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MEETING

STATE LANDS COMMISSION

BOARD OF HARBOR COMMISSIONERS

925 HARBOR PLAZA

SIXTH FLOOR, BOARD ROOM

LONG BEACH, CALIFORNIA

ORIGINAL

THURSDAY, APRIL 20, 1979

10:00 A.M.

Frances Ann Peterson  
C.S.R. License No. 4379

MEMBERS PRESENT

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Mr. Roy Bell, Chairperson, for Richard T. Silberman  
Mr. David Ackerman, for Mike Curb, Lieutenant Governor  
Mr. John Jervis, for Ken Cory, State Controller

STAFF PRESENT

~~D. S. Golden, Assistant Executive Officer~~  
James Trout  
Robert Hight  
W. M. Thompson  
Dianne Jones

ALSO PRESENT

Greg Taylor, Assistant Attorney General

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PROCEEDINGS

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3 CHAIRPERSON BELL: Ladies and gentlemen, the hour  
4 of ten o'clock having arrived -- my microphone seems  
5 growling. Can you all hear me? -- the meeting of the State  
6 Lands Commission will be called to order. Present are  
7 David Ackerman, representing Mike Curb, Lieutenant Governor,  
8 on my left, appropriately. John Jervis representing Ken  
9 Cory, State Controller, on my right. And I'm Roy Bell,  
10 representing Richard Silberman. And I'll chair this  
11 meeting.

12 Mr. Hight, since we have two alternates present  
13 rather than the principals, can you advise me as to the  
14 rights of voting?

15 MR. HIGHT: Yes, Mr. Chairman. Mr. Jervis will  
16 represent the Controller in voice only and will not vote on  
17 any matters. And Mr. Ackerman will vote on matters. And  
18 we will have a legally constituted commission.

19 CHAIRPERSON BELL: Thank you.

20 MR. TAYLOR: The Commission today will consist of  
21 you --

22 CHAIRPERSON BELL: I'm sorry. This is Mr. Taylor,  
23 Deputy Attorney General -- Assistant Attorney General.

24 MR. TAYLOR: Mr. Bell, just so the record is  
25 straight, the Commission today will consist of you and Mr.

1 Ackerman. And Mr. Jervis will not be voting, although he  
2 will be here as Mr. Cory's representative to, in effect,  
3 observe this meeting.

4 CHAIRPERSON BELL: Thank you, Mr. Taylor.

5 The minutes of the meeting of March 29th were  
6 distributed to members. If there are no corrections or  
7 alterations or improvements, they will be deemed approved.

8 The first item on the agenda is a report of the  
9 Executive Officer.

10 MR. TROUT: Mr. Chairman, I think we'll spare you  
11 that today. And I just want to point out that on the  
12 calendar, Consent Item C7 will be off calendar. The rest  
13 of the consent items are okay. Mr. Golden will have a  
14 report, however, on the State Coastal Commission.

15 CHAIRPERSON BELL: All right. For the court  
16 reporter, that was Mr. Trout speaking.

17 Staff report on the State Coastal Commission from  
18 Mr. Golden.

19 MR. GOLDEN: Thank you, Mr. Chairman and members.  
20 The status of the Coastal Commission's local coastal program  
21 certification process is what I'm going to be addressing  
22 this morning.

23 As you are aware, the California Coastal Act of  
24 1976 requires the California Coastal Commission to certify  
25 Local Coastal Programs -- which I'll refer to as LCP's --

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1 along the coast, statewide, for being capable of carrying  
 2 out the Coastal Act. These LCP's, when certified, will  
 3 consist of local plans, zoning ordinances, and other  
 4 implementing actions. They must be certified by June 30,  
 5 1981.

6 This certification process will impact the  
 7 operations of the State Lands Commission in at least two  
 8 ways. First, the Coastal Commission will retain permit  
 9 authority over development on the State tide and submerged  
 10 lands and may look to this Commission for the exercise of  
 11 the public trust over such lands. Consequently, we will  
 12 be asked to make more definitive determinations of State  
 13 lands boundaries and clarify the extent of State interest  
 14 in such lands. Second, the LCP's will include land usage  
 15 designations for our lands and for lands adjacent to them.  
 16 Our interest is to ensure that such land use plans are  
 17 consistent with our objectives and with the public trust.

18 Our staff has been working with the Coastal  
 19 Commission on both of the above. Our involvement in working  
 20 with local governments and the Coastal Commission is expected  
 21 to increase substantially over the next couple of years.  
 22 To date, our most concrete participation has been on the  
 23 Tomales Bay area plan, which is expected to be completed  
 24 in draft form within the next couple of months and submitted  
 25 to this Commission for review and approval shortly thereafter.

1 Additional principal areas in which we expect to  
2 become involved include Humboldt Bay, Monterey Bay, and  
3 the remaining wetland areas of Southern California, several  
4 eroding shoreline areas of the State, and port plans for  
5 Long Beach, Los Angeles and San Diego.

6 There are 68 local governments -- 15 counties and  
7 53 cities -- for which LCP's must be certified. To date,  
8 while work on many LCP's has commenced, only a handful are  
9 nearing completion, and only one land use plan, that of  
10 the City of Trinidad, has been certified by the State  
11 Coastal Commission. It has been estimated that for the  
12 Coastal Commission to complete the LCP process by the  
13 statutory deadline of mid-1981, it would have to consider  
14 three LCP's per meeting from here on. As you can see, the  
15 job at hand is immense.

16 Our staff will continue to work with the Coastal  
17 Commission to assist in the LCP process and, most  
18 importantly, ensure that our interests in this process are  
19 properly considered and protected.

20 That concludes my report, Mr. Chairman.

21 CHAIRPERSON BELL: Thank you, Mr. Golden. Any  
22 questions by Commission members?

23 If not, we'll now go to the Consent Calendar. The  
24 Consent Calendar consists of the first 16 items, with Item 7  
25 off calendar, as Mr. Trout indicated.

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1 Is there anyone in the audience who wishes to  
2 withdraw from the Consent Calendar any of the first 16  
3 items?

4 Hearing no objection, the first 16 items are  
5 subject to a single act.

6 MR. ACKERMAN: Also move they are.

7 CHAIRPERSON BELL: All right. I have a motion.  
8 All in favor, say Aye.

9 (Ayes.)

10 CHAIRPERSON BELL: Opposed?

11 (No response.)

12 CHAIRPERSON BELL: They are approved.

13 We will now go to Item 17, which is the first item  
14 on the Regular Calendar. And it's the Yuba River item.

15 MR. TROUT: Mr. Chairman, each of the Commissioners  
16 has received from Mr. Dacey, representative of Yuba Gold  
17 Fields, a rather significant package of information relating  
18 to this item. In addition we have received today a letter  
19 from St. Joseph Church, signed by Reverend Hugh J. Bannon,  
20 which I won't read entirely but we will submit in the record.  
21 He asks that the Commission take the following four points  
22 into account in making the determination on this item:  
23 one, water which Yuba Gold Fields want to sell to Southern  
24 California; two, the recreational potential of the property;  
25 three, the fact Yuba Gold Fields is in the process of trying

1 to trade this land to the Federal Government, which  
2 already has extensive holdings in Yuba County, i.e. Beale  
3 Air Force Base, and thereby effectively taking it off the  
4 tax rolls. And the fourth item is the value of gravel of  
5 which there is almost an inexhaustible supply, plus the  
6 minerals, specifically gold, contained in the gravel  
7 deposits.

8 We received a telegram -- actually two telegrams,  
9 from Harold J. Sperbeck, Chairman of the Yuba County Board  
10 of Supervisors. Unfortunately, it's a little like the  
11 telegram that says, "Please ignore my previous telegram."  
12 He says,

13 "Regarding my letter of April 23rd,  
14 referring to File 503906, Yuba River, et  
15 cetera, the letter was my own personal  
16 view and position on the matter."

17 It goes on to just say that the Yuba County Board of  
18 Supervisors has not taken a stand on the issue and asks that  
19 we report this to you. The problem is that as of last  
20 night, we had not received the April 23rd letter. But the  
21 telegrams and the letter when it arrives will also be made  
22 part of the record.

23 Mr. Jack Rump, Staff Counsel, will make the staff  
24 presentation on the Yuba River item.

25 CHAIRPERSON BELL: Mr. Jack Rump.

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1 By the way, that again was, for the court reporter,  
2 Mr. Trout speaking.

3 MR. RUMP: This calendar item concerns a partial  
4 claim by Yuba Gold Fields, Inc., consisting of a --

5 CHAIRPERSON BELL: The audience cannot hear you.

6 MR. RUMP: Okay.

7 Now?

8 CHAIRPERSON BELL: Yes.

9 MR. RUMP: This calendar item concerns a partial  
10 claim by Yuba Gold Fields, Inc., consisting of about 8,000  
11 acres approximately eight to nine miles upstream the Yuba  
12 River from Marysville. We have various maps and photographs  
13 available. The one in the center of the photograph shows  
14 the area generally just north of Beale Air Force Base and  
15 subject to many of the dredging, gold dredging debris. The  
16 U.S. townships are illustrated in orange on that map. Next  
17 to it on the right is a quad base map showing the perimeter  
18 of the claims of Yuba Gold Fields. We may not necessarily  
19 agree with the perimeter, but this has been supplied to us  
20 by Yuba.

21 Approximately 2100 acres of land is located between  
22 the meanders, as it is shown on the official township plat.  
23 The area is also the site for the proposed Marysville Lake  
24 project by the U.S. Army Corps of Engineers.

25 As is described in the calendar item, the dispute

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1 centers on three main points: first, whether the Yuba  
2 River was a navigable river and therefore sovereign lands  
3 belonging to the State. This would include questions of  
4 navigation in fact versus statutorily declared heads of  
5 navigation of the river, first eight miles upstream and  
6 finally at F Street in downtown Marysville. Secondly, the  
7 last natural location of the historic river boundary,  
8 whether it be the meanders or some other water line. And  
9 third, finally as this is non-titled waterway, whether the  
10 legal boundary would be high or low water.

11 This item was originally scheduled for Commission  
12 consideration in October of 1978, but was removed at the  
13 request of Yuba Gold Fields. Discussions have continued  
14 between the parties concerning the possibility of settlement.  
15 However, the dispute still continues. And staff feels that  
16 there is no possibility of settlement at the moment.

17 As you have received in the mail, Yuba Gold Fields  
18 has prepared a statement in opposition. However, the staff  
19 still disagrees with the conclusions reached in their  
20 statement. For example, on the issue of navigability, Yuba  
21 Gold Fields discusses the voyage of the steam dredge Phoenix  
22 in 1850-'51 to Ousley's Bar, apparently an area within the  
23 proposed litigation. And they also state that the dredge  
24 was moved during the wet season in January. Rather than  
25 belabor points back and forth -- because, as you know,

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1 historical research is time consuming and we have to go  
2 through historic newspaper counts and the like -- our  
3 further research indicates that the voyage indeed was under  
4 the vessel's own power. For instance, the Sacramento  
5 transcript of February 7, 1851, stated, and I quote,

6 "We learned from a gentleman who has  
7 returned from upriver that the Yuba River  
8 Dredging Company has made another trial  
9 machinery on board the Phoenix for dredging  
10 of gold. For some time past, the Phoenix  
11 has been unable to proceed to the point  
12 intended on account of the low stage of  
13 water in the river. But the owners now  
14 intend to put on steam and force it through  
15 to the rich bar, which the Company intends  
16 working. Unless it rains, therefore, within  
17 the next ten days and the river rises, the  
18 steamer will force her way to commence active  
19 operations."

20 There are similar accounts; and we anticipate, as we  
21 proceed, to find other instances of navigability. We also  
22 have found a panograph depiction of the Phoenix on the Yuba  
23 River. I won't go into that at this time.

24 As you are aware also from the statement in  
25 opposition, Yuba Gold Fields has a letter from the U.S. Army

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1 Corps of Engineers. They state in their letter that there  
2 is no significant or substantial evidence to the contrary  
3 that has been brought to their attention. Apparently on  
4 this basis they have entered into an exchange agreement with  
5 the Yuba Gold Fields in which they would receive dates to  
6 the proposed site of the Marysville Lake project.

7 Unfortunately, we disagree as to whether or not  
8 there exists significant or substantial evidence. For  
9 example, the township plat for the area in question was  
10 meandered both banks pursuant to instructions from the  
11 U.S. Surveyor General. Also the field notes indicate that  
12 the river was navigable. This is also true of the township  
13 plat for the area immediately to the west and further  
14 upstream of the property.

15 Also one of our staff has uncovered a report which  
16 was prepared by a noted engineer of the Corps, Owen Stanley,  
17 who apparently had joined the California Debris Commission  
18 about 1906. His work -- only to make it short, just read  
19 the significant portions -- says,

20 "In San Francisco scores of would-be  
21 goldminers left their usual jobs and made  
22 their way mostly by river steamers towards  
23 various areas reported to be gold bearing  
24 to join out-of-state would-be goldminers  
25 in Sacramento, Stockton, and Marysville.

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1 In these towns the expectant goldminers  
2 transferred their belongings to rowboats,  
3 small rafts and anything else that would  
4 float their goods. They then proceeded  
5 by such water transportation to where the  
6 Mokelumne, American, Yuba, and Feather  
7 Rivers, respectively, debouch from the  
8 foothills onto the valley floor. These  
9 sites are near the present-day communities  
10 of Comanche, Folsom, Sicard Flats, and  
11 Oroville. Sicard Flats apparently is  
12 further upstream from this property in  
13 roughly the vicinity of Timbuku.

14 We have requested the Board to certify -- to get a certified  
15 copy of this document from them. But after two requests,  
16 they have not done so.

17 Additionally, since we're talking about the Corps  
18 and specifically the Marysville project, in 1970 the  
19 Commission received a letter with regard to any claims of  
20 ownership or whether or not the Commission felt that the  
21 river at this location could be navigable. We answered in  
22 September of 1970 and did assert the ownership of the river.

23 Rather than going into any further details at this  
24 time, I'd like to summarize that the staff feels that there  
25 is good cause to believe that the area in question was

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1 traversed by a navigable waterway, which is sovereign land  
2 of the State, and that further research and evidence will  
3 show its historic location and use as a highway of commerce.

4 We ask that we be given authorization to proceed  
5 with a resolution of this matter. I think since there will  
6 be statements from Yuba Gold Fields and possibly the Corps of  
7 Engineers and others, that summarizes most of the points at  
8 this time.

9 CHAIRPERSON BELL: Thank you. If there are no  
10 other comments, I have five requests for appearance on this  
11 item. And the first person I will call on is Mr. Marvin  
12 Kratter.

13 Mr. Kratter.

14 MR. KRATTER: May I use this microphone?

15 CHAIRPERSON BELL: Yes, I believe it's on.

16 I think you have to talk close to it.

17 MR. KRATTER: My name is Marvin Kratter. I'm  
18 President and Chairman of the Board of a public company  
19 called Yuba Gold Fields, Inc., which is the owner of various  
20 interests in property in Yuba County, California, in the  
21 area of Marysville. The company is a publicly owned company  
22 with approximately 15,000 shareholders, many of whom are  
23 California residents. The property under question has been  
24 in the hands of Yuba Gold Fields, Inc., and/or its  
25 predecessors since the early twentieth century, beginning



1 approximately 1904.

2 I would like the Commission to understand that the  
3 question of title to lands within our recorded boundaries  
4 is not a question that was originated by the State Lands  
5 Commission staff, but arose out of a civil controversy with  
6 a tenant or an alleged tenant of the property who was using  
7 several of the ponds on the property for the development  
8 of -- for the production of trout. We got into a controversy  
9 with this gentleman and brought a civil action to terminate  
10 his alleged tenancy. And as a result of that action, his  
11 engineer came down to the State Lands Commission and  
12 indicated that the State had ought to look into this because  
13 they thought he was sitting on State owned land.

14 A representative of the State Lands Commission,  
15 acting as a representative of the Attorney General's Office,  
16 actually appeared in court at State expense during the --  
17 some of the hearings in this particular issue, the initial  
18 phases of which have been ruled on and held in favor of  
19 ourselves. That particular property, for your information,  
20 is in an area which is the subject of an exchange with the  
21 United States Army Corps of Engineers and settlement of a  
22 longstanding title dispute between them and the Gold Fields.

23 The actual area owned by the Gold Fields to which  
24 it will have title or has title now after the consummation  
25 of the Corps of Engineers agreement is less than 700 acres.

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1 An attempt has been made here to describe this as 8,000  
2 acres being owned by the Gold Fields. No such thing.

3 The property seeking to be claimed as State property  
4 in this action cannot be clearly differentiated or separated  
5 from properties now owned by the Corps of Engineers, who are  
6 represented here today by their counsel and chief real  
7 estate officer, Mr. Denney and Mr. Wheeler, whom you'll be  
8 hearing from after I conclude and must unfortunately leave  
9 for another legislative session over in Nevada. Therefore,  
10 it is impossible in my opinion and in our engineer's opinion  
11 to distinguish between the Government and ourselves in the  
12 areas sought to be being claimed by the State. There's an  
13 intermingling of fee ownerships by us and fee ownerships  
14 by the Corps of Engineers and fee ownerships by the Bureau of  
15 Land Management.

16 In the original presentation to you for the  
17 calendar item in October -- and the reason for this extensive  
18 delay in terms of getting this hearing on was the fact that  
19 the original calendar item, in our opinion, was substantially  
20 misleading and seemed to represent that neither the Corps  
21 nor the Bureau of Land Management had any interest and  
22 didn't care to assert any. And if you will look at the file,  
23 you will find that both of those organizations have written  
24 rather lengthy letters indicating that they have a definitive  
25 fee ownership interest in these properties and that the

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1 initial presentation to the Commission was not correct.

2 We have a great emotional problem with this  
3 entire action, too. And that is the fact that the public,  
4 and we believe there has been a -- has been led to believe  
5 that this action is an attempt to salvage or get State con-  
6 trol of the existing Yuba River. And in the presentations  
7 to this august body, the same attempt was made. It was made  
8 in talking about claim ownership of the Yuba River. Now,  
9 any layman or person not completely versed in the highly  
10 technical details of this matter would assume that the State  
11 was now trying to gain control of the existing Yuba River.  
12 And if you'd like, I can take you over to the pictures, both  
13 ours and the State's pictures on the wall and show you that  
14 practically throughout the entire property seeking to be  
15 attacked, the Yuba River is a half to two miles away as the  
16 river currently exists.

17 To get the facts in perspective, the State can only  
18 succeed legally in maintaining any claim to any of our  
19 land if it can prove two things: (a) If it can prove that  
20 the river was navigable in 1850, I believe September 9th is  
21 the day, when our sovereign State became a state; and  
22 secondly, if they can prove without any question of doubt  
23 where the Yuba River was on that date. Now, the only  
24 evidence available that we have found or that has been  
25 submitted by the State to us -- and incidentally, they have

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1 submitted practically nothing despite a promise that before  
2 this meeting we would be supplied with the data upon which  
3 this claim was being based. In other words, we came into  
4 this meeting this morning despite repeated promises from  
5 staff counsel that we would be shown the facts on which this  
6 claim was being based so that we would have an opportunity  
7 to contest them and despite the fact that we made every  
8 document in our files, and the Government has made every  
9 document in its files, available to the staff. I have the  
10 feeling of Shakespeare when he said, "Methinks we have  
11 nurtured us a viper unto our bossoms." We gave them every-  
12 thing we had. In the language of the gutter, we spilled  
13 our guts. We haven't had a transmittal of one piece of  
14 information that we could have relied on in coming to this  
15 meeting today to determine what the State based its position  
16 on.

17 Now, the first thing that has to be made crystal  
18 clear is that we are not talking about the existing river.  
19 I have said that before. The second point we have to make  
20 is that the only piece of documentation that would purport  
21 to show where the Yuba River was on the date of statehood  
22 is dated 17 years after statehood. Now, if you look at the  
23 presentation that was made to you today, the authorization,  
24 you will see that Item Number 3 states,  
25 "Intensive mining activities in the

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1 mid-nineteenth century" --

2 and I presume that means in the time of 1850 and thereafter --

3 "have irreparably altered the course and

4 nature of the Yuba River at this location."

5 Well, if hydraulic mining and dredging was going on in the  
6 mid-nineteenth century, namely 1850, how could anybody  
7 state that the only survey, dated in 1867, presented to you  
8 as the meander lines of the Yuba River on that orange-  
9 colored map, on the orange-colored lines on that aerial  
10 picture -- which we incidentally supplied, are the lines  
11 as they existed in 1850? There are plentiful indications  
12 that the river engaged in a sort of a flood plane with  
13 many rivulets of all kinds running over it. There really  
14 wasn't a Yuba River consistently at any period during this  
15 time, because every time hydraulic mining took place --  
16 and incidentally not by us, because our properties only  
17 came into being, our ownership in the early 1900's. But  
18 every time they mined and did hydraulic mining, they diked  
19 and dammed and changed the course of the river. How the  
20 State of California can now come in and say, "We're going  
21 to take your property because we have a map that shows where  
22 it was in 1867 and, therefore, we're maintaining that's  
23 where it was in 1850." So far there has not been one shred  
24 of evidence introduced, shown to us or, as far as I can tell,  
25 shown to your august Commission here, that would indicate

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1 where that river was in 1850. So I don't think you can  
2 indiscriminately go out and take people's property based  
3 on an 1867 survey.

4 I am going to leave for others the question of  
5 high and low water lines and the litigation before the  
6 courts now. There is nothing, for example, in connection  
7 with the 1867 survey even, the purported meander lines of  
8 the Yuba River at that time, that shows whether they were  
9 low or high water lines. And, as you know, the court cases  
10 are now insisting that the State's ownership would be  
11 limited in any event to the low water lines. We have --  
12 the Corps of Engineers will show you profiles of the river  
13 indicating that because of the rivulet and the flood planing  
14 effect, it would be almost impossible to locate a low water  
15 line by any surveyor during that particular period of time.

16 The other issue, of course, which must be met by  
17 the State if it's to prove ownership of these lands is that  
18 not only are these the lines as they existed in 1850 on  
19 September 9th, but that the river was navigable. The major  
20 case on the question of navigability, which is called the  
21 Daniel Ball, stated consistently and has been followed  
22 consistently by all the Federal Courts. Those rivers must  
23 be regarded as publicly navigable rivers in law which aren't  
24 navigable in fact. And they are navigable in fact when they  
25 are used or are susceptible of being used in their ordinary

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1 condition -- that means without dredging, changing, or  
2 alteration -- as highways for commerce, meaning that there  
3 had to be commercial use. You couldn't have a youngster  
4 sailing a sailboat across the river and claim this as a  
5 commercial use. Coming back to the citation,

6 "over which trade and travel are or may be  
7 conducted in the customary mode of trade  
8 and travel on water."

9 Now, the predecessors of the Gold Fields were never  
10 able to get their supplies and equipment up the Yuba River  
11 to the present gold field site. They had to be mule packed  
12 in from Marysville.

13 I think also the initial presentation that was made  
14 to you was aggravating and misleading because it didn't  
15 bother to indicate that the State of California, acting  
16 through its Legislature, over a period of eight years have  
17 twice indicated that the river was only navigable up to  
18 Marysville.

19 I think another thing that is extremely aggravating  
20 and misleading, for the public anyway, is the fact that our  
21 property has been singled out. Now, I don't know why we're  
22 being singled out. I don't know whether this is a personal  
23 vendetta situation by staff counsel, whom we have attacked,  
24 as you will have seen in the initial response to the initial  
25 litigating request that you had for failure to convey to you

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1 adequate information on which you could reasonably base a  
2 decision. But the mode of conduct has been to really try  
3 to obscure and obfuscate the issue in helping you reach a  
4 decision. For example, I speak today not only for Yuba  
5 Gold Fields, but I have with me in writing -- and will be  
6 glad to supply those to you if you'd like -- authorizations  
7 from 25 other property owners and two we got by telephone  
8 this morning -- which we can supply later if you want them --  
9 to represent them at this hearing. If the State elects to  
10 take property within the meander lines of the Yuba River,  
11 I do not believe that they have the privilege of just  
12 attacking ours. I think they must attack and seek to gain  
13 title for the State to all meander lines, all properties  
14 within the meander lines. And if they don't do it, I  
15 believe that any citizen has a right to say to the State of  
16 California, "If you believe you own the property within the  
17 meander lines because that's where the river was in 1850,  
18 based on this survey; and if you believe it was navigable,  
19 then I think there is a duty on the State to go after all  
20 these owners." There are some 121 such owners involved  
21 within these meander lines. They include shopping centers,  
22 apartment houses, private homes, farms, and even property  
23 owned by Yuba County. We will not stand by and permit  
24 ourselves to be singled out on a divide and conquer basis.  
25 If the State has a burden of proving title, it's got to come

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1 in and face up to the music and say to the 121 other owners,  
2 "Get out of your house or get out of your farm or pay us  
3 for the land", or whatever. We will not hold still for  
4 that, nor will the Federal Government hold still. We're  
5 not being named -- in my opinion, we're not being named  
6 in this action.

7 Now, this is, in our opinion, an outrageous  
8 situation for any person in a free society to be faced with.  
9 The State has dealt with this property for 130 years as if  
10 it was private property. We have paid real estate taxes  
11 on this property. The State, acting as part of the  
12 California Debris Commission, has entered into various  
13 conveyances, various title instruments, relating to the fact  
14 that the State did not have title or convey title or  
15 quitclaim title in connection with the Debris Commission  
16 to these particular areas. How can they now come in and  
17 say after 130 years on a hindsight basis that they have  
18 done this? It's very difficult to understand, with as big  
19 an area involved and as many people involved, why this  
20 Lands Commission, acting through its counsel, had to wait  
21 until this got into civil litigation.

22 Now, I must tell you that the consequences,  
23 independently of how you act here today, the consequences  
24 of what has been done here have created horrendous,  
25 irreparable harm and injury to 128 property owners. If you

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1 were a bank officer and read in the newspaper that the State  
2 was claiming title to a piece of land and a customer came  
3 in and said, "I need a new mortgage on my land to put my  
4 crops in" or "I want to improve my shopping center or my  
5 apartment house", would you lend him money on the strength  
6 of the fact that the State was not going to be able to  
7 maintain its claim? They have clout, and I think this  
8 amounts really to inverse condemnation by virtue of the kind  
9 of language that has been used and the kind of publicity  
10 that has been given to this thing. They sent a woman up  
11 to the library to try to find records of navigability who  
12 used it as a platform for a press conference. A newspaper  
13 there recently carried an article about this action. And  
14 instead of saying, "Yes, the State will have an obligation  
15 to attack all the owners in that area", said, "All we're  
16 doing is attacking Yuba", and they begged the question by  
17 saying, "for now."

18 Well, we will not stand by and be the only one  
19 attacked, and I don't think the Federal Government will  
20 stand by and be the only one attacked. I think that the  
21 admission that the State has made pertaining to the  
22 intensive mining activities in the mid-nineteenth century,  
23 in the 1850 area, are absolutely damning to the position  
24 that they can come and identify a piece of land on which  
25 they are asking you to lay claim. And if you concede to

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1 their wishes and give them litigating monies which are  
2 soroly needed in better parts of the State, they are going  
3 to tie up title to those properties and affect the lives  
4 of 121 property owners for maybe five to ten years until  
5 the issue can finally be litigated and resolved. And after  
6 all that's done, I don't know what the liability of the  
7 State is going to be for having done this. I for one am  
8 going to take the position that this is inverse condemnation,  
9 absent the supplying of a great deal more material than  
10 that one little item of navigability that has been read to  
11 you and without any presentation by staff counsel to you  
12 today that they can define the land in which the low water  
13 line of the Yuba River ran on September 9th, 1850.

14 Now, this is really a civil action situation  
15 between the tenants you are seeking to dispossess and the  
16 State that's being brought in as a tax boy. As a taxpayer  
17 in this State -- and incidentally a taxpayer with a sense of  
18 public conscience who last year took his savings from  
19 Proposition 13, some \$26,000, and gave it to various local  
20 agencies in Marysville who were deprived of budget by virtue  
21 of Proposition 13, I resent the amount of State time and  
22 money that has been spent thus far. And I will fight to the  
23 bitter end the expenditure of any more State monies until  
24 there is a much more definitive indication of what those  
25 lines were and a much more court wise provable statement of

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1 navigability.

2 Now, there is one other point I'd like to make  
3 before I close. And I hope you will forgive me if I have  
4 sounded overaggressive or overintent on this thing. But  
5 the lives of many people, not just the property owners,  
6 but of some 10,000 California shareholders are here at stake.  
7 I don't think it's unfashionable to be an owner of security  
8 in a public company. I don't think we should become a fat  
9 cat subject to State attack by virtue of that particular  
10 characterization of our ownership.

11 Now, there is one other item that I would like to  
12 cover in this matter. And that is the statement that the  
13 staff has tried to negotiate with us. I want to make clear  
14 to you exactly what happened. And, of course, this may be  
15 part of bureaucracy everywhere. But the reason we have  
16 not negotiated with the State after offering to do so was  
17 the same reason that I'm complaining about coming here  
18 unable to make a valid argument because the State has  
19 withheld the facts supporting its claims. When the question  
20 of settlement came up, we said, "Look, we realize that you  
21 can harass us and cloud our title for years. And if we have  
22 to be blackmailed or" -- again in the words of the gutter,  
23 when rape is inevitable, the thing to do is to lie back and  
24 enjoy it. As far as I'm concerned, we felt that we were  
25 going to be raped of our land. So we said, "Okay, let's

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1 negotitate a settlement of some kind if you want." We  
2 offered, for example, to quitclaim to the State, in exchange  
3 for a quitclaim on our lands, the bed of the existing Yuba  
4 River to the extent that that bed was now owned by us,  
5 because we have no desire in preventing the use of the Yuba  
6 River so long as our property isn't invaded in the process.  
7 But we said to the State, "If we're going to give up as a  
8 trustee for shareholders a valuable piece of land, the  
9 ownership in fact of the bed of the river, then tell us  
10 on what you base your claim and supply us with a quid pro  
11 quo. Why are we doing this? Why are we giving up ownership  
12 to land we hold to you in exchange for an ethereal claim on  
13 your part?" They have never given us one piece of paper to  
14 support their claim. And they have worked hard on this.  
15 They have had people up at the Marysville Library, which I  
16 think is the third or fourth oldest library in the nation,  
17 trying to find some evidence of commercial navigability.  
18 And they have come up with zilch.

19 Now, in closing, there are people here who can much  
20 more articulately present our point of view and who can  
21 answer technical questions as they relate to ownership, the  
22 course of the river, the navigability, and the legalities  
23 that will be faced if litigation is attempted in this matter.  
24 Obviously since the U.S. Government is involved, the State  
25 will not have the benefit of a paternal state court system

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1 helping it. It will have to go into federal court like  
2 any other citizen. And so far these types of things are not  
3 being sustained. Land grabs are not being sanctioned by the  
4 Federal Courts. And you could wind up wasting a fortune of  
5 money and years of staff time and wind up with nothing.

6 I would like to step over to the map and just show  
7 you some of the indications that I have been talking about,  
8 that is, where the river is and where it goes through our  
9 property and again reiterate to you we have less than  
10 600 acres at stake, not 8,000 as has been represented to  
11 you. The rest is Federal land.

12 This is the land sought to be being attacked.  
13 The Yuba River is the blue line that you see up here. In  
14 one corner, I would guess in less than ten percent of our  
15 property and in fact in an area where we do not own the  
16 property, but it's owned by the Federal Government. And  
17 we merely have either use or possession rights or mineral  
18 rights. Does the river flow through the area sought to be  
19 being attacked? This entire area of meander lines, land  
20 which is currently owned by the Federal Government has not  
21 been mentioned to you. The meander lines have not even  
22 been extended on the State's presentation -- and again I'm  
23 sure it's for emotional and maybe political reasons -- to  
24 show that they go clear down into the City of Marysville  
25 where some of these 121 properties, including the apartment

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1 houses, the homes, the farms, the ranches and the businesses  
2 are located. It would just seem to me that if this body  
3 would consider taking lands within the meander lines, it's  
4 fine to start it ten miles or so upstream of our property.  
5 But if good faith is being shown here, why didn't they show  
6 you the rest of the meander lines clear down into Marysville?  
7 Why did they stop conveniently at the end of our property?

8 I'm going to try to stay here as long as I can to  
9 answer any questions that you may have. If you have any,  
10 I'd like to respond to them now. If not, I would like to  
11 see the next people representing us in this matter and the  
12 Federal Government have its say.

13 Is there any way I can clarify or elaborate on  
14 what I have said?

15 CHAIRPERSON BELL: Are there any questions by  
16 Commission members?

17 MR. KRATTER: I'm sorry. I don't hear you, sir.

18 CHAIRPERSON BELL: I was asking if they have any  
19 questions.

20 MR. KRATTER: Oh, I'm sorry.

21 MR. ACKERMAN: Not at this time.

22 CHAIRPERSON BELL: I would only dispute that the  
23 other people will be much more articulate than you.

24 MR. KRATTER: Thank you.

25 CHAIRPERSON BELL: Any comments from our Attorney

1 General? Or shall we hear the rest of the witnesses?

2 MR. TAYLOR: I think we should reserve our comments  
3 to try to expedite it until all of them have made their  
4 presentation.

5 CHAIRPERSON BELL: I have four other witnesses,  
6 two of whom represent the company, two of whom represent  
7 the Corps. I do not know in which order you wish to appear.  
8 Would it be appropriate to have the company appear next,  
9 the Corps after that? If so, I have before me a request  
10 from John Denney -- I'm sorry. I got the wrong one. John  
11 Dacey, attorney at law for Yuba Gold Fields.

12 MR. DACEY: That is I, sir.

13 CHAIRPERSON BELL: Pardon?

14 MR. DACEY: That is I.

15 CHAIRPERSON BELL: That is you. Please proceed,  
16 Mr. Dacey.

17 MR. DACEY: I just have a very few preliminary  
18 comments, and then I would be open to any questions concerning  
19 the presentation that we made in our written opposition.

20 I believe that the written opposition that we  
21 prepared and supplied to the Commission adequately responds  
22 to whatever points the staff counsel has presented to us.  
23 The points that they made this morning, I'm not familiar  
24 with. It may be necessary to further respond to those points  
25 if we might have additional time. I'm not familiar with the

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1 points they raised. However, I would entertain any questions  
2 that the Commission might have with respect to the written  
3 opposition that we have supplied.

4           However, I would like to make preliminary  
5 statement at this time. The Gold Fields personnel, myself  
6 and Mr. Kratter and others, along with the United States  
7 Corps of Engineers' representatives who are here today,  
8 are appearing with the understanding that for this hearing  
9 to have any meaning, it must direct itself to the merits  
10 of whatever claims the State may have and that the request  
11 for authorization, we believe, must be supported by some  
12 showing, some preliminary showing that the claim has merits.  
13 We do not believe that showing has been made. We believe  
14 that with respect to the issues as to navigability, we  
15 see that there is a very serious doubt whether or not, based  
16 on the authorities that we have cited and analyzed in our  
17 opposition, whether or not the Yuba River was navigable in  
18 1850. Quite clearly, had it been navigable or could it be  
19 susceptible of commercial navigation, we believe that it  
20 would have been so used. It was not.

21           With respect to the bed of the Yuba River in 1850,  
22 again I have consistently requested staff counsel supply to  
23 me what information it may have or in what manner it would  
24 hope to establish where either the high or the low water  
25 mark existed as of 1850. It is quite clear that between 1850

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1 and 1867, the date of the initial survey indicating meander  
 2 lines, there are substantial changes in the course of the  
 3 Yuba River. We believe that unless there is material or  
 4 relevant competent evidence which will establish where the  
 5 bed of the Yuba River was in 1850, a court of law simply  
 6 will not speculate as to where it was. Certainly in view  
 7 of the fact that 130 years have passed or approximately 130  
 8 years have passed, that what evidence there may have been  
 9 with respect to where the Yuba River lie in 1850, this  
 10 evidence is no longer in existence, so far as we are aware  
 11 of.

12 We believe the State's delay in serving its claim,  
 13 whether or not it's meritorious or not, simply is not  
 14 justified by virtue of the delays in which have taken place  
 15 in their asserting this claim.

16 Now, again getting back to the purpose of this  
 17 hearing, I believe that again if the hearing is to have any  
 18 meaning, there should be some preliminary showing as to the  
 19 merits of a State claim. We believe that no showing has  
 20 been made. We believe in fact that what the staff counsel  
 21 would like is an authorization to use as leverage to unfairly  
 22 put us in a position where we have no choice but to make  
 23 unfair concessions. We believe that for this Commission to  
 24 authorize litigation at this time, it would do so, and  
 25 authorize expenditure of funds for a nonmeritorious cause.

1 At this time I would entertain any questions that  
2 the Commission might have with respect to the written  
3 opposition that has been supplied.

4 CHAIRPERSON BELL: Mr. Dacey, I have none.  
5 Do you have any?

6 MR. ACKERMAN: I think I'll wait to hear the Corps'  
7 presentation. And then maybe we can ask questions of you  
8 collectively.

9 MR. DACEY: Fine.

10 CHAIRPERSON BELL: All right. In addition I believe  
11 Mr. Frank Andres also indicated that he wishes to make  
12 comments. Mr. Andres, as my note indicates, is Vice-presi-  
13 dent.

14 MR. ANDRES: Yes. My name is Frank Andres. I'm  
15 Executive Vice-president of the Yuba Gold Fields. And I  
16 just wanted to say that no matter which way the State acts  
17 today, the lives and titles to the property which have  
18 already been adversely affected, an effect on their validity,  
19 there is going to be a cloud that's been cast upon these  
20 titles by the staff and that it will be -- the way it  
21 stands today, it could possibly never be curable.

22 And that's my statement.

23 CHAIRPERSON BELL: Mr. Andres, would a court  
24 determination clear the title?

25 MR. ANDRES: That's a possibility. It could be.

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1 CHAIRPERSON BELL: Thank you, Mr. Andres.

2 Any questions?

3 If not, there are two representatives of the Corps  
4 of Engineers here, Mr. Don Denney, District Counsel, and  
5 Mr. Morgan Wheeler, Chief of the Real Estate Division.

6 Gentlemen, I'll leave it up to you as to who goes  
7 first. Just identify yourselves for the reporter.

8 MR. DENNEY: My name is Don Denney. I'm the  
9 District Counsel for the U.S. Army Corps of Engineers,  
10 Sacramento District.

11 We're happy to come before the Board today to  
12 present the position of the Corps of Engineers in this  
13 matter. As we go along, perhaps you will see that we have  
14 a very difficult problem to resolve, not only as far as  
15 the U.S. Government is concerned, but perhaps with the  
16 State and perhaps with other private individuals. We want  
17 to set out as near as we can the problems that we have  
18 encountered the last two or three years. And we have spent  
19 a substantial amount of our time looking into this matter  
20 as to the titles, as to legal theories, as to the possi-  
21 bility of the State ownership based on navigation, and as  
22 far as the respective ownerships between Yuba Gold Fields  
23 and the U.S. Government.

24 Perhaps just on a minor matter to start with,  
25 counsel for the State Lands Commission mentioned a

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1 certification that they desired to get from the Corps of  
2 Engineers. I happen to have it here in my hand, which I'd  
3 be happy to hand to him. It appears to be, for your  
4 benefit, an excerpt from a report made by a person by the  
5 name of Stanley, who used to be employed by the U.S.  
6 Army Corps of Engineers. And he made an interesting  
7 historical account of the area. I'm not certifying that  
8 that historical account is correct. I'm certifying that the  
9 copy that they handed us purports to be a copy of a couple  
10 of pages from that report. So if we don't agree on anything  
11 else, we agree on that certification.

12 CHAIRPERSON BELL: Thank you, Mr. Denney.

13 MR. DENNEY: I might say I have volumes of other  
14 papers that we have offered to give to the State, and they  
15 have accepted some of it. We have 17 more boxes which we're  
16 going to paw through one of these days. So far they have  
17 only asked me to certify to the two pages. I'd be happy to  
18 certify to most anything else that we have in our files,  
19 for what it's worth. However, it did not appear to me that  
20 this was a court session, and I really -- I don't know where  
21 we stand. But anyway, so much for the certification.

22 CHAIRPERSON BELL: It's not designed to be, Mr.  
23 Denney.

24 MR. DENNEY: Okay. The Corps of Engineers made an  
25 official -- what we call an official position paper on this

1 matter or at least as it relates to this matter by letter  
2 dated 25th of October, 1978. Perhaps you have seen it.  
3 It was addressed to Mr. Frank, Attorney General's Office,  
4 representing the State Lands Commission. In that we go  
5 into a little bit of history. And if you don't mind, I'll  
6 kind of start with that letter. We say that since the  
7 State came into the Union in 1850, that the Yuba River is  
8 nonnavigable beyond Marysville. That's our position. And,  
9 of course, the significance of that is that if it's non-  
10 navigable above that point, then, of course, the State does  
11 not own the bed of the river.

12 There are other questions, of course. Even if the  
13 river was navigable -- well, of course, that has already  
14 been pointed out to you -- the difficulties in the location  
15 of that river and, perhaps a far more important question,  
16 once you determine whether it's navigable or not, the  
17 singular question of the high or low water mark. And we'll  
18 say a little bit more about that later. But anyway, it's  
19 our position, and I think adequately stated by the State  
20 Legislature in 1850 and 1851, that the Yuba River is not  
21 navigable above Marysville. And, of course, if this  
22 Commission chooses to adopt that position, the question as  
23 far as the State is concerned goes away. It goes away.

24 Now, the question is who is going to speak to the  
25 State of California? Is it the Legislature? Is it the

1 State Lands Commission? Or are you going to dump this  
2 into the courts one more time. And it has been in the  
3 courts before, and we'll get to that in a minute.

4 Now, the problem has been there for 130 years.  
5 The players have changed, as we shall see. Names come and  
6 go. Some names have been great; some not so great. I have  
7 to borrow from something I read a long time ago. I don't  
8 know whether or not we will be long remembered or not after  
9 today's session. But I'm sure the problem will probably go  
10 on forever. We're not the first ones to attack this  
11 problem. It has been attacked before. And I don't know  
12 that whatever we resolve will be the final resolution of  
13 the matter. All I'm saying is that it has been laid to rest  
14 before, and there is a good place to leave it, where it has  
15 been laid before.

16 Now, what's the Corps of Engineers' interest in this  
17 area? Well, beginning around 1890 or so when the hydraulic  
18 mining up above the Yuba River was flooding and, you might  
19 say, burying the river, it filled up the channel, as you can  
20 see by looking at the center map, the photograph. It filled  
21 up the channel. And when the river dumped into the flood  
22 plane, it filled up the flood plane. So the river lost  
23 its identity, you might say, as far as the hydraulic debris  
24 coming down. Sometime later or about the time the debris  
25 began to come down, as near as I can tell, we went into the

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1 U.S. Government, not the Corps of Engineers, but the  
2 Department of Interior, put some meander lines somewhere  
3 where the river was once upon a time. The purpose of those  
4 meander lines -- and, by the way, some people are looking  
5 at those meander lines as though that's the river lines.  
6 The purpose of the meander lines was the purpose of patenting  
7 lands on both sides of the river and as it turned out, in  
8 my opinion, the river itself. It is the position of the  
9 Bureau of Land Management that those meander lines, assuming  
10 the river is nonnavigable, when they patented the land up  
11 to the meander lines, by operation of law it patented the  
12 lands to the bed of the river. So that's the purpose of  
13 the meander lines, merely to outline high land or upland from  
14 low land for patent purposes. It does not identify either  
15 the high or low water mark or, for that matter, not the  
16 real questions that we're dealing with here today. It's a  
17 nice line to look at for those who would like to claim a  
18 wide area of land between the meanders. But that's all it  
19 represents in the patent lines.

20 Now, we have had occasion to deal into the history  
21 of this thing a little bit. In 1882 Lieutenant Colonel  
22 Mendell of the U.S. Army Corps of Engineers was commissioned  
23 to make a report about this area of the Yuba River. And  
24 among other things, what did he say? He is one of those  
25 players, by the way, of almost hundred years ago. And here

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1 we are playing the same game again. What did he say?  
2 This is 100 years ago. He had an opportunity to go out  
3 there and dig, looked at the river, made a survey based on  
4 instruments, he said. And he says it was a nonnavigable  
5 stream. 1882, Lieutenant Colonel Mendel. Now, where is  
6 that report now? Well, I don't know. It may be lost  
7 somewhere, except it does happen to appear in the celebrated  
8 case of Woodruff vs. Bloomfield Gravel Mining Company,  
9 which we mentioned in our 25 October letter. That's the  
10 celebrated case of a Judge Sawyer that went into the whole  
11 business of hydraulic mining. And the question was is  
12 whether or not the people operating the hydraulic mines  
13 would be allowed to continue to dump the debris into the  
14 Yuba River. The Court held that they could not. Why?  
15 Because the debris would wash down and obstruct navigable  
16 water. But where was that navigable water? That was the  
17 Feather and the Sacramento Rivers, not the Yuba River.  
18 The document, the Mendell report recited, I think, a  
19 significant clue as to where we are today. It recited that  
20 the Yuba was -- and I want to say it again because that's  
21 what we're talking about today -- it was a nonnavigable  
22 stream. There were other cases after that. By the way,  
23 that case was decided in 1884.  
24 There were additional cases concerning the  
25 authority of the California Debris Commission. Now, what

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1 is the California Debris Commission? Is that the State or  
2 is that the Federal Government? Well, as it so happens,  
3 it's a little bit of both. The actual title, California  
4 Debris Commission, is a United States Government agency.  
5 It is embodied now in the U.S. Army Corps of Engineers.  
6 We in Sacramento, we administer what is now left of the  
7 California Debris Commission. As it so happens, the  
8 California Debris Commission, a good part of its present  
9 activity is now confined to the Yuba River. It happens to  
10 be overlapping with another U.S. Army Corps of Engineers  
11 project called the Yuba River Project, which happens to be  
12 in this same area. As it happens, the State of California,  
13 through the State Water Department, we are kind of a  
14 partner up there. Since the turn of the century, the  
15 State of California and the U.S. Army Corps of Engineers  
16 and/or the California Debris Commission, we have been a  
17 partner. That is to say, the State has furnished half the  
18 money, we have furnished half the money to build certain  
19 barriers, dikes, retards, levies, and whatnot in this  
20 particular area in an effort to keep the river confined to  
21 a particular channel, keeping in mind, of course, that the  
22 original river bed had been filled up with debris, and  
23 the river tries to spread all over the place. As a matter  
24 of fact, an area of about two miles wide from about where  
25 you're looking at on the narrows there down to Marysville,

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1 the river spreads out over an area of about two miles. So  
2 our endeavor has been to keep that river in a particular  
3 channel to protect the people on both sides, the "people"  
4 being people with homes, farms, and what have you. But  
5 anyway, it wasn't attacked on the authority of the California  
6 Debris Commission.

7 And there was a case decided in 1898, North  
8 Bloomfield Gravel Mining Company vs. United States, in  
9 which there was a recitation -- and I think this is very  
10 important as far as your action today is concerned -- the  
11 recitation being that since 2nd February, 1848 -- this is  
12 two years before statehood -- since 2nd February, 1848, and  
13 there is a quote,

14 "The Yuba River during the same time  
15 was and still is" --

16 Now this is 1898, remember, first case 1897. Let me go over  
17 the quote one more time.

18 "The Yuba River during the same time  
19 was and still is navigable from its mouth" --  
20 okay? -- "navigable from its mouth to a  
21 point about one mile above its mouth",

22 which puts it right at Marysville. So now we've got two  
23 pieces of evidence. We've got the State Legislature having  
24 spoke. It said Marysville is the head of navigation. Now  
25 we have a Federal Court. It has spoken; it has said twice.

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1 It said that the Yuba River was a nonnavigable stream. It  
2 has also said that the Yuba River was navigable from its  
3 mouth to Marysville. Now, we as new players can play the  
4 game one more time. I forecast that the end result is going  
5 to come out precisely as it did in 1898, the last case that  
6 I cited.

7 Now, we have heard a little bit about steamboats,  
8 dredges, whatnot going up the river. Well, One robin, of  
9 course, doesn't make a spring. It seems as though I have  
10 heard that somewhere. Maybe a boat did go up during flood  
11 water. When it floods, an awful lot of water does come down  
12 that river. In the summertime -- well, except for the  
13 present dams upstream -- I would say it would be a dry bed.  
14 Nobody knows really at the moment. I personally feel like  
15 that there was long periods of the year where there was no  
16 water or very little in the Yuba River historically. Now,  
17 as I say, because of upstream dams, there is water coming  
18 down the river most of the year. And during the spring  
19 floods a great deal of water comes down, a lot of water.  
20 Of course, the Corps of Engineers is thinking about even  
21 maybe some day building another dam upstream to catch some  
22 of that water. That's another story, perhaps even a longer  
23 one than this one. I don't know. We'll see how that one  
24 comes out.

25 Well, so, what about some of the facts? So we do

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1 want to play again. Well, we're ready to play again if you  
2 people are. But why not look at some of the facts. As I  
3 say, we have been looking at this problem the last two or  
4 three years and spending a good deal of time. Originally  
5 our problem we thought was with Yuba Gold Fields. We had a  
6 lot of discussion with the Yuba Gold Fields people. We had  
7 ten or twelve sessions. I don't know what happened.  
8 Finally we saw the light or they saw the light, and we  
9 decided that the best thing as far as between Yuba Gold  
10 Fields and ourselves was concerned was, well, let's try to  
11 resolve our problems. The concept was you guys get what you  
12 need and we get what we think we need. And then we'll try  
13 to define the area in between. And with that concept we  
14 set out to make an exchange agreement. And, by the way,  
15 the Corps of Engineers feel like it's taken care of the  
16 public trust up there. Now, we're always glad to get any  
17 help that we can get, but we can do without help that doesn't  
18 help us.

19 But anyway, getting to some of the facts again.  
20 Yuba Gold Fields, as I understood it, wanted to go in and  
21 do some dredging. We took the position that we had certain  
22 rights in there that we must protect. We had the Daguerre  
23 Point Dam. We had the levies; we had the retaining barriers.  
24 We had the retards; we had the wiers. We had all sorts of  
25 things in there that we felt must be protected. And keep in

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1 mind the State of California was our partner in all of this.  
2 We took the lead. They were furnishing half the money; we  
3 were taking care of the business. We were taking care of  
4 the store, so to speak. Now we have another arm of the  
5 State Government, apparently for perhaps different reasons,  
6 don't like the way that we were keeping the store. Well, I  
7 don't know whether they are or not. They really haven't  
8 taken a firm position. They have just made some noises,  
9 as I understand it. Now, perhaps today there will be a  
10 direction that the State may take. But up to now, as far as  
11 we are concerned, the State has been very cooperative.  
12 We have worked well with them. We feel like that we have  
13 enjoyed a good relationship with the State. But when it  
14 comes to ownership, that's something else. We feel very  
15 strong that the U.S. Government has an interest in there  
16 that we must protect against all comers, individuals or  
17 anyone else. And I will tell you why.

18 First, I have a mosaic here which is something like  
19 the aerial photographs that you have. And I will just lay  
20 it aside here. But I want to point out where in general  
21 the U.S. Government believes that it owns the land or at  
22 least interest in the land. And I doubt that you will be  
23 able to see it from there. But generally you can see it is  
24 the same area. This apparently takes Yuba Gold Fields  
25 into consideration. And I might say this -- let me try to

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1 explain what has happened down since the turn of the century.  
2 The Corps of Engineers went into this area. We were going  
3 to try to control the river. And so what happened, somebody  
4 -- I don't know who, but another player -- decided who owns  
5 the land in this area. And as with all of our projects,  
6 that determination was made by somebody. So we go in and  
7 we contact several dozen owners in this area. We buy their  
8 interest. What interest did we buy? Generally we bought  
9 the right to use the surface. And what was reserved, it  
10 was various kinds of estates reserved: Federal interests,  
11 mining interests, precious metals interests, use and  
12 possession of the surface, various kinds of, as I say,  
13 estates were reserved. As it so happened, Yuba Gold Fields  
14 became in possession of those reserved estates in most  
15 cases, or at least in several cases. That is the interest  
16 that Yuba Gold Fields primarily owns in this general area  
17 from our determination. And as it so happened, down through  
18 the years the U.S. Government sold off some of the land it  
19 had bought, the so-called settling basin area, which is the  
20 large area down here. Yuba Gold Fields bought that from the  
21 Government. There is also some land up in here that Yuba  
22 Gold Fields bought from the Government that at the time the  
23 Government thought was in excess to its needs. However  
24 there were several hundred -- several thousand acres actually  
25 still involved where the U.S. Government owned an interest

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1 and Yuba Gold Fields owned an interest.

2 Now, what you can't see there from there, I'm  
3 sure, we have outlined in a dark line this entire area in  
4 which the U.S. Government owns an interest. Now, this is  
5 probably the same area that the State now seems to want to  
6 participate in our endeavor as far as land ownership is  
7 concerned. So that's how Yuba Gold Fields and the Corps of  
8 Engineers have got into our discussion which has been going  
9 on the last two or three years. We ultimately have arrived  
10 at what we call an exchange agreement which essentially  
11 would give Yuba Gold Fields the land to operate on exclusively  
12 when they think they want to operate on. We retain land  
13 in which we think we need for two purposes: one, the  
14 Daguerre Point, the barriers and whatnot, the existing  
15 facilities, and plus the possibility of a Marysville Lake  
16 project which was thrown in for good measure as far as we're  
17 concerned. It was very important to us to define the  
18 interests of Yuba Gold Fields and the U.S. Government.

19 So what I'm saying here is -- by the way, super-  
20 imposed on this are the so-called meander lines that you keep  
21 hearing about. It goes down through the heart of the  
22 property. The river is up here. Now, whether or not the  
23 river in 1850 came down through the meander lines, I don't  
24 know. Whether it was up here, I don't know. All we can show  
25 you is on some older maps it does depict the location of the

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1 river. You can draw from it whatever conclusions you desire.  
2 In my opinion it's certainly not or not necessarily at least  
3 the meander lines now.

4 One other thing I want to say before I leave this,  
5 you can see that this entire area has been dredged, actually  
6 been dredged several times. There are mountains of sand  
7 and gravel out there. And some areas the river still flows,  
8 some areas it does not.

9 Now -- I'll just hold it just for a minute. Here  
10 is a map made in 1904. There are two sections of map here.  
11 One is the lower half of what I would call the lower half  
12 of the river from Marysville up almost to Daguerre Point Dam.  
13 What I'm showing you, you have heard the figure of 121  
14 owners here this morning. Well, as you can see, this is a  
15 very busy map, all sorts of colors, all sorts of lines all  
16 over the place. But what this means to me, you have heard  
17 the figure of 121 owners. Well, that's as good a figure as  
18 any. What this shows is that the U.S. Government bought  
19 down to the area that we're generally talking about today,  
20 in the area of the Daguerre Point Dam. We bought on both  
21 sides of the river and the river bed itself. That was at  
22 the turn of the century. We had deeds saying that -- and,  
23 of course, just the nature of those rights, of course, there  
24 was an argument, separate argument between Yuba and us.  
25 But anyway, we got documents which courts later determined

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1 to be deeds by court decision in 1920, said that the  
2 Government owns in fee both sides of the river, in my  
3 opinion, also includes the lands within the bed of the  
4 river, because it's the same document. And we have acted  
5 as though we own this since 1901 or 1902, the bed of the  
6 river as well as on both sides. Downstream we've got a  
7 little different kind of a document. We've got what we  
8 call easements only downstream. However they, too, are on  
9 both sides of the river. It's the right to built barriers  
10 and all of our construction and whatnot as necessary down-  
11 stream.

12 Now, you can see where we bought is about a strip  
13 two miles wide immediately above Marysville. Now, where was  
14 the original river in 1850? Was it as we contend a stream  
15 200 feet wide, or was it a navigable stream two miles wide  
16 as perhaps some would like to assume? Big question. It's  
17 our position that even if the Yuba River is a legally  
18 navigable stream, that it would be limited to a stream 200  
19 feet wide through this area and not between the so-called  
20 initial meander of the river and certainly not the area  
21 two miles wide in which we have purchased. So again we say  
22 all this time the State of California has been our partner  
23 in this area, never once, not one time has the State even  
24 indicated that they own one acre of that land. We think  
25 it's a little late in the day for the State to come in or

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1 anyone else and say that anyone other than the adjoining  
2 owners own this land in the bed of the river.

3 Now, this I don't think I'll really show you.  
4 But I want to talk about it.

5 Am I taking too much of your time?

6 CHAIRPERSON BELL: No, that's all right.

7 MR. DENNEY: These are copies of maps kind of  
8 similar to theirs. These are official records of the  
9 California Debris Commission. And this particular copy  
10 I want to give to the State before I leave today. But it  
11 happens to be the only copy I had. So anyway, as you can  
12 see, it's kind of a bulky set of maps. But I want to show  
13 you what we're kind of looking at and what we're faced with.  
14 I want you to know the problem that you're getting into  
15 other than the legal aspects of the case. Now, it might  
16 be easy to turn it over to the Attorney General's Office  
17 and say, "You figure it out." Here is that two-mile wide  
18 stretch or thereabouts that I was talking about. You see  
19 the many channels of the river down through there? Which  
20 one of those does the State want, or do you want them all?  
21 If you want them all, it's our position that none of them  
22 could even possibly be navigable because there is not that  
23 much water. It changes with the seasons. However, we do  
24 have fairly good control of it. Now, we do have a main  
25 channel down about through the middle of it that we're trying

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1 to maintain.

2 CHAIRPERSON BELL: Mr. Denney, may I just ask you  
3 to pause for a moment?

4 Are you pretty close to the end of your paper?

5 THE REPORTER: Yes.

6 CHAIRPERSON BELL: Would you like to take a  
7 couple-minute break?

8 THE REPORTER: Yes.

9 CHAIRPERSON BELL: Mr. Denney, I'm going to ask  
10 for a couple-minute break.

11 (Thereupon a brief recess was taken.)

12 CHAIRPERSON BELL: Ladies and gentlemen, I'd like  
13 to get the meeting started again. Five minutes have  
14 expired.

15 Mr. Denney, have you concluded, or do you wish to  
16 say something more?

17 MR. DENNEY: Just one more point.

18 CHAIRPERSON BELL: Thank you. We have another  
19 distinguished member of the Corps to testify.

20 MR. DENNEY: Since I was going to turn this over  
21 to the State Lands Commission, I wanted to explain what it  
22 was. This is a cross section taken about the year 1906  
23 and updated through, I think, about 1912. It shows sections  
24 across the area all the way from Marysville all the way up  
25 to Park's Bar. That's in the package. I have just selected

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1 one here to show where it is. Take the one right at  
2 Daguerre Point Dam is all these wiggly lines here. This goes  
3 across an area, a section of about two miles from the high  
4 land on one side to Daguerre Point and the high land on the  
5 other. This shows the bed of the stream, you might say.  
6 Of course, where is the bed of the stream is kind of a  
7 problem that we've got. This shows two miles.

8 Now, where is the river? The river is this little  
9 point right here and maybe -- well, actually right here.  
10 On that whole two-mile section the river is right here.  
11 Even assuming that the State owns -- assuming that the river  
12 is a navigable stream and the State thereby owns, what do  
13 they own? It's our position they own this little piece  
14 about 200 feet wide right here, not the big wide area that  
15 you see on the maps, not the meander lines that you see.

16 What is the other significance of the 200-foot  
17 strip? To me that says that's why the river and other  
18 people before us decided that it was a nonnavigable stream.  
19 It just doesn't make sense for a stream that wide to be  
20 navigable. So I'll leave these with the State Lands  
21 Commission. This old map they have a copy of. I'll leave  
22 this with the State Lands Commission also. I'd like to  
23 have this old map back for historical purposes, because this  
24 may come up again in a couple hundred years.

25 CHAIRPERSON BELL: It could very well.

1 Well, Mr. Denney, thank you very much.

2 I believe Mr. Morgan Wheeler also of the Corps of  
3 Engineers, who is the Chief of the Real Estate Division,  
4 wanted to address the Commission.

5 MR. WHEELER: Thank you, Mr. Chairman. My name  
6 is Morgan Wheeler. I'm Chief of the Real Estate Division  
7 for the U.S. Army Corps of Engineers in Sacramento.

8 Mr. Denney has basically stated the Corps' position.  
9 So I will take, I hope, less than 60 seconds to make a couple  
10 of brief comments.

11 I would like to make very clear to the Commission,  
12 in view of a statement made during opening remarks by  
13 staff counsel, that the question of title to the bed of the  
14 Yuba River had no effect whatsoever on the Corps working  
15 on an exchange agreement with Yuba Consolidated. We  
16 recognize the potential that the State might come in and  
17 make a claim under its sovereignty. However, we are not  
18 concerned with that, so it was in no way connected with the  
19 desirability to make the exchange.

20 Secondly, the exchange, as Mr. Denny pointed out,  
21 was made after having analyzed the title claim by the  
22 United States and various lands which the title derived  
23 from written contracts and documents, not from something  
24 hypothetical. These were surveyed lands easily identified.  
25 The question was as to what rights were owned by each party.

1 MEETING  
2 STATE LANDS COMMISSION  
3

4  
5 EXCERPT  
6 CALENDAR ITEM 18  
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10 BOARD OF HARBOR COMMISSIONERS  
11 925 HARBOR PLAZA  
12 SIXTH FLOOR, BOARD ROOM  
13 LONG BEACH, CALIFORNIA  
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19 THURSDAY, APRIL 26, 1979  
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MEMBERS PRESENT

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Mr. Roy Bell, Chairman  
Mr. David Ackerman  
Mr. John Jarvis

STAFF PRESENT

Robert Hight  
Richard Golden  
James Trout  
Dianne Jones

ALSO PRESENT

Greg Taylor, Attorney General's Office



I N D E X

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P R O C E E D I N G S

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CHAIRPERSON BELL: Calendar Item 18.

MR. TROUT: Mr. Chairman, Calendar Item 18 involves the renewal of a lease that was signed in November of 1974 for the Malibu Pier Corporation. The proposal before you is a 30-year lease, actually a 10-year lease with two 10-year renewals at \$6,000 minimum or one percent of the gross, whichever is greater.

We have some photographs taken of the pier recently which I'd like to pass to the Commission.

CHAIRPERSON BELL: Since the lease expired on November 15th, 1974, why are we in on this thing?

MR. TROUT: The lessee has been very difficult to deal with. One of the problems is that the rental prior to expiration was around \$1300 a year. The rental on the area that had originally been leased would have been significant, in fact, several times the \$6,000 now being proposed.

Over a period of years we have attempted to work with the lessee. The area of the lease has been reduced. The lease requires that the pier be in an acceptable state of repair which, from the photographs which we have now obtained, there may be some question. But the Staff, in an attempt to resolve the situation, sometime ago made an

1 offer which was accepted on behalf -- by the applicant, the  
2 offer being that the Staff felt it could represent the  
3 item before you.

4 CHAIRPERSON BELL: What's an acceptable state of  
5 repair? It just happens that I have been on this pier,  
6 but I was on this pier many years ago. My reaction is from  
7 those pictures, we better spell out pretty carefully what  
8 "state of repair" means. I'm a little hesitant to go into  
9 a 30-year lease, even though the Staff has recommended it,  
10 without some actual spelling out and guarantee of making  
11 sure that that pier is put back into an acceptable position  
12 to the State. I would be hesitant to go to that long-term  
13 lease.

14 On the other hand, on the other side, from the  
15 property owner's standpoint, it seems a little unreasonable  
16 to jack the rent up on him to this degree until we have  
17 made sure that the pier has been corrected.

18 MR. TROUT: Mr. Chairman, perhaps it would be best  
19 if we put this item over to another Commission meeting.  
20 We'll get back with the lessee. Perhaps we can define what  
21 an acceptable or good state of repair is and set a date for  
22 restoration of the pier to that condition. And we'll also  
23 discuss the possibility regarding the rent.

24 CHAIRPERSON BELL: Yes. I would suggest that you  
25 find some reasonable length of time to expect the person.

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1 that owns it to put it into the degree of repair which is  
2 proper for the State; and until then, you don't raise his  
3 rent.

4 MR. TROUT: I think we'd be happy to look into  
5 that, Mr. Chairman. We had some indication that someone from  
6 Malibu Pier Corporation might be here, although we haven't  
7 been handed an attendance slip. There may be someone that  
8 wants to speak.

9 CHAIRPERSON BELL: May I ask if anyone in the  
10 audience wishes to address the Board on this item?

11 Apparently no one from the Malibu Pier Corporation  
12 has made it.

13 MR. ACKERMAN: I don't know. This is just a  
14 personal opinion of mine --

15 CHAIRPERSON BELL: Any objection?

16 MR. ACKERMAN: No objection. I just wanted to  
17 question -- given the photographs that indicate the condition  
18 of the pier, I just wonder if the insurance question should  
19 be looked at, too, as to the liability coverage and  
20 protecting the State's interest, depending on what's  
21 negotiated about the condition of the pier. This may not  
22 be an adequate level if something is worked out on the  
23 status of the pier.

24 MR. TROUT: The Staff will take the Commission's  
25 comments to heart, and we'll see what we can do. We'll

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1 talk to the applicant and bring the matter back to you at  
2 another time.

3 CHAIRPERSON BELL: "All right. Item 18 will be  
4 put over with the admonitions the Commission has given to  
5 the Staff. I don't think the Staff has done a very  
6 adequate job on this item, to be very honest with you.  
7 And I hope you do a better job on the next one.

8 MR. TROUT: We'll take that to heart, sir.

9 (Thereupon the proceedings regarding  
10 Calendar Item 18 were concluded.)  
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CERTIFICATE OF SHORTHAND REPORTER

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I, FRANCES ANN PETERSON, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing State Lands Commission Meeting excerpt was reported in shorthand by me, Frances Ann Peterson, 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 1st day of May, 1979.

*Frances Ann Peterson*  
FRANCES ANN PETERSON  
Certified Shorthand Reporter  
License Number 4379