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MEETING
STATE LANDS COMMISSION

ROOM 2133
STATE CAPITOL
SACRAMENTO, CALIFORNIA

ORIGINAL

WEDNESDAY, NOVEMBER 30, 1977

10:00 A.M.

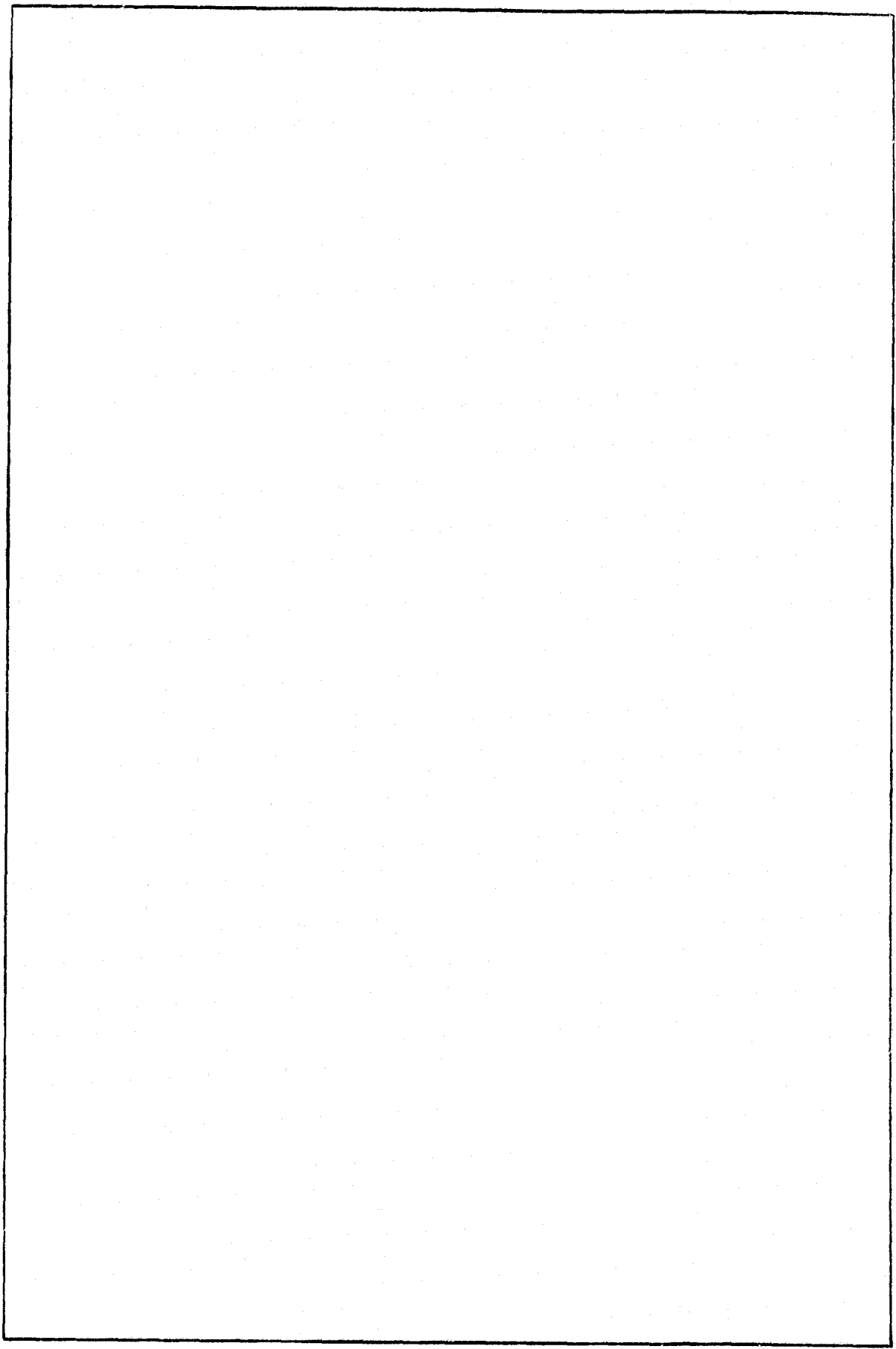
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MEMBERS PRESENT

Mr. Sid McCausland, Acting Chairman, for Roy M. Bell
Mr. Carl J. D'Agostino, for Kenneth Cory

MEMBERS ABSENT

Hon. Mervyn Dymally, Lieutenant Governor

STAFF PRESENT

Mr. Robert S. Golden
Mr. Robert C. Hight
Mr. James F. Trout
Mr. Jan S. Stevens
Mr. Donald J. Everitts
Mr. David K. Hayward
Mr. Steven C. Lindfeldt
Mr. Stephen Mills
Mr. Randy Moory
Mr. Dwight Sanders

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P R O C E E D I N G S

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2
3 ACTING CHAIRMAN McCAUSLAND: The meeting of the
4 State Lands Commission will come to order. The chairman,
5 State Controller Cory, is in Washington, D.C., today and
6 I am acting as chairman. My name is Sid McCausland. I am
7 deputy director of finance. I am joined today by Deputy
8 Controller D'Agostino.

9 Are there any corrections or additions to the
10 minutes of October 27, 1977? If not, they will be deemed
11 approved as submitted.

12 Before we go on to the report of the Executive
13 Officer, I would like to inform you that I intend to go
14 through the agenda in fairly rapid order today. If you want
15 to testify on any agenda item, please raise your hand, and
16 we will get an appearance form passed to you right now so
17 you can fill it out and I can know ahead of time that I am
18 to call on you on that agenda item. So if there is anyone
19 who has not completed a form requesting an appearance, please
20 do so now. There is an individual there in the second row
21 who would like one.

22 The Executive Officer's report.

23 MR. GOLDEN: Mr. Chairman, the City of Stockton
24 has requested that the Commission express its intent to
25 enter into negotiations with the city for a lease covering

1 an area of Ten Mile Slough adjacent to the city's Buckley
2 Cove development, which is in an area of the original bed
3 of the San Joaquin River previously granted to the city.

4 Because of the withdrawal last month of a private
5 applicant's application on Ten Mile Slough near Buckley Cove
6 in the city of Stockton, it is the intent of staff to
7 negotiate a revenue-producing lease covering the same area
8 with our remaining applicant, the City of Stockton.

9 Negotiations will be conducted in the same manner
10 as would any negotiations for a commercial lease, and will
11 require a monetary rental from the City of Stockton.

12 Calendar item number 7 and calendar item number 27
13 have been taken off the agenda.

14 I don't know whether the Commission wishes to
15 express -- or whether the statement I just read would take
16 care of the City of Stockton's request in this area.

17 ACTING CHAIRMAN McCAUSLAND: Without objection,
18 the request of the City of Stockton will be granted.

19 The next item on the agenda constitutes the
20 consent calendar. That includes items C1 through item C13.
21 Item C7 has been removed from the calendar. Unless there
22 are objections, the Commission will approve the staff
23 recommendations for consent calendar items C1 through C6,
24 C8 through 11, and C13. In addition, the Commission will
25 acknowledge receipt of staff report on item C12. Are there

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1 any objections?

2 MR. D'AGOSTINO: No.

3 ACTING CHAIRMAN McCausland: Such will be the
4 order.

5 The next item is calendar item 14 regarding a
6 prospecting permit for geothermal resources at Boggs Mountain
7 State Forest. Mr. Golden.

8 MR. GOLDEN: Mr. Chairman, I have a statement to
9 read into the record on Boggs Mountain.

10 At the September meeting the Commission considered
11 the request of Geothermal Kinetics, Inc., for permits to
12 prospect for geothermal resources on Boggs Mountain State
13 Forest in Lake County. Because of questions raised about
14 possible impacts to cultural or historical resources and
15 also about the size of the area to be covered by the proposed
16 permits, the Chairman directed that staff meet with the
17 parties involved in an attempt to resolve the issues raised
18 at that meeting.

19 On October 12 Mr. Northrop, along with members
20 of the staff, met with Mr. Clyde Kuhn, who had raised questions
21 about the need for additional archaeological studies of the
22 site. Also present was Mr. William C. Seidel, archaeologist
23 with the Office of Historic Preservation of the Department
24 of Parks and Recreation.

25 Mr. Kuhn renewed his request that a cultural

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1 resource study be done of the entire forest so that proper
2 interpretation could be made of any resources found at
3 drillsites. He also stressed the need for consultation
4 with the Native American Heritage Commission. He restated
5 his position that damage to cultural resources could occur
6 from pre-drilling geophysical surficial exploration.

7 Staff pointed out that because of questions raised
8 by the Commission as to the size of the proposed permit,
9 any permit issued would probably be reduced in size, therefore
10 reducing potential impacts. Based on the Division's study,
11 it has been determined that:

12 (1) Two of the four proposed drillsites have
13 no archaeological or cultural values.

14 (2) The exact types of geophysical exploration
15 to be utilized were unknown at the time. However, all
16 activities would be restricted to existing roads, and if
17 there was a possibility of damage, an archaeologist would
18 monitor these activities.

19 (3) The cultural resource overview to establish
20 the relationship of any cultural resources which might be
21 discovered could probably be accomplished by a literature
22 review.

23 (4) No decisions on specific impacts on specific
24 sites can be made until the applicant does his surficial
25 geophysical exploration, and the applicant cannot do anything

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1 until he has received a prospecting permit from the Commission.

2 It was agreed that most of the archaeological
3 concerns could be satisfied with proper monitoring after
4 the permit had been issued. The Office of Historic Preserva-
5 tion offered to provide a plan for cultural resource manage-
6 ment to be utilized if a discovery is made and the applicant
7 applies for a lease for full field development. Cost figures
8 for archaeological studies will also be provided.

9 On October 14th staff met with representatives
10 of the applicant, Geothermal Kinetics, Inc., in the division
11 office in Long Beach. They indicated they did not intend
12 to drill temperature holes as part of their initial explora-
13 tion, a procedure which has the potential for damage to
14 cultural resources. If the applicant finds he is unable
15 to obtain sufficient data to target drillsites without
16 utilization of "off the road" temperature holes, it will
17 be a requirement of the permit that an archaeologist monitor
18 any such activity.

19 After further review of the work already done,
20 staff has concluded that there is sufficient information and
21 resource data in the archaeological study already performed
22 to provide tools to interpret any finds of cultural or
23 historical values during this preliminary exploratory project.
24 If either one of the two sites identified as having potential
25 values are chosen for exploration, the applicant has agreed

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1 to participate in a limited, controlled archaeological survey
2 of the sites in a 100-yard radius from the center of the
3 drillsite. Such a survey will be performed by a qualified
4 archaeologist.

5 Additionally, Mr. Northrop has reviewed the
6 testimony of Mr. Kuhn from the September meeting where he
7 quoted Mr. Northrop as saying that his comments to the draft
8 and final EIR's were "not in keeping with law".

9 Mr. Northrop's statements were taken somewhat
10 out of context by Mr. Kuhn from a letter which he wrote to
11 Mr. Kuhn responding to his comments to the EIR's. Mr. Northrop's
12 comments were concerning a request by Mr. Kuhn that the
13 environmental documentation should consider not only the
14 prospecting aspect of this project, but also full field
15 development.

16 Mr. Northrop's specific reference was to recent
17 California appellate court decisions, which have stated that
18 when a lead agency is considering the issuance of a permit
19 for a geothermal exploration, only the impacts of the
20 exploratory aspects of the project need be discussed, and
21 not those potential impacts associated with full field
22 development. As such, Mr. Kuhn's quotation of Mr. Northrop's
23 statement was taken out of context, and is therefore a
24 misquotation of what was intended to be conveyed. It is
25 staff's belief that the record should be so clarified.

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1 Lastly, as a result of several meetings, the
 2 applicant has agreed to reduce the application for two
 3 prospecting permits for the entire 3460 acres of the forest
 4 to one application for approximately one-half of the forest,
 5 encompassing approximately 1784 acres.

6 On November 3rd staff met with Mr. Stephen Rios,
 7 executive secretary of the Native American Heritage Commission,
 8 to discuss the commission's concerns over possible project
 9 impact on Native American resources. Mr. Rios indicated
 10 that he had been contacted by a member of his commission,
 11 as well as a member of the staff of Sonoma State College,
 12 suggesting that religious or ceremonial sites of importance
 13 to the Native American community may be present in the project
 14 area.

15 He said he was checking the statements and asked
 16 for another ten days to confirm the sites. On November 14th
 17 Mr. Northrop received a letter from Mr. Rios indicating that
 18 due to his small staff and tremendous workload, he would not
 19 be able to follow up this matter in a timely fashion and
 20 requested that staff members or consultants pursue this
 21 issue. Yesterday staff met with Ms. Mabel McKay, a member
 22 of the Native American Heritage Commission, noted Indian
 23 medicine woman, and expert in local Indian history. The
 24 purpose of this meeting was to take Ms. McKay to the project
 25 area and to attempt to ascertain the existence and significance

1 if any, of any Native American religious, cultural and
2 ceremonial sites within the project area.

3 Staff has been advised by Ms. McKay that although
4 the general area has been used by various Indian groups in
5 the past, this area is now a (quote) "dead" (unquote) area,
6 without significance as an Indian religious, cultural or
7 ceremonial site. She stated that the project would not
8 therefore have any impact on the cultural resources.

9 Following this meeting, staff consulted with
10 Mr. Rios regarding the findings of Ms. McKay. Based upon
11 that discussion, he advised that he is removing his previous
12 objection to the EIR.

13 Also contacted was Dr. David A. Frederickson of
14 California State College, Sonoma, an expert in local
15 archaeology. He advised the staff that although he had
16 expressed some concerns to Mr. Rios, he was satisfied that
17 the project as proposed, with its numerous safeguards, would
18 adequately protect the existing archaeological resources.

19 Additionally, Mr. Northrop received a letter
20 November 4th from the Office of Historic Preservation as
21 a result of staff's earlier meeting with Mr. William Seidel
22 of that office. It had been staff's understanding that
23 Historic Preservation would provide us with a format for
24 a cultural resource management plan to be enacted if a
25 discovery was made and the applicant requested a lease.

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1 The material received thus far calls for large-
2 scale expenditures of money, but is somewhat too general
3 to be of great use at this point. Staff plans to ask
4 Historic Preservation for additional assistance and informa-
5 tion. In any case, the project before you is of an exploratory
6 nature, and the proposal made by Historic Preservation is
7 one for full field development at some time in the future
8 if a commercial development is made.

9 It is staff's belief that through these meetings
10 and consultations, most of the concerns voiced by the public
11 and by members of the Commission have now been resolved, and
12 staff recommends approval of this modified application.

13 ACTING CHAIRMAN McCAUSLAND: Thank you, Mr. Golden.

14 Is there anyone who wishes to testify on calendar
15 item 14, the prospecting permit at Boggs Mountain?

16 Let me say one last time that if you wish to
17 testify, I would appreciate it if you fill out a blue form,
18 because I'm going to move through the agenda rather rapidly.
19 At this time I am only aware of individuals wishing to testify
20 on items 23 and 36. If you do want to testify, raise your
21 hand and one will be passed to you immediately.

22 The Commission has spent a considerable amount
23 of time on the Boggs Mountain prospecting permit. We have
24 greatly scaled down the scope of the prospecting permit and
25 put additional constraints on the nature of the activity

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1 that can be undertaken pursuant to the permit.

2 Without objection, we will authorize staff to
3 issue the permit for prospecting for geothermal resources
4 at Boggs Mountain State Forest.

5 MR. D'AGOSTINO: Let me ask one question.

6 ACTING CHAIRMAN McCAUSLAND: Mr. D'Agostino.

7 MR. D'AGOSTINO: You indicated that most of the
8 objections have been answered. Are there any other objections
9 that have not been?

10 MR. GOLDEN: Bob, do you want to take that?

11 MR. HIGHT: Mr. D'Agostino, no. I think all of
12 the objections have been answered in a fashion acceptable
13 to the staff.

14 MR. D'AGOSTINO: This is only an exploratory
15 permit?

16 MR. HIGHT: Yes, this will only authorize exploration.

17 MR. D'AGOSTINO: No objections to item 14.

18 ACTING CHAIRMAN McCAUSLAND: Item 15 would place
19 into the investigatory record all the materials received as
20 a result of subpoenas issued in the course of this Commission's
21 investigation on the reasonable market value of natural gas
22 in California. Is there anyone in the audience wishing to
23 testify on item 15?

24 MR. D'AGOSTINO: No objection.

25 ACTING CHAIRMAN McCAUSLAND: Without objection,

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1 item 15 is adopted.

2 Item 16 concerns a supplement of litigation and
3 issuance of a 15-year lease to lands in the Sacramento River,
4 Yolo County, to Patricia Avila and M. R. Richards. Any
5 objections?

6 MR. D'AGOSTINO: No.

7 ACTING CHAIRMAN McCAUSLAND: Without objection,
8 item 16 is adopted.

9 Item 17 regards a lease in the bed of the Albion
10 River in Mendocino County to Northern Headlands, a partner-
11 ship. Any objections?

12 MR. D'AGOSTINO: No.

13 ACTING CHAIRMAN McCAUSLAND: Without objection,
14 item 17 is adopted.

15 Item 18 relates to a permit in Lake Tahoe at
16 Tahoe City to Associated Timber Products. Any objection?

17 MR. D'AGOSTINO: No.

18 ACTING CHAIRMAN McCAUSLAND: Without objection
19 item 18 is adopted.

20 Item 19 relates to the amendment and assignment of
21 a lease for marine land in the Pacific Ocean at Long Point,
22 Palos Verdes Peninsula. Is there any objection?

23 MR. D'AGOSTINO: No.

24 ACTING CHAIRMAN McCAUSLAND: Without objection,
25 item 19 is adopted.

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1 Item 20 relates to the termination of a lease
2 in the Sacramento River near Glenn, Glenn County. Any
3 objections?

4 MR. D'AGOSTINO: No.

5 ACTING CHAIRMAN McCAUSLAND: Without objection,
6 item 20 is adopted.

7 Item 21 relates to a negotiated lease from the
8 Department of Water Resources: lands in Contra Costa County
9 for the McCulloch Oil Corporation. Any objections?

10 MR. D'AGOSTINO: No objections.

11 ACTING CHAIRMAN McCAUSLAND: I have one question
12 on this one. Are there any similarities between the
13 producing properties of this land and the Union Island field?

14 MR. EVERITTS: I don't understand the question.

15 ACTING CHAIRMAN McCAUSLAND: I will ask you
16 sometime in a staff meeting.

17 (Laughter.)

18 ACTING CHAIRMAN McCAUSLAND: Without objections,
19 item 21 is adopted.

20 Item 22 relates to a modification of drilling
21 requirements on state oil and gas leases in Santa Barbara
22 County to Chevron, Exxon and Atlantic Richfield to allow
23 the orderly developm it of the field. Any objections to
24 item 22?

25 MR. D'AGOSTINO: No.

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1 ACTING CHAIRMAN McCAUSLAND: Without objections,
2 item 22 is adopted.

3 Item 23 is an information item on the status of
4 negotiations with Aminoil under oil and gas leases in Orange
5 County. We have requests for appearances from two employees
6 of Aminoil USA, Incorporated: C. D. Howald, division project
7 engineer, and J. H. Loeb, regional counsel. Would you like
8 to come forward.

9 Mr. Golden, would you like to present your report
10 on this matter first?

11 MR. GOLDEN: It might be helpful if Mr. Everitts
12 would give us a brief summary. This is a very complicated
13 item to go over in brief.

14 MR. EVERITTS: This item has to do with an
15 undeveloped fault block in the Huntington Beach oil field.
16 It involves approximately, depending on various cases, four
17 to five million barrels of oil, secondary and primary.

18 In order to encourage secondary development,
19 the law allows negotiation of a special royalty rate in order
20 to allow for the added expenditures of a secondary recovery
21 project. The law says that the secondary royalty shall be
22 no less than the remaining primary royalty. That's a
23 negotiated thing, but the minimum it can be is the remaining
24 primary.

25 In this instance the field has not been drilled.

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1 It's been determined to exist by virtue of coreholes and
2 other geological data. Through engineering calculations
3 we have determined that the primary royalty would probably
4 be around 23 percent. That therefore would also be the
5 minimum secondary royalty.

6 The state has gone through various computer models
7 and determined that the most advantageous position for the
8 state would have been 23 percent for the primary and 35
9 percent gross, or approximately 50 percent of the net, on
10 the secondary. We proposed that to Aminoil.

11 Aminoil responded that they weren't interested in
12 that proposal and came back with a 23 percent primary, 23
13 percent secondary. We countered with 25 percent of the net,
14 which is equivalent to about 30 percent of the gross on
15 secondary, with 23 percent primary. They countered with
16 the same original offer: 23 percent, 23 percent.

17 They have now said that if we don't go for the
18 23 percent primary, 23 percent secondary, they will not even
19 go into the secondary project, which will of course mean
20 a loss of revenue to the state of quite a few dollars. However,
21 that is their option, I guess.

22 From our own calculations it appears that on a
23 discounted, cash flow basis probably they will do as well
24 on just straight primary as they would on a secondary project
25 unless they can have their 23 percent, 23 percent thing. So

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1 there's really no basis for them to go any other way.

2 ACTING CHAIRMAN McCAUSLAND: Mr. Loeb?

3 MR. LOEB: I'm Joe Loeb, attorney with Aminoil.

4 Don stated the case pretty accurately. We have
5 an undeveloped reservoir, and we can develop it two ways.
6 We can just drill it and produce it and deplete it under
7 primary circumstances, or conduct secondary recovery operations
8 immediately by injection of water.

9 We have been negotiating very strenuously with
10 the state's staff for, I'd say, 18 months in order to
11 convert the leases to the point where the expense of a
12 secondary recovery project can be undertaken. Under the
13 existing sliding-scale royalty formula, a secondary recovery
14 program is impossible, because the royalty rates are
15 geometrically proportionate to the volume of production
16 per day, and it just won't support the expense of a secondary
17 recovery project.

18 We have done this many times in the past at
19 Huntington Beach: revised each lease to accommodate secondary
20 recovery projects. In each case the resulting royalty --
21 well, the top royalty that has ever been negotiated before
22 was 17 percent. We have a history of something like 30
23 leases where this has been accomplished and the State Lands
24 Commission has approved.

25 Now we come to this project. It's a little bit

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1 different in that there have been no wells drilled yet. We
2 have no production history at all. But we thought that it
3 would be a reasonable offer to go through the same tabulations
4 which resulted in a 23-percent gross royalty to be applied
5 to the secondary projects.

6 This wasn't acceptable to the state staff. They
7 had several counter-offers, all of which boiled down to
8 the fact that we, the lessee, would make about the same
9 amount of money under primary production, without going
10 to extra expense of drilling additional wells and setting up
11 secondary recovery equipment, as going into a full-scale
12 secondary recovery.

13 The answer was just evident: there was no sense
14 in investing additional risk capital -- we estimate somewhere
15 between two and a half and three million dollars -- with
16 no return, and in fact a chance of losing that. There are
17 several projects at Huntington Beach, the same kind of
18 waterflood projects, that have not returned their capital.

19 So we have to face the decision of whether to
20 just go ahead and drill the wells and produce primary and
21 make the same amount of money, or to accept the state offer
22 with considerable risk.

23 The legislation that accommodates the secondary
24 recovery amendments was designed to encourage secondary
25 recovery and to increase production. It sets forth a

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1 procedure for establishing the minimum royalty. This is what
2 we did. But in effect we think that this is really more than
3 the minimum royalty. In the ordinary circumstance a field
4 is pretty well along in depletion before we commence secondary
5 recovery operations, and the primary production is down,
6 and you come up with a much lower figure through this legis-
7 lative calculation. As I said before, the highest one that
8 ever came up before was 17 percent.

9 So in effect the 23-percent calculation is really
10 a six-percent gross royalty kicker or bonus. In effect,
11 the state gets a much bigger return from this project than
12 the oil company lessees. The 23-percent gross royalty that
13 we are offering and willing to settle for is approximately
14 70 percent of the net profits. In other words, of the
15 entire net income derived from this project, the state will
16 end up with 70 percent at no risk, and the lessee will end
17 up with 30 percent, which is an incentive for the state to
18 want to go ahead on this project.

19 The way it stands right now, we are forced to
20 just drill the wells and produce primary. This will result
21 in a loss to the state of approximately \$4 million according
22 to our calculations and the state's too -- comparing the
23 state's return under the secondary recovery at the 23-percent
24 figure with what would happen if we hadn't gone into it at
25 all.

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1 From a management point of view, there is just
2 no alternative but to continue to develop this pool, the
3 Fault Block 28 pool, as a primary project. The money that
4 would have been invested in this project at a reasonable
5 royalty rate of 23 percent will just be spent elsewhere,
6 outside of California of course, because of the barriers put
7 up by the Division.

8 ACTING CHAIRMAN McCAUSLAND: Do you want to
9 respond to those comments in any fashion?

10 MR. EVERITTS: I think you would say they are
11 basically correct. Seventy percent of the net profits: it's
12 closer to 60 percent at today's prices, and it would be
13 closer to 55 percent if crude oil prices are allowed to
14 escalate over the life of the field. Nevertheless, it is
15 a high percentage of net profits.

16 We did offer a net-profits concept after payout.
17 From that standpoint they wouldn't be risking any more capital
18 than they are under their 23-23 thing, because you're saying,
19 "If you didn't get any payout, you'd never get to the
20 50 percent of the net profits."

21 MR. D'AGOSTINO: That offer was made and rejected?

22 MR. EVERITTS: They really are rejecting the
23 concept of net profits.

24 ACTING CHAIRMAN McCAUSLAND: Mr. Loeb, you've
25 read the calendar items prepared by staff. Is that a fair

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1 reflection of the proceedings we've been through to date from
2 your perspective?

3 MR. LOEB: Yes, that's a detail of the history
4 of the negotiations.

5 ACTING CHAIRMAN McCAUSLAND: Basically this is
6 a matter of principle in this particular instance as much
7 as a matter of economics? On a cash flow basis, if push
8 comes to shove, it's a zero-sum game for you, and it's the
9 principle of a net profit participation formula that perturbs
10 you as much as anything? Is that a fair characterization?

11 MR. LOEB: Well, I think the former outweighs
12 the latter. If you reduce the gross royalty and added
13 net profits -- net profits doesn't bother us. We would
14 rather not, because it gets complicated, and there are
15 always arguments in the accounting portion of a net-profits
16 calculation. But it's the return.

17 ACTING CHAIRMAN McCAUSLAND: Are these guys
18 unreasonable when it comes to reviewing your accounting
19 techniques with you? Do we have a reasonable staff or
20 unreasonable staff when it comes to accounting?

21 (Laughter.)

22 MR. LOEB: We generally reach an accommodation.

23 ACTING CHAIRMAN McCAUSLAND: I thought they were
24 pretty levelheaded.

25 MR. LOEB: Well, there are some things that

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1 reasonable people can disagree about in accounting matters.

2 ACTING CHAIRMAN McCAUSLAND: Especially net profits
3 in the oil industry. It has a history of being fraught with
4 public misunderstanding.

5 The item before us today is an information item.
6 The staff is advising the Commission that they wish to
7 leave the door open for continued discussions with you. Do
8 you have something that you would like us to consider in
9 terms of guidance for staff: where we go from here?

10 MR. LOEB: All we can say is that the time is
11 getting short, because we have requested permits to drill
12 wells for the primary production, and we would be going into
13 this program shortly. It is more advantageous to both parties
14 to commence the secondary recovery operation along with the
15 drilling of these original wells.

16 ACTING CHAIRMAN McCAUSLAND: It appears to be
17 the most technically sound approach to the management of
18 that formation. We would like very much for everybody to
19 continue discussing the matter. If it's necessary for the
20 Commission itself to act on the matter in the near future,
21 I think we would like to see some accommodation reached,
22 but it has clearly been the intent of the current chairman
23 of this Commission to do everything he can to maximize the
24 state's returns from its vanishing resource. This happens
25 to be one of the reasons why 30 past leases may not be the

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1 perfect precedent for the discussions that are underway at
2 the present time.

3 This will be upper-tier oil; is that correct?

4 MR. LOEB: Yes. Upper tier regardless of whether
5 there is a waterflooding project or otherwise.

6 ACTING CHAIRMAN McCAUSLAND: I understand that
7 Are there any additional questions?

8 I appreciate your coming today. We would like
9 to continue discussing this matter with you, and I hope we
10 can have a forthright sharing of the profits soon.

11 At a time when we're closing down wells, it's
12 nice to see somebody getting ready to open some.

13 MR. LOEB: All we need is some encouragement.

14 ACTING CHAIRMAN McCAUSLAND: At the present time
15 I am still only aware of individuals wishing to testify on
16 item 36.

17 Mr. Loeb, the other gentleman who was with you
18 was Mr. Howald; is that correct?

19 MR. LOEB: Yes.

20 ACTING CHAIRMAN McCAUSLAND: We will move on then
21 to item 24. If you wish to testify on any items between this
22 item and number 36, please fill out a blue form.

23 Item 24 relates to a permit to drill two soil
24 test holes on the westerly side of the San Francisco Peninsula
25 for the City and County of San Francisco. Are there any

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1 objections to the issuance of the permit? If not, the staff
2 recommendation is deemed adopted.

3 Item 25 regards the approval of the third modifica-
4 tion of the 1977-1978 Plan of Development and Operations and
5 Budget for the Long Beach Unit.

6 MR. GOLDEN: We have a brief statement, Mr. Chairman,
7 from Mr. Hayward of the Long Beach staff.

8 ACTING CHAIRMAN McCAUSLAND: Our net profits are
9 going down, by the way, so I hope Aminoil's go up.

10 MR. HAYWARD: Mr. Chairman, the third modification
11 of this present plan and budget of the Long Beach Unit is
12 primarily an updated estimate of the expenditures and revenues.
13 The budget remains unchanged at \$82,737,000. Based on
14 estimated gross revenue of a little over \$152 million from
15 the sale of oil and gas, the resulting net revenue would be
16 a little over \$69 million.

17 These revenue figures are down from previous
18 estimates as a result principally of a continuing decline
19 in oil production rate. The average price paid for crude
20 oil remains at its depressed level of \$5.36 per barrel, and
21 no increase in oil price is foreseen during the current
22 fiscal year. This is the point we wanted to emphasize for
23 the benefit of the Commission: we remain at this depressed
24 level of \$5.36.

25 ACTING CHAIRMAN McCAUSLAND: One of the questions

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1 that I have is: we went through an extended strike, and we
2 haven't made any really serious modifications to our work plan
3 as far as I can tell. Are we making all reasonable efforts
4 to keep the field fully functional, and are the improvements
5 on schedule, or should we be looking at spending more money
6 on upgrading the field in order to keep it current? Or is
7 our current plan of operation and improvements still the
8 most reasonable approach for the present time?

9 MR. HAYWARD: Yes, Mr. Chairman. Under the present
10 situation everything is being done that can be done to maintain
11 an orderly operation there in Long Beach. In other words,
12 the pressure maintenance operation is going ahead. The
13 water injection program is going ahead. The necessary
14 maintenance and operational work is going ahead to the
15 existing wells. But there is a feeling at this depressed
16 level of \$5.36 it is difficult to generate much enthusiasm
17 to do a whole lot more in the way of new development and
18 enhanced recovery projects.

19 ACTING CHAIRMAN McCAUSLAND: Are there any
20 objections to the adoption of the third modification?

21 MR. D'AGOSTINO: No.

22 ACTING CHAIRMAN McCAUSLAND: The third modification
23 will be deemed approved without objection.

24 Item 26 is an informational review of the
25 caustic waterflooding pilot project in the Long Beach Unit

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1 of the Wilmington Oil Field.

2 MR. GOLDEN: Mr. Hayward has a very brief report
3 on that item as well.

4 MR. HAYWARD: Mr. Chairman, this is a semi-annual
5 review of the pilot-scale field demonstration of waterflooding
6 with a caustic solution in the Long Beach Unit. It is
7 being conducted with the cooperation of the Federal Energy
8 Research and Development Administration on a cost-sharing
9 basis. The hoped-for effect is to create an emulsion in
10 the petroleum reservoir which would improve the injection
11 sweep efficiency and thereby increase the oil recovery.

12 Thus far we are about one year into the project.
13 A small-scale injection test has indicated that the caustic
14 solution can be injected successfully. A larger test is
15 expected to commence in March 1978 to determine the effect
16 of the caustic in recovering additional crude oil. About
17 \$2.4 million has been spent on this project so far out of
18 a total of \$11.6 million that was approved by the federal
19 government for cost sharing.

20 Laboratory tests have indicated that an additional
21 four to five percent of the reservoir oil in place can be
22 recovered by this means. It does have the advantage of
23 being a relatively low-cost method of enhanced recovery,
24 although as we know, no method is inexpensive.

25 I might just add one thing too: in the older part

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1 part of the field there is another pilot test going on. It
2 is a smaller one. It is known as a micellar injection project.
3 It too is a cost-sharing, pilot-scale enhanced-recovery
4 project in its early stages.

5 It is planned to inject an emulsion of crude oil
6 and sulfonate, known as a micellar solution. A large,
7 90,000-barrel mass of this material will be injected and then
8 pushed through the reservoir by a polymer solution that is
9 injected behind it, hopefully resulting in an increase in
10 oil recovery.

11 In this case it's a much more expensive type of
12 operation, but it is hoped that approximately ten percent
13 more of the crude oil in place can be recovered.

14 So far we've had a mini-injection test of a
15 laboratory mix of sulfonated oil, and it is scheduled to
16 now go into operation in December, this next month, and
17 it will determine hopefully whether a micellar solution
18 can be injected. But much more work does remain to be done
19 on that project.

20 ACTING CHAIRMAN McCAUSLAND: Thank you very much.

21 Since there are additional individuals in the room,
22 let me say one last time that I am going to move through
23 this agenda rapidly. If you want to testify, please fill
24 out a blue form, and I will stop at the item that you wish
25 to participate in.

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1 Item 27 is off the agenda.

2 Item 28: there is an error in the designation of
3 the county the item relates to. It is not Contra Costa County.
4 Item 28 authorizes a boundary line agreement with Florence
5 L. Comfort in the city of San Jose. Without objection --

6 MR. D'AGOSTINO: No objection.

7 ACTING CHAIRMAN McCAUSLAND: -- item 28, the
8 staff recommendation, will be deemed adopted.

9 Item 29 regards the commencement of procedures
10 to make general revisions to the Commissions regulations.
11 Those matters will be distributed to all interested parties.
12 There will be public hearings and the matter will be back
13 to the Commission for action at a later date. Without
14 objection, item 29 will be adopted.

15 Item 30 regards a finding that the tide and
16 submerged lands granted to the County of Sonoma in 1959 have
17 been substantially improved as required. Are there any
18 questions on item 30?

19 MR. D'AGOSTINO: No.

20 ACTING CHAIRMAN McCAUSLAND: Item 30 is deemed
21 adopted.

22 Item 31 regards a disclaimer of compensation
23 in United States v. 74.42 Acres of Land, etc., in Tuolumne
24 County.

25 MR. D'AGOSTINO: No objection.

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1 ACTING CHAIRMAN McCAUSLAND: Item 31 will be
2 deemed adopted.

3 Item 32 regards a disclaimer of interest in
4 United States of America v. 6.80 Acres of Land, et al., in
5 Santa Clara County.

6 MR. D'AGOSTINO: No objections.

7 ACTING CHAIRMAN McCAUSLAND: Item 32 will be
8 adopted.

9 Item 33 regards the mariculture areas for South
10 San Francisco Bay and Tomales Bay, San Mateo and Marin Counties.
11 Are there any questions on item 33?

12 MR. D'AGOSTINO: No.

13 ACTING CHAIRMAN McCAUSLAND: Item 33 will be
14 adopted.

15 Item 34 authorizes the staff to terminate negotiations
16 and find another developer for its parcel in Seal Beach.
17 Any questions on item 34?

18 MR. D'AGOSTINO: No.

19 ACTING CHAIRMAN McCAUSLAND: Item 34 will be
20 deemed adopted.

21 Item 35 regards a compromise settlement of disputed
22 titles along the San Leandro shoreline in Alameda County.
23 Any questions on item 35?

24 MR. D'AGOSTINO: No.

25 ACTING CHAIRMAN McCAUSLAND: Item 35 will be deemed

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1 adopted.

2 Item 36 regards the acceptance of a bid for removal
3 of submerged hazards from the Sacramento-San Joaquin River
4 Delta. There are a number of parties wishing to testify on
5 this item. Mr. Golden, would you like to make a presentation?

6 MR. GOLDEN: Mr. Lindfeldt of our staff will give
7 a brief resume of where we are at this point, along with
8 Mr. Sanders.

9 MR. LINDFELDT: I believe Dwight Sanders of the
10 planning unit can discuss the factual events that have occurred
11 in this bid process, and I can address the legal problems
12 that may have developed. Dwight would like to analyze the
13 factual situation.

14 MR. SANDERS: Mr. Chairman, on September 16th the
15 State Lands Commission received a grant from the federal
16 government, from the Economic Development Administration, to
17 remove the hazards and obstructions within the Sacramento-
18 San Joaquin Delta area. Subsequently the State Lands Commission
19 requested bids for the project from contractors properly
20 licensed by the Contractors' State License Board. The bids
21 were requested on October 24, 1977, and due on November 22,
22 1977.

23 In this procedure three bids were received and
24 opened as prescribed by law. The bids that were received
25 are outlined in the calendar item. I think one further

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1 clarification should be brought to the Commission's attention
2 in this regard, and that is that acceptance of the grant
3 includes a mandate to begin operations within the delta area
4 within 90 days of September 16th. Therefore the date by
5 which we must be underway in the delta is December 15th.

6 MR. LINDFELDT: Basically, unsuccessful bidders
7 have raised a number of questions concerning the applicability
8 of various Government Code sections and the State Contract
9 Act to the bid opening and the requirements of the bid
10 package.

11 The first issue that arises is whether or not this
12 is a project as defined in 14254 of the Government Code, and
13 therefore even subject to the State Contract Act. Our
14 prior hazard-removal program -- when we sat down and discussed
15 it with the legal staff of General Services, they gave us
16 their opinion that this type of hazard removal was not a
17 project as defined in that section of the Government Code and
18 would therefore not be subject to the State Contract Act.

19 Assuming though that it is subject to the Contract
20 Act, the specific section being raised in discussions is
21 Section 14311.5, which states that if a party has been pre-
22 qualified to bid on a project -- and a pre-qualification is
23 a financial analysis of the prospective bidders and a statement
24 to the bidders that: "We have reviewed your financial situation
25 and your capabilities, and we say you are qualified to bid

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1 on this project." If that has been done, then if the contractor's
2 license required to operate the project is not in the
3 possession of the bidder, he has until the initial project
4 is started or the first progress payment is made -- under
5 14311.5 -- to obtain that license. But if there has been
6 no pre-qualification -- in this case there was no pre-qualifi-
7 cation, no financial analysis of prospective bidders, no
8 statement to prospective bidders that they were qualified
9 and acceptable to bid -- then that Section 14311.5 does not
10 apply to this bid. That is the situation that we have.

11 The requirement that we made in our bid package
12 was that the license be in the possession of the bidder at
13 the time of the bid opening. That was done to protect the
14 state, because of the critical nature of the timing of this
15 project: that it has to be underway, with actual work being
16 done, by December 15. We had to meet that 90-day requirement
17 by law. So to protect the state's interests in this project,
18 it was required that the license be in the possession of
19 the bidder at the time of the bid opening. I think that is
20 the basic legal dispute that the parties will raise.

21 Now there may be other factual questions about
22 the calculations of the low bid, the issuance and the place-
23 ment of the bidding bond, and things of this nature. But
24 those are the legal issues that have been raised prior to
25 this meeting.

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1 ACTING CHAIRMAN McCAUSLAND: Did we use any
2 pre-bidding procedure, qualification procedure, in this
3 project?

4 MR. LINDFELDT: No.

5 ACTING CHAIRMAN McCAUSLAND: There were no pre-
6 qualification procedures.

7 MR. SANDERS: No, sir.

8 ACTING CHAIRMAN McCAUSLAND: So that anyone who
9 received or was aware of the opportunity to bid could file
10 a bid as long as it was in a timely fashion?

11 MR. LINDFELDT: Yes.

12 ACTING CHAIRMAN McCAUSLAND: What procedure did
13 you use to determine average cost in the two of the three
14 bids that you did not disqualify?

15 MR. SANDERS: Mr. Chairman, in the two of the
16 three bids that we did not disqualify, the average cost was
17 specified by the bidder. There was no calculation made by
18 the staff.

19 ACTING CHAIRMAN McCAUSLAND: What basis for
20 comparison was there with the American Leadburning Company
21 bid, in which there was no average cost offered? How could
22 you compare the three bids?

23 MR. SANDERS: Since there was no average cost
24 given in the Leadburning bid, we went item by item,
25 Mr. Chairman, within the bidder's proposal on the equipment

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1 items.

2 ACTING CHAIRMAN McCAUSLAND: Can you advise us
3 of the comparability of costs under that formula of analysis?

4 MR. SANDERS: Yes, sir. For example, on the bid
5 from Dutra and Company -- I'm going to have to do a little
6 laying out here.

7 ACTING CHAIRMAN McCAUSLAND: I'm sorry I wasn't
8 aware that I was going to ask this questions ahead of time.

9 MR. SANDERS: That's all right. I brought the
10 bids along in anticipation of it, Mr. Chairman.

11 All right. This may be laborious here, but we
12 will go item by item.

13 On the equipment schedule number one, we required
14 one crane barge with a capacity of 400 to 600 tons, et cetera.
15 Mr. Dutra wanted \$96.25 for an hourly rental rate for 1 to
16 240 hours; \$87.50 for 240 to 720 hours; and \$81 for 720
17 hours or more.

18 ACTING CHAIRMAN McCAUSLAND: That's probably a
19 good example. Let's just look at that example across the
20 three. I don't think we should go item by item.

21 MR. SANDERS: That's fine, Mr. Chairman. In the
22 Jensen and Reynolds Construction Company proposal, the hourly
23 rates for the same piece of equipment, 1 to 240 hours, was
24 \$90; 240 to 720 hours, \$82.50; 720 hours or more, \$75. That
25 is lower than Mr. Dutra's.

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1 In the Leadburning proposal, same piece of equip-
2 ment, the hourly rental rate for 1 to 240 hours was \$223.79;
3 240 to 720 hours, \$212.60; 720 hours or more, \$201.97. That
4 is roughly 50 percent higher than the two other parties.

5 ACTING CHAIRMAN McCAUSLAND: One hundred percent.

6 MR. SANDERS: One hundred percent.

7 MR. STEVENS: Mr. Chairman, just by way of clarifi-
8 cation, could I ask the basis for which this bid was rejected?
9 The agenda item appears to simply state that it doesn't
10 conform to the bid specifications. Was it in fact rejected
11 because it was not the lowest bid and also because bid
12 specifications were not met by virtue of nonpossession of
13 the requisite contractor's license? Also, was there a
14 problem with the required filing of a bond?

15 MR. SANDERS: Mr. Stevens, the bid can be rejected
16 on a number of factors you mentioned. Number one, we first
17 looked at the license, since it was a pre-requested or pre-
18 qualified portion of the bid package. Since the Leadburning
19 Company does not possess the proper license, the bid can be
20 rejected on that particular issue.

21 Secondly, a bidder's bond of ten percent of the
22 contract amount was required with the bid. The Leadburning
23 proposal was not accompanied by a bond in that amount. In
24 fact, the bond submitted was \$120, although a bond of \$107,000-
25 plus was required to have been attached to the bidding

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1 proposals, as was done with the other two proposals.

2 ACTING CHAIRMAN McCAUSLAND: On the question of
3 the bond -- let me save that question, because we have an
4 individual from the California Office of Minority Business
5 with whom I can raise that question, and then we can discuss
6 it.

7 Perhaps I should ask if the item that we selected
8 for cost comparison is representative, or is that an
9 aberration? Did we compare prices on an item --

10 MR. SANDERS: An item-by-item basis, Mr. Chairman.

11 ACTING CHAIRMAN McCAUSLAND: On an item-by-item
12 basis, all items were substantially higher than the other
13 two bids?

14 MR. SANDERS: Mr. Chairman, the items in which --

15 ACTING CHAIRMAN McCAUSLAND: Why don't you research
16 that while I go on?

17 MR. D'AGOSTINO: I just wondered if the staff had
18 made an effort to at least establish ballpark figures for
19 the average per-hour cost.

20 MR. SANDERS: Not per se, Mr. D'Agostino. The
21 project is one in which the Commission is in effect breaking
22 new ground as far as experience is concerned. We have relied
23 heavily on the United States Corps of Engineers' experience
24 in similar projects. Based on contacts with that entity and
25 what staff experience we had, the cost figures submitted by

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1 the Dutra people and the Jensen and Reynolds people are
2 indeed reasonable and ballpark figures for this type of work.

3 MR. D'AGOSTINO: Is it possible, based on the
4 data submitted by American Leadburning, to know whether their
5 average cost per hour would be higher?

6 MR. SANDERS: You mean to actually figure it out?

7 MR. D'AGOSTINO: Yes.

8 MR. SANDERS: That --

9 ACTING CHAIRMAN McCAUSLAND: Perhaps the answer
10 to my question helps lead to the answer to that question.
11 On an item-by-item basis, is there any consistent pattern to
12 the bid of American Leadburning Company to the others? For
13 instance, on the item we compared there is a 100-percent
14 difference.

15 MR. SANDERS: That's correct. The items on which
16 American Leadburning is substantially lower -- or lower, I
17 should say -- are items six and seven. Item six consists of
18 two front-end loaders, basic, heavy pieces of equipment,
19 and item seven consists of three ten-yard dump trucks. Those
20 two items would be used perhaps ten to twenty percent of the
21 project life. On those pieces of equipment the American
22 Leadburning Company is approximately one-fifth to one-sixth
23 of the bid of the other two individuals.

24 ACTING CHAIRMAN McCAUSLAND: So the others are
25 several hundred percent greater?

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1 MR. SANDERS: On those two items, Mr. Chairman,
2 yes. On the items which would be used 70 to 100 percent
3 of the time, the other two individuals, Dutra Company and
4 Jensen and Reynolds, are in the relationship which we explored
5 with that one item.

6 ACTING CHAIRMAN McCAUSLAND: Unless there is
7 objection from the American Leadburning Company spokesman,
8 I'd like to ask Juan Flores to testify next, procurement
9 manager for the California Office of Minority Business.
10 Following his testimony, then I would like Robert Gonzalez
11 to come forward, and he can decide whether he wants Richard
12 Barteo and Alan Carey with him or following him. Mr. Flores.

13 MR. FLORES: Thank you, Mr. Chairman. My name
14 is Juan Flores, and I represent the California Office of
15 Minority Business within the Department of General Services.

16 Specifically we are interested in the rejection
17 consideration based upon the failure to provide a license
18 at the time of the bid response. As I think has already
19 been indicated, both federal EDA guidelines and the State
20 Contract Act, as well as the California Government Code,
21 spell out that where federal funds are involved in state
22 contracting, a license is not required at the time of the
23 bid submittal nor at the time of the award and should not
24 be considered in conjunction with those two procedures.

25 I think it is an irrelevant consideration in terms

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1 of a firm needing to be qualified in order to fall under
2 the section within the State Contract Act, because the EDA
3 grant programs do not require any bidder to become pre-
4 qualified in any way, shape or form. I think that particular
5 section of the language gave consideration to firms interested
6 in being pre-qualified to do business through the normal
7 State of California bid procedures.

8 I should also indicate that in communication with
9 the Office of the State Architect and also in communication
10 with the legal division within the Department of General
11 Services, the procedures being applied in terms of licensing
12 consideration are consistent with EDA's guidelines and with
13 the language spelled out in the State Contract Act.

14 I think the way this law is interpreted by the
15 Department of General Services through the Office of the
16 State Architect, as well as the Office of Procurement, the
17 purchasing office for most segments of the State of California,
18 should be taken into strong consideration by other depart-
19 ments in attempting to apply the same program.

20 Additionally, the creation of more stringent specs
21 in this instance is counterproductive to the intent of the
22 Congressional legislation in itself, and the purpose for
23 coming up with the more stringent specs in terms of meeting
24 the time guidelines that they are confronted with is a
25 little bit inappropriate. There are many departments within

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1 the State of California that are also project grantees by
2 the federal Economic Development Administration. Each of
3 those grantees as state entities are confronted with the
4 same stringent guidelines, time guidelines, as is the
5 State Lands Commission. To my understanding neither the
6 State Architect's office, which is handling a large number
7 of the contracting of those grant projects for the various
8 agencies, nor any other departments, are in this particular
9 instance applying more stringent specs for the purpose
10 of meeting those time guidelines.

11 I think for the State Lands Commission to uphold
12 or apply more stringent guidelines for that purpose is
13 contradictory to accepted practice in the application of
14 the EDA guidelines by the remainder of the state entities
15 applying these guidelines, and is contradictory to the
16 intent and purpose of the EDA guidelines themselves.

17 It's my understanding, in talking with the
18 Contractors' State License Board, and also in talking with
19 the construction manager at the Office of the Architect,
20 that American Leadburning Company should have no problem
21 securing the required Class A license in sufficient time
22 to meet the time guidelines that the State Lands Commission
23 is subject to.

24 Separate from that, I would also like to raise
25 the point of the ten-percent minority requirement as one of

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1 the conditions of the EDA project grants. I don't know
2 specifically whether or not American Leadburning Company
3 is in fact the low bidder. I don't know whether in fact
4 they did submit the appropriate bid bond. Your staff
5 suggests they did not. But it is my understanding that
6 the firm is 100-percent minority-owned, or the majority of
7 the firm is owned by legitimately minority individuals.

8 If everything else fell into place, in terms of
9 their being the low bidder and in terms of meeting the
10 bonding requirements, I think that rejection of the bid
11 on the basis of the licensing consideration is both unfair
12 and unreasonable and contradictory to, as I indicated, the
13 EDA guidelines and the State Contract Act.

14 Our office is in the process of doing the verifica-
15 tion of those firms claiming the minority status for the
16 purpose of the ten-percent requirement for most state
17 grantees, as well as for other government entities. In
18 this particular instance, we weren't requested by the State
19 Lands Commission to do the verification. There are certain
20 stringent steps, I think, that have to be adhered to in order
21 to conduct that verification process. I would be interested
22 in knowing what verification process was applied in ensuring
23 that the other bidders did meet that ten-percent minority
24 requirement.

25 I know in our verification procedures there has

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1 been just an array of problems in attempting to verify these
2 firms.

3 MR. D'AGOSTINO: I wonder if someone could answer
4 for me the following question: how does the State in an
5 instance such as this, where commencement has to begin by
6 a certain date or federal funds can be lost, protect itself
7 if the bidder is not required to be qualified either at
8 the time of bid or at the time of award of bid? Can someone
9 explain that?

10 MR. LINDFELDT: The way we attempted to protect
11 ourselves was to see that at the time of the bid the person
12 had the necessary Class A license, licensed by the Contractors'
13 State License Board, that would indicate that the firm
14 was capable of doing the work required. That was the
15 way we took the steps to protect the state.

16 ACTING CHAIRMAN McCAUSLAND: This is a Title 2 --

17 MR. SANDERS: Title 1.

18 ACTING CHAIRMAN McCAUSLAND: This is a Title 1
19 project. How are other state agencies dealing with the
20 issue of the 90-day commencement of on-site activity? Are
21 you working with other state agencies in complying with that?

22 MR. FLORES: Our office is working strictly with
23 the verification and the monitoring process of the ten-percent
24 minority requirement.

25 ACTING CHAIRMAN McCAUSLAND: So you have not been

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1 working historically on the contractor qualification or the
2 bonding aspect of the problem; is that correct?

3 MR. FLORES: That's correct.

4 MR. SANDERS: Mr. Chairman, in discussions with
5 the State Historic Preservation office, which is another
6 condition of the grant, to get his verification of our
7 work, it was stated to me that the State Lands Commission
8 to their knowledge was the only state agency having
9 received a Title 1 grant. There are other agencies which
10 have received monies from EDA, but these are under Title 2,
11 and these are revenue-sharing funds and, I believe, governed
12 by a completely different set of ground rules than the
13 Title 1 funds, which do have the 90-day requirement.

14 ACTING CHAIRMAN McCAUSLAND: Robert Gonzalez, Sr.,
15 owner of the American Leadburning Company. Would you like
16 to shed some light on this for us at this time?

17 If you want to bring Mr. Bartee and Mr. Carey forward
18 with you, you may.

19 MR. STEVENS: Mr. Chairman, I wonder if in the
20 meantime it could be made clear whether verification was
21 made of the ten-percent employment requirements with respect
22 to the other bidders. Perhaps Mr. Sanders --

23 ACTING CHAIRMAN McCAUSLAND: Mr. Stevens has
24 asked whether or not there has been verification made of
25 the ten-percent minority participation by the other bidders.

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1 Can you address that question, Mr. Sanders?

2 MR. SANDERS: Mr. Chairman, to this point in time
3 each bidder was required to sign a statement to the effect
4 that "I hereby certify that to the best of my knowledge
5 the firms listed here have represented themselves as a
6 minority-owned/controlled business and that I have accepted
7 as same."

8 ACTING CHAIRMAN McCAUSLAND: These are subcontractors?

9 MR. SANDERS: In this instance Mex-Cal Trucking is listed
10 as a subcontractor in the Jensen and Reynolds proposal to
11 the amount of ten percent of the awarded contract. Mr. Jensen
12 has signed this as of 11/22/77. The Dutra Company also
13 signed a similar statement in their bid proposal.

14 MR. FLORES: I'd like to respond to that,
15 Mr. Chairman. I think the certification by notarization
16 by a given firm claiming the minority status is a condition
17 within the bid procedures handled by the Office of the
18 State Architect as well. In my communication with other
19 grantees in their handling of the bid process, they are
20 requiring the same type of certification, a notarized
21 statement.

22 MR. SANDERS: Mr. Chairman --

23 MR. FLORES: My point is that the Department of
24 General Services through its staff has been working on
25 this project. That includes the State Architect's office,

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1 legal division, the Office of Procurement, and our office
2 as well. We have found that that hasn't been sufficient in
3 terms of weeding out those firms who are stating that claim
4 as a result of a misunderstanding of the guidelines that
5 are required to be adhered to or just as a result of some
6 other intent.

7 ACTING CHAIRMAN McCAUSLAND: Following this
8 meeting, it is clear that our staff will discuss this
9 matter with you.

10 MR. SANDERS: I've been informed by a member of
11 my staff that Mex-Cal Trucking is listed in your document,
12 Mr. Flores, as a verified minority enterprise.

13 MR. FLORES: We have several internal listings
14 that we've put together.

15 ACTING CHAIRMAN McCAUSLAND: After this meeting
16 our staff, you and our staff will make sure which list is
17 which, because we do want to do this in an appropriate
18 fashion. It is difficult. The federal government has
19 asked us to do something within 90 days. We do want to make
20 a serious effort to make certain that this Commission fully
21 complies with the intent and spirit of that law in terms
22 of full opportunity for all sectors of the economy to
23 participate in that grant program, and I think the minority
24 aspect of business enterprise is very important to that.
25 So we will make certain that we are playing by the right set

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1 of rules.

2 Mr. Gonzalez?

3 MR. GONZALEZ: Mr. Chairman, first I would like
4 to introduce myself. I am Bob Gonzalez, and I will let
5 my other colleagues introduce themselves as they speak.

6 Number one, I personally myself got involved in
7 this with Mr. Bartee here about a week prior to the bid
8 opening. I myself, the same as the State of California,
9 am new at this field, but Mr. Bartee has been in it for a
10 long time, and he and I have worked together for many years.
11 So we decided to go after this job on a joint venture type
12 of deal. Just as the State of California has never had
13 experience in this thing, I feel I can jump in the same
14 as they can and go after a job I know I can perform.

15 As far as the time is concerned, I don't think
16 there is any problem, because we are capable of starting
17 it at any given moment.

18 In regards to the things that they are claiming
19 we did not comply with, number one is the price. They are
20 failing to give the price on a per-hour basis, as it was
21 read at the bid opening. At the time of bid opening, the
22 figures that were read out -- and I don't have them written
23 down in front of me, but they were close enough that with
24 the five-percent set-aside for minority, we were well under
25 the second bidder.

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1 Now I would like to turn this over to Mr. Barteer,
2 who has a lot of things written down that he will explain
3 to you. Before I do turn it over to him, I would like to
4 mention the fact that I am the sole owner of American
5 Leadburning, and I performed a lot of jobs for the state
6 and government-funded jobs, such as sewage treatment plants
7 and so forth. I've done most of the sewage treatment plants.
8 I do corrosive protection and so forth, which is really
9 related to the type of work that we are talking about now.
10 We have done the Roseville Sewage Treatment Plant and so
11 forth, and part of the Sacramento Sewage Treatment Plant.
12 We are presently doing part of the pipeline and so forth.

13 So we are involved in this type of work, and I
14 hold several classifications of contractor's licenses, and
15 I have been notified by the State License Board that I would
16 have no problem in acquiring this classification that would
17 be required for this job.

18 ACTING CHAIRMAN McCAUSLAND: Thank you. Mr. Barteer?

19 MR. BARTEE: Thank you, Mr. Chairman. My name
20 is Richard Barteer, and I have been working with Bob Gonzalez
21 several times, particularly on this project.

22 As to Mr. Gonzalez' stating of the amounts of the
23 bids read at the bid opening, I have to admit it was a
24 failure on our part to fill in one line in the bid package
25 itself. It was an average of hourly rates for the equipment

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1 supplied. I do have the rates that were read of the other
2 contractors. The low one was \$617.13 an hour. We have
3 averaged our figures out, and they are \$644.19 an hour.
4 Taking the five percent off for small business, which
5 I have been informed is not really available to be used in
6 this bid package, puts us well below the low bidder.

7 How other contractors have arrived at the rates
8 that they have read, I don't know. I use the book in here
9 for wage rates that was provided, and the number of men
10 necessary to operate the piece of equipment. Their wages
11 already exceeded their hourly rates. That's their problem
12 as far as their bonding companies are concerned.

13 Our rates are 40 percent labor. Ten percent of
14 that, we feel, will be expended towards the education of
15 minority employees to teach them the trade of marine-type
16 construction. It is a very highly skilled trade, not some-
17 thing you learn every day. You have to go out and work at
18 it and get people who know to teach you these things.

19 As far as the bid bond is concerned, the amendment
20 was made to the bid specs three days before bid opening.
21 In their own specifications it states that amendments can
22 be made "if time permits". They do not state whether that
23 means time permitting for the state or for the contractor.
24 I interpret it myself as meaning for either party.

25 Our bonding is done through the Small Business

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1 Administration in San Francisco, and they require at least
2 ten days just to process a bond. There is no way you can
3 get around it.

4 Going by the specifications, it says a ten-percent
5 amount of the bid. The bid that was requested was an hourly-
6 rate bid, so we submitted ten percent of that hourly rate.

7 On the contractor's license itself, in the very
8 front of the book, the very first page, it says that pre-
9 qualification is not necessary. You go into the specs
10 themselves and in another section it tells you that a
11 contractor's license is not required to bid or accept an
12 award of this contract.

13 ACTING CHAIRMAN McCAUSLAND: What page is that?
14 Do you have that one?

15 MR. BARTEE: In Instructions to Bidders, paragraph
16 18, page six, the beginning of the paragraph. Continues on
17 to the next page. It gives the Government Code. Those two
18 paragraphs tell you that a contractor's license is not
19 necessary. On the very first page of the specifications,
20 where it announces the bid opening, approximately at the
21 bottom of the page, it says that pre-qualification of the
22 bidders under the State Contract Act is not required.

23 MR. FLORES: I'd like to add, Mr. Chairman, I
24 think that point is agreed upon by the staff of the State
25 Lands Commission as well. It's just a question of whether

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1 or not the State Lands Commission finds it necessary to
2 apply more stringent specs for the purpose of the contract.

3 ACTING CHAIRMAN McCAUSLAND: Mr. Sanders was
4 advising me that this entire contract was based on the
5 Office of the State Architect model contract. Actually, the
6 two sections that you are referring to are complementary,
7 though they don't appear to be. The first one says that
8 pre-qualification of bidders under the State Contract Act
9 is not required, and the second one says -- I'm trying to
10 read just the pertinent parts, and it's kind of hard. "In a
11 state project in which the bidder is required to be and
12 has been pre-qualified" -- that's the precondition of
13 paragraph 18 that you referred to, so paragraph 18 in reality
14 is awfully difficult to apply.

15 MR. FLORES: With the exception of the fact that
16 the State Architect's office is applying that section without
17 the requirement of pre-qualifications for the purpose of
18 these EDA grants.

19 ACTING CHAIRMAN McCAUSLAND: Then why did they
20 write it this way?

21 MR. FLORES: What the staff of the State Lands
22 Commission has done, as I understand it, it to take those
23 bid conditions as written up by the State Architect's office
24 -- and our office, as well as our legal office, was involved
25 in putting together those bid conditions -- and used those

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1 as a model in putting together their own set of bid conditions,
2 and adding an additional specification requirement. The
3 State Architect's office --

4 ACTING CHAIRMAN McCAUSLAND: It takes a lawyer
5 for Mr. Gonzalez and Mr. Bartee to find out what it is that
6 they are bidding on.

7 MR. GONZALEZ: I agree. Can I say something, please?

8 Not only do we need a lawyer to interpret this
9 to us, but after the bid opening was made, the Board made
10 a decision to really kick us off of the bidding, and they
11 failed to send me a letter stating that they were going
12 to hold this meeting. I never received a letter telling
13 me anything about this meeting.

14 ACTING CHAIRMAN McCAUSLAND: About today's meeting?

15 MR. GONZALEZ: That's right.

16 ACTING CHAIRMAN McCAUSLAND: Mr. Bartee, I'm
17 sorry. I interrupted you. That was an interesting statement.
18 I wanted to find out what the provisions in the contract
19 were.

20 MR. BARTEE: This entire set of specs compared to
21 the other specs in the marine work that I have bid, is
22 very poorly put together. For example, they call for one
23 crane barge with a capacity of 400 to 600 tons. There is
24 only crane barge on the entire west coast that has that
25 capacity. It is owned by Merchant Pacific. I understand

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1 it is now in San Diego. It couldn't even begin to get into
2 the waterways which we're talking about working on.

3 They call for three drum deck engines. What they
4 mean is three drum winches.

5 They call for 3,000-pound anchors on spuds. Spuds
6 and anchors are basically the same thing. What they're
7 saying is to hang the anchors on top of the spuds.

8 This whole thing, the way it is written, leaves
9 a lot of things -- if a person is going to bid and follow
10 what they had written down, their bids would be much, much
11 higher than what they even can conceive, because a marine
12 rig like that would run \$2500 an hour. That's to give you
13 an idea of how badly the specs are written.

14 They call for two front-end loaders, each capable
15 of moving wooden piling. What they want is front-end loaders
16 capable of loading pilings, so they want the thing with a
17 four-in-one bucket or a log fork.

18 They call for underwater gear, all kinds of under-
19 water gear: air compressors, underwater cutting torch, under-
20 water chain saw, welding machines. They don't call for a
21 diver to operate them. Just one thing after another.

22 I called and had an amendment sent out. They said:
23 "Mobilization and Demobilization". I called them up and
24 asked them, "Where are you mobilizing to?" They said, "The
25 delta." That's a big place. It takes time to pull equipment

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1 around. So I filed an amendment to that as to a certain
2 place to mobilize.

3 But there are things all through this contract
4 or the specs where they have contradicted their own statements
5 using federal statutes and state statutes to bid this
6 project.

7 ACTING CHAIRMAN McCAUSLAND: Was there a bidders'
8 conference prior to --

9 MR. BARTEE: Mr. Chairman, the bids were advertised
10 on the 31st day of October, and bids were originally called
11 for on the 8th day of November. There was not even the
12 beginning of enough time there to obtain bonding.

13 ACTING CHAIRMAN McCAUSLAND: Is that basically
14 accurate?

15 MR. SANDERS: Yes and no, Mr. Chairman. The time
16 frame is correct. The call for bids was extended, and each
17 bidder was notified to this effect by the most expeditious
18 means possible.

19 As I stated in the opening statement and as
20 provided by the calendar item, the bids were requested on
21 October 24th and due on November 22nd.

22 ACTING CHAIRMAN McCAUSLAND: This happens to be
23 one of the worst aspects of the Title 1 projects, the idea
24 that Congress could pass something two years ago and 90 days
25 later actually have people working on a site. It produced

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1 a piece of federal legislation that is totally unrealistic
2 from your standpoint and from ours. I don't think anybody
3 associated with the Commission staff or the Commission likes
4 the idea of giving people such a short time to try to work
5 through such a complex set of specs to make a bid.

6 On that point I think it would be very helpful
7 to make certain that the state model contract says what
8 it means to say, so that when other opportunities come up,
9 we are not going to be faced with the same situation, where
10 different sections of the contract don't seem to be relevant
11 to the issue that is at hand. We are trying to find a way
12 to qualify people to get in and bid on projects, but we're
13 writing contracts that don't make that very reasonable.

14 Let me ask one other question, if I might. Do
15 you want to go on, Mr. Bartee?

16 MR. BARTEE: No.

17 ACTING CHAIRMAN McCAUSLAND: Let me ask one other
18 question. What formula did we utilize for determining what
19 the average cost per hour is that's reflected in the calendar
20 item? I understand that the bid required that that be
21 submitted. Was that a weighted average cost of the various
22 elements, or was that just simply adding it up and dividing
23 by the number of hours? How did we come up with the average
24 cost per hour?

25 MR. SANDERS: As I stated, Mr. Chairman, that was

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1 listed within the bid package.

2 ACTING CHAIRMAN McCAUSLAND: It was listed in the
3 bid, but I assume the bid specified how that number would
4 be derived.

5 MR. SANDERS: No, it did not.

6 MR. D'AGOSTINO: How did you contemplate ever
7 being able to compare bids?

8 MR. GONZALEZ: Mr. Chairman?

9 ACTING CHAIRMAN McCAUSLAND: Yes, Mr. Gonzalez.

10 MR. GONZALEZ: I'd like to see if I can clarify
11 that a little bit. The way that we went about it was
12 utilizing the information that was offered to us in the bid
13 package according to the hourly rates and so forth and
14 the knowledge that he has in this type of field in estimating
15 as to how many men it was going to take to run the barges
16 and so forth and to do the job that was supposed to have
17 been done. That's how we determined the hourly rate. On
18 top of that went the operating expenses of the pieces of
19 equipment that were called for and so forth.

20 ACTING CHAIRMAN McCAUSLAND: That's probably the
21 same technique that any contractor would utilize coming up
22 with a number if they didn't have a formula specified.

23 MR. BARTEE: The way that we figured our average
24 bid was to take the three bids they requested -- the first
25 item had from 1 to 240 hours, then 240 to 720 hours, then

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1 720 hours or more. In order to get an average bid we took
2 the three figures that we had, added them together and
3 divided by three and came up with an average figure per
4 hour for each piece of equipment. On some pieces of equip-
5 ment they only requested two time breakdowns: from 1 to 240
6 hours and from 240 to 720 hours. We took those and divided
7 them by two. Then to get our average total bid, we took
8 and added those averages together to give us our average total
9 bid. To us, that's the only way we could figure an average.

10 ACTING CHAIRMAN McCAUSLAND: That's not quite
11 a technique for weighting it towards on-site usage.

12 MR. BARTEE: No. I don't know really how we would --

13 ACTING CHAIRMAN McCAUSLAND: Let me ask you
14 another question. I've had a little experience with bonding.
15 I don't understand how you could go out on a venture as
16 essentially -- well, it's got all the marine hazards
17 associated with it -- go out on a venture like this and
18 get a bond for \$100,000 as your first shot out of the bag.
19 How do you go about doing that? Mr. Carey?

20 MR. CAREY: These people are small businesses
21 and can qualify under the Small Business Administration
22 for federal guarantees. So they will guarantee the bond,
23 but it is about a ten-day process of submitting all the
24 figures that are needed and so on. They can come up with
25 this bond guaranteed by the Small Business Administration.

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1 ACTING CHAIRMAN McCAUSLAND: For \$100,000?

2 MR. CAREY: A million dollars.

3 MR. GONZALEZ: A million dollars.

4 ACTING CHAIRMAN McCAUSLAND: What kind of
5 capitalization -- well, I guess that's something we'll have
6 to discuss.

7 MR. CAREY: I think I know what you're asking.
8 They simply want a financial statement.

9 MR. GONZALEZ: American Leadburning as a company
10 has been bonded to \$175,000 before. So in that respect,
11 I don't think I would have any problems at all.

12 ACTING CHAIRMAN McCAUSLAND: So you have experience
13 with a performance bond?

14 MR. GONZALEZ: We live under those rules. We
15 are in construction work, so we have to have bonding.

16 The one thing that really puzzles me is the fact
17 that number one, American Leadburning was the hot topic
18 of conversation at the bid opening, and American Leadburning
19 was the only one that was not notified of this meeting.
20 That's something that really has me puzzled.

21 ACTING CHAIRMAN McCAUSLAND: Can the staff
22 enlighten us on that?

23 MR. MILLS: Mr. Chairman, I talked to Mr. Bartee
24 on the telephone last week, and I personally informed him
25 that the meeting would be held today, where it would be held,

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1 and that he was perfectly welcome to come and present any
2 information he had at that time. A letter was sent from
3 the State Lands Commission to all bidders --

4 MR. MOORY: -- indicating what would be on the
5 agenda and when.

6 MR. BARTEE: Mr. Chairman, in regards to that,
7 I talked to Mr. Lindfeldt.

8 MR. MILLS: Mills. You talked to several of us.

9 MR. BARTEE: Yes, I was personally invited, but
10 it's still not the same thing legally as a written letter.

11 Also there was a situation of a request for an
12 amendment or agenda to this meeting. I talked to a secretary
13 on Monday morning and requested a copy. She told me she
14 would put one in the mail immediately. It was. I received
15 it the following day. We were also told that the letters
16 regarding this were mailed on last Wednesday, and they have
17 never arrived as of yet. I don't understand why this has
18 happened.

19 ACTING CHAIRMAN McCAUSLAND: I deal with the
20 U.S. Post Office every day --

21 MR. BARTEE: I know what you mean.

22 ACTING CHAIRMAN McCAUSLAND: It's nice to have
23 somebody to blame once in a while.

24 Mr. Carey, you really haven't had a chance to
25 get your licks in.

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1 MR. CAREY: There are a few things. I am very
2 late on this thing with Bob. But I have worked with
3 Richard Bartee off and on over seven years and know their
4 qualifications and experience and the equipment they have,
5 that sort of thing. In fact, I have an agreement now to
6 help him reorganize and recapitalize his business. Although
7 I feel I should have been here earlier, I wasn't too much --
8 this came up very suddenly. Everybody was bidding on it.

9 For background, I have 18 or 20 years of dealing
10 with the federal contracting and all of this kind of thing,
11 and I sympathize with everybody here over this type of thing.
12 I could make two or three suggestions that might clear
13 things up. In order for him to organize as a 100-percent
14 minority business and be able to provide the equipment
15 and the license, he does have some equipment coming from
16 Charles Hastings. Charles Hastings has an engineering A
17 license and has written a letter and would provide the
18 license and would be the project manager. So where licensing
19 has been of some concern here, I think there are ways to
20 get around that.

21 MR. D'AGOSTINO: By going that route, don't they
22 then lose their five-percent minority advantage?

23 MR. CAREY: No. He is simply renting the equip-
24 ment, and Mr. Hastings would be an R.M.E. But that would
25 only be temporary, because he can qualify any time for a

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1 license.

2 The second thing I would like to suggest is that
3 I have seen this kind of thing come up before where every-
4 body is trying seriously to find a way to take that
5 federal money and spend it. When everybody is seriously
6 working on it, it's possible to call the federal government
7 and say that we need a little more time, and they put it
8 off. So the December 15th date may not be as tough as
9 everybody is saying here. We're not really going to lose
10 the funding if things don't happen by the 15th.

11 Other than that, what we're really doing here --
12 and I've only read this through since yesterday -- we're
13 dealing with federal funds and in many cases we will have
14 to follow federal regulations. We are all in a position of
15 complying with the federal government regulations in order
16 to use those funds. Even though that's not compliance,
17 it's sometimes like being a slave. You do what people say
18 if you want the money.

19 That is where a lot of the conflicts in thinking
20 come about here. These people do qualify as small business-
21 men. They can qualify as minority. Their intent is to
22 train minorities, which I think is part -- the big issue here
23 is really that: why is this federal money being made
24 available? It's being made available to, if possible, work
25 things out to train minorities or hire minorities.

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1 I don't know. I could be helpful maybe in making
2 suggestions as to how some of these conflicts could be
3 worked out, but that would depend on whether somebody wants
4 me to make those kinds of suggestions.

5 MR. BARTEE: Mr. Chairman?

6 ACTING CHAIRMAN McCAUSLAND: Mr. Bartee.

7 MR. BARTEE: I have talked with a gentleman at
8 the EDA office in Seattle, Washington. The name is Darrel
9 Johnson. He is an attorney up there for the EDA. I have
10 asked several questions about EDA-funded projects. I asked
11 him very point-blank if there was a problem arose in this
12 thing, was it actually a matter of the state not fulfilling
13 their obligations in trying to locate a contractor or
14 secure a contractor, or a problem in the actual thing of
15 minority and the wording of the specifications for bid,
16 would it be possible to receive additional time on this
17 EDA grant? He didn't say: no, it wasn't impossible, and
18 he didn't say it was. He said it would be considered.

19 MR. SANDERS: Mr. Chairman, if I could shed some
20 light on the extension problem. We have been in contact
21 with EDA specifically Mr. Charles Rains, who is the project
22 manager for this grant, as late as four o'clock yesterday
23 afternoon, asking the parameters of extension problems
24 relating to another part of the contract. We were told at
25 that time that an extension would have obviously to be

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1 requested by the State Lands Commission. It would be
2 evaluated by Mr. Rains and another individual, with the
3 recommendation being made to a third party. The extension
4 would be based on extenuating circumstances. There is no
5 definition given of extenuating circumstances.

6 If an extension were to be given, it would be
7 given for that time which EDA feels necessary to eliminate
8 whatever extenuating circumstances upon which they granted
9 the extension.

10 Again, it's rather a bird-in-the-hand versus
11 two-in-the-bush kind of situation.

12 ACTING CHAIRMAN McCAUSLAND: I don't understand
13 why the Office of Minority Business or the deputy secretary
14 of the Consumer and Services Agency or someone vitally
15 concerned with this matter hasn't found some way to structure
16 the selection process so that we don't wind up being the
17 scapegoats. As far as I can tell, we did everything by the
18 book, pursuant to what the federal law required, pursuant
19 to using everybody else's best thinking on how to put
20 together the appropriate contract provisions, using the
21 staff that we had available to figure out specs for a job
22 that we obviously have never done before.

23 MR. FLORES: Excuse me, Mr. Chairman. Our point
24 is that everything did go by the book and then some. That's
25 the initial issue. The "and then some" is the additional

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1 specs that were written into the State Lands Commission bid
2 conditions for this particular project. As a result of
3 those additional specs, which are contradictory to EDA
4 guidelines, and I'm sure contradictory to the regional
5 project director out of Seattle, Washington civil rights
6 office or legal office, as well as state law, in terms of
7 those additional specs. It's as a result of that that
8 Mr. Gonzalez' bid was rejected and made the bonding issue
9 and the extension price issue moot issues. That was the
10 response that I got from staff within the State Lands
11 Commission, that the principle consideration, the foremost
12 consideration, was the question of the license.

13 Before they even went further in determining
14 whether or not their bid was competitive and determining
15 whether or not their bonding response was acceptable, they
16 rejected them on the basis of the license. That was in
17 addition to what is required by state and federal law.

18 ACTING CHAIRMAN McCAUSLAND: I understand your
19 statement perfectly. Once upon a time in my life I submitted
20 bids; at another time in my life I opened bids; and now,
21 God help me, I have to award contracts.

22 (Laughter.)

23 ACTING CHAIRMAN McCAUSLAND: Jensen and Reynolds
24 and Dutra and American Leadburning all spent a lot of time
25 trying to figure out: how do you respond to something like

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1 this? I don't imagine any of these firms do a whole lot
2 of business with EDA or the State of California, so they
3 had to familiarize themselves with this package. They had
4 to spend the time working out what they considered would
5 give them a reasonable return on the job. They did it in
6 an unreasonable time frame. I wouldn't have bid on this.
7 There just wasn't enough time. But these guys are probably
8 hungry, so they went through the hassle.

9 Now I'm supposed to tell Jensen and Reynolds and
10 Dutra that we're going to go back and do it over again
11 because we asked for the guy to have a contractor's license
12 before he did it and unfortunately Mr. Gonzalez didn't
13 have the right class, and we asked for a bond and unfortunately
14 we did it without adequate notice for Mr. Gonzalez to get
15 a bond, and we asked for an average-price bid, and
16 unfortunately that line wasn't filled out on Mr. Gonzalez'
17 submittal.

18 I can't go back to the other two companies and
19 say that we are going to do this all over again when every-
20 body played by the same set of God-awful rules in the first
21 place.

22 MR. FLORES: I don't think you have to go back
23 and reject everything and rebid everything to come up with
24 another conclusion strictly insofar as the licensing
25 consideration is concerned. I don't think sufficient work

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1 has been done by staff to really determine who is in fact
2 the apparent low bidder and determine whether in fact the
3 ten-percent requirement is being legitimately met, as best
4 as can be determined, by the other two bidders in this
5 instance.

6 I think additional work has to be done as the
7 bid responses exist now. I think a different conclusion
8 and a different recommendation than what has been made by
9 the Commission staff insofar as licensing is concerned can
10 be made without rejecting anything.

11 ACTING CHAIRMAN McCAUSLAND: How many people
12 received this?

13 MR. SANDERS: Approximately ten companies,
14 Mr. Chairman.

15 ACTING CHAIRMAN McCAUSLAND: Ten companies received
16 this. Seven of them decided not to respond. How many of
17 those seven didn't have the license at that time and decided
18 not to respond because they didn't have the license?

19 MR. FLORES: That isn't the point.

20 ACTING CHAIRMAN McCAUSLAND: That is the point,
21 because if we decide that we can make a different finding
22 on the basis of this bid that was submitted, we have changed
23 the ground rules upon which we accepted bids, opened them,
24 and prepared to award them. We can't foreclose any of
25 those seven who didn't file bids from going to suit to enjoin

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1 us from changing the conditions of the contract prior to
2 the award of the bid.

3 MR. FLORES: I think what you'll find is that
4 there are conflicting conditions within that bid package,
5 and the conflicting conditions came as a result of the
6 Land Commission's staff finding it necessary to add
7 additional specs in terms of the licensing requirement.

8 ACTING CHAIRMAN McCAUSLAND: I would like very
9 much for you to have a good shot at this. I think it's
10 a damn good thing that you went out and did this, and I
11 feel like a real heel trying to figure out procedurally
12 where we come down on this thing. But I think that the
13 key thing that I read -- and it's pretty early on in here --

14 MR. SANDEPS: Paragraph two.

15 ACTING CHAIRMAN McCAUSLAND: Instructions to
16 Bidders, paragraph two, Competence of Bidders, A, License:
17 "No bidder may bid on work of a kind for which he is not
18 properly licensed by the Contractors' State License Board."
19 There may be other provisions in here that are not fully
20 compatible with that, but I bet you that seven of the ten
21 firms looked at that and at least a couple of them, in all
22 likelihood, said, "I don't meet that. There's no sense in
23 reading further."

24 MR. GONZALEZ: May I say something?

25 ACTING CHAIRMAN McCAUSLAND: Mr. Gonzalez?

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1 MR. GONZALEZ: Aside of the fact of licensing
2 and all this, my personal way of looking at this now is
3 that I've been down this road before many times with
4 general contractors. I lost a great big job here in
5 Sacramento, the sewage treatment plant, to a general. After
6 I spent seven and a half weeks of probably 16 hours a day
7 bidding the job, they used my figures, my prices and every-
8 thing, and they decided to do it themselves. After a few
9 shots like that, you kind of learn to stand up and fight
10 for your rights.

11 About the only thing I can say about this job:
12 if you were to take it and analyze it the way it should be
13 done, right down to the nitty-gritty -- number one, price
14 factor, as far as I'm concerned, that is it. If you have
15 a total price on a per-hour basis from each one of the
16 companies and reviewed it and allowed me the five percent
17 as a minority contractor, then the price should stand, and
18 I think there wouldn't be any questions asked from anybody,
19 especially me.

20 (Laughter.)

21 MR. D'AGOSTINO: There are a couple of problems.
22 In terms of the price factor, aside from the rejection of
23 American Leadburning, I don't see anything that really allows
24 a comparison of prices to be made. Secondly, there are
25 other considerations, I think, besides price. There is

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1 bonding, and at least in the bid specs there was some
2 requirement as to a qualification to be met. So I think
3 there are other factors besides cost, and I think that cost --
4 as far as I'm concerned, we're looking at apples and oranges
5 in terms of making a comparison on that one item.

6 MR. GONZALEZ: Mr. Chairman?

7 ACTING CHAIRMAN McCAUSLAND: Mr. Gonzalez.

8 MR. GONZALEZ: This reminds me of a little thing.
9 To me it seems like a small business, especially a minority
10 business, there's a lot of governmental offices that are
11 there to help them. To me, what you people are doing is
12 you're helping a kid across the freeway and you leave him
13 in the middle of the freeway and you say, "That's as far
14 as I can help you." Do you see what I mean? He's got to
15 go either way. I can't understand why it's so hard to make
16 a decision on this type of deal, because number one, the
17 license is not a factor. Number two, the bonding is not
18 a factor, because the opportunities are available to me
19 to get bonding and licensing. There is no problem at all
20 there.

21 The only problem I can see is the dollars and
22 cents, and that's what everybody is fighting for.

23 ACTING CHAIRMAN McCAUSLAND: What is the total
24 value of the bid that you signed here?

25 MR. GONZALEZ: Just go on an hourly basis. That's

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1 all you can do.

2 ACTING CHAIRMAN McCAUSLAND: There really is no
3 bottom-line number.

4 MR. SANDERS: You mean a total bid?

5 ACTING CHAIRMAN McCAUSLAND: Yes.

6 MR. SANDERS: Yes, there was. Bid for complete
7 work for the lump sum of \$1,072,035. It was put out in
8 that manner so that each bidder would in effect come back
9 with a response of how many hours they could give us for
10 that amount of money.

11 MR. GONZALEZ: That's right. It's right there:
12 how many hours you can get for that amount of money.

13 MR. CAREY: You never asked it that way.

14 MR. SANDERS: Yes, we did.

15 MR. GONZALEZ: The thing that I see wrong here
16 is: how are you supposed to bond a job where everybody
17 knows what the total figures are? You're supposed to bond
18 a job as to what you're giving the price for. We got our
19 bond according to the amount of money on the hourly basis.
20 What we're trying to tell you people is: we're willing to
21 give you more hours labor for the amount of money that
22 you have to spend than anybody else.

23 MR. BARTEE: Mr. Chairman?

24 ACTING CHAIRMAN McCAUSLAND: It took a long time
25 for us to get to that issue.

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1 MR. BARTEE: Mr. Chairman?

2 ACTING CHAIRMAN McCAUSLAND: Yes, Mr. Bartee.

3 MR. BARTEE: I was talking to several bond people,
4 trying to obtain the bonds quickly for this. After reading
5 the specifications to several people, SBA offices, they
6 told me that really you don't have a bondable job. Number
7 one, it's a service contract. Service contracts are not
8 bondable because there's no real way of saying when you're
9 going to shut it off and when you're going to start it.

10 ACTING CHAIRMAN McCAUSLAND: No performance to
11 perform.

12 MR. BARTEE: That's it basically. Their recommenda-
13 tion to me was actually: bid your hourly rate and provide
14 a bond of 100 percent of your hourly rate for performance
15 and 100 percent of your hourly rate for payment. This is
16 the only strategy I had to bid. I brought forth the lump
17 sum of \$1,072,000. No bonding company honestly works like
18 that.

19 ACTING CHAIRMAN McCAUSLAND: That's part of what
20 my question was. I didn't know what it was the SBA was
21 bonding either.

22 All right. Your proposal is not then that we
23 go back and start the bidding process over again. Your
24 proposal is that we select your bid over the other two.

25 (Laughter.)

1 MR. BARTEE: Naturally.

2 MR. GONZALEZ: On a dollars and cents basis.

3 ACTING CHAIRMAN McCAUSLAND: I don't know how to
4 do it on a dollars and cents basis. I don't have anything
5 that tells me what the dollars and cents basis is. A minute
6 ago you said dollars and cents basis, and then you said I
7 should do it on the number of hours you will have people
8 out in the field working.

9 MR. GONZALEZ: Mr. Chairman, at the bid opening
10 they read the figures. This is just rough figures: \$664 an
11 hour, \$644 an hour, and \$617 an hour. Our bid was at
12 \$644 an hour. If you take away the five percent off of
13 that, we've got \$611.

14 ACTING CHAIRMAN McCAUSLAND: But if I'm going to
15 go on dollars and cents, I've just been handed your bid
16 submittal and on the page where it says "Bid for Complete
17 Work", it says: "For the lump sum of \$1,072,035, tell us
18 the hourly rate for equipment and operators, the item cost
19 per pile, snag and structure removed," and that has an
20 "X" through it.

21 If I go through the submittal from Jensen and
22 Reynolds, I've got \$619. If I go through the bid for Dutra,
23 on the page which is apparently the closest you can come to
24 a bottom-line figure, I've got \$676.

25 MR. BARTEE: Mr. Chairman, Mr. Charles Hastings

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1 received a copy of these bid specs. He is unable to be here
2 today. He met personally in the State Lands office and
3 was personally handed a set of bid specs. On his specs they
4 had that page totally marked out and said, "Don't use."
5 Also in his bid specs they marked out "small business
6 preference" with a felt-tip marking pen on the main page.

7 ACTING CHAIRMAN McCAUSLAND: Would somebody like
8 to testify to that?

9 MR. CAREY: I picked up his thing yesterday and
10 went and made a copy of it. I've never heard this before,
11 but I could check whether or not something has been crossed
12 out.

13 ACTING CHAIRMAN McCAUSLAND: Who is Charles
14 Hastings?

15 MR. BARTEE: A general engineering contractor who
16 is prepared to work as an R.M.E. for Mr. Gonzalez and also
17 supply most of the heavy equipment.

18 ACTING CHAIRMAN McCAUSLAND: Is he one of the ten
19 parties who received this thing initially?

20 MR. BARTEE: He met with me in San Francisco and
21 told me what had been told him and showed me his bid specs.

22 ACTING CHAIRMAN McCAUSLAND: I'll have to consider
23 that hearsay. I don't know how to utilize that in a hearing
24 such as this. I find it to be fairly unusual procedure.
25 If you want to pursue that, it's probably your remedy, but

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1 I don't know how to accept that as anything but hearsay.

2 Mr. Flores, I really don't know how I can make
3 the finding you think I should be making. I really think
4 that the procedure is not adequate to accomplish what it is
5 your office has set out to do, and I think you really need
6 to work on that procedure. There is something really wrong
7 with Title 1 and Title 2 if we can't get the procedure lined
8 up so that we don't have this happen to us.

9 MR. FLORES: Keep in mind that our office is not
10 EDA. EDA came down with the guidelines. To that extent,
11 we are as aware as anybody of the large amount of grey
12 matter involved in the language of these guidelines.

13 ACTING CHAIRMAN McCAUSLAND: You said that nicely.

14 MR. FLORES: My point is strictly in regard to
15 the licensing consideration, that the Lands Commission
16 staff chose to extend itself beyond the language of the
17 laws that applied to the federal EDA guidelines and to the
18 State Contract Act and the California Government Code. My
19 point is that an adjustment should be made in terms of the
20 licensing consideration.

21 I would even choose to recommend that if that
22 type of adjustment can't be made that an extension be asked
23 by the Lands Commission staff to EDA, and then reject the
24 bids and rebid the thing. That sounds like the safest and
25 cleanest way to approach this, given the intent and purpose

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1 and objectives of the Congressional legislation, and in terms
2 of cleaning up a sloppy matter. It seems to me that maybe
3 that is the best alternative.

4 ACTING CHAIRMAN McCAUSLAND: But isn't it basically
5 also true that all other participants in this matter approached
6 it by the same set of ground rules and proceeded in a
7 deliberative fashion with the assumption that there was
8 going to be some consistency to the process?

9 MR. FLORES: Consistent with that, your initial
10 point was that a large number of prime contractors who would
11 normally bid state jobs of this type chose not to bid,
12 period. So in terms of trying to present that as a consensus,
13 I think that it doesn't represent the --

14 ACTING CHAIRMAN McCAUSLAND: I don't think we
15 really went after large state contractors. I think we were
16 deliberately attempting to aim this at the kind of con-
17 tractors that would benefit most from a job like this.
18 We didn't go after the freeway builders of the world. We
19 went after Will Ross, Jensen and Reynolds, Dutra Dredging,
20 Smith's-Rice Dredging, Western Delta Marine Construction,
21 Pat Malone, Haviside-Hastings, Dutra Construction,
22 James Fristoe (American Demolition), and DeBeers Contracting.

23 I don't think I've ever seen them in the list
24 of majors.

25 MR. BARTEE: Mr. Chairman, originally, when they

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1 first sent the specs out, there was a set of specs given
2 to Dutra Construction, Jensen and Reynolds, Dutra Dredging
3 Company, and Smith-Rice. Smith-Rice is one of the largest
4 in the Bay Area. Haviside-Hastings is not really that large.
5 Dutra Construction is the only side draft dredging company
6 in the delta, basically classified as being fairly large.
7 Dutra Construction is not what I would consider a small
8 company at all. It's a very fast-growing company, very
9 efficient. Jensen and Reynolds the same thing: they're a
10 very fast-growing company. I would not consider them small
11 any more.

12 ACTING CHAIRMAN McCAUSLAND: Thank you. I will
13 consider that clarification.

14 MR. FLORES: Maybe as a final point, a question
15 that the Commission should be asking itself is: to what
16 extent is it leaving itself in the open in terms of
17 liabilities if they leave the results as they appear to be
18 now? I really question the position of the Commission if
19 they proceed to leave these things as they are now.

20 ACTING CHAIRMAN McCAUSLAND: We have the unfortunate
21 position of being at our peril on virtually every decision
22 we make. That's why the attorney general is here, so that
23 when he represents us in court, he's aware of what kind of
24 foolhardy avenue we had to tread.

25 I take your statement most seriously, because I

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1 said a similar thing to Mr. D'Agostino a little bit earlier.
2 I don't think we can shy away from that prospect.

3 Mr. Carey?

4 MR. CAREY: One other point: with discrepancies
5 or conflicts like this in all of the figures, it's obvious
6 that there would be lots of amendments or extra work or
7 change orders or whatever they might be, down the line to
8 correct. Just looking at the figures on the ones that they
9 read out, the difference between \$90 and \$223. I'm experienced
10 in all kinds of contracting. I know what the labor figures
11 are. I know what fuel might cost. It seems to me that
12 nobody can run that first piece of equipment for \$90 an
13 hour. Somebody has to come back and say, "It can't be done."
14 Maybe I'm wrong, but I'm not so sure that people aren't
15 just depending on the fact that they can come back and say,
16 "Well, we interpreted the contract differently, and we're
17 looking for an amendment or a change order."

18 ACTING CHAIRMAN McCAUSLAND: What are the provisions
19 in this contract for change orders?

20 MR. CAREY: I don't know.

21 MR. SANDERS: A member of my staff, Randy Moory,
22 says that they are provided for.

23 MR. BARTEE: They are very heavily provided for.

24 ACTING CHAIRMAN McCAUSLAND: What is the pleasure
25 of the Commission?

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1 MR. BARTEE: Mr. Chairman, that is covered on
2 page 27 of the general conditions of the contract.

3 ACTING CHAIRMAN McCAUSLAND: Thank you.

4 MR. MOORY: Item 32 and item 33 under the general
5 conditions of the contract provide for change orders ordinary
6 and change orders general.

7 ACTING CHAIRMAN McCAUSLAND: Will you identify
8 yourself for the record, please?

9 MR. MOORY: Randy Moory, a member of the Division
10 staff.

11 ACTING CHAIRMAN McCAUSLAND: For the record, we
12 are in the process of looking at the bid schedules and
13 the equipment schedules on all three of the bids before us.

14 (Thereupon a short recess was taken and
15 a short discussion was held off the record.)

16 ACTING CHAIRMAN McCAUSLAND: The Commission has
17 discussed the matter with counsel to review our legal
18 options. We have also reviewed the bids as submitted through
19 an item-by-item visual comparison of the rates before us.
20 Without objection, the State Lands Commission adopts the
21 staff recommendation as submitted.

22 The ext meeting of the State Lands Commission will
23 be on December 19, 1977 in Sacramento at 10:00 a.m. Thank
24 you for coming. The meeting is adjourned.

25 MR. GONZALEZ: Mr. Chairman, may I make one last

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1 statement? I'd like to be notified by mail as to this
2 finding, please.

3 ACTING CHAIRMAN McCAUSLAND: You will receive a
4 copy of the minutes as soon as they are available.

5 (Thereupon the meeting of the State Lands
6 Commission was adjourned at 12:00 m.)

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

3 I, PAUL D. RAMSHAW, C.S.R., a Notary Public in and
4 for the County of Sacramento, State of California duly
5 appointed and commissioned to administer oaths do hereby
6 certify:

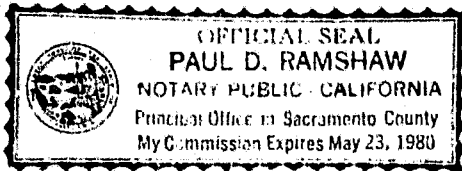
7 That I am a disinterested person herein, that the
8 foregoing State Lands Commission Meeting was reported in
9 shorthand by me, Paul D. Ramshaw, a Certified Shorthand
10 Reporter of the State of California, and thereafter transcribed
11 into typewriting.

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

15 IN WITNESS WHEREOF, I have hereunto set my hand
16 and affixed my seal of office this 12th day of December, 1977.

Paul D. Ramshaw

PAUL D. RAMSHAW, C.S.R.
Notary Public in and for the
County of Sacramento, State of
California
C.S.R. License No. 3434



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