
21 State.

22 COMMISSIONER DYMALLY: So moved.

23 CHAIRMAN CORY: Without objection, such will be the
24 order.

25 MR. NORTHROP: Mr. Chairman, the next item. In

1 last month's meeting we approved the 1975-'76 Budget for the
2 Long Beach operation. This Eleventh Modification is to
3 balance out mainly inflation and high utility costs for the
4 balance of 1975. This is Item 7 (A) on the Calendar Summary.

5 COMMISSIONER DYMALLY: So moved.

6 CHAIRMAN CORY: It has been moved and seconded.

7 Without objection, such will be the order.

8 7 (B).

9 MR. NORTHROP: 7 (B) is the approval of Long Beach
10 to expend money to purchase lots in Long Beach.

11 MR. TAYLOR: This is the approval to use tidelands
12 oil revenues for the purchase of three lots on the east
13 beach area to be incorporated into the City's east beach
14 bathing beaches. And that is a proper trust use under
15 Chapter 138.

16 They are asking for approval of the operation --
17 they are notifying us of the expenditure and we have an
18 opportunity to object to it. In this case the staff agreed
19 with a finding that it is within the reasonable discretion.

20 [Thereupon Commissioner Bell returned to his
21 seat.]

22 CHAIRMAN CORY: The property shall be used in
23 perpetuity for recreation only?

24 MR. TAYLOR: Yes.

25 CHAIRMAN CORY: And it will be open to the public

1 generally?

2 MR. TAYLOR: Surrounding property is already used
3 for public beaches and this will be incorporated into the
4 public beach.

5 CHAIRMAN CORY: There is no way that they can use
6 the money for this and then go back and change it later?

7 MR. TAYLOR: No, The escrows are all open and we
8 are a party to all the escrows.

9 COMMISSIONER DYMALLY: So moved.

10 COMMISSIONER BELL: Second.

11 CHAIRMAN CORY: Without objection, such will be
12 the order.

13 MR. NORTHROP: Mr. Chairman, Item 8 (A) and the
14 following items are budgetary items. This is the authoriza-
15 tion of a contract with the Ace Blue Print Company for
16 drawings and related materials for the Long Beach Office.
17 This has been pursuant to bid procedure.

18 CHAIRMAN CORY: Low bid?

19 MR. NORTHROP: This one was a low bid, wasn't it?

20 MR. GOLDEN: Right, this was low bid.

21 COMMISSIONER DYMALLY: Mr. Chairman, does it also
22 apply for Items --

23 MR. NORTHROP: Item (B), Governor Dymally, there may
24 be a question on, Item (C), rather. I would think we ought
25 to discuss that.

1 CHAIRMAN CORY: (A).

2 COMMISSIONER DYMALLY: So moved.

3 COMMISSIONER BELL: Second.

4 CHAIRMAN CORY: Okay. Governor Dymally moves and
5 Mr. Bell seconds.

6 MR. NORTHROP: Item (B), it was a low bidder.

7 COMMISSIONER DYMALLY: So moved.

8 COMMISSIONER BELL: Second.

9 CHAIRMAN CORY: Okay. Without objection, such will
10 be the order.

11 Item (C).

12 MR. NORTHROP: Item (C) is the execution of a
13 contract, while on the face of it the Cartwright Aerial
14 Surveys, Inc., is the winner of the bid based on the volume
15 of business handled by the Commission, it should be pointed
16 out here that Mr. Cartwright of Cartwright Aerial Surveys,
17 Inc., I believe, serves on the Board of Control. Is that
18 right, Mr. Chairman?

19 COMMISSIONER BELL: That is correct.

20 MR. NORTHROP: For that reason I think we should
21 bring that to the Commission's attention and ask if there is
22 someone here to address themselves to that.

23 CHAIRMAN CORY: There was another bidder on that
24 particular item?

25 MR. NORTHROP: Yes, there was another bidder on

1 that particular item. Murray-McCormick, I believe, was the
2 name of it. It is on page 44 of the summary. The
3 differences, as you will see on page 44, they bid three
4 dollars a square foot versus Cartwright's \$3.19 a square
5 foot. However, they gave no discount for volume and our
6 volumes run usually 25 sheets or more which means a 20
7 percent discount which brings the price considerably lower.

8 Now, Murray-McCormick has done work for the
9 Commission, I understand, and is aware of our volume but
10 did not offer the discount.

11 CHAIRMAN CORY: Question to the staff. How is it
12 possible that bids are not identical? I mean it seems that
13 somehow the regulation should be drafted or the request for
14 a bid, that they have to bid on the same thing, and either
15 the discount proposal is part of the bid and either one or
16 the other should be thrown out for not meeting the specs.

17 MR. NORTHROP: Mr. Trout.

18 CHAIRMAN CORY: It would keep us out of this bind.

19 MR. TROUT: Mr. Chairman, I think you are correct
20 in Monday morning quarterbacking. We provided at the bottom
21 of the bid form for a provision for discounts if any.
22 Murray-McCormick considered that to mean a cash discount and
23 they put "None." Cartwright considered that, since the
24 camera has a very difficult setup, and we considered
25 recommending rejecting the bids but, since there are only the

1 two firms in Sacramento that do this work and since the bids
2 were already out, they would each know what each other bid
3 and it would make it very awkward to cancel the bids.

4 This is an alternative that the Commission has.
5 You can reject all bids and we can bid again but we only have
6 the two bidders and they now know what each of them bid.

7 MR. TAYLOR: Mr. Chairman, we have reviewed this
8 matter. The discount statement was on the bid. There
9 wasn't anything ambiguous about the fact that there could be
10 a discount expressed. One bidder chose to express a dis-
11 count and the other bidder wrote in the discount location
12 "None." So at least he saw that there was a discount
13 situation there.

14 It is only because he interpreted "discount" to
15 mean something different than the other one. We think that
16 the form put out by the staff was proper, that the bids are
17 proper, and the lowest bid based on volume is the one that
18 has been recommended to you by the staff.

19 COMMISSIONER DYMALLY: Mr. Chairman, based on the
20 Attorney General's opinion, I move that we recommend
21 approval of the bid.

22 CHAIRMAN CORY: The Cartwright bid?

23 COMMISSIONER DYMALLY: Yes.

24 COMMISSIONER BELL: May I just ask, on the discount
25 notation on the bottom, did it indicate discount by volume?

1 MR. TROUT: No. It just said "Discount, if any."

2 Now, I might point out that both bidders contacted
3 the Commission by telephone and both bidders have done an
4 equal amount of work during this fiscal year for the office
5 and are familiar with the volume of business -- in other
6 words, the fact that we have given them in fairly large
7 volume -- and both of them were, as far as we know, equally
8 knowledgeable on the Division's activity.

9 CHAIRMAN CORY: In the future it would seem to me
10 that the staff should draft the things to avoid this
11 situation because where we find ourselves, if we go with
12 Cartwright and we are wrong on the volume of business, we
13 are going to be subject to criticism for accepting the
14 higher bidder who happens to be involved in the governmental
15 family, or we have to go to somebody who is ostensibly at a
16 higher price. And there is no good solution to that dilemma.
17 And that is why it seems to me that although we may be
18 technically within the law, in future bidding we should
19 figure out a way to avoid those situations, and we are talking
20 about roughly a 2,000, \$1500 difference, whichever way we
21 guess in terms of being wrong.

22 I am sure that greater mistakes have been made in
23 the anals of government. However, I try to avoid them.

24 MR. TAYLOR: Mr. Chairman, I think it is known.
25 The quantity is known. In other words, we have the orders

1 on file at the present time to know and be assured that we
2 will have that volume, so I don't think there is any mis-
3 understanding.

4 CHAIRMAN CORY: Is that correct, in terms of the
5 staff, you know you will place them?

6 MR. TROUT: Yes, Mr. Chairman. We are completely
7 in control in the sense that we can save up our orders until
8 we submit them in units of 25 or more, and the staff has
9 already been instructed that if you concur in the recommenda-
10 tions, that that is the way we would handle it.

11 COMMISSIONER BELL: And that is the way you would
12 have done it either way?

13 MR. TROUT: That is the way we have in the past
14 been doing it practically.

15 COMMISSIONER BELL: Okay. Okay, Cartwright.

16 COMMISSIONER DYMALLY: So moved.

17 COMMISSIONER BELL: I will second.

18 CHAIRMAN CORY: Governor Dymally moves and
19 Commissioner Bell seconds that the Cartwright bid will be
20 approved.

21 Without objection, such will be the order.

22 COMMISSIONER DYMALLY: I want it clear that I
23 don't know Mr. Cartwright or know anything about the firm.

24 COMMISSIONER BELL: I don't either, frankly,
25 Governor.

1 MR. NORTHROP: Mr. Chairman, Items (D), (E), and
2 (F) are computer contracts.

3 One of them is for Control Data Corporation to
4 do the equity work that is necessary with the Long Beach
5 unit. At a contract not to exceed \$1500.

6 CHAIRMAN CORY: Shall we take them as a group?

7 MR. NORTHROP: Yes.

8 CHAIRMAN CORY: Proceed.

9 MR. NORTHROP: The second one is with IBM for
10 fiscal and peripheral work.

11 COMMISSIONER DYMALLY: I move (D), (E), and (F).

12 CHAIRMAN CORY: Governor Dymally moves (D), (E),
13 and (F).

14 COMMISSIONER BELL: Second.

15 CHAIRMAN CORY: Mr. Bell seconds.

16 Without objection, such will be the order.

17 Item (G).

18 MR. NORTHROP: Item (G) is a renewal service
19 contract that we have, a renewal helicopter contract, or at
20 least permission to go to bid for surveillance and monitoring
21 of oil spills in the Santa Barbara Channel and to make
22 unscheduled inspections on the off-shore facilities.

23 CHAIRMAN CORY: Is this actually used?

24 Is this contract that is being put out to bid for
25 a flat fee, minimum fee, or only if we utilize it based upon

1 some hourly basis?

2 MR. NORTHROP: What it is, it is an hourly basis
3 with a floor. We guarantee so much and then above that we
4 pay on an hourly basis.

5 CHAIRMAN CORY: What is the floor?

6 MR. NORTHROP: The floor is -- Do you have the
7 floor on that?

8 CHAIRMAN CORY: The maximum is 15 grand?

9 COMMISSIONER BELL: Yes, you have to have so much.

10 MR. NORTHROP: I believe 15 is the floor on that.

11 CHAIRMAN CORY: No, 15 is the max.

12 MR. NORTHROP: All right, max.

13 COMMISSIONER DYMALLY: Moved.

14 COMMISSIONER BELL: Second.

15 CHAIRMAN CORY: It has been moved and seconded.

16 Without objection, such will be the order.

17 (H).

18 MR. NORTHROP: 8 (H) and (I), which we can
19 probably take as a group and split off. The staff has been
20 conducting hearings on a new Administrative Code for
21 rentals. We have held the hearings and come to the
22 recommendation that the flat rentals that we have been
23 assessing should be increased from six to eight percent.

24 However, there has been and there seems to be
25 very little objection in our hearings to this increase in

1 amount.

2 However, the pipeline throughput concept has run
3 into considerable objection in the petroleum industry as
4 well as among the public utilities.

5 And the staff would like to take an additional
6 90 days and discuss that and have additional hearings on
7 that concept, and hammer out a rental program. While it
8 would perhaps not be acceptable to the oil industry or all
9 of industry, it would at least give us a chance to put
10 together a meaningful rental program. And that's (H).

11 CHAIRMAN CORY: (H) and (I)?

12 MR. NORTHROP: (H) is the emergency meeting, and
13 excuse me. (H) is the emergency meeting.

14 CHAIRMAN CORY: To authorize us in emergencies
15 to move quicker than the seven days.

16 MR. NORTHROP: Fine.

17 COMMISSIONER DYMALLY: So moved.

18 COMMISSIONER BELL: Second.

19 CHAIRMAN CORY: Governor Dymally moves and
20 Mr. Bell seconds on the emergency regulation.

21 COMMISSIONER BELL: I was amazed to find that we
22 didn't have one.

23 CHAIRMAN CORY: Without objection, (H) will be
24 approved.

25 (I) is splitting?

1 MR. NORTHROP: (I) is splitting, right.

2 We have a Mr. Strengell, Manager of Engineering
3 of Calnev Pipe Line Company. I believe Calnev is a
4 subsidiary of Southern Pacific, is that correct?

5 MR. STRENGELL: No, it is a subsidiary of Union
6 Pacific.

7 MR. NORTHROP: Union Pacific, I'm sorry.

8 CHAIRMAN CORY: Did you want to speak to splitting
9 these two items up? If we go as the staff recommends to
10 approve the other rental items, and put the throughput
11 charge over for additional hearings, do you still have
12 something you'd like to say?

13 MR. STRENGELL: I'd still like to comment anyway,
14 just in case.

15 CHAIRMAN CORY: Have at it. The mike is yours.
16 Identify yourself and go to it.

17 MR. STRENGELL: Just in case we have some future
18 consideration of charges like this.

19 Mr. Chairman and Commissioners, my name is Paul
20 Strengell and I am Manager of Engineering for Calnev Pipe
21 Line Company.

22 I would like to make a statement in opposition to
23 the proposed increase in charges for use of State lands for
24 pipeline occupancy as recommended in amendments and changes
25 dated March 31, 1973. We consider that the result of the

1 proposed throughput charges is to levy a tax on pipeline
2 transportation and has no relationship whatever to fair
3 or reasonable charges or rental based on value of State lands.

4 Calney is a subsidiary of the Union Pacific
5 Corporation and is classed as an independent pipeline
6 carrier which is non-shipper owned. We are a common carrier
7 reporting to, and filing tariffs with, the Interstate
8 Commerce Commission for inter-state movements from California
9 to Nevada. Additionally, for movements in California,
10 Calney is a public utility and common carrier filing intra-
11 state tariffs with and regulated by the California Public
12 Utilities Commission.

13 Calney is in the business of pipeline transporta-
14 tion. We have no ownership whatsoever in the commodity
15 moving through the line nor are we involved in oil
16 production, refining or the ultimate use of petroleum
17 products. We are simply a common carrier engaged in public
18 transportation. We transport jet fuel for the United States
19 Air Force, turbine fuel for major airlines, diesel fuel for
20 major railroads and truck lines and gasoline for the public
21 in general.

22 Calney now possesses a 50-foot right-of-way
23 strip across two separate tracts of State land in
24 California; one 2500 feet in length and the other 1104 feet
25 in length. Both tracts are located in remote desert areas

1 at the extreme eastern edge of San Bernardino County in the
2 Mojave Desert. The combined area of both tracts equals
3 4.14 acres.

4 At the present time, Calnev is paying \$504 per
5 year for the use of these rights of way which is based on
6 one cent per diameter inch per lineal foot per year for a
7 14-inch pipeline. As we understand the proposed changes,
8 the charges for transmission pipelines occupying State lands
9 would increase from the present formula to a schedule of
10 charges based on barrels of throughput and related to the
11 length of the parcels.

12 At current throughput levels, the new charges to
13 Calnev for occupancy of these two tracts would increase to
14 \$183,209 per year, an increase of 36,000%. This would
15 result in a cost of \$44,250 per acre per year for rent on
16 undeveloped desert property and constitutes a charge equal
17 to four percent of our total tariff to Las Vegas.

18 We believe that such a proposed increase is
19 arbitrary, unreasonable and wholly unrelated to reasonable
20 compensation for the land used. We further believe that
21 such an increase must ultimately be born by the shipper
22 which in the end will place an undue burden on the consumer.

23 I thank you for the opportunity to appear here
24 today.

25 CHAIRMAN CORY: I have a question, sir.

1 When the regulation on diameter inch was imposed,
2 did you oppose those fees?

3 MR. STRENGELL: I personally felt they were a bit
4 unreasonable in regard to the property you were crossing.

5 CHAIRMAN CORY: Did you oppose it?

6 MR. STRENGELL: These types of charges are in
7 effect in many cities at the present time so we had a
8 precedent set there already.

9 CHAIRMAN CORY: It just seemed to me that your
10 basic argument, not having relationship to the property
11 charge you are now paying, bears very little relationship
12 to the value of the property on so much per diameter inch
13 of pipeline.

14 There is something missing in your logic. I
15 understand the economics of your argument but I wasn't sure
16 that --

17 MR. STRENGELL: I will agree with you there. I
18 think both our logics are probably diverting somewhat, but
19 I can't see any logic in the other charges at all. Actually
20 they should be based, I believe, on the actual value of the
21 land. That is a reasonable charge, the value of the
22 property that you are using.

23 CHAIRMAN CORY: If we adopt the 8 (I) as presented,
24 you will have additional hearing opportunities --

25 COMMISSIONER BELL: Ninety days.

1 CHAIRMAN CORY: -- in the next 90 days to go
2 ahead with it.

3 Thank you very much.

4 Anyone else?

5 MR. NORTHROP: Western Oil and Gas has indicated
6 they would like to speak.

7 MR. McCLINTOCK: Mr. Chairman and Members of the
8 Commission, my name is Greg McClintock, and I am appearing
9 here today as attorney for the Western Oil and Gas
10 Association.

11 I had intended to make comments regarding the
12 need for additional time both, I believe, for the staff to
13 study the proposed regulations and also for the oil industry
14 to study and comment upon those regulations. And in light
15 of what the staff is proposing, the 90 days, I think, would
16 give us the time which the industry needs. This should take
17 care of that problem.

18 The other matter which I wish to address myself
19 to was certain legal issues which are presented by the
20 regulations as presently drafted.

21 However, in light of the fact again that the staff
22 is proposing to give these regulations further study, I
23 don't think it is necessary that I make those comments at
24 this time and it would probably be more appropriate if we
25 addressed our legal arguments to the staff and gave them an

1 opportunity to consider those arguments and comment thereon.
2 For that reason I will cut my remarks short unless
3 the Commission or any Member of the Commission appears
4 inclined to disagree with the staff recommendation in which
5 case I would like to proceed.

6 CHAIRMAN CORY: Your concerns are only with the
7 throughput charge and you realize we are adopting everything
8 other than throughput at this point?

9 MR. McCLINTOCK: Yes.

10 CHAIRMAN CORY: Mr. Bell.

11 COMMISSIONER BELL: No, I can assure you that I
12 plan to accept the staff recommendation.

13 MR. McCLINTOCK: Fine, very good. In that event
14 I will cut my remarks short and thank you very much for the
15 opportunity to speak.

16 MR. NORTHROP: Mr. Chairman, there is a change
17 that Mr. Trout had.

18 MR. TROUT: System bites man or something. In any
19 event, in the bureaucracy of adopting regulations pursuant
20 to Senate Bill 90, and mandated local costs, we found that
21 we had an outdated statement on page 52, Recommendation
22 No. 3.

23 And in lieu of the statement that is there -- I
24 haven't had time to have it typed and reproduced, but I'd
25 like to read it to you, the amended language we would like

1 to have you adopt in place of that in Item 3.

2 The language is, "Determine there are no State
3 mandated local costs in this regulation that require re-
4 imbursement under Section 2231 of the Revenue and
5 Taxation Code because there is an option as to compliance.
6 And in the alternative, notwithstanding Section 2231 of the
7 Revenue and Taxation Code, there shall be no reimbursement
8 pursuant to this regulation because duties, obligations or
9 responsibilities imposed on local governmental entities by
10 this regulation are such that related costs are incurred
11 as a part of their normal operating procedures."

12 We believe that this will make the regulation
13 consistent with the provisions of Senate Bill 90, Section
14 2231 and the State Administrative Manual sections that now
15 govern.

16 MR. NORTHROP: Thank you, Jim,

17 Mr. Chairman, also in this is subpoena power for
18 the staff to get information.

19 CHAIRMAN CORY: Any questions?

20 COMMISSIONER BELL: I recognize your language as
21 that which is advocated by our department to all agencies
22 in the State.

23 MR. TROUT: It came from your predecessor.

24 COMMISSIONER BELL: Therefore it's good.

25 [Laughter.]

1 CHAIRMAN CORY: Mr. Bell moves?

2 COMMISSIONER BELL: I will so move with --

3 CHAIRMAN CORY: With the amendments.

4 COMMISSIONER BELL: -- with the amendments which
5 merely change the language.

6 CHAIRMAN CORY: Governor Dymally seconds?

7 COMMISSIONER DYMALLY: Giving due praise.

8 CHAIRMAN CORY: Without objection, such will be
9 the order.

10 MR. NORTHROP: Mr. Chairman, we are asking
11 approval of preliminary maps, which start on page 56, on
12 Donner Lake.

13 CHAIRMAN CORY: Any questions or comments on the
14 approval of preliminary maps, 9 (A)?

15 COMMISSIONER DYMALLY: So moved.

16 COMMISSIONER BELL: Second.

17 CHAIRMAN CORY: Governor Dymally moves and
18 Mr. Bell seconds.

19 Without objection, such will be the order.

20 10. We have a list of concurrent jurisdictions
21 for Federal --

22 MR. NORTHROP: Mr. Chairman, the Commission has
23 discussed this preliminarily and Mr. Richard Golden will
24 speak to it now.

25 MR. GOLDEN: Mr. Chairman, this is just to cede

1 jurisdiction so the Federal and the State regulations will
2 govern over these areas.

3 COMMISSIONER BELL: This is really the right way
4 to do it, isn't it?

5 MR. GOLDEN: Yes, it is. It's the only way in
6 the Code to proceed.

7 COMMISSIONER DYMALLY: So moved.

8 COMMISSIONER BELL: Second.

9 CHAIRMAN CORY: Governor Dymally moves and
10 Mr. Bell seconds.

11 Without objection, they are therefore approved as
12 presented.

13 11 (A).

14 MR. NORTHROP: Mr. Chairman, 11 (A) and (B) are
15 two requests for litigation. One is to get from the
16 United States Department of Agriculture monies due to the
17 State Lands for State timber that was sold. And I guess the
18 only way they can get the money back to us is for us to take
19 this kind of action.

20 Secondly --

21 COMMISSIONER BELL: So moved.

22 COMMISSIONER DYMALLY: Second.

23 CHAIRMAN CORY: Mr. Bell moves and Governor
24 Dymally seconds.

25 Without objection, such will be the order.

1 11 (B).

2 MR. NORTHROP: Secondly, we were trying to get the
3 Federal Government to acknowledge our ownership or at least
4 get proprietary ownership of some Geothermal lands in
5 Surprise Valley.

6 COMMISSIONER DYMALLY: So moved.

7 COMMISSIONER BELL: Second.

8 CHAIRMAN CORY: It has been moved and seconded.
9 Without objection, 11 (B) will be approved.

10 MR. TAYLOR: No action on (C). We have a meeting
11 with the Commission on the 4th to discuss this.

12 MR. NORTHROP: Routinely, the City of Seal Beach
13 has asked for approval of a proposed annexation to their
14 beach property.

15 CHAIRMAN CORY: Does that relate to any of the
16 minerals?

17 MR. GOLDEN: No, sir. This just has to do with
18 approving the boundaries that they have adopted locally for
19 the extension of the jurisdiction of the City.

20 CHAIRMAN CORY: What if we ended up doing what
21 Huntington Beach is, and the County, Orange County's constant
22 attempt to get tideland revenues for beach maintenance?

23 You know Burke always carries the bill.

24 MR. NORTHROP: Mr. Chairman, we are still working
25 on that with the City of Huntington Beach, Mr. Chairman.

1 CHAIRMAN CORY: Okay. So we aren't affecting
2 that?

3 MR. NORTHROP: It has nothing to do with that, no.

4 CHAIRMAN CORY: Okay. Annexation?

5 COMMISSIONER BELL: I have no problem with that.
6 I would recommend that it be approved.

7 COMMISSIONER DYMALLY: Second.

8 CHAIRMAN CORY: Mr. Bell moves and Governor
9 Dymally seconds.

10 Without objection, such will be the order.

11 13 (A).

12 MR. NORTHROP: Mr. Chairman, this is a finalization
13 of a contract or an agreement with Atlantic Richfield
14 which was completed at the last Commission meeting.

15 However, there was some language change suggested
16 and the staff has worked with ARCO and has Item 6 on page
17 89 as the finalization of that language.

18 COMMISSIONER DYMALLY: So moved.

19 CHAIRMAN CORY: Governor Dymally moves --

20 COMMISSIONER BELL: I will second.

21 CHAIRMAN CORY: Mr. Bell seconds.

22 Without objection, such will be the order.

23 MR. NORTHROP: Mr. Chairman, the next meeting is
24 in Sacramento.

25 CHAIRMAN CORY: The meeting will be June 23rd,

1 at 10:00 a.m., in Sacramento.

2 Is that the fourth Tuesday?

3 MR. NORTHROP: Do you have a problem with the
4 fourth Tuesday?

5 MR. BELL: No, I thought all our meetings were on
6 the fourth Tuesday.

7 COMMISSIONER DYMALLY: It was changed because I
8 am supposed to go to Washington.

9 COMMISSIONER BELL: Oh, okay.

10 CHAIRMAN CORY: We stand adjourned.

11 [Thereupon the May 27th meeting of the
12 State Lands Commission was adjourned at
13 12:00 o'clock noon.]

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1 State of California)
2 County of Sacramento) ss.
3

4 I, RONALD J. PETERS, a Notary Public in and
5 for the County of Sacramento, State of California, duly
6 appointed and commissioned to administer oaths, do hereby
7 certify:

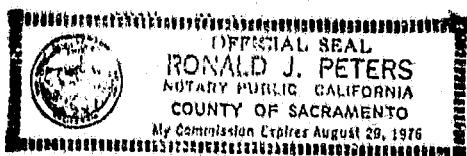
8 That I am a disinterested person herein; that
9 the foregoing State Lands Commission Meeting was reported
10 in shorthand by me, Ronald J. Peters, a Certified
11 Shorthand Reporter of the State of California, and
12 thereafter transcribed into typewriting.

13 I further certify that I am not of counsel or
14 attorney for any of the parties to said meeting, nor in
15 any way interested in the outcome of said meeting.

16 IN WITNESS WHEREOF, I have hereunto set my hand
17 and affixed my seal of office this 23rd day of June,
18 1975.

19 *Ronald J. Peters*

20 Ronald J. Peters
21 Notary Public in and for the County
22 of Sacramento, State of California



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24 ---oOo---
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