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MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

ORIGINAL

ROOM 2068
STATE CAPITOL
STATE OF CALIFORNIA

THURSDAY, JANUARY 25, 1979
10:00 A.M.

Diane Lynn Walton
C.S.R. No. 3067

MEMBERS PRESENT

- 1
- 2 Mr. Kenneth Cory, State Controller, Chairperson
- 3 Mr. Mike Curb, Lieutenant Governor, Commissioner
- 4 Mr. Roy M. Bell for Mr. Richard T. Silberman,
- 5 Director of Finance, Commissioner

MEMBERS ABSENT

- 6
- 7 Mr. Richard T. Silberman

STAFF

- 8
- 9
- 10 Mr. William F. Northrop, Executive Officer
- 11 Mr. A. S. Golden, Assistant Executive Officer
- 12 Mr. N. Gregory Taylor, Assistant Attorney General
- 13 Mr. James Trout
- 14 Mr. Robert C. Hight
- 15 Mr. Wilbur Thompson
- 16 Mr. Robert Collins, Deputy Attorney General
- 17 Ms. Diane Jones

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P R O C E E D I N G S

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3 CHAIRPERSON CORY: We will call the meeting to
4 order. The Lieutenant Governor has been delayed in a late
5 flight problem.

6 The first item on the Agenda is confirmation of
7 the minutes of the meeting of December 20th, 1978. Are
8 there any corrections or additions?

9 COMMISSIONER BELL: No objection.

10 CHAIRPERSON CORY: Without objection, they will be
11 approved as presented. Mr. Northrop, your report.

12 EXECUTIVE OFFICER NORTHROP: Mr. Chairman,
13 Mr. Bell, we discussed previously the Santa Barbara Ad Hoc
14 Study Group on Oil and Tar Seeps. The Commission approved,
15 as you recall, the formation of an ad hoc study group on
16 oil and tar seeps. This group will consist of representa-
17 tives from the state, Santa Barbara County and industry.
18 Charged with the responsibility of updating existing oil
19 and tar seep data in the Santa Barbara Channel, this group
20 will attempt to develop specific recommendations for the
21 Commission by which it may initiate remedial actions.

22 The following names have been submitted to staff,
23 and as you requested at the meeting, we are offering these
24 names to you for approval prior to the formation: For the
25 industry and the Western Oil and Gas Association has

1 suggested Jack E. Hundley, from the Atlantic Richfield
 2 Company, and Clayton D. McAuliffe, from Chevron, S.S.A.
 3 The County of Santa Barbara has asked to consider Al Reynolds
 4 from the Department of Environmental Resources; and
 5 Russ Hanscom, he is the petroleum administrator for the
 6 county; and John English, from the Air Pollution Control
 7 Board. And the Office of Planning and Research in the
 8 Governor's Office has submitted the name of Richard Grix.

9 If you concur with these nominations, staff will
 10 proceed to notify these people and schedule its first
 11 meeting.

12 COMMISSIONER BELL: No objection.

13 CHAIRPERSON CORY: Without objection, proceed.
 14 Geothermal study.

15 EXECUTIVE OFFICER NORTHROP: Staff was advised
 16 this month that the Energy Commission has selected the
 17 State Lands Commission to perform a \$10,000 study on the
 18 impacts of regulation on the development and utilization
 19 of low to medium temperature geothermal resources for direct
 20 heat, non-electric applications.

21 As you know, most of the excitement, activity and
 22 money has been centered on The Geysers where a unique
 23 vapor-dominated geothermal system makes the generation of
 24 electricity relatively easy and economical. But,
 25 throughout California, and most of the world, for that

1 matter, there are vast untapped stores of hot geothermal
2 waters too low in temperature for electrical generation,
3 but still potentially useful for a variety of direct
4 heat applications, such as space heating, cooling,
5 agricultural, aquaculture, industrial process heat, and so
6 forth.

7 With the notable exceptions of isolated uses in
8 states such as Oregon, Idaho and Nevada, this vast store of
9 energy, for the large part, has gone unused in most of the
10 West and particularly California.

11 Testimony last year before the State Geothermal
12 Task Force gave some indication that regulations of the
13 drilling of low temperature wells and the economic impact
14 of such regulations has on utilization of the resource,
15 might mean an inhibiting factor on greater drilling of wells
16 for direct heat applications.

17 With the enactment of SB 1027 last year, which
18 changed many of the Commission's geothermal leasing
19 provisions, staff has begun to draft regulations for
20 leasing and management of low temperature resources from
21 state-owned lands.

22 The Energy Commission study just authorized will
23 expand on the work we have already done and will include an
24 examination of how this problem is dealt with in other
25 western states. Such work will include interviews with

1 regulators, as well as drillers, to determine the problems
2 and identify possible solutions.

3 We hope to have that on the next month's Calendar
4 for March for you.

5 That completes my report.

6 CHAIRPERSON CORY: Items 29 and 30 are pulled
7 from the Calendar?

8 EXECUTIVE OFFICER NORTHROP: Yes, sir.

9 COMMISSIONER BELL: Yes.

10 CHAIRPERSON CORY: Thank you. Mr. Golden.

11 ASSISTANT EXECUTIVE OFFICER GOLDEY: Yes,

12 Mr. Chairman, Mr. Bell. There are three items affecting
13 State Lands Commission's interest in the Coastal Zone.

14 The first one has to do with the Monterey Sand
15 Company. On January 29th, the Central Coast Regional
16 Commission is scheduled to act on a permit application by
17 the Monterey Sand Company to continue and expand its sand
18 extraction operations in South Monterey Bay. Monterey Sand
19 is currently under a State Lands Commission lease for its
20 activities.

21 At issue for the Coastal Commission is what
22 effects continued and expanded sand extraction by Monterey
23 Sand, Lonestar Industries and others will have on
24 shoreline erosion. The sand company may be asked to
25 contribute toward a five-year study of the littoral

1 processes of Southern Monterey Bay as a condition of
2 obtaining a coastal permit. Our staff is working with the
3 coastal and other state and federal staffs to scope the
4 study, explore funding sources for it, and ensuring that
5 no conflicts arise with our lease as a result of the
6 Coastal Commission's actions.

7 CHAIRPERSON CORY: Excuse me. Is that a common
8 thing for them to extract dollars for a permit?

9 ASSISTANT EXECUTIVE OFFICER GOLDEN: In some
10 instances they have asked for environmental studies, and
11 whatnot. This has gone to court in some cases, and I
12 understand has been upheld.

13 CHAIRPERSON CORY: Strange.

14 ASSISTANT EXECUTIVE OFFICER GOLDEN: Yes. This,
15 I think is a little bit unique in this particular area
16 because this is probably a rather large-scale study.

17 CHAIRPERSON CORY: Okay.

18 ASSISTANT EXECUTIVE OFFICER GOLDEN: OSC Lease
19 Sale 48. State Lands staff has continued to monitor the
20 OSC Lease Sale 48 process planned for June of this year.
21 The Final Environmental Impact Statement on the Lease Sale
22 is due to be published shortly. We are currently working
23 with other state agencies on the separation of the
24 Governor's comments to the Secretary of the Interior this
25 spring. Our comments at this time are primarily in regards

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1 to protecting our resources from drainage of State
 2 resources resulting from mineral extraction on Federal
 3 lands, and on requesting the Secretary of the Interior to
 4 invoke his authority under Federal statutes to require
 5 "net profit" rather than "cash bonus" bids for this sale.

6 Finally, the Arcata Little League Baseball Field --
 7 our office has received much correspondence in the last
 8 couple of weeks regarding the Arcata Little League Baseball
 9 Field due to come before the State Coastal Commission in
 10 early February. The project appears to be located
 11 adjacent to lands which may be subject to the public trust.
 12 It was turned down by the State Coastal Commission on
 13 appeal in August of 1977 for inconsistency with the
 14 wetlands protection policies of the Coastal Act. Since
 15 this is an extremely controversial matter on the North
 16 Coast, some of you may receive correspondence on this
 17 matter. You should be aware that the specific play field
 18 site does not appear to be under our jurisdiction,
 19 although a portion of a larger portion from which the field
 20 parcel is to be created may be,

21 CHAIRPERSON CORY: What does that mean?

22 ASSISTANT EXECUTIVE OFFICER GOLDEN: In essence,
 23 a portion of the parcel that is being donated to the
 24 Arcata Little League people -- the total parcel has public
 25 interest problems, but not the particular area that they

1 have chosen.

2 CHAIRPERSON CORY: So, we can correctly say if
3 they want to give the ball diamond as a field, we have got
4 no problems?

5 ASSISTANT EXECUTIVE OFFICER GOLDEN: That's right.

6 CHAIRPERSON CORY: If they want to give a lot of
7 other stuff, there are some problems?

8 ASSISTANT EXECUTIVE OFFICER GOLDEN: That's right.

9 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, in
10 addition on the OSC, I think we inadvertently left out the
11 fact that we are also going to ask in our comments that the
12 DOE deal with the current glut -- or the interior work
13 with DOE in dealing with the current glut of heavy oil on
14 the West Coast before more is added to it on a lease sale.

15 CHAIRPERSON CORY: All right. The next item we
16 have before us is the Consent Calendar. These are Items
17 1 through 12 with a Prefix C. If there is anybody in the
18 audience that disagrees with the proposed action in that,
19 they should speak up now because these items will be taken
20 up all in one unit. Is there anybody that wishes to
21 object to any of these items?

22 (No response.)

23 CHAIRPERSON CORY: Without objection the Consent
24 Calendar will be approved as presented, Items C1 through
25 C12.

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1 Item 13, approval of Chevron, U.S.A. and Shell
2 Oil gas sales agreements with Pacific Gas and Electric
3 Company, Sacramento, Solano, Contra Costa and San Joaquin
4 Counties. This is a dollar seventy per mcf based upon the
5 Federal reg?

6 EXECUTIVE OFFICER NORTHROP: Yes.

7 CHAIRPERSON CORY: And there is the proviso in
8 here that if the current lawsuit which is pending, which
9 would challenge that -- if that limitation is overturned
10 by the court, all bets are off and we are back at the
11 negotiating table, is that right?

12 COMMISSIONER BELL: No force and effect.

13 MR. TAYLOR: That's right or any other litigation.
14 It's not limited to this particular case of Oklahoma, Texas,
15 Louisiana, but any other litigation that might invalidate
16 that provision of the Act.

17 CHAIRPERSON CORY: Is there anybody in the
18 audience on this item?

19 Without objection, Item 13 will be approved as
20 presented.

21 Item 14. This is a denial of an application to
22 construct a single-family residence in Inverness, Marin
23 County, for Robert Cassel.

24 EXECUTIVE OFFICER NORTHROP: That's correct,
25 Mr. Chairman. We are asking denial without prejudice on

1 this application.

2 CHAIRPERSON CORY: Is there anybody in the
3 audience on this item?

4 Without objection, Item 14, denied.

5 COMMISSIONER BELL: Not much chance to do
6 anything but deny it in this case?

7 CHAIRPERSON CORY: Because of the statute problem.

8 COMMISSIONER BELL: Because of the statute
9 problem.

10 MR. TAYLOR: A letter has been sent to the
11 private party, and he will refile immediately. And it will
12 be held in abeyance until the study is completed.

13 CHAIRPERSON CORY: Okay.

14 COMMISSIONER BELL: And this action will be
15 without prejudice?

16 MR. TAYLOR: Yes.

17 CHAIRPERSON CORY: Item 14 is hereby denied.
18 Item 15, Tower Park, Incorporated,

19 EXECUTIVE OFFICER NORTHROP: Mr. Chairman,
20 Mr. Trout will address the Commission on this item.

21 MR. TROUT: Mr. Chairman, Mr. Bell, Tower Park is
22 one of a number of marinas in the Delta that have had
23 leases with the Commission for some period of time. Their
24 lease was up for rent review in 1977. We have been working
25 on a new process which we think fairly more represents the

1 market value and is a superior way of leasing property
2 which involves percentage of gross and income approach.

3 Tower Park is a third in a number of these
4 marinas that are coming under lease. They have paid back
5 rent, which now we have. They have agreed to this new
6 lease arrangement, and we are recommending approval of
7 this lease. They have agreed to \$7456 in rent for the
8 period shown, February 23, '77 through the end of 1978,
9 and a minimal rental starting on January 1, '79, against
10 5 percent of their gross income, and a cent a gallon of
11 fuel sales up to 100,000 gallons, and a penny and a half per
12 gallon over 100,000 gallons, and a minimum rent will be
13 \$5,000.

14 We think this is a fair way of doing it. We
15 understand that representative of Tower Park had some
16 comments they wished to make to the Commission, but it is
17 our understanding that they do not at this point object
18 to the action before the Commission.

19 CHAIRPERSON CORY: Is there anybody in the
20 audience on this item?

21 Questions.

22 COMMISSIONER BELL: No one in the audience?
23 Okay. I would move its approval.

24 CHAIRPERSON CORY: Without objection, Item 15 will
25 be approved as presented.

1 Item 16, indemnity selections.

2 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, we are
3 requesting that the Commission authorize us to make up to
4 2575 and one-half acres of indemnity selection from
5 unappropriated public domain within the Geysers geothermal
6 area from the Bureau of Land Management, Department of
7 Interior.

8 CHAIRPERSON CORY: Is there anybody in the
9 audience on this item?

10 Without objection --

11 COMMISSIONER BELL: Without objection.

12 CHAIRPERSON CORY: -- we request you to choose
13 wisely.

14 EXECUTIVE OFFICER NORTHROP: Okay.

15 CHAIRPERSON CORY: Bring home the bacon.

16 (Laughter.)

17 Item 17.

18 EXECUTIVE OFFICER NORTHROP: Mr. Chairman,
19 Item 17 is a title settlement and exchange.

20 CHAIRPERSON CORY: Are we ready to go on this
21 item?

22 EXECUTIVE OFFICER NORTHROP: Are we ready to go
23 on this one? Mr. Trout will address the Commission on this
24 item.

25 MR. TROUT: We have a statement we would like to

1 make because there is a small adjustment that has to be
2 made in the Calendar item.

3 In September 1978 the Commission approved a
4 Boundary and Exchange Agreement between Charles Silvia and
5 the state. Under this agreement the state was to issue
6 its patent from sovereign lands, title and interest, in
7 four-tenths of an acre in the vicinity of Alviso in
8 Santa Clara County, in an exchange for an undivided 5.555
9 percent interest in Brown's Island in the Contra Costa
10 County. The dollar value of the four-tenths of an acre
11 was \$7500.

12 Mr. Silvia is having some problems in finalizing
13 his portion of the transaction, and he has agreed to the
14 rescission of that action to allow this portion of Brown's
15 Island to be used as selection for Calendar Item 17.

16 The staff of the State Lands Commission,
17 therefore, requests the Commission rescind their approval
18 of the said boundary agreement and exchange, with the
19 understanding that the calendar item and agreement will be
20 presented at a later time when both suitable exchange lands
21 are found, that he has cleared up his problems, and the
22 finding that the extent of the interest of the Silvia
23 parcel as described in the Calendar item remains at \$7500.

24 This will allow Pickleweed Associates to acquire
25 lands to exchange with the state and thereby conclude their

1 boundary and exchange agreement with the state.

2 Mr. Silvia through his attorney has agreed to
3 this transaction. Therefore, also we would recommend on
4 page 98, that Recommendations 1 through 8 be renumbered 2
5 through 9, and Recommendation 1 be inserted, which would
6 read:

7 "Rescind without prejudice action of
8 September" -- and I don't have the exact date
9 which we will fill in -- "September 1978 approving
10 boundary and exchange agreement with
11 Charles J. Silvia concerning property in
12 the vicinity of Alviso."

13 CHAIRPERSON CORY: Okay. Counsel, you don't have
14 any trouble with the blank date?

15 MR. HIGHT: No.

16 MR. TROUT: Now, the transaction itself involves
17 a piece of property in Mill Valley in which there are
18 overlapping claims from several different kinds of
19 transactions, rancho lands, swamp, overflowed lands, Board
20 of Tide Land Commissioners Sales.

21 There is a belief on the part of the state that
22 it has an interest in the former slough through the parcel;
23 the private party does not agree. But, in order to protect
24 the state and to provide for the development of the parcel,
25 we have entered into a Boundary Agreement and exchange,

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1 which would, in effect, give the state 3.3 acres on the
2 site, title policy of \$12,500 insuring that parcel; a
3 thousand dollars for an easement parcel, which we would
4 acquire through the middle of the property, a title
5 insurance policy of \$15,500 on the exchanged lands, which
6 will be acquired by Pickleweed.

7 This is the agreement which we finally had typed
8 this morning, and we wanted to have available.

9 And the state will issue a patent to Pickleweed
10 for the remaining portion of Pickleweed's property. It's
11 not all the details, but that is a summary of the
12 transaction.

13 COMMISSIONER BELL: That leaves them what, six
14 acres?

15 MR. TROUT: I think that leave them with about
16 6.7 or something.

17 MR. HIGHT: 9.3.

18 MR. TROUT: 9.3.

19 CHAIRPERSON CORY: I am really reluctant to
20 approve this. I would like to have Pickleweed around. It's
21 such a great title.

22 MR. TROUT: It really will replace the La Jenelle,
23 though, in longevity. Good title.

24 COMMISSIONER BELL: Well, I can assure you we will
25 still have it before BCDC regardless of our action today --

1 pardon me, if we approve it today.

2 MR. PROUT: Staff wants to express the
3 appreciation that we have to Pickleweed and the title
4 company for working with us on this thing.

5 CHAIRPERSON CORY: Great choice of words.

6 (Laughter.)

7 CHAIRPERSON CORY: Is there anybody in the
8 audience on Pickleweed?

9 Ready to approve it?

10 COMMISSIONER BELL: Yes. We are ready to approve
11 it as amended.

12 CHAIRPERSON CORY: With that objection, Item 17
13 will be approved as amended.

14 Item 18. What does the staff wish to do, go
15 ahead with this the way it is? Are you comfortable that we
16 are protected?

17 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, I
18 think we should put it over.

19 (Thereupon a brief discussion was held off
20 the record.)

21 CHAIRPERSON CORY: Are you ready to go ahead?

22 (Thereupon a brief discussion was held off
23 the record.)

24 MR. TAYLOR: We're okay.

25 CHAIRPERSON CORY: You're okay. You don't want to

1 add the thing if it goes back into use it converts to a
2 volume-metric?

3 MR. TAYLOR: We only have a portion of the line.

4 CHAIRPERSON CORY: All right. As long as you
5 are --

6 COMMISSIONER BELL: Okay.

7 CHAIRPERSON CORY: If you thought about it we
8 will proceed on the advice of counsel.

9 MR. TAYLOR: We will verify that. If it's a
10 problem, we will bring it back to you next month.

11 CHAIRPERSON CORY: All right. Anybody in the
12 audience on Item 18?

13 Without objection, Item 18 will be approved as
14 presented, with the understanding that if the staff later
15 sees a problem they can hold up the paperwork and put it
16 back on calendar.

17 MR. TAYLOR: Fine.

18 CHAIRPERSON CORY: Item 19, Stipulation for
19 Judgment, 21,120 acres of bombed-out land, right?

20 MR. HIGHT: Right.

21 MR. TAYLOR: Fort Irwin.

22 CHAIRPERSON CORY: What?

23 MR. TAYLOR: Fort Irwin.

24 CHAIRPERSON CORY: Fort Irwin. Is there anybody
25 in the audience on this item?

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1 Any problems?

2 COMMISSIONER BELL: No. The only problem I have
3 is that some day those people ought to be responsible for
4 cleaning up their lands --

5 MR. TROUT: Mr. Chairman --

6 COMMISSIONER BELL: -- to remove our liability.

7 MR. TROUT: If I might respond to Mr. Bell, I
8 don't think it's possible to clean up the land. As an
9 alternative, the Defense Department and the Secretary of
10 the Army have authorized them to be in working with us
11 to exchange interests for some land that we can actually
12 use. And we expect to have something before you in the next
13 few months, I can't say how many, maybe four to six months,
14 that would provide an exchange with the United States to
15 get us completely out of Fort Irwin.

16 COMMISSIONER BELL: Good.

17 CHAIRPERSON CORY: Without objection, Item 19 will
18 be approved as presented.

19 Item 20.

20 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item 20
21 is the addition of Security Pacific Bank, the lender, to
22 the Tosco grantors.

23 CHAIRPERSON CORY: Anybody in the audience on
24 Item 20?

25 Without objection --

1 COMMISSIONER BELL: No objection.

2 CHAIRPERSON CORY: -- said is granted.

3 Item 21, dedication of a four-acre grove of
4 redwood seedlings in honor of Lew Moran, retired state
5 forester, who worked 37 years for the state in the De La
6 Cruz Parcel, Santa Cruz County.

7 Is there anybody in the audience on this item?

8 I think it's a worthwhile thing for a guy who
9 did a hell of a lot for the people of California.

10 COMMISSIONER BELL: I would strongly recommend it.

11 CHAIRPERSON CORY: Without objection, Item 21
12 is approved as presented.

13 Item 22. We want a swamp land list and a swamp
14 land patent on 80 acres near Zamora, Knights Landing,
15 Yolo County, requesting BLM.

16 EXECUTIVE OFFICER NORTHROP: Requesting for it
17 to be placed on the clear list. We sold it in 1899, and I
18 think it is time we gave them clear title.

19 COMMISSIONER BELL: Okay. This gives clear title?

20 EXECUTIVE OFFICER NORTHROP: When the paperwork
21 gets done, he will have it.

22 CHAIRPERSON CORY: Anybody in the audience on this
23 item?

24 Without objection, Item 22 will be approved as
25 presented.

1 Item 23, acceptance of quitclaim deed to terminate
2 subsurface oil and gas lease from McCulloch Oil. Is there
3 anybody in the audience on this item?

4 Without objection --

5 COMMISSIONER BELL: No problem.

6 CHAIRPERSON CORY: -- 23 will be approved as
7 presented.

8 Item 24.

9 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item 24
10 will be presented by Mr. Thompson from our Long Beach
11 operation, as well as Item 25. He is going to figure out
12 how come due the city and due the state means due the state.

13 MR. THOMPSON: All right. Maybe we need a little
14 bit of background here, and I will try to give a quick
15 summary on this and maybe the lawyers will want to polish
16 it up later on.

17 In essence, under Chapter 29 and 138 the City of
18 Long Beach is reimbursed for oil revenue from the Long Beach
19 Tidelands for money they spent to correct damage due to
20 subsidence on the tidelands.

21 CHAIRPERSON CORY: Pardon me, Moose. I would
22 like to acknowledge the lieutenant governor is here,
23 Mr. Carb.

24 We are on Item 24, which we just commenced with.
25 We have speaking Mr. Moose Thompson from our staff, who was

1 telling us what is happening on the subsidence work down
2 in Long Beach.

3 MR. THOMPSON: To back up a minute, then, under
4 Chapter 29 and 138, the City of Long Beach is reimbursed
5 from oil revenues from the Long Beach Tidelands for monies
6 they have spent to correct damage due to subsidence in
7 the tidelands as our district if they have prior approval
8 from the Commission.

9 Now, when these prior approvals are given, we
10 have only a general outline, in many cases, and only an
11 estimate of what the cost of the project will be at that
12 particular time. But, based on those particular estimated
13 costs, a percentage of the project -- and a project may
14 encompass anywhere from zero to 100 percent subsidence costs.

15 Now, then, this particular percentage, then, is
16 worked out for the convenience of the cities so that they
17 may get deductions each month as this project goes along
18 that particular amount of money out of the total project
19 costs, so they are reimbursed as the project goes along.
20 Again, these are estimated costs and estimated percentages.

21 And to get around this sometimes, we also try
22 to have a first phase and second phase approval, where we
23 get prior approval on the first phase to do some engineering
24 work to more closely define the scope and estimate the
25 costs, and then they come back and do the second phase of

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1 this.

2 But, again, because of this unknown in the
3 estimates, these are unknown, and so these are all subject
4 to final audit and review at the end of a project, for
5 which then the actual subsidence costs involved in the
6 project are determined, and then they come back to the
7 Commission for final approval.

8 So this, in effect, is where we are now in these
9 projects. Originally there were four projects on here.
10 We have tried to get these particular four projects in
11 front of the Commission now for almost a year. The city
12 has asked for quite a few delays here, asking to keep
13 putting it over, and again we have agreed to defer until
14 next month's Items 29 and 30, so that we can get together
15 one more time to see if we can get these annual costs
16 straightened out for the period 1956 to 1964, but we also
17 wanted to understand it, get the costs straightened out
18 through 1970 and see where we are coming up to date.

19 CHAIRPERSON CORY: In Item 24, how does the cash
20 flow work? I'm still confused on the difference between
21 the two terms.

22 MR. THOMPSON: All right. We might want to go
23 into this a little bit.

24 If you look at Exhibit A -- this is page 142 --
25 what the Commission is being asked to determine is what this

1 allowable subsidence cost -- which is the second column
2 from the right -- this particular case we would be asking
3 you to approve the allowable subsidence cost in the project,
4 or \$291,474.82.

5 Now, the right-hand column, the credit, this is
6 merely an adjustment in dollars between the final
7 determination that is made of subsidence costs, and the
8 amount the city has deducted each month as it went along
9 based on this percentage we did when we started the project
10 with prior approvals and did it on an estimated basis.

11 So, therefore, when you get through with the
12 project and you determine the final subsidence costs, there
13 may be a credit to the state or the city depending on what
14 has been deducted, but it has nothing to do with the
15 subsidence cost on the actual project.

16 CHAIRPERSON CORY: They have unilateral control
17 over what they withhold in the interim, then?

18 MR. THOMPSON: Based on a percentage of the
19 estimated subsidence costs portion of the total project.

20 CHAIRPERSON CORY: Okay.

21 MR. THOMPSON: Again, we try to do this the best
22 way we can going in. Again, this is a convenience to the
23 cities so they are allowed to deduct each month as the
24 project goes along instead of waiting until the project is
25 at end. Maybe if they couldn't deduct every month, the

1 project might close a little faster at the end so they
2 would get their money.

3 CHAIRPERSON CORY: Okay. But, out of \$300,000,
4 you were \$787 off?

5 MR. THOMPSON: No. That's really not -- only in
6 the relationship to the amount that had been deducted, but
7 no relationship to any subsidence amount.

8 Originally, this particular project was estimated
9 to cost \$270,000. It finally cost about two hundred
10 ninety-some thousand dollars. In the prior approval before,
11 we estimated that depreciation credit would be at that
12 time, I believe, \$2600, and it turned out -- we are now
13 asking for a depreciation credit for \$2800. This is really
14 the crux of the disagreement the city has right now, is
15 the fact that we want to take \$2,883.89 for depreciation.

16 CHAIRPERSON CORY: How much staff time have you
17 spent haggling over that \$2800?

18 MR. THOMPSON: A lot. We went through this the
19 last time. The city, again, is being reimbursed 100 percent
20 for their particular time. The city representatives that
21 come up here today, their particular expense will be paid
22 by the state.

23 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, I
24 believe there is precedent involved.

25 MR. TAYLOR: The amounts of both of these items

1 and the two that were stricken, are small. I think the one
2 thing that Mr. Petersen, who will address you on behalf of
3 the city, and I can agree on, is that it's the principle
4 that counts, and apparently it has gotten down --

5 CHAIRPERSON CORY: Lawyers can always say that as
6 they send the bills.

7 (Laughter.)

8 CHAIRPERSON CORY: Go ahead.

9 MR. TAYLOR: Apparently that's what it has gotten
10 down to.

11 We are liable for any subsidence expense incurred
12 by the city pursuant to statutory agreement that we worked
13 out to allow the East Wilmington Field to be developed.

14 We feel that it's only fair to be allowed to
15 deduct from that the cost of the benefit of the replaced
16 structure, for instance, the sewer line and other things.

17 There are several ways that that can be approached.
18 The first way, which would be of far greater benefit to the
19 city, would be to take the today value and to determine --
20 and make the deduction from that on a replacement cost
21 basis.

22 In 1968, we entered into an agreement with the
23 city, that we would use the original cost, and so each of
24 these things is determined upon the original cost of the
25 improvement. So, we are taking a smaller amount of

1 deductions. The argument on both of these items, No. 24
 2 and 25 today, centers upon whether these are permanent
 3 facilities or temporary facilities, and whether there was
 4 some emergency work. We feel that the depreciation should
 5 be taken in any event, irrespective of temporary or
 6 permanent, and we don't believe the '68 settlement involved
 7 any such distinctions that are now being made.

8 We also believe that we have tried to be
 9 extremely reasonable to the city with regard to this
 10 kind of action. The city, of course, does not agree with
 11 that, despite the small amount of money. But, one is a
 12 sewer line which is designed to permanent specifications.
 13 There is nothing temporary about it, put it in the ground,
 14 just the same as any other sewer line is put in. It
 15 doesn't lay loose, no loose piece of pipe with temporary
 16 plastic fittings or anything else. It is in there just like
 17 any other sewer-line.

18 The second project is one where some repair was
 19 done to a pier, and the scope of the repair was so
 20 extensive -- I'm sorry. I had the transactions reversed.

21 The first one is where the scope of the
 22 transaction, a thousand tons of asphalt, we feel is so
 23 large that it should be deemed to be a permanent replacement
 24 and we should get the value. We could again have taken a
 25 more expensive position to the city than the one we have

1 taken. We think both of those are permanent improvements,
2 and we should be allowed the capitalization deduction for
3 the original cost,

4 And I think that's where the argument between the
5 city and state will hinge in both of these items. The
6 sewer line, we think is permanent, we think it's a
7 permanent change, and that the asphaltting went to such a
8 larger extent, that that is one, which also should have
9 the depreciation taken from it.

10 Both of these items are before you in a
11 administrative type of proceeding. You are authorized
12 to make these findings in an administrative law capacity.
13 These are final findings, which you are the final arbitor
14 of between the staff and the city. And if the city seeks
15 to review, they have to do it through administrative
16 procedure, but you are sitting in sort of a semi-judicial
17 procedure in regard to these matters. And I believe what
18 the staff is concerned about and what the city is
19 concerned about is precedent in the future.

20 CHAIRPERSON CORY: Are we going to hear from
21 Long Beach?

22 MR. THOMPSON: In the asphalt case, for example,
23 if you have to take out a piece of asphalt to replace a line
24 that is damaged, the replacement for that asphalt is
25 normally considered to be a repair, and we accept that, and

1 it takes them the life of the rest of the asphalt. The
2 issue here is the fact that the 60 percent of the asphalt
3 was taken out, and we figure that is a pretty major part,
4 almost a thousand tons of material would be used, plus the
5 fact that a skin coat, a layer was put over the entire
6 asphalt.

7 There is another position that the staff could
8 have taken -- and if we want to go back and review this
9 enough times we will come up with this -- that that skin
10 coat was a betterment, and there is almost a thousand
11 dollars cost involved in that that we might propose the
12 state can get some credit for.

13 These problems have many ramifications to them.
14 We are trying to get them simplified, get them through and
15 get them done. We have talked over and over these things,
16 and we are sort of wearing our time out.

17 CHAIRPERSON CORY: Let's hear from Long Beach.

18 Would you identify yourself for the record.

19 MR. PETERSEN: Yes, sir. Mr. Chairman, Mr. Bell,
20 Mr. Curb, my name is Einar Petersen, Deputy City Attorney,
21 City of Long Beach.

22 We have common issues in both of these projects
23 which have been completed by the city in the Port of
24 Long Beach. They both involve depreciation, but they do
25 involve different portions of the 1968 agreement between

1 the city and the state.

2 The first project, which deals with the repair
3 of subsidence damage to Pier 5, involves the question of
4 the distinction between replacement or repair.

5 Succinctly stated, the city's position is that
6 this is nothing more than a repair, a replacement of fill
7 material, the strengthening of the connecting rods which
8 snapped as a result of the wracking forces.

9 The State Lands staff characterizes the work as
10 one of replacement. Now, as a result of the nature of the
11 damage, which all occurred beneath the surface and within
12 the wharf structure itself, substantial excavations had to
13 be made to identify where the damage occurred. Because of
14 the nature of the repairs, these steel rods are connected
15 to the foundation of a transit shed immediately adjacent
16 to the wharf structure itself, which meant that the entire
17 length of the pier had to be excavated to identify which
18 rods were broken, and then the repairs could be made after
19 the damaged parts were identified.

20 There is no question but that the excavations
21 were extensive, but if all of the connecting rods were not
22 exposed and inspected, there would be the requirement to
23 go back in repeatedly to find where the additional damage
24 could be taking place.

25 Now, every time you excavate you have to fill up

1 the hole; in this case, they brought in new fill. You have
2 a situation here where this particular wharf is subsided
3 below the level of other wharfs in the area. It has not
4 been raised to the elevation of other facilities.

5 You have had an occasion in the past where this
6 particular wharf has been covered with a second coat of
7 asphalt, both of which were removed in this excavation, but
8 only one layer was replaced. Because of the nature of the
9 excavation, the cutting at the edge of the transit shed,
10 you have a very irregular pattern. It is not just a clean
11 slice through the asphalt running the length of the transit
12 shed; it is in the regular cut squares, rectangles, and
13 other shapes had to be dug out.

14 Now, if material were placed back, it would be
15 no question; you have a simple repair. In this case they
16 had to put in new asphalt. There was approximately 330
17 tons of asphalt used as a skin coat to create a safe working
18 area. Without that coat being added, there would be no
19 question but that you would have a substantial liability
20 situation as far as the Port of Long Beach is concerned,
21 because you have the irregular surfaces. We have all had
22 the common experience of seeing roads being resurfaced, and
23 in the various utilities companies coming along and
24 excavating to do whatever they have to do. And you have the
25 uneven surface generated. We have forklifts, we have heavy

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1 trucks traversing this particular wharf.

2 CHAIRPERSON CORY: You talk about a skin coat?

3 MR. PETERSEN: Skin coat.

4 CHAIRPERSON CORY: What kind of material are you
5 talking about?

6 MR. PETERSEN: Asphalt.

7 CHAIRPERSON CORY: What kind of asphalt?

8 MR. PETERSEN: Similar to the one that was placed
9 below.

10 CHAIRPERSON CORY: Are you talking about a
11 macadam asphalt and gravel mixture, or are you talking about
12 an emulsified asphalt coating on top of the macadam mixture?

13 MR. PETERSEN: I would have to defer that question
14 to Mr. Wheeler, who is also present today.

15 CHAIRPERSON CORY: I am just trying to understand
16 what you are telling me about what this skin coat is.

17 MR. PETERSEN: To my understanding is it the same
18 material that is used --

19 CHAIRPERSON CORY: Can somebody answer the
20 question. Mr. Wheeler.

21 MR. WHEELER: I am Al Wheeler, Senior Civil
22 Engineer with the Port of Long Beach.

23 It is the same material as the rest of the AC.
24 It is a very thin coat between an inch and an inch and a
25 half, something like that, over the whole area to make a

1 smooth operating surface.

2 CHAIRPERSON CORY: Okay. But, if a macadam gravel
3 and asphalt --

4 MR. WHEELER: Right.

5 CHAIRPERSON CORY: -- asphalt mixture, hot mix?

6 MR. WHEELER: Right.

7 CHAIRPERSON CORY: Okay. Fine. I just wanted
8 to make sure you weren't talking about a surface sealing
9 skin.

10 MR. WHEELER: No. It's not just a tar, it was a
11 mixture.

12 CHAIRPERSON CORY: Okay. Go ahead. I'm sorry
13 to interrupt.

14 MR. PETERSEN: That's quite all right.

15 It is the city's position that the material which
16 was used to fill up the hole, the asphaltic material that
17 was used to fill the hole, should not be deemed a
18 replacement, but merely a repair. The city has conceded to
19 the staff that the skin coat may be considered a replacement
20 and should be depreciated. That proposition has not been
21 accepted by the staff.

22 The net effect of that is to increase the credit
23 due the city from \$787.49 to \$2,681.02. That results from
24 the depreciation, the claim being reduced accordingly.

25 I might point out that a similar type of repair

1 was accomplished in 1959 without the claim of depreciation
2 being made at that time. The 1968 agreement itself, which
3 has been alluded to, provides depreciation allowance is to
4 be made upon facilities replaced due to the effects of
5 subsidence. And as I said, the city's position is that
6 the material below the skin coat was not a replacement in
7 its context, but a repair. It did not -- that material
8 did not significantly extend the life or the value of the
9 facility; the skin coat did.

10 CHAIRPERSON CORY: But, that latter definition is
11 a tax definition, isn't it?

12 MR. PETERSEN: Yes, sir.

13 CHAIRPERSON CORY: That may or may not be valid in
14 this instance.

15 MR. PETERSEN: It is one definition upon which we
16 can hang our hats at this point.

17 CHAIRPERSON CORY: I'm just trying to understand
18 where we are. I'm still confused as to what the hell you
19 really did on a pier. Can somebody explain in English
20 what actually happened, and what it is you are talking about
21 in a functional sense? I mean, I understand the attorney's
22 words -- do you understand what happened on the pier in
23 terms of what is below the skin?

24 COMMISSIONER BELL: Vaguely.

25 MR. WHEELER: What happened was that some tie rod

1 broke due to horizontal movement, the stresses, and so forth
2 caused by subsidence. And when the tie rod broke, the
3 wharf moved away from the transit shed several inches.
4 This happened in the evening.

5 These pictures that you are getting happened in
6 1959, and the same thing happened again in 1973. And when
7 those tie rods --

8 CHAIRPERSON CORY: These happened in '59?

9 MR. WHEELER: Yes.

10 CHAIRPERSON CORY: We are talking about a repair
11 that took place to fill that, or that happened again?

12 MR. WHEELER: It happened again, a second time in
13 the same location.

14 CHAIRPERSON CORY: Okay.

15 MR. WHEELER: In 1959 they were of a temporary
16 nature because we had planned to raise the transit shed, and
17 to date that facility has not been demolished and razed.

18 When the wharf tie rods broke, the pavement
19 dropped down, and a crack developed along the whole length
20 of the wharf. We had to go in, dig out the pavement, dig
21 down to the tie rods, and determine what the problem was,
22 where the breaks were. When we found where they were, we
23 had to check the rest of the tie rods, the full length of
24 the building, to make sure that they weren't cracked or
25 damaged along down the line. We made those repairs, some in

1 an emergency measure, and then went back in at the same time
2 under further contracts and repaired them in a permanent
3 fashion.

4 We tried to cut the concrete, the AC pavement, in
5 such a way that we minimized the amount of pavement removal
6 that we could. Those small pictures that you see there
7 show the pavement that was still left toward the wharf,
8 toward the water side of the facility, and we compacted the
9 fill when the project was completed, and filled in the
10 pavement to the elevation of the adjoining area there.

11 After we filled that in, to eliminate elevation
12 differentials, even though slight, between the old pavement
13 and the new pavement, with jiffies running over it, and
14 trucks and so forth, we put this skin coat to make a smooth
15 surface over the entire area.

16 CHAIRPERSON CORY: Okay.

17 MR. WHEELER: I think that gives a brief picture
18 of the project.

19 COMMISSIONER BELL: Okay. Mr. Chairman, I would
20 like to ask if we can consider both this item and the next
21 item dealing with the sewer, because they apparently both
22 involve the same question as to permanency versus temporari-
23 ness, and whether they are repairs or replacement.

24 MR. TAYLOR: I don't know that we actually agree
25 with the replacement-repair concept that is being injected.

1 in here. We think that they got a new facility as a result
2 of this. Whether it is repair or what, they have upgraded
3 the area; I think that's conceded now. They upgraded this
4 area substantially, and what we are asking -- the only thing
5 we are asking for is a recognition of \$3,000 of
6 depreciation for a facility which, no matter how you look
7 at it, regardless of whether it's replaced, or temporary,
8 or anything else, they have got something there that is
9 going to be recapitalized and used for a long time. And
10 we don't necessarily agree with the distinction that they
11 are making, and we believe that they got a very fine feel
12 for the minor amount of depreciation they wanted to take
13 over the original cost of this work, and that's the
14 position of the staff.

15 CHAIRPERSON CORY: But, Mr. Bell's question is,
16 can we consider both of these items together --

17 MR. TAYLOR: Oh, yes.

18 CHAIRPERSON CORY: -- or must we dispose of 24
19 separately from 25, or can we hear testimony on both? That
20 was your question.

21 COMMISSIONER BELL: Yes. I may have a difference
22 of opinion between the two items, I'm not sure.

23 CHAIRPERSON CORY: But, we can talk about both
24 of them at this point?

25 MR. TAYLOR: Certainly.

1 CHAIRPERSON CORY: This one is Item 24, which is
2 the --

3 MR. WHEELER: Berth 5.

4 CHAIRPERSON CORY: And your position at this
5 point is that the skin coat, which is 300 tons, is subject
6 to depreciation because it's an improvement?

7 MR. WHEELER: Yes, sir.

8 CHAIRPERSON CORY: But that what you did
9 underneath that was not, and the staff is contending
10 because of the order -- that it exceeded more than half of
11 the total amount, we are actually replacing the whole thing,
12 is that correct?

13 EXECUTIVE OFFICER NORTHROP: And there is a
14 betterment involved in there as well, Mr. Chairman.

15 CHAIRPERSON CORY: Okay. Can the staff explain
16 the point that -- if I understand these pictures correctly --
17 if they had just filled them up to the part they had to dig
18 out to go underneath and work on the substructure, if they
19 had just filled in that portion, you consider this a
20 betterment increment to that?

21 MR. THOMPSON: No. The magnitude then would have
22 been whether it was replacement or not. If you replace 60
23 percent of it, then it would be a question of whether it
24 would be a replacement.

25 The skin coat on the top is the betterment issue,

1 because it upgrades the whole area.

2 CHAIRPERSON CORY: That is what I am trying --
3 and they seem to have conceded to that point. Now, are we
4 in disagreement on this -- on the point that the fill of
5 that portion (indicating) was a repair?

6 MR. THOMPSON: Probably on the basis of the
7 magnitude of it, but again that --

8 CHAIRPERSON CORY: Now, what are you saying,
9 Moose? I don't understand the words.

10 MR. THOMPSON: If you are going to go down and
11 replace the pipeline where you had to take out a small
12 amount of it. But, in effect here, you have taken out over
13 60 percent of it.

14 CHAIRPERSON CORY: But, are you suggesting they
15 took out more than they needed to for the repair?

16 MR. THOMPSON: No.

17 CHAIRPERSON CORY: Okay. I'm not sure I
18 understand the point of the beef.

19 MR. THOMPSON: As soon as you start to break it
20 down to each one of them, you get into various issues on
21 each one of them, and that's where you get the complication
22 here.

23 We could have probably overlooked this and taken
24 it to be -- if that would have been the only issue, we
25 probably could have overlooked it and said, yes, this was a

1 repair. But, we get into complication with everything else.
2 We get the betterment issue, and then we get the
3 complication. We were trying to find an easy way out of
4 this.

5 We have two issues involved here: We have
6 principles and we have dollars. My recommendation would
7 be that from the dollar sense, as I said last month, their
8 particular proposal to settle out for \$1300 is a financial
9 way for the state to go as long as there are no principles
10 being bothered on either side. But, the lawyers will have
11 to work on that.

12 MR. TAYLOR: I think what we are saying here is
13 that you have a new life. You have a new life to this
14 structure as a result of this. Whether you call it a repair
15 or anything -- betterment, or anything else.

16 CHAIRPERSON CORY: Are you talking about when
17 they went down below the surface?

18 MR. TAYLOR: And took care of that. They got a
19 new life out of that, irrespective of what else they had
20 to do. They may have been fixing it, but they certainly
21 got a new life out of it by the work which was done.

22 CHAIRPERSON CORY: Let me make sure I understand
23 the issue. The staff position is that when they cut
24 through, went underneath and did new tie rods, did whatever,
25 that at that point you got a betterment of the total.

1 facility because there had been some depreciation that had
2 occurred on those tie rods. And if subsidence hadn't
3 occurred, they probably only had another 15 years,
4 hypothetically, for the whole thing before it would have
5 had to have been replaced. And the fact that it was --

6 MR. TAYLOR: They certainly got a new life on
7 each tie rod which was replaced.

8 MR. PETERSEN: No.

9 MR. THOMPSON: We did not go into that
10 particular complication. This endlessly compounds -- he
11 is trying to depreciate each thing like that. We just
12 assumed that that was a necessary replacement, all of that
13 particular facility. But, then on top of this you have a
14 facility that was upgraded, a separate one, the blacktop.

15 CHAIRPERSON CORY: The blacktop.

16 MR. THOMPSON: And the issue that it had to be
17 leveled because of work on it, sure, but that's a Port
18 operation. In other words, they have to keep all of their
19 areas in proper working order.

20 CHAIRPERSON CORY: I understand that. But, from
21 what you say and what they just conceded to I'm not sure
22 I understand that there is not an agreement between the
23 staff and the city. Do you get that impression or not?
24 I mean, when they say the skin coat they will agree to if
25 we will accept that the first fill --

1 COMMISSIONER BELL: They're not together, if
2 that's what you mean.

3 CHAIRPERSON CORY: They obviously -- they say
4 they're not together, but I don't understand what they are
5 arguing about.

6 MR. THOMPSON: I would say accept that compromise
7 from a dollar standpoint because we are going to spend more
8 money than that arguing over it, as long as the lawyers on
9 either side don't figure it prejudices their case.

10 COMMISSIONER BELL: It boils down to if they had
11 to dig up 40 percent of the pier instead of 60 percent,
12 would you have had the same argument?

13 MR. PETERSEN: (Shakes head.)

14 MR. THOMPSON: Maybe the argument wouldn't have
15 come up if they hadn't put the skin coat on, because putting
16 the skin coat on you did give a new life to all of that
17 blacktop.

18 COMMISSIONER BELL: And not just the skin coat.

19 MR. THOMPSON: Yes, because the skin coat, in
20 effect, protects the rest of it and will extend the life of
21 that.

22 MR. PETERSEN: May I make one observation? They
23 have talked about replacing 60 percent of something. I
24 would like to point out that the asphalt surface extends
25 inside the transit shed and also to an area much greater than

1 is depicted in the pictures.

2 So, if you are talking about a percentage of
3 something, in all fairness, you should include the entire
4 facility, the wharf, the transit sheds and the areas behind
5 it. I think you find in that instance, the percentage would
6 be substantially smaller than the 60 percent used by staff.

7 MR. THOMPSON: If I take all the blacktop and pour
8 an area it will become an infinitesimal small amount.

9 CHAIRPERSON CORY: What are the principles that
10 are going to be offended if we get rid of this turkey? Can
11 somebody explain that?

12 COMMISSIONER BELL: What if we accept the city's
13 position on this, what does this mean to us?

14 MR. TAYLOR: I'm having difficulty on one item.
15 (Thereupon a brief discussion was held off the
16 record.)

17 MR. TAYLOR: This is Robert Collins, Deputy
18 Attorney General that has been working on this.

19 MR. COLLINS: I think the issue is whether or not
20 the state gets credit for the past use of that blacktop.
21 That blacktop had been there for 30 years, and the question
22 is whether we get credit for that 30 years' use, or do they
23 get a new blacktop free, which will have another 40 years
24 of life.

25 And the 1968 agreement was so favorable in that

1 we are using the past cost of that blacktop.

2 CHAIRPERSON CORY: Is the '68 agreement something
3 that the world must live with forever?

4 MR. COLLINS: Well, the '68 agreement is very
5 unfavorable for the state.

6 CHAIRPERSON CORY: No. I didn't ask you that. I
7 asked you if that agreement -- can we terminate it?

8 MR. COLLINS: Well, it would be to our advantage
9 if we did.

10 CHAIRPERSON CORY: No. I didn't ask you that.
11 Can we terminate it, a simple question, yea or nay.

12 MR. COLLINS: I think so.

13 CHAIRPERSON CORY: Does the agreement include
14 terms for termination?

15 MR. TAYLOR: I don't believe that it does, but I --

16 CHAIRPERSON CORY: And you feel it is binding on
17 subsequent Commissions?

18 MR. TAYLOR: I really would like to advise you
19 subsequently on that. There is no termination provision in
20 the agreement.

21 I think what you are making in this situation is
22 that --

23 CHAIRPERSON CORY: Well, I understand the
24 argument that the staff is making in terms of it was a used-
25 up piece of asphalt, but then there is the other rule at

1 least in terms of personal injury, you take your victim as
2 you find them, at least in terms of insurance.

3 If you want to go to the expense of litigating,
4 frequently the courts say, yeah, the paint job was five
5 years old, but the guy really wouldn't have needed to
6 repaint the car at all except for your interference, in
7 this case, the subsidence interference.

8 So, it seems to me that these people should get
9 asphalt where there is no sand in that picture, and as
10 Moose suggested, that would have been the end of it and it
11 would have been a repair. That seems somewhat reasonable.

12 Now, if we make that point -- if we agree to that
13 point, and that the skin coat is an improvement, what --

14 COMMISSIONER BELL: Which we then do get
15 depreciation on.

16 CHAIRPERSON CORY: -- what precedent are we
17 setting?

18 COMMISSIONER BELL: We get depreciation on the
19 entire coat or just the skin coat?

20 MR. TAYLOR: Mr. Chairman, if I can consult with
21 the staff for a minute --

22 CHAIRPERSON CORY: Sure.

23 MR. TAYLOR: -- while you hear the second item on
24 the sewer pipe, then maybe we can give you an answer on
25 the first one.

1 But, I would like to be very careful in this
2 because there is a lot of money involved in the future.

3 CHAIRPERSON CORY: Well, that's what we need to
4 understand, what you are talking about. And pardon me,
5 staff, but when we went over the Calendar I didn't think
6 this was a big deal.

7 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, I
8 didn't think it was a big deal either.

9 CHAIRPERSON CORY: Can somebody start explaining
10 what the sewer item is.

11 MR. PETERSEN: In this particular project, you
12 have what is called in the Port of Long Beach a town lot
13 area. This is an area which is north of Ocean Boulevard,
14 north of Seaside, between the Desmond Bridge and the
15 Los Angeles River Channel. It's a triangular -- roughly a
16 triangular-shaped property, which experienced substantial
17 subsidence, and in some areas, the elevation was two feet
18 below water level.

19 MR. WHEELER: Minus two feet.

20 MR. PETERSEN: Minus two feet. As a result of
21 the subsidence, the city was required to acquire the
22 property and rehabilitate the utilities and other structures
23 which were situation in that area.

24 One of the rehabilitation projects was this
25 Broadway Sewer Project.

1 On August 28, 1973 the city sought second-phase
2 approval of this particular project, which has, as
3 Mr. Thompson explained, was at the phase when we have firm
4 bids for the work, we have definite detailed plans and
5 specifications.

6 And in the month of September of 1973 the
7 Commission did grant second-phase approval, prior approval,
8 to this particular project.

9 Now, in the city's request or notice, it was
10 stated that no allowance has been made for depreciation
11 since the proposed facilities are only temporary. That
12 particular statement followed the communication from the
13 staff, which was dated May 8, 1973, confirming that the
14 proposed work would be considered temporary.

15 The project itself was completed and accepted by
16 the Board of Harbor Commissioners of the Port of Long Beach
17 on July 1, 1974.

18 During the month of September 1977, approximately
19 three years later, the city was advised that the state was
20 then contending that a 12-percent subsidence allowance
21 would be deducted from the subsidence costs. There is no
22 dispute that the project is 100 percent subsidence, but
23 the state contended at that point in time, as of September
24 1977, a 12-percent depreciation allowance should be asserted.

25 During the period February 1972 through May of

1 1977, 15 projects within the Port, within this town lot area,
2 were closed, that is, they received final audits from the
3 Commission. In none of those cases was depreciation
4 claimed.

5 CHAIRPERSON CORY: Counsel, let me suggest making
6 that argument is digging your hole a little deeper, because
7 our staff is telling us don't do this because there is a
8 bad precedent, and you are harping back to precedent to
9 bootstrap you forward. Take your best shot, but I just
10 want to caution you, because what you just rang a bell in
11 my head is that maybe I ought to say no, to stop the
12 precedent.

13 MR. PETERSEN: All I want to do is point out --

14 CHAIRPERSON CORY: Go ahead. I just want to make
15 sure you know how I am responding to what you are saying.

16 MR. PETERSEN: I fully appreciate your position.

17 The Port's position at this point in time is
18 that this was deemed a temporary facility, and they always
19 have been, and but for the unfortunate fact that the matter
20 was not closed in a timely fashion, we probably wouldn't be
21 here today disputing this particular point.

22 CHAIRPERSON CORY: You have the argument that
23 there is some document in '72-'73 referring to it as
24 temporary by the staff?

25 MR. PETERSEN: That's correct.

1
2 CHAIRPERSON CORY: But, what about the basic
3 question as to whether or not it is temporary or it is
4 permanent, aside whether that was a mistake or not, if our
5 fundamental question that the decision hinges upon is
6 permanence versus temporary, what is the fact situation
7 that makes the sewer line temporary?

8 MR. PETERSEN: It is still in a -- well, the
9 depth at which the sewer is now located, because some
10 portions of this area have been raised. At the time they
11 were not, but subsequently in the past two or three years
12 the area has been raised so now we have a sewer which, in
13 some cases, is up to --

14 MR. WHEELER; Well, the sewer is down in some
15 cases to a minus two elevation and the --

16 CHAIRPERSON CORY: Minus two feet?

17 MR. WHEELER: Right, minus two feet.

18 CHAIRPERSON CORY: Not two-tenths?

19 MR. WHEELER: That's an elevation.

20 CHAIRPERSON CORY: It's an elevation off a mean?

21 MR. WHEELER: Right, mean low or low water. And
22 the fill itself -- sorry -- the surface of the ground where
23 the sewer is located is a minus two elevation, and the
24 surface to where it has now been filled in a plus 20
25 elevation. So, there is about 22 feet of fill over portions
of this line at the present time, and it was constructed

1 four or five feet -- I'm not sure exactly -- below the
2 surface at the time it was constructed. It was constructed
3 in tide water at the time because there was no other place
4 to put it.

5 Other portion of the line have between two and
6 four feet of fill, new fill placed over it.

7 CHAIRPERSON CORY: All right. Let me interrupt
8 you. Is this where we get -- I want to ask Mr. Northrop,
9 our Executive Officer, at times, from our side of the table,
10 the subsidence project in Long Beach starts to look like
11 the House of Windsor, that there is no end, that you filled
12 up this one, and then the other one you come up two feet
13 higher, and then you must keep building it, and pretty soon
14 we are going to be able to ski in Long Beach.

15 EXECUTIVE OFFICER NORTHROP: In my concept, I
16 think the Port of Long Beach would love to make a pool table
17 out of the entire port, and I think that is one issue that
18 is involved in this thing because the parcels to which the
19 sewer line serves, to my understanding, is not city owned.
20 The city is looking with covetous eyes on the piece of
21 property, would certainly like to level it down, and if
22 they could get the sewer moved one more time, would be in
23 good shape.

24 So, that's the problem, as we perceived part of
25 it.

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1 COMMISSIONER CURB: It sounds to me like the
2 staff and the city are pretty much in sync here. Is there
3 an overriding argument why we shouldn't go along with the
4 city?

5 CHAIRPERSON CORY: Well, on the sewer question,
6 I think the fundamental issue is that elevations keep
7 changing on parcels within -- I guess it is a question
8 overall that the city is of the opinion that the ultimate
9 best use of the port would be to have everything raised to
10 the same level. And the staff's position is that there is a
11 realistic level benchmark, and it may not be even, and
12 there are certain uncomforts, discomforts that exist from
13 that, but it is a question of what the state's obligation is.

14 Put it in perspective, if our obligation is to
15 have everything at the same elevation throughout the Harbor,
16 through 138, there is a quantum leap forward in terms of
17 dollar costs, and the difficulty we have in terms of the
18 agreement in Chapter 138, the subsidence costs, the state
19 pays for indirectly from the General Fund. We pay for it
20 out of oil revenues before it gets to the General Fund.

21 Our control item is prior approval of each
22 project, but by going on a piecemeal basis, we get to a
23 point of probably, I would guess neither side really
24 understood what they were really doing when they approved
25 to put in a sewer at this point. The city is contending

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1 that, gee, they really need the level up here, but it
2 wasn't up here, so we had to put the sewer way down here,
3 so it is obviously temporary. Am I misstating your position?

4 MR. PETERSEN: No. That's correct.

5 CHAIRPERSON CORY: The staff is saying, hey, wait
6 a minute, we did that. We filled it once, how many times
7 do we have to fill this parcel?

8 MR. WHEELER: Well, we had not filled the
9 location where the sewer was placed.

10 CHAIRPERSON CORY: No. But, by implication I
11 think trying to understand the staff's arguments, that the
12 next time the sewer line is there, and you approve that,
13 and then to have the fact that we upgrade it and do the
14 fill and pay for that, that that means that we have to buy
15 another sewer line for them.

16 MR. THOMPSON: The sewer line was put in to be a
17 permanent line, in fact, as far as the workmanship. The
18 line has been in about five years now. We have only seen
19 the five-year plan future for the Harbor Department. We
20 see where nothing in there indicates that they are going to
21 buy those private-owned parcels that service this to be
22 razed.

23 CHAIRPERSON CORY: That are serviced by --

24 MR. THOMPSON: Serviced by that. So, as far as we
25 can see for a 10-year period, at least, this quote

1 'temporary' line will be in service.

2 CHAIRPERSON CORY: But, while you were out of the
3 room they were quoting a document which referred to the line
4 as being temporary.

5 MR. THOMPSON: You have to be very careful what
6 you read here, because don't forget this line originally
7 was to go down one street. They started to do a lot of work
8 on it, changed their mind, and put it on another street,
9 and there was another action by the Commission. And I
10 would have to be very careful as to which letters pertain
11 to which, and the word "temporary" nature might have been
12 caretting back what the city said was going to be temporary.

13 MR. TAYLOR: There is nothing temporary, as I
14 understand it, from the staff in the type of construction
15 or the facility. In other words, there is nothing to
16 distinguish this facility from any other sewer line in
17 terms of it's portability.

18 CHAIRPERSON CORY: While you were out they were
19 quoting from some document of the staff in '73.

20 EXECUTIVE OFFICER NORTHROP: May 23 of '73.

21 CHAIRPERSON CORY: And I think that is the
22 strongest thing I have heard from their viewpoint, if they
23 have some detrimental reliance, on what the staff had told
24 them.

25 MR. TAYLOR: Do you have the '73 letter? I don't

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1 know,

2 MR. PETERSEN: Yes. I do.

3 CHAIRPERSON CORY: We are at a point where I'm
4 not sure that that issue, if it's that complicated, we can
5 resolve and it is appropriate to take the Committee's time,
6 and we may have to bounce that issue back for you to piece
7 together and tell us what is there.

8 MR. TAYLOR: This argument apparently has been
9 developed since Monday, because I discussed the matter on
10 Monday and that comes to me as a surprise on that item. I
11 don't know if it is a correct one or not. I can't tell you
12 today whether that it correct.

13 CHAIRPERSON CORY: I think the facts will have to
14 be developed, and I would like with the Commission's approval
15 to take the sewer issue, give back to the staff for you guys
16 to piece together what they are arguing about.

17 COMMISSIONER BELL: I would like to have both
18 report back to them unless it is very clear that they are
19 two different things.

20 CHAIRPERSON CORY: What I was planning on doing
21 is then asking the staff what they had come up with out in
22 the hall on the other one. If they don't have a clear
23 delineation as to what the facts are, to send it back to you
24 because you have got to get the facts to where we can at
25 least understand them before we can adjudicate them.

1 COMMISSIONER CURB: (Nods head.)

2 CHAIRPERSON CORY: What did you learn in the halls?

3 MR. TAYLOR: I think that if you want to
4 compromise the matter we can compromise that one. I don't
5 know -- I think that Mr. Bell's suggestion might be better
6 in light of the problems that we spoke of, that they be
7 put over until the next meeting and try to come up with a
8 better explanation of the situation.

9 I think there is a real problem of what is
10 temporary and what is permanent, and if the Harbor had its
11 way, nothing would ever be permanent. And if that is the
12 case, then the situation is we have an unending liability
13 and a very significant effect upon state income ultimately,
14 and that is what the staff is hired to guard against.

15 CHAIRPERSON CORY: We understand that issue.
16 I would guess that it's the wish of this Commission that
17 you try -- if we have to go through the hassle, we at least
18 ought to get down very clearly what each side's position is
19 and what the significance of our decision will be, rather
20 than try to fly by the seat of the pants.

21 MR. TAYLOR: I thought that it was all shook out
22 before today's meeting started.

23 CHAIRPERSON CORY: But it appears not to be from
24 this side of the table. If it looks clear from your side,
25 I want to know what kind of clear pills you're taking.

1 (Laughter.)

2 COMMISSIONER BELL: I don't think anything in the
3 Agenda would indicate any explanation of what we have heard
4 today.

5 I think it ought to be settled before it comes to
6 us so we can understand the two sides.

7 CHAIRPERSON CORY: Okay. Item 24 and 25 will be
8 sent back to the staff. Sit down with the people in
9 Long Beach and see what you can work out.

10 MR. PETERSEN: Thank you.

11 CHAIRPERSON CORY: I apologize for taking your
12 time. All right. Twenty-six.

13 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, 26,
14 informing on the subsidence. We find subsidence on 138 to
15 be acceptable.

16 CHAIRPERSON CORY: All right. We have received
17 that information, approval of third modification of the
18 plan of development and operations and budget, Long Beach
19 Unit, Wilmington Field, Los Angeles County.

20 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, I
21 approve one tax zone well under this modification.

22 CHAIRPERSON CORY: This bails you out, right.
23 Anybody in the audience on this outrageous act of the
24 Executive Officer?

25 Without objection, Item 27 will be approved as

1 presented.

2 Item 28. What's this, another subsidence?

3 EXECUTIVE OFFICER NORTHROP: No. This is a
4 1.3 million dollar refurbishing of the lifeguard program in
5 Long Beach, dismantling some lifeguard towers, some
6 restrooms and some concession stands.

7 CHAIRPERSON CORY: That seems like a public use
8 of statewide significance.

9 EXECUTIVE OFFICER NORTHROP: 1.3 goes sailing
10 through; 700 falls down the tubes.

11 CHAIRPERSON CORY: Anybody in the audience on this
12 item?

13 Without objection, Item 28 will be approved as
14 presented. Item 29 and 30 are off the Calendar.

15 Item 31, approve the leg 1 description submitted
16 by Clearlake for incorporation.

17 Is there anybody in the audience on this item?
18 Any questions from commissioners?

19 COMMISSIONER BELL: I have nothing.

20 COMMISSIONER CURB: No.

21 CHAIRPERSON CORY: Without objection, 31 will be
22 approved as presented.

23 Item 32, acceptance of retrocession of concurrent
24 jurisdiction from the United States on 38.69 acres, more or
25 less, at the Naval Air Station at Los Alamitos.

1 EXECUTIVE OFFICER NORTHROP: It is a former
2 housing project in Los Alamitos. That's where the "former"
3 comes in.

4 COMMISSIONER BELL: Former housing -- I thought
5 they had given up the Naval Air Station.

6 (Laughter.)

7 CHAIRPERSON CORY: Is there anybody in the
8 audience on Item 32? Any questions from commissioners on
9 this item?

10 COMMISSIONER BELL: They explained to me what
11 those words meant.

12 COMMISSIONER CURB: Yes. Former Naval Air
13 Station.

14 (Laughter.)

15 CHAIRPERSON CORY: Item 32, without objection, will
16 be approved as presented.

17 Item 33, disclaimer on 857 acres of land in
18 Merced County. We don't have an interest?

19 MR. HIGHT: No, Mr. Chairman.

20 CHAIRPERSON CORY: Any questions from the audience?

21 MR. TAYLOR: We are not waiving the fact that
22 we may have an interest; we are only waiving the right to
23 compensation on both of those items.

24 We have not resolved the question of whether we --
25 we have not resolved the question of --

1 CHAIRPERSON CORY: Wait a minute, Greg.

2 MR. TAYLOR: I want to make it clear that there is
3 no disclaimer in either of those Calendar items of an
4 ownership interest. They are just saying that the ownership
5 interest is not sufficient to fight with the federal
6 government over in connection with these projects which we
7 are interested in. And several times the Commission has
8 waived compensation but not waived an interest.

9 CHAIRPERSON CORY: Okay. So, we may have an
10 interest but somebody can use it without paying for it?

11 MR. TAYLOR: Yes.

12 COMMISSIONER BELL: Oh, that's what it means,
13 Okay.

14 CHAIRPERSON CORY: Okay.

15 COMMISSIONER BELL: Because it isn't big enough
16 to worry about it.

17 MR. TAYLOR: Overall, on balance, the cost isn't
18 worth the battle.

19 CHAIRPERSON CORY: And the reason for wording it
20 that way is because that is not used as precedent?

21 MR. TAYLOR: Against any disclaimer of interest
22 within the area we are talking about. It is only a small
23 portion of a waterway, and therefore, we don't think it's
24 worth fighting with them as far as money is concerned.
25 But, we don't, by making a statement of no interest, want

1 to say that applies to the whole area outside of the project
2 and that's the reason for the distinction.

3 CHAIRPERSON CORY: Okay. Anybody in the audience
4 on the item?

5 Any questions from commissioners?

6 Without objection, authorization is granted.

7 This is a bigger hunk, in Merced and Mariposa
8 Counties, same item. Anybody in the audience on this item?

9 Any questions from commissioners?

10 Without objection, authorization is granted.

11 Status of major litigation.

12 MR. TAYLOR: There are four items which should be
13 reported to the Commission. At the request of the
14 Commission, we filed a Writ of Mandate trying to review the
15 high water-low water question in connection with Clearlake
16 with the California Supreme Court last week

17 The Court remanded the writ to the Court of
18 Appeals, which is similar to the procedure which was used
19 in the Murphy case.

20 CHAIRPERSON CORY: Which court?

21 MR. TAYLOR: It went to the San Francisco Court of
22 Appeals.

23 CHAIRPERSON CORY: Okay.

24 MR. TAYLOR: The high water-low water case was
25 also argued in the Court of Appeals in Sacramento on an

1 appeal of an injunction against the Commission taking any
2 action with regard to high water-low water in connection
3 with Lake Tahoe.

4 COMMISSIONER BELL: Lake Tahoe.

5 MR. TAYLOR: The court may rule on the high water-
6 low water question in that, although it's only one of a
7 number of issues, and it is also possible for the court not
8 to decide the issue.

9 But, both of these actions are consistent with
10 the Commission's direction and the commitment of the
11 Attorney General that we would get this question resolved at
12 the earliest possible time, and that's what we are seeking
13 to do.

14 CHAIRPERSON CORY: What panel did you have here
15 on that, do you know?

16 MR. TAYLOR: I don't recall. We will call you
17 after the meeting and let you know who it was.

18 The second item is there were oral arguments
19 in the United States Supreme Court on whether the United
20 States Supreme Court would accept jurisdiction of the
21 Davis Lake controversy between Arizona and the federal
22 government of California. That is just to determine
23 ownership of that stretch of the Colorado River between the
24 State of Arizona, the State of California and the federal
25 government.

1 The federal government surprises us and withdrew
2 their arguments that the matter should be held in abeyance
3 pending settlement discussions. The U.S. solicitor got
4 upset with the delays of the Department of Interior and
5 told the court to take the case, and they would intervene.

6 Since he had asked for some word from the
7 Department of Interior six months before and hadn't heard
8 from them, he withdrew that portion of his brief during
9 oral argument. So, we are hopeful that the Supreme Court
10 will keep the case and appoint a master.

11 COMMISSIONER BELL: Is Lake Davis where the
12 Colorado Aqueduct takes off?

13 MR. TAYLOR: I think it is below that point. It's
14 below the City of Blythe, and it's an area near the
15 Palo Verde irrigation people, although not in their direct
16 area. It's a few miles below Blythe.

17 The third item is that we have been sued by
18 Amigos des Bosa Chica to set aside the 1973 settlement
19 agreement, and that was discussed with the Commission in
20 Executive Session.

21 CHAIRPERSON CORY: Have you been served on that?

22 MR. TAYLOR: We have not been served on that.
23 Signal did file an Answer and a Cross-Complaint which
24 prevents the withdrawal of the case without Signal's
25 approval. And I don't know just exactly how that leaves

1 things, but we have not been served by either side.

2 The fourth item is that we have been sued by
3 L & M Properties in Aqua Hedionda Lagoon in San Diego, which
4 is a review of whether or not there is any sovereign title
5 interest of the state in a lagoon located within the
6 boundaries of a rancho. And that is the result of a
7 Coastal Commission action taken on the basis of an area
8 project study of the State Lands Commission, and that will
9 be a second lawsuit and may stand more chance of getting a
10 clear ruling on that question than the Carman-Ryles case
11 which the City of LA brought at Marina del Rey. That is a
12 very significant lawsuit, and that ranks in importance with
13 the other three that we discussed this morning.

14 Mr. Northrop asked me to also mention that we had
15 an argument on the Throughput case. Both sides have filed
16 counter summary judgment motions. The matter was argued
17 before Judge Marlton in Sacramento a week and a half ago.
18 WOGA requested permission to file Amended Complaint, and
19 also to add additional argument, and the matter was
20 continued until next month, at which time there will be an
21 argument on whether the Amended Complaint should be filed
22 and a continuation on the motion on the question of summary
23 judgments on both sides.

24 I don't know whether there will be any other
25 argument after that day or whether the matter will be

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1 concluded. But, it is set for in mid -- I believe the 15th
2 of February. I don't know whether that date will come off
3 or not. It depends upon what additional papers are filed
4 by WOGA in the meantime.

5 CHAIRPERSON CORY: Any other items?

6 MR. TAYLOR: That concludes my report,
7 Mr. Chairman.

8 CHAIRPERSON CORY: Any other business?

9 EXECUTIVE OFFICER NORTHROP: No, Mr. Chairman.

10 CHAIRPERSON CORY: Okay.

11 COMMISSIONER BELL: Sorry Mr. Silberman couldn't
12 get here. I guess Ways and Means never let him loose.

13 CHAIRPERSON CORY: The meeting will stand
14 adjourned. The next meeting is --

15 EXECUTIVE OFFICER NORTHROP: The next meeting will
16 be February the 22nd in Sacramento, Mr. Chairman.

17 (The meeting of the State Lands Commission
18 was adjourned at 11:30 A.M.)

CERTIFICATE OF SHORTHAND REPORTER

I, DIANE LYNN WALTON, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein, that the foregoing Meeting of the State Lands Commission was reported in shorthand by me, Diane Lynn Walton, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of February, 1979.

Diane Lynn Walton CSN
DIANE LYNN WALTON
Certified Shorthand Reporter
License No. 3067

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