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MEETING
STATE LANDS COMMISSION
STATE OF CALIFORNIA

ORIGINAL

ROOM 447
STATE CAPITOL
SACRAMENTO, CALIFORNIA

THURSDAY, SEPTEMBER 25, 1986
10:00 A.M.

Nadine J. Parks
Shorthand Reporter

A P P E A R A N C E S

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Leo T. McCarthy, Lieutenant Governor, Commissioner,
Chairman, and Jock O'Connell of the
Lieutenant Governor's Office

Lizabeth Rasmussen for Kenneth Cory, State Controller,
Commission Chairman

Nancy Ordway for Jesse R. Huff, Director of Finance,
Commissioner

Staff Present:

Claire T. Dedrick, Executive Officer
James F. Trout, Assistant Executive Officer
Robert C. Hight, Counsel
David Judson, Department of Justice
Wilbur "Moose" Thompson
Alan Hager

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P R O C E E D I N G S

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3 CHAIRMAN MC CARTHY: Welcome, ladies and
4 gentlemen, to this meeting of the State Lands
5 Commission.

6 For everybody's knowledge, Items 15, 28, 29,
7 and 30 are removed from the calendar. If anybody's
8 here on those items, they will not be taken up today.

9 Minutes of the last Commission meeting. Are
10 there any corrections?

11 MS. RASMUSSEN: Move.

12 CHAIRMAN MC CARTHY: Moved, seconded. They
13 are approved.

14 Consent items are items 1 through 14. Does
15 anyone wish to remove any of those items from the
16 consent calendar?

17 MS. ORDWAY: Moved.

18 CHAIRMAN MC CARTHY: They're moved. Those
19 recommendations are approved and noted.

20 Item 15. 15 is off. We're on Item 16.

21 EXECUTIVE OFFICER DEDRICK: Yes, Commissioners.
22 This is our report to you of the final -- consideration of
23 the final report on the Sacramento River marina study.

24 The staff is recommending that the
25 Commission adopt the report and also give us authority

1 to go out and meet with local government and other people
2 in the development of an implementation plan, which we
3 would bring back to you within two months.

4 The report has been at your direction
5 distributed to the public. We've had a lot of comment,
6 all of it favorable. We've had no negative comments on
7 the report, a lot of encouragement that the Commission
8 should go forward with this.

9 And now the question is how do you implement
10 the recommendations of that report? Some of these
11 recommendations clearly relate to other appropriate
12 jurisdictions -- local governments, some Federal, and
13 other State agencies, such as the Water Quality Control
14 Board.

15 So, what staff would like to do is meet with
16 all those agencies and develop an implementation plan
17 that would address appropriately the other levels of
18 government's responsibilities and come back to you with
19 knowledge or a recommendation as to how to go forward
20 with it.

21 We recommend also that we speak directly from
22 the Commission to the leaders in local government as to
23 the goals that the Commission has in carrying out this
24 plan.

25 And that's where we're at. And as far as I

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1 know, we have no commenting people on this issue today.
2 Do we? I don't see anybody.

3 CHAIRMAN MC CARTHY: Any questions from
4 members of the Commission? Any comments from anybody
5 else in the audience?

6 MS. ORDWAY: This motion, I believe, is to
7 allow for a two-month period in which staff will work
8 with other agencies from Federal, State, and local
9 governments?

10 EXECUTIVE OFFICER DEDRICK: And bring back to
11 you --

12 MS. ORDWAY: And then come back to us in
13 November probably?

14 EXECUTIVE OFFICER DEDRICK: Yes. And the
15 relevant thing that I failed to mention is that the
16 moratorium on construction we recommend to stay in effect
17 during that period.

18 MS. ORDWAY: During that 60-day period.

19 EXECUTIVE OFFICER DEDRICK: We recommend
20 that you do not lift the moratorium at this stage.

21 MS. ORDWAY: Motion.

22 CHAIRMAN MC CARTHY: There's a motion.
23 Approved as requested. 17.

24 EXECUTIVE OFFICER DEDRICK: 17 is a request
25 for approval of a staff report on the Commission's

1 Maintenance Dredging Policies.

2 In the past, we have had a process of
3 charging for dredging separate from -- issuing permits
4 for dredging separate from leases. There have been a
5 good many complaints from various lessees that the
6 process is inefficient. And we had people having to go
7 both to Los Angeles, to Long Beach, and to Sacramento to
8 get their permits. It was inefficient.

9 We have about a two-year study by the staff
10 working with the people who were involved in the -- both
11 the marinas and the dredging business. And the result
12 is the report before you which, to our knowledge, has
13 very strong support.

14 Ellen Johnck, who is the Executive Director
15 of the Bay Planning Coalition is here and has asked for
16 time to speak. And I recommend you hear her. I'm sure
17 you would anyway.

18 CHAIRMAN MC CARTHY: Have you finished your
19 report?

20 EXECUTIVE OFFICER DEDRICK: Yes, unless you
21 want more details. I'll be happy to give it to you, but
22 it is in the report.

23 CHAIRMAN MC CARTHY: Any questions from the
24 members of the Commission? We have a request from
25 Ellen Johnck, the Executive Director of the Bay Planning

1 Coalition to be heard on this item.

2 Would you like to step forward, please.

3 MS. JOHNCK: Good morning. I guess this is
4 on (speaking of microphone), right?

5 Yes. It's a pleasure to be here this
6 morning. And I will be brief.

7 I'm Executive Director of a nonprofit
8 association called the Bay Planning Coalition. We
9 represent approximately 200 business concerns and local
10 government entities in San Francisco Bay and along the
11 shore line. Our basic purpose is to ensure that a
12 fair, reasonable, predictable, and expeditious permit and
13 planning process occurs.

14 About two years ago, we approached your
15 staff with a request to look at your specific policy for
16 charging royalties on spoils dredged for navigational
17 purposes in San Francisco Bay.

18 Our basic concerns -- representing a good
19 deal of the marina owners and dredging industry in the
20 Bay -- was that this charge was an unreasonable and an
21 unnecessary burden on dredgers.

22 Basically, we felt that the spoils are mud,
23 have little intrinsic value, even for fill. And so, your
24 staff very graciously agreed to look at this. And in the
25 course of looking at that particular policy, began a

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1 study to look at all your permitting procedures for
2 maintenance dredging. And we were quite pleased to
3 see a very conscientious effort developed which resulted
4 in the recommendations that you have before you today.

5 So, I'm here first of all to support the
6 recommendations as they have come out of this study. I
7 do have two additional requests. Since our original
8 concern was on the royalty charge -- and we are pleased
9 to see that it will be waived on the condition that those
10 spoils should be placed in an authorized Army Corps of
11 Engineers' disposal site.

12 But it is my understanding that as --
13 hopefully you will adopt this policy, but that current
14 permittees will have to come in and immediately renegotiate
15 their leases and their contracts to receive the
16 benefits of this royalty charge waiver. We think
17 that's kind of an extra burden and a hassle that
18 permittees would have to go through. And so, we're
19 asking you if you would consider stipulating something
20 like a blanket order, that per the adoption of these
21 policies, including the waiver charge, that the waiver
22 charge is hereby dropped from all current leases and that
23 permittees would -- instead of having to all come up here
24 immediately tomorrow or whatever to renegotiate their
25 leases, that they renegotiate them at the time that they

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1 come up for renewal. That is one request.

2 The second request is -- is that there are --
3 and this applies to perhaps only one or two people. Two--
4 one marina owner put money, royalty charge money, in
5 escrow pending the outcome of the study and pending the
6 approval of a waiver of the royalty charge. And we
7 would request that the State Lands Commission adhere to
8 those escrow instructions which essentially state that
9 if the State Lands Commission adopts the policy with the
10 royalty charge waiver, that the money is, in fact,
11 returned to the permittee.

12 I think that only affects one person, and
13 that person I think will be on a subsequent agenda at one
14 of your monthly meetings.

15 Thank you.

16 CHAIRMAN MC CARTHY: Are you going to
17 respond?

18 EXECUTIVE OFFICER DEDRICK: Yes. Mr. Chairman,
19 we understand where Ellen and her people are coming
20 from and, of course, sympathize. I think, however, the
21 assumption that all of this has to happen tomorrow is
22 really not founded. What we would propose to do would be
23 to put together an implementation plan, which is not going
24 to take any time at all. We're just talking about it
25 now.

1 It's just a matter of our contacting the
2 individual lessees, of which there are about 50 as I
3 recall, and letting them know that they have the option
4 to modify their leases.

5 In other respects, the regulations are
6 prospective. In regard to the one lessee who is, in
7 fact -- does, in fact, have money in an escrow account,
8 that money -- I think we need to get back to you with a
9 report on that specific case.

10 The legal counsel has advised me earlier --
11 and Bob could not be here right now, so Rick may be
12 picking up pieces, but -- that we couldn't really take --
13 you could not really take that action today anyway
14 because that action was not noticed. The dredging report
15 recommendations are the only actions truly noticed.

16 However, I do want to assure you that we are
17 acting expeditiously in this and will be back to you very
18 shortly with a proposal that will take care of Ms. Johnck's
19 concerns.

20 MS. ORDWAY: Mr. Chairman? Would it be
21 possible to have a report on both of those items at the
22 October meeting?

23 EXECUTIVE OFFICER DEDRICK: Yes. Certainly.
24 No problem.

25 CHAIRMAN MC CARTHY: So, you're indicating,

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1 Ms. Dedrick, that we are going to act on this promptly
2 and remove any clouds?

3 EXECUTIVE OFFICER DEDRICK: Yes. Now, the
4 one question I have now that Bob is back -- Bob, we're
5 on the dredging report -- is can we -- now, if the
6 Commission adopts these policy changes today, can we go
7 forward in implementing them or do we need to go through
8 say, for example, the OAL process first? I never was
9 quite clear as to what that -- we usually just do things,
10 don't we?

11 MR. HIGHT: Yes. It's my belief that
12 all that is necessary is the adoption today, and this is
13 not an item that falls within OAL purview.

14 EXECUTIVE OFFICER DEDRICK: That's fine. So
15 we can then get back to you on the October meeting to
16 tell you and have input from the concerned people as to
17 how to go about this. I don't really see it as a
18 complex process.

19 CHAIRMAN MC CARTHY: All right. Any other
20 questions?

21 MS. JOHNCK: None. I just wanted to add my
22 thanks to the staff, particularly Jim Trout and Lisa
23 Beutler, both of whom have been very devoted to this
24 cause. And we've worked very closely together and
25 we're going to be happy to continue to facilitate and

1 cooperate with you in the implementation of these new
2 policies. Thank you.

3 CHAIRMAN MC CARTHY: Any questions?

4 EXECUTIVE OFFICER DEDRICK: We appreciate
5 the support of the lessees and the interested people.
6 They were very, very helpful in helping us develop this
7 policy change. Thank you.

8 CHAIRMAN MC CARTHY: With that mutual
9 applause thundering in our ears, we'll accept the
10 recommendations on Item No. 17.

11 No. 18?

12 EXECUTIVE OFFICER DEDRICK: No. 18 is an
13 approval and consent to a recordation of a resubdivision
14 on three leasehold parcels held by the State in the City
15 of Burlingame.

16 MS. ORDWAY: Motion.

17 CHAIRMAN MC CARTHY: Without any questions,
18 accept the recommendation.

19 Item 19?

20 EXECUTIVE OFFICER DEDRICK: No. 19 is an
21 authorization with you acting both as the State Lands
22 Commission and as School Land Bank Trustees to sell
23 and issue a patent to the Department of Interior for
24 five and a half acres of a road in San Bernardino County.
25 The money from that will go to the Land Bank Trust,

1 School Land Bank Trust.

2 MS. ORDWAY: Motion.

3 CHAIRMAN MC CARTHY: Any questions?

4 Recommendation accepted. 20?

5 EXECUTIVE OFFICER DEDRICK: No. 20 is an
6 authorization to submit an application to the Secretary
7 of the Interior to acquire a couple of acres of ocean
8 front land at Port Hueneme to allow access to the La
9 Jenelle wreck, which is a fishing pier.

10 MS. ORDWAY: Motion.

11 CHAIRMAN MC CARTHY: Okay. Any discussion?

12 Recommendation is accepted.

13 No. 21?

14 EXECUTIVE OFFICER DEDRICK: No. 21 is a
15 consideration of a proposal of Long Beach Oil Royalty
16 Owners to -- for implementation of Elder's bill, AB 2568.

17 I'd like to ask Mr. Trout to give you a
18 brief report. There are people here, as you know, who
19 wish to speak to this issue. And if we could go forward
20 with Mr. Trout first, if that's acceptable to the
21 Commission?

22 CHAIRMAN MC CARTHY: Mr. Trout?

23 MR. TROUT: Mr. Chairman, Jane has handed out
24 to you a chart which shows the area assignments or the
25 distribution of interest within the Long Beach Unit. This

1 is just for your information that shows that as time goes
2 on and information is collected, the amount of interest
3 within the lands contained in the Long Beach Unit has
4 varied back and forth.

5 And everytime an adjustment is made, that
6 party which has been overpaid then pays back to the Unit
7 for distribution to the rest of the members the overpay-
8 ment.

9 What we have before us now is a question of
10 how the overpayments to the Townlot people are to be paid
11 back to the State and to the Unit.

12 The present statute and agreement provides
13 that these revenues shall be paid out of future flow
14 revenues at not more than 50 percent. This has
15 presented a hardship to some of the royalty owners. And
16 as a result, Assemblyman Elder carried a bill which would
17 allow, subject to certain conditions, the payback to be
18 reduced from 50 percent of future royalties to 10 percent
19 of future royalties, which makes the payback a longer
20 period of time.

21 The State Lands Commission is involved in
22 this in whether or not it should be approved and whether
23 it's in the best interest of the State.

24 The royalty owners have suggested a payback
25 provision which in effect would require changing of the

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1 current procedures to allow for the 10 percent --
2 reduction from the 50 percent to 10 percent.

3 The problem really before us is how that's
4 going to be paid for. It requires a reprogramming of
5 computer data and a change in the way in which the Unit
6 and its operators and the various royalty and working
7 interest owners are dealing with each other.

8 The oil companies have said in the most part
9 that they are willing to make the adjustment if the
10 State Lands Commission decided to approve it, but they
11 are not willing to absorb any of the costs of making that
12 adjustment, any of the costs of reprogramming the
13 computers and what not.

14 The proposal before you from the Long Beach
15 Royalty Owners Association is for those costs to be
16 Unit expense. In other words, that the information would
17 be supplied to the Unit operators, which is the City of
18 Long Beach, and then implemented at their request by the
19 Unit contractor, the THUMS-Long Beach Company.

20 THUMS has indicated to the city that the
21 cost of implementing is significant. The calendar item
22 that you now have before you is slightly changed from the
23 one that was mailed out, in that we had erroneously put
24 THUMS in the place of the Unit operator and left out the
25 city. It's a minor technical change, but it does provide

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1 that the information on the Royalty Interest Owners
2 would be provided to the City of Long Beach as the Unit
3 Operator and implemented at their discretion by the
4 contractor, THUMS.

5 The second handout I gave you gives you some
6 idea of what was required. The payback on the seventh
7 interim area assignment, which is the current one we're
8 talking about, is twenty-seven and a half million dollars.

9 The payback of other than oil companies --
10 Assemblyman Elder's bill does not allow the producing oil
11 companies to have the benefit of the delayed payback --
12 is \$3.1 million. And we're talking about approximately
13 12,400 royalty interest owners, of which about 8,000
14 have royalty agreements with Arco and another 3,000 with
15 Chevron. These are very round numbers. And the balance
16 with a number of other companies.

17 We feel two things about the Townlot
18 Operators -- Royalty Interest Owners' proposal. One is
19 it -- because of the State's high percentage net profit
20 interest in the Unit, if it were Unit expense, the State
21 would pick up a majority, approximately 82 percent of the
22 cost of implementing based on THUMS' estimate for
23 implementing the change.

24 The other thing is that we find nothing in
25 the statute, Mr. Elder's bill, or in the prior legislation

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1 that seems to give any authority for the Commission to
2 encumber -- basically to reduce State revenues by this
3 amount of money. We also believe that it would require
4 a change in the operating agreement. I believe that the
5 opinion that I've expressed is unanimously agreed to by
6 the City Attorney's Office in Long Beach and by our
7 staff counsel and by the Office of the Attorney General.

8 I know that the Townlot people would like to
9 speak to you. Alan Hager from the Attorney General's
10 Office is here to give you their evaluation of it. It's
11 a very difficult situation. And we have worked with the
12 people. We have a lot of sympathy for their position.
13 But we're not sure that the proposal currently before
14 you is one that we could recommend.

15 CHAIRMAN MC CARTHY: Questions? Let me try
16 to understand. How did we get to this point?

17 MR. TROUT: Well, we got to this point in a
18 couple of ways. As the interim area assignments were
19 adopted, the oil companies had to implement them. The
20 last couple of assignments went to arbitration. There was
21 an arbitrator's decision. And they were implemented.

22 The last area assignment was implemented, but
23 there was some delay on the part of at least one of the
24 companies in implementing it. So, when they did, after
25 six or seven months, start getting the payback out of the

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1 current revenues for the Townlot people, they not only
2 took the authorized 50 percent, but they took additional
3 funds to recover the money they should have been taking
4 out the prior six or seven months.

5 In addition, the price of oil dropped at the
6 same time from roughly \$20 to somewhere in the
7 neighborhood of eight to ten dollars. So, as a result of
8 the 50 percent payback, the recovery of previously not
9 taken payback amounts, and the drop in oil prices,
10 there has been a significant reduction in the amount of
11 the royalty checks that the royalty owners have received.

12 EXECUTIVE OFFICER DEDRICK: Moose would like
13 to speak to some aspects of this.

14 MR. THOMPSON: You asked where this started.
15 This started in 1964 when the Legislature of the State
16 of California passed Chapter 138. As part of that, they
17 had this equity adjustment concept that would go back and
18 be adjusted periodically and would be retroactive.

19 And so that's the genesis of all this. This
20 is merely doing what that bill said.

21 CHAIRMAN MC CARTHY: I'm just trying to find
22 out whether or not any of the parties that are
23 participating here were culpable in any way in
24 contributing to the position that the royalty interest
25 owners now find themselves in; how much were they

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1 responsible for creating this situation themselves? How
2 much was the oil company who delayed figuring out what
3 the calculations should be -- I think you said for six
4 months -- what did each contribute here to this dilemma?

5 MR. THOMPSON: Governor, this is something
6 that, as additional data came out, because in the past
7 the Townlot at one time had their share increased, and
8 there's been an adjustment now and it's going the other
9 way. It's gone both ways. As additional information was
10 gained, these equities were recalculated. So, it's gone
11 both ways. And there's no fault by any party. It's just
12 development of additional information. I don't think
13 anybody has questioned --

14 CHAIRMAN MC CARTHY: I appreciate the process
15 where the adjustments can go up or down depending upon the
16 profitability of the sale of oil.

17 MR. THOMPSON: No. Lots of times on the data
18 that's available, as you're getting additional data,
19 then how this equity is split.

20 EXECUTIVE OFFICER DEDRICK: Percentage doesn't
21 change. Just the dollar price changes when the price of
22 oil changes.

23 MR. THOMPSON: But actually, in the formula
24 you go back and talk about \$3.00 oil, because it's all
25 referenced back to that differential in the actual equity

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1 participation formula.

2 CHAIRMAN MC CARTHY: Go ahead, now that it's
3 so clear. Go ahead.

4 (Laughter.)

5 EXECUTIVE OFFICER DEDRICK: Mr. Chairman,
6 because -- as demonstrated so ably, it's not clear at all.
7 And I think that's one of the problems, is that for
8 people who live a normal life, the esoteric calculations
9 of the Unit agreement are pretty esoteric, and I think
10 that in terms of real culpability, there really isn't
11 anybody really guilty.

12 There's been some nonsense in the question of
13 one of the oil companies increasing the impact by
14 delaying charging for a change that has caused a lot of
15 pain that didn't need to occur.

16 But the adjustments are both legal and
17 actually required. And if the city did not act consistent
18 with Chapter 138, they would be violating their public
19 duty. I'm sure you understand. The price of oil dropping
20 at the same time obviously contributed to a very
21 substantial impact on individual royalty owners.

22 The hardship is a genuine hardship. The
23 solution is not at all apparent. I mean it's just a very,
24 very difficult solution.

25 In regard to the proposal that's before you

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1 today, I think we have a clear legal opinion that we
2 cannot -- that you do not have the authority under the
3 existing statutes to do what you've been asked to do.
4 And that had you that authority, it would be a serious
5 problem in the adjustment of the Unit agreement which
6 would take the agreement of the oil companies who are
7 the majority working interest owners.

8 I can only suggest that we have made
9 recommendations to you in this report that we continue to
10 cooperate as much as we can and try to find other
11 alternatives to the problem. But the problem really
12 remains one of the nature of the oil business, the nature
13 of Unit agreements, and the nature of Chapter 138.

14 CHAIRMAN MC CARTHY: Any questions from the
15 Commissioners so far?

16 MS. RASMUSSEN: I have one.

17 CHAIRMAN MC CARTHY: Yes.

18 MS. RASMUSSEN: Clear up -- a point of
19 clarification. I'm a little confused about the dual role
20 of the oil companies. It seems to me to be inconsistent
21 that the oil companies can be a royalty interest owner
22 with an interest in the royalties and how much they are
23 and at the same time responsible for the implementation
24 of the payback. And I understand how that happened, but
25 I don't have an answer as to how that could be corrected.

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1 But it just seems to me to be an awfully
2 difficult question. And maybe it's the basis of the whole
3 problem here.

4 MR. THOMPSON: I think in the case where an
5 oil company is a royalty holder, that would be on a
6 parcel in which another working interest owner has a
7 mineral interest. Because basically, if you have a
8 royalty and you also have a working interest, that's just
9 part of the working interest share.

10 It's only if you were in someone else's
11 parcel that you had a royalty interest.

12 MS. RASMUSSEN: But you would -- I think that
13 they would still have interest in what occurred on the
14 Townlots.

15 MR. THOMPSON: But this specifically says
16 that if you were an oil company, that you could not get
17 advantage of this particular bill, only nonoil companies --

18 CHAIRMAN MC CARTHY: That's the 1964 law?

19 MR. THOMPSON: No.

20 EXECUTIVE OFFICER DEDRICK: No.

21 MR. THOMPSON: The Elder bill. The Elder
22 bill is specific to help only royalty owners or nonoil
23 companies working interest owners.

24 EXECUTIVE OFFICER DEDRICK: What may not have
25 been clear to you, Commissioners, last year Assemblyman

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1 Elder carried the bill that we're talking about trying to
2 implement. And it really was not an easy bill for him to
3 get through. But the Commission did not -- you know,
4 did support the legislation and tried to help it become
5 something that would work.

6 But it came up with the conclusion that the
7 structure of the thing is such that it takes the
8 cooperation of the oil companies to get any result and
9 that cooperation, as Mr. Trout told you, was limited to
10 saying, "It's a nice idea, but we're not going to pick
11 up any of the dollars that are involved." And that's
12 really -- so, we're down to where does the money come
13 from and you have no statutory authority to spend it
14 if you decided that it was in the State's interest to
15 spend that money.

16 And that is one of the findings you have to
17 make in reducing the payback percentage. You must make
18 a finding that your actions would be in the best
19 interest of the State.

20 CHAIRMAN MC CARTHY: We're talking about
21 reducing the number of dollars that would be paid back
22 ultimately, or --

23 EXECUTIVE OFFICER DEDRICK: No.

24 CHAIRMAN MC CARTHY: -- are we talking about
25 increasing the span of time in which to pay back?

1 EXECUTIVE OFFICER DEDRICK: The latter.

2 MR. TROUT: Just reducing it from
3 50 percent to some number which could be as low as 10
4 percent.

5 The second problem which we would get into,
6 if we could overcome the first one, would be whether or
7 not there's sufficient time at the level of payback
8 proposed to make sure that all the money is paid back.

9 Ten percent might take some of them beyond
10 the economic payback, so maybe ten percent isn't the right
11 number. But that's -- we're not at that point yet.

12 MR. THOMPSON: For example, if you took a
13 certain payback period out at 50 percent and go to 10
14 percent, you also are going to have a five-time-plus
15 expenditure of the period of time to pay that back.

16 CHAIRMAN MC CARTHY: Okay. Anything else
17 from staff before we hear --

18 EXECUTIVE OFFICER DEDRICK: No, unless you
19 ask questions.

20 CHAIRMAN MC CARTHY: We have two witnesses to
21 hear from. One is Rose Buchholz and the other is
22 Robert Austin.

23 Ms. Buchholz is the president of the Long
24 Beach Royalty Owners. And Mr. Austin is the attorney for
25 the same group. Why don't you tell us what order you would

1 like to make your presentation.

2 MS. BUCHHOLZ: I think Mr. Austin will speak
3 first.

4 MR. AUSTIN: My name is Robert G. Austin.
5 I'm legal counsel for the Long Beach --

6 MS. ORDWAY: Could you move just a little bit
7 closer to that mike, please?

8 MR. TROUT: Right up to --

9 MR. AUSTIN: Right up to it. It's a little
10 bit out of my past experience speaking before a
11 microphone such as this, but I'll do the best I can.

12 As I was saying, my name is Robert G. Austin.
13 I'm legal counsel for the Long Beach Oil Royalty --
14 Oil Royalty Interest Owners Association.

15 And I would like to make some comments on
16 a problem we have had. And I think I would like to
17 organize my thoughts in three principal areas. I think
18 to get a better perspective of the Elder bill and what it
19 was intended to do and why the Elder bill came into being,
20 I think we have to go into the background of the Elder
21 bill.

22 Secondly, I want to go into the matter of
23 costs. And thirdly, I'd like to go into the area of
24 whether or not the Unit agreement requires amending.

25 I think we've got to go back much further

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1 than the history of the Elder bill and why it was
2 carried by Assemblyman Elder. This problem came about --
3 came into being when we had the sixth interim area
4 assignment. The sixth interim area assignment was adopted
5 by the equity committee of the Long Beach Unit and it
6 was forced upon all the participants, principally by the
7 State.

8 And it was incorporated with some rather
9 suspect engineering theories. The State, realizing that
10 they had two out of three votes, could run the show.
11 Chapter 138 gives the State its vote on the equity
12 committee, plus it gives them the right to direct the
13 city vote as trustee on the equity committee, and
14 there's one other vote on the equity committee. So
15 when you control two votes out of three, you're running
16 the show.

17 When the sixth interim area assignment was
18 adopted and because that is based on some rather suspect
19 engineering theories which currently are in arbitration
20 at the present time, that triggered the operation of
21 Section 5.4 of the Unit agreement.

22 5.4 of the Unit agreement -- well, to back-
23 track, I guess I might as well say it, although I don't
24 think I need to say it -- the sixth interim area assignment
25 resulted in a shifting of Unit participation share from

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1 the Townlot area to the offshore area. And that's
2 demonstrated in the handout that the State just gave.

3 You'll note that the sixth interim area
4 assignment, there was a substantial reduction in the
5 Townlot participation share. So, that triggered Section
6 5.4 of the Unit agreement. 5.4 of the Unit agreement
7 requires or provides for a payback of prior overallocation
8 of crude oil.

9 Now, this adjustment period on every
10 interim area assignment, the adjustment period goes back
11 to year one; that is, 1965. And 5.4 further provides
12 that -- for paying back any adjustment for overallocation,
13 it's to be paid out of current revenues or current
14 production up to 50 percent or 50 percent would be the
15 payback percentage.

16 You can see the impact that that would
17 have on the owners of Townlots. The impact has been
18 drastic. It has been compounded by the drop in the price
19 of crude oil.

20 Now, Assemblyman Elder, when he carried
21 2568, intended it for some relief to the Townlot owners,
22 Townlot royalty interest owners. And the Townlot royalty
23 interest owners, not only just individuals -- there's
24 common people -- but we also are talking about schools.
25 We're talking about churches. Everybody in the Townlot

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1 area that had a royalty interest was drastically impacted
2 by the shifting of equity participation shares as a result
3 of the sixth interim area assignment.

4 The Legislature in adopting AB 2558, intended
5 to afford a measure of relief to these Townlot owners.
6 I think that intent is clear. So, what we are concerned
7 with here in this matter or in this proposal, we are
8 concerned with how do we handle this payback adjustment
9 as provided in Section 5.4 of the Unit agreement.

10 We're not talking about the calculation of
11 royalties between a lessor and a lessee. We're talking
12 about the Unit agreement and the triggering of Section
13 5.4 of that agreement.

14 The provision in that section dealing with
15 the payback -- retroactive payback for overallocation --
16 prior overallocation, that's the issue here.

17 It is a section which deals with -- or a
18 section in the Unit agreement which deals with the
19 providing for paying back for prior overallocation.

20 Now, the Elder bill was intended to provide
21 another procedure for this payback adjustment. It
22 gave the Lands Commission the sole discretion as to
23 whether or not that payback percentage should be 50
24 percent as provided in Section 5.4, or whether it can be
25 as low as 10 percent or somewhere in between.

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1 That is addressed to the sound discretion of
2 this Commission. If the Commission is inclined to
3 provide relief as authorized by the Elder bill, then
4 they must make a further finding that any relief provided
5 is not going to inure to the benefit of a producing
6 oil company. If it inures to the benefit of royalty
7 interest owners or to a working interest owner who is not
8 a producing oil company (sic). Offhand, I would say
9 probably -- although I don't know as a matter of fact --
10 like the Long Beach Unified School District I understand
11 receives -- has oil interests. I don't know if they are
12 a working interest owner who would -- obviously they
13 would not be a producing oil company and would receive
14 the benefit of any relief granted by this Commission --
15 or whether they are just a royalty interest owner. That
16 I do not know.

17 But I assume that that language was put
18 into the bill to cover those entities or those individuals
19 who would be a working interest owner rather than a
20 royalty interest owner, but who were not a producing oil
21 company.

22 Now, since this action or this problem arises
23 under 5.4 of the Unit agreement as a result of an interim
24 area assignment, I would submit that it's just as much a
25 part of the unit operations as the interim area assignment

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1 itself.

2 In the Unit agreement, Unit expenses are
3 defined in Section 5 -- 1.52 and subsection -- or
4 subdivision (i), small (i), in that section I submit
5 is sufficiently broad to cover the cost of implementation
6 of AB 2568.

7 It is an omnibus provision dealing with
8 Unit expense. And it refers to all other costs and
9 Unit operations. And I would submit if this is something
10 which arises as a result of an interim area assignment,
11 and there's no question but what an interim area assign-
12 ment would be part and parcel of Unit operations, then
13 this of necessity I think would have to be considered a
14 Unit expense, the cost of implementing AB 2568.

15 So, the numbers which have been submitted --
16 I must submit I'm not a computer programmer analyst; I
17 have no first-hand information as to the cost. But they
18 seem extremely high to me. I cannot understand -- once
19 you've got the program in place -- why it's going to cost
20 \$43,000 a month to make these determinations each month.

21 And also, there has to be, under the Unit
22 agreement, a final area assignment in 1990. This is
23 1986, almost 1987. So, you're not going to have very
24 many more interim area assignments. And the relief
25 provided by Elder's bill is relief which can be given upon

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1 every interim area assignment.

2 Secondly, the costs are going to be borne
3 proportionately according to the Unit participation
4 share -- the working interest owners and their Unit
5 participation share, whatever it may be, will bear their
6 proportionate costs of the cost of implementing this
7 bill.

8 The Townlot area will bear their -- whatever
9 their Unit participation share -- they'll bear that
10 portion of the cost. In other words, not one party is
11 going to bear the entire cost. It's going to be borne
12 proportionately according to the Unit participation shares
13 just as the gross revenue or the net revenues are divided
14 according to Unit participation share.

15 Nobody is getting the benefit or advantage
16 over the other. You share -- you bear the cost according
17 to your Unit participation share. So, you bear your
18 proportionate share of the costs involved.

19 So, in view of the broad wording of the
20 omnibus clause in the definition of Unit expense as set
21 forth in Section 5 -- 1.52 sub (i), I would submit that
22 this falls within that definition of Unit expense and
23 would properly be considered and handled as a Unit cost.

24 Now, getting into the matter of whether the
25 Unit agreement requires amending. I would submit that it

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1 does not. And I know that there's a difference of
2 opinion. Anytime you get a group of lawyers together
3 you're going to have a difference of opinion. That's
4 just the nature of the game so to speak.

5 But I'd like to give you my reasons why I
6 believe that the Unit agreement does not require amending.
7 First of all, you've got to keep in mind that AB 2568
8 amends Chapter 138. That is absolutely clear. In fact,
9 it adds Section 6.1 to Chapter 138.

10 The Unit documents in Chapter 138 are
11 integrated. In fact, you'll find language through the
12 Unit documents stating that in the event of conflict,
13 the provisions of Chapter 138 are to govern. In other
14 words, Chapter 138 is what is to control. If there's any
15 dispute as to what the Unit agreement provides or means,
16 Chapter 138 controls.

17 The Unit -- the administration of the Unit
18 is to be consistent with the terms and provisions of
19 Chapter 138. Now, in the Unit agreement, there is a
20 Section 18.8 which deals with reformation. That section
21 in substance says that where you've got a conflict in
22 the provisions of the Unit agreement and Chapter 138, the
23 Unit agreement is deemed to be amenable to reformation
24 so as to eliminate those portions found to be in
25 contravention of Chapter 138.

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1 So, Elder's bill does provide for a procedure
2 that is not consistent with Section 5.4 of the Unit
3 agreement. Under 18.8, I would submit that 5.4 could
4 be reformed so as to be consistent with AB 2568. It
5 doesn't require amending so that you have to have
6 unanimous agreement between all parties that this section
7 should be amended.

8 It merely requires by its own wording, which
9 everybody has agreed to in advance, that if there is a
10 conflict with Chapter 138, the document can be amended or
11 reformed. I won't say amended. The Unit agreement can
12 be reformed so as to make it consistent with Chapter 138.

13 And I would submit that in order to make the
14 relief intended by the legislation a reality, that this
15 Commission could go ahead and grant the relief. Whether
16 it's reduce to 10 percent or someplace between 10 and 50,
17 I cannot say. But that's addressed to the sound
18 discretion of the Commission.

19 CHAIRMAN MC CARTHY: Mr. Austin, may I ask
20 you one or two questions?

21 MR. AUSTIN: Yes.

22 CHAIRMAN MC CARTHY: What kind of relief?
23 Reduce it to dollars for me. What kind of relief are
24 you asking be granted here? What number of dollars?

25 MR. AUSTIN: Well, I can't state it in terms

1 of dollars because the price of oil changes --

2 CHAIRMAN MC CARTHY: Well, with what
3 information we have right now, and what's projected for
4 the next couple of years, why don't you -- I'm sure you've
5 thought a lot about this. What kind of relief are we
6 talking about?

7 MR. AUSTIN: Well, I really can't say, because
8 I haven't tried to evaluate it in dollars and cents.

9 CHAIRMAN MC CARTHY: What the Legislature had
10 in mind in considering the Elder legislation, you indicated
11 the Legislature wanted to give relief. What were they
12 talking about? Was it a million dollars or \$10 million,
13 or some very small sum? What do you think they had in
14 mind?

15 MR. AUSTIN: Well, I can't answer that,
16 because for one thing, you've got different royalty
17 and different percentages. One lease that had a calling
18 for royalty of say one-sixth; the recipient of that
19 royalty would be probably -- could expect more than some
20 royalty --

21 CHAIRMAN MC CARTHY: I'm thinking of an
22 aggregate figure that affects all of the people that are
23 deeply concerned about this issue. What do you think
24 that adds up to? Do you have any idea?

25 MR. AUSTIN: I have no information or idea.

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1 MS. BUCHHOLZ: Can I speak?

2 MR. AUSTIN: But Miss Buccholz is here and
3 apparently could respond to that.

4 CHAIRMAN MC CARTHY: Okay. Miss Buccholz?
5 Would you like to address the Commission?

6 MS. BUCHHOLZ: When Mr. Putnam and I started
7 this company , we really started it to help the poor
8 people in Long Beach. And we have a lot of elderly people
9 that are depending to supplement their income with what
10 they receive from the oil. That's why we started it.

11 When they deducted 50 percent without any
12 notice to us whatsoever, people that were getting a
13 hundred dollars a month -- which doesn't sound like much
14 to you people I suppose, but it helps elderly people when
15 they need it --

16 CHAIRMAN MC CARTHY: Sure.

17 MS. BUCHHOLZ: -- for rent and health,
18 medicine, and so forth. They would be getting 50 percent;
19 from that, they took off the cost of operation, which
20 left them sometimes less than \$25 or \$15. Some companies
21 will not write a check unless it's over \$15. And I
22 notice one company wrote a letter to me last week and
23 said that their deadline was \$25. Anything under \$25
24 there was no checks written.

25 So, it left hundreds -- and I think I'm safe

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1 in saying -- thousands of Long Beach people that don't
2 get any kind of payment at all ever since this deduction
3 came in.

4 CHAIRMAN MC CARTHY: Which oil company was
5 it that wrote and said that they wouldn't write any
6 checks for under \$25?

7 MS. BUCHHOLZ: It was Arco.

8 CHAIRMAN MC CARTHY: All right.

9 MR. TROUT: Mr. Chairman, let me interrupt
10 you for a minute if I may. Our understanding of the
11 relief was that it did not reduce the amount of the
12 payback. All it did was extend the period of payback
13 so that instead of paying it off in two years, it would
14 be paid off in ten years, which would be reducing the
15 amount that would be taken out of their checks.

16 MS. BUCHHOLZ: That's right.

17 CHAIRMAN MC CARTHY: Well, I was just trying
18 to find out if that's what Mr. Austin also had in mind --

19 MS. BUCHHOLZ: We were trying money --

20 CHAIRMAN MC CARTHY: -- in granting relief.
21 I didn't understand him to imply that he was just talking
22 about delayed payments.

23 MR. AUSTEN: No, it's just reducing the
24 percentage of paybacks so to give it a longer period of
25 time to pay it back than currently provided.

1 MS. BUCHHOLZ: We were trying to put enough
2 money in there, back in the hands of the people that need
3 it so that they could stay in their homes or whatever
4 they were used to living with with what they were getting
5 from oil and have a longer time to pay it.

6 I get calls every day and every day asking
7 when is this bill going through, when we're going to get
8 some money back. They're frustrated. This has been a
9 long year to wait for some relief. And it was an
10 emergency measure.

11 MR. AUSTIN: It really is not a matter of
12 giving the royalty interest owners something that they're
13 not entitled to by way of dollars. It's merely saying,
14 okay, you've got a longer period of time to pay back this
15 overallocations you received.

16 CHAIRMAN MC CARTHY: Well, what I'd be
17 interested in trying to find out is what responsibility
18 does anybody representing the State of California have
19 for causing the difficulties now being encountered by
20 all the people if that is the case. If the State of
21 California or officials representing the State of
22 California were in any way significantly responsible for
23 producing the distress now being experienced by the kind
24 of people you're describing, Mrs. Buchholz, that might
25 enter in here in some way. What our attorneys are telling

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1 us is, as you heard, is that under the law this State
2 Lands Commission really doesn't even have the latitude --
3 I appreciate that you presented an argument as to why
4 we do have that latitude under the Elder bill. Our
5 attorneys, the people's attorneys, Attorney General's
6 Office, the attorneys from the State Lands Commission, and
7 as I understand it, the attorneys for the City of Long
8 Beach; is that correct -- are all saying this is simply
9 the enforcement of an existing contract and its an
10 accumulation of events that have added up to some very
11 bad luck and serious distress for the kind of people
12 you're describing.

13 MS. BUCHHOLZ: Well, we have never been able
14 to be heard at any time. We were in a dark locked closet
15 for 20 years.

16 CHAIRMAN MC CARTHY: Down in Long Beach?

17 MS. BUCHHOLZ: And until I organized this
18 company, now we can get together and talk things over.
19 There's a lot of --

20 CHAIRMAN MC CARTHY: Years ago, were you
21 trying to amend this contract?

22 MS. BUCHHOLZ: No. I never tried it until
23 then. Other people did, but they weren't successful.

24 MR. AUSTIN: If I might say something. If
25 you want to say whether or not somebody was to blame in

1 terms of culpability, I don't know if you can say
2 culpable or not, but this whole problem arises out of the
3 sixth interim area assignment when the State pushed that
4 interim area assignment through the equity committee on
5 a two-to-one vote. Because they had the two votes and
6 they utilized or incorporated into that interim area
7 assignment some suspect engineering theories. One was
8 adjusting for overburden pressure; one was averaging
9 velocity by area rather than unitized formation. That --
10 the use of those theoretical --

11 CHAIRMAN MC CARTHY: Which is the two-to-one
12 vote you're referring to, Mr. Austin?

13 MR. AUSTIN: On the equity committee in the
14 Long Beach Unit, it has a total of three votes.

15 CHAIRMAN MC CARTHY: Right.

16 MR. AUSTIN: Anything can be adopted by
17 majority vote. So the three votes are the townlot area,
18 the offshore tract one area, which is the city's vote as
19 trustee, and Tract 2, which is the state.

20 Chapter 138 gives the State to direct the
21 city's vote so far as Tract 1 is concerned. So, they've
22 got their own vote plus the city's vote. When you've
23 got two out of three votes, you're running the show.

24 So, the sixth interim area assignment went
25 through the equity committee on a two-to-one vote. And

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1 that is where the whcie problem started, because the
2 sixth --

3 CHAIRMAN MC CARTHY: Could I get a clarifica-
4 tion of that, Mr. Austin, from the officials here? Miss
5 Dedrick?

6 EXECUTIVE OFFICER DEDRICK: Yes, Oh, excuse
7 me.

8 MR. TROUT: I was just going to say, I think
9 that while the data may be in Mr. Austin's mind
10 questionable, it is not a free license on the State to
11 impose its will upon the equity committee. The
12 agreement and legislation provides that there may be
13 arbitration and litigation. And as Mr, Austin pointed
14 out, the issue of the, quote, questionable, end quote,
15 data is the subject of arbitration which is now going on.

16 So, it isn't that the State just gets to do
17 whatever it wants. There is a process by which the data
18 may be examined by competent people to determine whether
19 or not it is valid.

20 EXECUTIVE OFFICER DEDRICK: And this process
21 is set up in the original agreement. And it's happened
22 many times, as Mr. Trout pointed out to you, and in the
23 little handout we gave you, in some instances it's
24 redounded to the benefit of the Townlot owners, but in
25 these last two assignments it's redounded to the benefit

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1 of the State.

2 But the process is a process where you don't
3 arbitrarily set those figures. And the two-to-one point
4 is, in fact, the truth. But what it constitutes is the
5 right to impose that assignment and proceed to arbitrate
6 it by engineering -- with engineering people.

7 MS. BUCHHOLZ: The fact remains, though,
8 that the State can propose an article and it can be
9 passed by them without any question.

10 CHAIRMAN MC CARTHY: I think the point that
11 Miss Deirick was just making, Miss Buchholz or Mr. Austin,
12 was that the procedure followed at the last equity
13 committee meeting was the same procedure that's been
14 followed over all of the years since that procedure
15 was created in the first place, and in some of those years
16 that procedure redounded to the benefit of the royalty
17 owners and apparently now the most recent experience
18 that's not the case. Is that an accurate representation?

19 MR. AUSTIN: With one exception. For every
20 interim area assignment prior to the sixth, you had
21 unanimity of opinion. Every interim area assignment
22 was passed with a unanimous vote.

23 MR. THOMPSON: Mr. Austin is mixing up the
24 payback with the equity adjustment. The procedure has
25 always been exactly the same way on how paybacks are

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1 implemented regardless of which way the equity base goes.

2 MR. AUSTIN: The paybacks result from an
3 interim area assignment. When you had adopted interim
4 area assignments that shifts your Unit participation
5 share from one area to another, then that triggers the
6 payback provisions of Section 5.4.

7 MR. THOMPSON: And when the Townlot interest
8 went up in the past, the flow was the other way.

9 MR. AUSTIN: We're not disputing that. What
10 I'm saying is that this sixth interim area assignment,
11 which triggered Section 5.4 of the Unit agreement, was
12 what -- and the result from that was what gave rise to
13 AB 2568.

14 CHAIRMAN MC CARTHY: Was that sixth interim
15 area assignment done any differently than previous interim
16 area assignments?

17 MR. AUSTIN: Except in the sixth, they
18 utilized the average porosity by area rather than by
19 unitized formation as done previously is my understanding.
20 And I don't think there was any adjustment made for
21 overburden pressure. And using that, reduced -- brought
22 the result which attained and which resulted in a shifting
23 of Unit participation shares from one area to the other.

24 Now, if I may point -- make one more
25 additional comment on --

1 CHAIRMAN MC CARTHY: Mr. Austin -- Ms.
2 Buchholz, did you finish your comments?

3 MS. BUCHHOLZ: Yes, I did, ~~for~~ the moment.
4 Yes, I did.

5 CHAIRMAN MC CARTHY: Mr. Austin?

6 MR. AUSTIN: I'd like to get back to this
7 matter of amending the Unit agreement. I've never seen
8 any opinion from the City Attorney's Office -- I'm not
9 saying they don't have an opinion -- but I've never seen
10 a written opinion. But to say that it requires amending
11 rather than reforming, you are totally ignoring the
12 provisions contained in Section 18.8, which says that if
13 there's any conflict -- any contravention of Chapter 138
14 by the Unit document or Unit agreement, than that's
15 amenable to reformation. And it's quite clear.

16 So, rather than amending the Unit agreement,
17 which would require the unanimity of all the parties,
18 I say that a court -- once it is proven that this Section
19 5.4 is -- conflicts or is in contravention of 2568 -- that
20 a court would order 5.4 to be reformed so it would be
21 consistent with 2568 since AB 2568 is a part of Chapter
22 138.

23 It amends Chapter 138 by adding a new section.
24 And I've never seen an opinion from any of the AG's Office
25 or the City Attorney's Office in which they've stated

1 their reasons why it requires amending rather than
2 reforming.

3 CHAIRMAN MC CARTHY: Could I hear a comment
4 from our attorney on that, please?

5 MR. HAGER: Okay.

6 EXECUTIVE OFFICER DEDRICK: Identify yourself,
7 Alan.

8 MR. HAGER: My name is Alan Hager. I'm
9 Deputy Attorney General. We have a significant legal
10 dispute here. We think that the -- what is being called
11 for is a change in the method of allocating cost burdens
12 between parties to a private contract that public
13 entities are a party to.

14 Royalty payments, the cost of making royalty
15 payments by a working interest owner, an oil company,
16 under the terms of the Unit agreement is the responsibility
17 of each working interest owner. It is not a
18 responsibility of the Unit.

19 In other words, it's not an expense like
20 buying drill pipe or paying for a drilling rig that is
21 paid by all the participants in the Unit in accordance
22 with their share in the Unit. If they have royalty
23 obligations -- Arco, or Chevron, or whoever it might be
24 have royalty obligations, they pay those royalties and
25 the cost of doing that under the terms of the Unit

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1 agreement are their own responsibility.

2 The Unit doesn't have anything to do with
3 anybody else in the Unit. That's simply the reason.

4 Arco's royalty obligations doesn't have
5 anything to do with Chevron or the State or the City or
6 anyone else. That's why it's not a Unit expense.

7 Now, what is being asked here is that those
8 obligations -- those payment costs be shared by all the
9 participants in the Unit according to their share in the
10 Unit.

11 The State share of this would be, oh, plus
12 or minus 82, 83 percent.

13 To do that would require, in my opinion,
14 an amendment to the agreement because you are opposing
15 additional costs. Mr. Austin says that's reformation.
16 Reformation is a legal concept that really is designed
17 to correct a written document that doesn't state what
18 the parties really intended or to correct a mistake.

19 Certainly, it should be consistent with
20 Chapter 138 if it mistakenly -- Chapter 138 -- if it was
21 inconsistent with Chapter 138, it should combine (sic).
22 But what the Elder bill did was amend 138. But it changed
23 a basic contract right -- excuse me. But if you would
24 interpret the Elder bill as mandating that the Unit bear
25 the cost of paying royalty, it changes the basic contract

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1 right that these parties had. It imposed a cost on them
2 that they didn't bargain for. The Legislature, as you
3 well know, cannot pass a bill that impairs the obligations
4 of a contract.

5 For example, the Legislature could not pass a
6 bill that says we're going to change the method of
7 determining the equity, slicing the pie. They can't
8 change the methodology that already the parties have
9 agreed to in the contract.

10 They cannot change the allocation of costs
11 among the parties to the contract. And they did not
12 do that. In fact, the Legislature specifically was
13 aware of this problem when we were working on the bill.
14 They were very concerned, especially Assemblyman Elder,
15 that there be no impairment of the obligation of the
16 contract. And that's why it says that it shall be --
17 that any adjustments will be to the extent permitted by
18 law and the Unit agreement.

19 So, if the oil companies who have to pay the
20 royalty say they don't want to spend this money, they
21 have every right to say that under their contract. That
22 may not be charitable to the royalty interest owners,
23 but maybe they think they would not be doing justice to
24 their stockholders if they agreed to do this. We can't --
25 the State can't force these costs on them. And so it is

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1 they're unwilling to do that, we can't force the
2 procedure that makes them bear these costs.

3 And we cannot bear these costs. The State
4 cannot bear these costs as a Unit expense because we
5 would again be forcing it partially on them and
6 partially on ourselves which would impair an obligation
7 in the contract.

8 MR. AUSTIN: May I respond to that?

9 CHAIRMAN MC CARTHY: Yes, sir.

10 MR. AUSTIN: We're not concerned with the
11 cost involved in calculating the amount of royalty which
12 would be paid by a lessee to a lessor. What we are
13 concerned with here is the cost of implementing a change
14 of procedure which the Legislature has said this
15 Commission may change in its discretion. We're concerned
16 with the cost involved in changing the retroactive
17 payback adjustment as provided in Section 5.4 regardless
18 of what oil company is involved.

19 That applies to all -- everybody -- not just
20 a certain specific oil company. So, we're really not
21 talking about shifting the cost of calculating the
22 royalty between lessor and lessee. We're talking about the
23 cost of a change of procedure which the Legislature
24 has said this Commission may change provided it makes a
25 certain finding.

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1 That change is a change in Section 5.4 or
2 provide for a different procedure which this Commission
3 can order or direct in its discretion.

4 So, that's what we're talking about. It's
5 the cost of administering the Unit insofar as payback
6 adjustment is concerned which results from an interim
7 area assignment.

8 And the Elder bill specifically refers to
9 upon any interim area assignment.

10 MS. ORDWAY: Mr. Austin?

11 MR. AUSTIN: Yes?

12 CHAIRMAN MC CARTHY: Commissioner Ordway.

13 MS. ORDWAY: I don't disagree that the
14 Elder bill acknowledges or recommends adjustments. As I
15 look at the bill, it has "appropriation: No." I can
16 only look at it as a Lands Commissioner and as a person
17 from Finance who spends a good part of time reading these
18 things and trying to interpret who pays for what.

19 It says, "Appropriation: No." There is
20 no acknowledgment of appropriation and there's no
21 acknowledgment of cost on behalf of the Lands Commission.

22 And so, I'm a little unclear with the point
23 that you're trying to make that somehow the burden should
24 be carried by the State to accommodate this adjustment.

25 I don't disagree that the bill acknowledges
that there should be an adjustment. But I can't in any

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1 place find in the bill where it is the State's
2 responsibility for paying for that adjustment.

3 MR. AUSTIN: Well, what I'm saying is
4 everybody pays for that adjustment according to their
5 participation share. Whatever the State's participation
6 share, that would be the proportionate cost they would
7 have to bear.

8 MS. ORDWAY: That does not appear to be the
9 information that we've been given this morning.

10 Of the approximately two and a half million
11 dollars that it would cost to do this, the State's share
12 of the cost is around \$2 million.

13 MR. THOMPSON: You asked an earlier question
14 which the Governor tried to get some quantification on
15 the dollars involved. I, too, cannot give you a
16 quantitative answer, but I might be able to give you a
17 qualitative answer.

18 The amount of paybacks still to be done is
19 a little \$13 million as of August. If I were to take
20 Mr. Austin's number, that the royalty is one-sixth --
21 and again, this is qualitative -- then the amount of
22 money involved might be one-sixth of \$13 million.

23 I would have problems from the staff
24 recommending to you that we have an expense of a couple
25 million dollars to handle a couple of million dollars

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1 retroactive adjustment change.

2 You would not change the dollar amount of
3 the payback, but it would be stretched out and the
4 implementation cost of that seems to me would be fairly
5 large in relationship to the amount of deferred amount.

6 CHAIRMAN MC CARTHY: We have ourselves a
7 dilemma here. First of all, while it's not always
8 apparent, I hope you both appreciate that the three of
9 us are sitting here as a Commission under State law with
10 a legal responsibility to try to make what seem to be
11 fair adjustments or fair decisions in dealing with
12 taxpayers' money. It's not our money. Really, it's the
13 taxpayers' money.

14 MR. AUSTIN: We appreciate that.

15 CHAIRMAN MC CARTHY: But we're dealing here
16 with a divergence of facts that have placed a lot of
17 people -- and I'm especially sensitive to the people you
18 described, Mrs. Buchholz, the elderly and lower income
19 people -- in a real pinch, an economic pinch here.

20 And we've got all the lawyers here telling us
21 there's a contract and it has enforceable provisions, and
22 that the interpretation of the Elder statute, according
23 to all of their legal brainpower and interpretation --
24 and that's why they're here, to advise us: we can be our
25 own lawyer and ignore them, all these lawyers that are

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1 advising us. But you remember what was said about the
2 fella who is his own lawyer.

3 MR. AUSTIN: That's first year law school.

4 CHAIRMAN MC CARTHY: We're in the horns of a
5 dilemma.

6 MS. BUCHHOLZ: Could I ask one question?

7 CHAIRMAN MC CARTHY: Yes, ma'am.

8 MS. BUCHHOLZ: When you deducted 50 percent
9 from our pay and you changed your records, who paid for
10 that?

11 CHAIRMAN MC CARTHY: Who? --

12 MS. ORDWAY: We deducted?

13 MS. BUCHHOLZ: You changed your records, like
14 we would ask that you change them now and reduce it from
15 10 from 50, you reduced our pay from 100 to 50, who paid
16 for that?

17 MR. THOMPSON: I think we're getting confused
18 here between the working interest owner-royalty owner
19 lease arrangement and the Unit. That was an arrangement
20 between each individual working interest owner and
21 their royalty owners. That was not a Unit matter.

22 EXECUTIVE OFFICER DEDRICK: The State has no
23 control over that at all.

24 MS. BUCHHOLZ: I stand corrected. I was
25 just wondering where that came from.

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1 CHAIRMAN MC CARTHY: We want to get this thing
2 clarified. It's all very complicated.

3 Is there a -- I don't know if you can even
4 differentiate between royalty owners that are really down
5 at the bottom, the ones who were getting a hundred
6 dollars or fifty dollars a month.

7 Is there a way we could try to somehow ease
8 their situation and ease their payback? Or do we
9 absolutely have to have the same percentage under this
10 contract for every single --

11 EXECUTIVE OFFICER DEDRICK: I have to defer
12 to attorneys on that one. I don't know how we could do
13 that kind of accounting.

14 CHAIRMAN MC CARTHY: Do you understand what
15 I'm asking, Mrs. Buchholz?

16 MS. BUCHHOLZ: Yes. I don't know. Everyone
17 in Long Beach who has a royalty interest is very much
18 disturbed about this. I doubt whether you could segregate them.

19 CHAIRMAN MC CARTHY: I appreciate that. For
20 everybody concerned --

21 MS. BUCHHOLZ: I mean I don't know how --

22 CHAIRMAN MC CARTHY: -- their ideal answer
23 would be to stretch this out in a way that would also
24 take into account the economic adjustment required.

25 MR. THOMPSON: This is a mixed situation. For

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1 example, in the Townlot, there are three working interest
2 owners who are actually receiving money coming back to
3 them because they were underpaid. There are 13 Townlot
4 working interest owners who have already completed their
5 payback.

6 So, there are some royalty owners connected
7 with those working interest owners who have either been
8 completely paid back or the situation would be completely
9 unchanged -- I mean no change. So, it's a mixed
10 situation.

11 CHAIRMAN MC CARTHY: Do we have any
12 administrative discretion at all where you're dealing with
13 people that are really getting modest --

14 MR. AUSTIN: Not under the Elder bill.

15 CHAIRMAN MC CARTHY: -- royalties out of
16 this to try to at least make some modest adjustment to
17 make it easier for them --

18 MR. THOMPSON: Also the problem of crude oil
19 prices dropping by 60 percent in a three or four month
20 period.

21 CHAIRMAN MC CARTHY: I think that's a large
22 part of this problem.

23 MS. BUCHHOLZ: It has something to do with it,
24 yes.

25 CHAIRMAN MC CARTHY: Dropping of oil prices

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1 and, therefore, the revenue and the royalties that are
2 coming back to all these folks has dropped considerably,
3 too.

4 MR. THOMPSON: And, of course, with that,
5 as crude oil prices have gone down, we have had to cut
6 back operating costs and the rate has to go down a little
7 bit because of that, and everything has added in the
8 wrong direction.

9 MS. BUCHHOLZ: We have another problem. We
10 have never been told what our debt is, this so-called
11 debt that's hanging over our head. We have never been
12 given a figure. And we have never been shown on our
13 payment each month how much credit we have gotten that
14 month against our payment. So, there's no way for us to
15 know when we're through with the debt.

16 MR. THOMPSON: Again, this is the working
17 interest owner --

18 MS. BUCHHOLZ: Yes, it is.

19 MR. THOMPSON: -- royalty issue. And,
20 unfortunately, this is out of our hands. And we do not
21 know all of the royalty shares --

22 MS. BUCHHOLZ: I realize that. But I just
23 want you people to know what we're up against on that.

24 CHAIRMAN MC CARTHY: This information will
25 come from the oil companies?

1 MR. THOMPSON: Yes.

2 CHAIRMAN MC CARTHY: If they want to, that
3 is?

4 MR. THOMPSON: But again, that again is
5 their liability. Their contract between each royalty
6 owner and themselves. It's not a new addition.

7 MS. BUCHHOLZ: How do we go about getting it?
8 I wrote to the oil company, the one that has my lease,
9 and after months I didn't get an answer. I wrote another
10 letter; didn't hear from them. I called long distance
11 six times, and finally got an answer that I had paid
12 one-third. I still owe two-thirds of it after paying over
13 a year.

14 MR. THOMPSON: We understand your problem and
15 tried to help in the past, but that's something that we
16 can't get involved with.

17 MS. BUCHHOLZ: No, that's right. I just
18 wanted you to know about it.

19 CHAIRMAN MC CARTHY: All right. Go ahead.

20 MS. RASMUSSEN: Yes, thank you. I don't
21 think we ever got an answer from our attorneys in
22 response to Mr. McCarthy's question. Do we have any
23 alternate recourses available to us at all?

24 MR. THOMPSON: This was a question of
25 selectivity, whether you could help one portion and not

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1 another.

2 MR. HIGHT: Mr. Austin agreed. Under the
3 Elder bill as it's presently worded, I don't think you
4 have that latitude.

5 MR. HAGER: I also, which is really repeating
6 what Moose said, the matter of royalty payments is
7 in the province of the oil companies. They know who
8 their royalty interest owners are and they know how much
9 each royalty interest owner gets.

10 If there was a determination to give greater
11 relief to one royalty interest owner over another, it
12 would be solely within the province of the oil companies
13 to do that. They have the data to make those
14 determinations. And again, they would come back to us
15 and say, "That costs us money to differentiate among the
16 various royalty interest owners. That's an expense we
17 don't have to pay under our contract and we won't do it."

18 CHAIRMAN MC CARTHY: This is frustrating.

19 MR. THOMPSON: One further point. Part of
20 your calendar item on page 20 146.7, there's a letter
21 from Chevron. And in the second paragraph they say they
22 would agree to do --

23 MS. RASMUSSEN: Where are you looking?

24 MS. ORDWAY: Page 146.7.

25 MR. THOMPSON: If they were modified and

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1 agreed so that they would be fully compensated for all
2 of their economic losses incurred. And at one time --
3 I don't know if they still have the position or not --
4 but at one time --

5 EXECUTIVE OFFICER LEDRICK: These are just
6 these letters.

7 MR. THOMPSON: -- this was the time value of
8 money if there were a deferred payback. I don't know
9 what their current position is on this.

10 CHAIRMAN MC CARTHY: I think we've probably
11 heard all points of view by this time. Do the
12 Commissioners have any other questions?

13 MS. ORDWAY: I don't know what we can do
14 about it. A lot of this is truly out of our hands. This
15 is very frustrating.

16 MS. RASMUSSEN: That brings up something that
17 perhaps the staff could get back to us on as soon as
18 possible. And that would be if we have any legal avenues
19 with regard to the oil companies, because it seems to
20 me that they have acted detrimentally in the interest of
21 all the people involved here. And I'm still concerned
22 somewhat about the question raised earlier about whether
23 there is a conflict of interest. I realize that their royalty
24 interest is on a parcel perhaps owned by a different oil
25 company, but still their actions benefit them and no one

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1 else.

2 And I'm very concerned about that. And I
3 think that there's a possibility that there may be a
4 conflict of interest. I also think that they've acted
5 negligently.

6 And I think we are, as a Commission, in a
7 very difficult box. I don't think we have an alternative
8 at this point. But I would like to ask that the staff
9 get back to us on that to see if we have any legal
10 recourse of any kind.

11 EXECUTIVE OFFICER DEDPICK: Yes, we will,
12 Commissioner.

13 MS. RASMUSSEN: With that in mind, I would
14 move the item as presented.

15 CHAIRMAN MC CARTHY: Okay. Unfortunately,
16 there's not much option in front of us. That's what's
17 before us.

18 MS. RASMUSSEN: With a lot of regret.

19 MR. AUSTIN: Could I make one inquiry?

20 CHAIRMAN MC CARTHY: Yes.

21 MR. AUSTIN: In reference to the recommendation
22 No. 2, if the proposal as submitted and as pending is
23 rejected, could we have some sort of guidelines as to what
24 would be acceptable by the staff so it's recommended to
25 this Commission? We don't know. We're in the dark. We

1 prepared a proposal and they say that's not sufficient.

2 Now, can somebody tell us what they may feel
3 is sufficient or at least how -- in what form the
4 proposal should be rather than just --

5 CHAIRMAN MC CARTHY: We'll ask the Commission
6 staff to discuss that with you, Mr, Austin. All right?
7 Let's see if there's some way to help.

8 MR. AUSTIN: I would at this time like to
9 thank the Commission and all the staff for their
10 attentiveness in hearing us. It's appreciated.

11 CHAIRMAN MC CARTHY: Thank you, sir.

12 MS. BUCHHOLZ: Thank you.

13 CHAIRMAN MC CARTHY: Thank you, Miss Buchholz.

14 MS. BUCHHOLZ: Thank you very much.

15 CHAIRMAN MC CARTHY: Item 22.

16 EXECUTIVE OFFICER DEDRICK: Item 22 is the
17 approval of the second modification of the 86-87 Plan and
18 Budget for the Long Beach Unit Wilmington Field, which it
19 constitutes a reduction of 17.3 million in expenses and
20 the reduction of activity by one drilling rig.

21 (Thereupon Lieutenant Governor McCarthy
22 exited the hearing chambers.)

23 ACTING CHAIRWOMAN ORDWAY: Any questions or
24 comments on Item No. 22?

25 MS. RASMUSSEN: Moved.

1 ACTING CHAIRWOMAN ORDWAY: Without objection,
2 Item 22 is approved.

3 Item 23.

4 EXECUTIVE OFFICER DEDRICK: Item 23 is an
5 approval of the third modification to the same document
6 for the purpose of continuing some funding for studies
7 of a projected cogeneration facility.

8 ACTING CHAIRWOMAN ORDWAY: Questions or
9 comments on Item 23?

10 MS. RASMUSSEN: Moved.

11 ACTING CHAIRWOMAN ORDWAY: Without objection.
12 Item 24.

13 EXECUTIVE OFFICER DEDRICK: Item 24 is
14 approval of a proposed expenditure of \$80,000 by the
15 City of Long Beach of their tideland oil revenues for the
16 removal of a comfort station.

17 ACTING CHAIRWOMAN ORDWAY: Question or
18 comment on Item 24?

19 MR. O'CONNELL: Moved.

20 ACTING CHAIRWOMAN ORDWAY: Without objection,
21 Item 24 is approved. Item 25.

22 EXECUTIVE OFFICER DEDRICK: 25 is approval
23 for the expenditure of \$257,000 from the same fund by the
24 City of Long Beach for the construction of a lifeguard
25 substation and new restrooms.

1 ACTING CHAIRWOMAN ORDWAY: Comments or
2 questions on Item 25?

3 MS. RASMUSSEN: Moved.

4 ACTING CHAIRWOMAN ORDWAY: Without objection.
5 Item 26?

6 EXECUTIVE OFFICER DEDRICK: Approval of a
7 five-year maintenance dredging permit in the San Joaquin
8 River by the Lower San Joaquin Levee District.

9 ACTING CHAIRWOMAN ORDWAY: Questions or
10 comments on Item 26?

11 MR. O'CONNELL: Moved.

12 ACTING CHAIRWOMAN ORDWAY: Without objection,
13 Item 26 is approved. Item 27.

14 EXECUTIVE OFFICER DEDRICK: Item 27 is a
15 proposed royalty crude oil sale from the South Elwood
16 Field in Santa Barbara County. Prices have moved a little
17 bit. There's a little bit of activity of sales in other
18 areas in Long Beach and staff would like to try it.

19 ACTING CHAIRWOMAN ORDWAY: Comments or
20 questions on Item 27?

21 MR. O'CONNELL: Moved.

22 ACTING CHAIRWOMAN ORDWAY: Without objection,
23 Item 27's approved.

24 Item 28, 29, and 30 are off calendar. In
25 the absence of any other business --

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1 MR. HIGHT: For the record, on Items 22
2 through 27, Jock O'Connell was sitting in a voting
3 capacity for the Lieutenant Governor and Mrs. Rasmussen
4 was sitting in a nonvoting capacity for the State
5 Controller.

6 ACTING CHAIRWOMAN ORDWAY: All right. In
7 the absence of any further business, motion to adjourn?

8 MR. O'CONNELL: Move.

9 ACTING CHAIRWOMAN ORDWAY: Without objection.

10 (Thereupon the meeting was adjourned.)

11 --o0o--

CERTIFICATE OF SHORTHAND REPORTER

1
2
3 I, Nadine J. Parks, a shorthand reporter of
4 the State of California, do hereby certify that I am a
5 disinterested person herein; that the foregoing meeting
6 of the State Lands Commission was reported in shorthand
7 by me and thereafter transcribed into typewriting.

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

11 IN WITNESS WHEREOF, I have hereunto set my
12 hand this 17th day of October, 1986.

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14 Nadine J. Parks
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