

MINUTE ITEM

1/26/73
JFT(NGT)

14. BOUNDARY SETTLEMENT AND LAND EXCHANGE AGREEMENT WITH SIGNAL COMPANIES;
ORANGE COUNTY - W 9213, BLA 137, PRC 4734.9, PRC 4735.9, PRC 4736.1.

During consideration of Calendar Item 12 attached, the Executive Officer read into the record a letter that had been received from Norman B. Livermore, Jr., Secretary for Resources, as follows:

"The January 26, 1973, State Lands Commission calendar item pertaining to Bolsa Chica Bay represents one of the most exciting and innovative resource and recreation programs in recent years. The proposal is the result of over two years of deliberate and persistent negotiations involving the state and private industry.

"The Bolsa Bay Conceptual Plan for Resources and Recreation was developed during the period of January through December 1972, using a unique interagency task force approach toward solving a very complex problem. The Task Force, comprised of members of The State Lands Division, The Attorney General's Office and Departments within The Resources Agency, cooperated and worked long, difficult hours toward mutually beneficial state objectives. The implementation of The Conceptual Plan will bring generations of Californians satisfaction and enjoyment, and will significantly help to perpetuate California's wildlife resources.

"I have approved The Conceptual Plan for Bolsa Bay. The Governor's 1973-74 budget contains an appropriation request necessary for detailed planning. I urge you to take the appropriate steps that will make the Plan a reality."

Mrs. David (Margaret) Carlberg, Secretary, Huntington Beach Environmental Council and City of Huntington Beach, appeared and informed the Commission that she was enthusiastic about the proposal and in favor of the staff recommendation being adopted.

Upon motion duly made and carried, the following resolution was adopted:

THE COMMISSION:

1. FINDS THAT THE EXCHANGE OF LANDS AND RIGHTS SET FORTH IN THE AGREEMENT REFERRED TO IN PARAGRAPH 2 BELOW, IS IN THE BEST INTERESTS OF THE STATE FOR THE IMPROVEMENT OF NAVIGATION AND TO ENHANCE THE CONFIGURATION OF THE SHORE LINE OF BOLSA INLET FOR THE IMPROVEMENT OF THE WATERS THEREOF AND THE ADJACENT UPLANDS, AND THAT IT WILL NOT SUBSTANTIALLY INTERFERE WITH THE RIGHTS OF NAVIGATION AND FISHING IN THE WATERS INVOLVED AND IN FACT WILL ENHANCE AND ENLARGE PUBLIC RIGHTS AND UTILIZATION OF SAID WATERWAYS FOR TRUST PURPOSES OF NAVIGATION, COMMERCE AND FISHERIES; AND THAT THE STATE WILL RECEIVE LANDS AND INTERESTS IN LANDS EQUAL TO OR GREATER IN VALUE THAN ANY SUCH LANDS OR INTERESTS RELINQUISHED BY THE STATE PURSUANT TO SAID AGREEMENT.

2. AUTHORIZES THE EXECUTION OF THE BOUNDARY AND EXCHANGE AGREEMENT (BLA 137) BETWEEN THE COMMISSION, CERTAIN SPECIFIED SIGNAL COMPANIES, AND THOSE OTHER PARTIES WHICH EXECUTE SAID AGREEMENT, SAID AGREEMENT BEING ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND BY REFERENCE MADE A PART HEREOF.
3. AUTHORIZES THE EXECUTION OF A STATE PATENT WITHOUT THE RESERVATION OF MINERAL INTERESTS TO THE SIGNAL COMPANIES WHICH ARE PARTIES TO SAID AGREEMENT AND OTHER PRIVATE PARTIES AS THEIR INTEREST MAY APPEAR OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY TO THE PARCELS OF REAL PROPERTY DESCRIBED IN SAID AGREEMENT REFERRED TO IN PARAGRAPH 2 ABOVE, PURSUANT TO THE TERMS OF SAID AGREEMENT.
4. AUTHORIZES THE ACCEPTANCE AND RECORDATION OF CONVEYANCES TO THE STATE AS PROVIDED IN SAID BOUNDARY AND LAND EXCHANGE AGREEMENT.
5. FINDS AND DECLARES THAT UPON THE DELIVERY OF THE PATENT TO THE PARTIES REFERRED TO IN PARAGRAPH 3 ABOVE, AND THE RECORDATION THEREOF IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, THE REAL PROPERTY DESCRIBED IN SAID PATENT:
 - A. HAS BEEN CUT OFF FROM NAVIGABLE WATERS, IMPROVED, FILLED, AND RECLAIMED BY CERTAIN SIGNAL COMPANIES AND THEIR PREDECESSORS IN INTEREST;
 - B. HAS THEREBY BEEN SEVERED FROM THE PUBLIC CHANNELS AND WATERWAYS AND IS NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR COMMERCE, NAVIGATION AND FISHING, AND IS NO LONGER IN FACT TIDELANDS OR SUBMERGED LANDS AND THEREFORE SHALL BE FREED FROM SUCH PUBLIC TRUST.
6. FINDS THAT THE ISSUANCE OF LEASES FOR TERMS OF 66 YEARS TO THE DEPARTMENT OF FISH AND GAME FOR PURPOSES SET FORTH IN THE ABOVE DESCRIBED CONCEPTUAL PLAN ARE IN THE BEST INTERESTS OF THE STATE IN THAT SUCH TERMS ARE NECESSARY FOR THE PROTECTION AND PRESERVATION OF THE LEASED LANDS TO INSURE AMORTIZATION OF CAPITAL INVESTMENT AND AUTHORIZE THE ISSUANCE OF SAID 66-YEAR LEASES.
7. FINDS THAT THE ISSUANCE OF AN OIL AND GAS LEASE TO SIGNAL OIL PURSUANT TO SECTION 6815 OF THE PUBLIC RESOURCES CODE IS APPROPRIATE AND PROPER IN THAT THE PROVISIONS OF SECTION 6827 OF SAID CODE ARE DEEMED TO BE IMPRACTICABLE BY REASON OF THE IRREGULAR CONFIGURATION OF THE STATE MINERAL INTERESTS AND SMALL SIZE OF MANY PORTIONS THEREOF, AND AUTHORIZE THE ISSUANCE OF SAID OIL AND GAS LEASE.
8. AUTHORIZES THE STATE LANDS DIVISION AND OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL FURTHER STEPS NECESSARY TO IMPLEMENT THE ABOVE TRANSACTION INCLUDING, BUT NOT LIMITED TO, APPEARANCES IN ANY LEGAL PROCEEDINGS BROUGHT CONCERNING THE ABOVE TRANSACTION.

Attachment:

Calendar Item 12 (8 pages)

CALENDAR ITEM

12.

1/73
JFT(NGT)
W 9213
(BLA 137)BOUNDARY SETTLEMENT AND LAND EXCHANGE AGREEMENT WITH
SIGNAL COMPANIES; ORANGE COUNTY

For the past two years, the State Lands Division, together with the Resources Agency Task Force on Bolsa Bay, has been conducting studies and negotiations concerning the extent and nature of State ownership and interests in lands which were beneath the waters of Bolsa Bay, in Orange County. In conjunction with that work the Division also requested the assistance of the Resources Agency in developing a plan for the public to utilize those rights and interests so that any settlement of the problems presented would take such a plan into consideration. Resources Secretary Norman B. Livermore appointed an Interagency Task Force on Bolsa Bay to develop the plan and named James B. McCormick, Task Force Chairman. This is the first time that such a comprehensive inter-disciplinary approach has been employed by the State in connection with boundary settlement and exchange agreements. The result has been not only to settle the problems but to create a conceptual plan for the maximization of the public trust purposes of commerce, navigation and fisheries for which purposes the State holds such property. The settlement will also permit the first re-establishment of an estuarine area of this size out of a reclaimed area by a public agency.

Prior to the activities of man at the turn of the century, Bolsa Bay was a small inlet or estuary having its own entrance to the Pacific Ocean. Beginning just prior to 1900, a group of Los Angeles and Pasadena businessmen formed a hunting club and constructed numerous facilities for hunting in and around the inlet. The most substantial of those improvements was a dam to prevent tidal waters from entering the lowlands. Levees, ponds and filling activities behind the dam were undertaken. The dam caused the inlet mouth to close by silting. A channel was then dug by hand to connect the former estuary with Anaheim Bay so that upland run-off waters could be discharged. The result of this work was to substantially obliterate natural conditions and put the area into an artificial condition.

Signal Properties claims to own in fee title approximately 1,450 acres of lowlands adjacent to and including what was Bolsa Bay in natural state (the lowlands are part of 1970 acres of land Signal claims in the area). The basis of Signal's claims is as successor in interest to the patentees of two Spanish and Mexican Ranchos, namely Rancho La Bolsa Chica and Rancho Las Bolsas, and two State Tide Land Patents issued pursuant to Orange County Tide Land Locations 195 and 221. (Rancho Las Bolsas is upland of Rancho Bolsa Chica, only the latter directly surrounding Bolsa Bay and only two very small slivers of Tide Land Location 221 are within the area claimed by Signal. Therefore, this transaction has been discussed in terms of Rancho La Bolsa Chica and Tide Land Location 195, although the validity of all procedural aspects of all patents have been determined and the proposed settlement has taken into consideration the various claims and contentions concerning all of the patented areas.)

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Present negotiations began upon application of Signal Properties to clear the title to certain portions of the lowlands affected by the State's claims.

The State's assertions of property title and interests in lands within the Bolsa Chica area are as follows:

- (a) That it retains an easement for purposes of commerce, navigation and fisheries over all tidelands within the area not included within Rancho La Bolsa Chica determined as of the date said lands last existed in a natural state;
- (b) That it is the owner of all submerged lands within the area not included within Rancho La Bolsa Chica as of the date said lands last existed in a natural state.

The area affected by the State claims also involves a determination of the extent of lands included within the Rancho inasmuch as the Rancho boundary is the ordinary high water mark of Bolsa Bay (with certain exceptions where sloughs and tributaries were included within the Rancho) and such a boundary moves in location with natural changes. No precise relocation of the Rancho boundary around Bolsa Bay has been made since the 1860's when the rancho was surveyed in the process of confirming title thereto with the federal government pursuant to the provisions of the Treaty of Guadalupe Hidalgo and statutes implementing the treaty's provisions.

Signal Properties has challenged the State's contentions and asserts that it (together with certain other Signal Companies) has complete title to all of the Bolsa Chica area.

It should be noted that in 1907, the California Supreme Court held that members of the public could not cross over the subject lands for purposes of hunting and fishing and that the portions of the waterways discussed in the opinion (which were located in the upper portion of the bay area) were found to be non-navigable. Bolsa Land Co. v. Burdick, 151 Cal. 254 (1907). Five years later, the Supreme Court, in seeking to distinguish the Bolsa case by way of dicta, stated that it was doubtful that the State patent to tidelands in Bolsa Bay conveyed any title thereto as the bay lands may have been included in the rancho grant. Forestier v. Johnson, 164 Cal. 24, 38-39 (1912). (The State has reviewed these authorities and has concluded that they do not affect the validity of the State's contentions although Signal has taken a contrary position.)

At the outset of said negotiations several studies were undertaken.

The first was an engineering study, with legal review, of the present location of the rancho boundary around Bolsa Bay and the location of tidelands and submerged lands in their last natural state. An independent engineering firm was employed at Signal's expense to prepare a historic study of the above matters pursuant to criteria established by the State Lands Division. Much of the information used was supplied by the State and the firm worked in close consultation with the Division. In addition, the Division conducted

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its own independent research and review of this matter and was advised throughout by the Attorney General's office with regard to applicable legal principles. A complete study was made of all historic maps to the present time, together with other reports and matters which would affect the location of the boundaries in question.

The second study was an environmental evaluation of the entire Bolsa Chica area by the Dillingham Environmental Company, which retained an array of experts to prepare a comprehensive inventory. The result of this work was a three volume report. The State Task Force has reviewed the report, done additional research and inspection of the subject property and met privately with the consultants to discuss their findings. A copy of the report has been loaned to several interested citizens over the past year.

Finally, Signal Properties and the State have each had appraisals made of the value of the various lands in dispute.

The Interagency Task Force on Bolsa Bay began its study with eloping objectives for Bolsa Bay. The objectives agreed upon by the Task Force are as follows:

"To re-establish and maintain for the people of the State, now and in the years ahead, a saltwater marsh ecological system, adequate in size and quality to provide for a diversity of use of coastal wetland habitats.

"More specifically:

- "1. To improve the bay and surf fisheries of the contiguous area by increasing nurseries and forage.
- "2. To provide habitat for a variety of water-associated wildlife including the endangered light-footed clapper rail and least tern.
- "3. To provide unique scientific and educational use opportunities to study the development, formation, and maintenance of a saltwater marsh.
- "4. To provide Bolsa Chica State Beach expanded recreational opportunities.
- "5. To provide a public waterway system available for small craft recreational use."

With these objectives in mind, the Task Force was requested to determine whether the configuration of State sovereign tide and submerged lands within the Bolsa Chica area was suitable for their realization. The Task Force determination was that because of the irregular configuration and narrowness of certain portions of the State claimed lands, those lands were not as conducive to attaining those objectives as would be the case if the State's interests were exchanged for a consolidated parcel of property abutting Bolsa Chica State Beach. Based upon this advice, the State

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negotiators determined that not only a boundary settlement agreement was necessary, but that an exchange was also required in order for there to be a maximization of public trust purposes for which such lands are held by the State.

The result of the State Lands Division review of the title and boundary problems has been (1) an agreement as to the location of the 1861 survey of the meander boundary around Bolsa Bay; and (2) the conclusion that there were 526.4 acres of sovereign tide and submerged lands (of which 63 acres were submerged lands) in which the State has an interest. This conclusion was reached at the end of the aforementioned extensive study and after legal review by the Attorney General's office.

Following the Task Force's adoption of objectives and the State's review of the various studies, extensive negotiations between representatives of Signal and the State have resulted in an agreement in principal for the settlement of title questions, a land exchange and a plan for the resources and recreational development of Bolsa Bay subject to approval by the State Lands Commission and Fish and Game Commission. Major points in the proposed agreement are:

1. Fee title to a 300-acre plot and 27.5 acres beneath Pacific Coast Highway (both of which are adjacent to the Bolsa Chica State Beach) will be confirmed or received by the State. See Parcel 2 on Exhibit A attached hereto and incorporated herein by reference. (For purposes of insuring that the State is receiving equal or greater value as a result of this transaction, the State's appraisal has determined that portions of rancho lands within the 300-acre parcel it is receiving are equal or greater in value than the interests in sovereign lands it claims outside the 300-acre area which are being conveyed to Signal in exchange for the rancho lands to be received by the State. Although such an appraisal approach was taken, it should be noted that each element of this transaction was indispensable insofar as reaching a settlement is concerned.)
2. Fee title to the remainder of Bolsa Chica area will be confirmed or conveyed to Signal Properties, Inc., and the easement of commerce, navigation and fisheries to the extent it exists over such lands will be terminated. See Parcel 4 on Exhibit A.
3. Signal will provide to the State the right to use, without payment of any rental, for a period of fourteen years and specified purposes, an additional 230 acres of land adjacent to the 300-acre plot. This will offset the effect of an ocean entrance system on the State's 300-acre parcel as well as being a contribution for the establishment of such a system by Signal. See Parcel 3 on Exhibit A.
4. The State will receive fee title to the 230-acre plot upon construction of an ocean entrance system within said fourteen year period re-opening Bolsa Bay to the Pacific Ocean to provide a variety of public benefits and water access to Signal lands.

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5. Upon re-opening Bolsa Bay to the Pacific Ocean, the State will have fee title to a total of 557.5 acres in Bolsa Chica area.
6. The Department of Fish and Game will receive 66-year leases of the lands described in points 1 and 3 above from the State Lands Commission with the qualifications that the lease of the point 3 area will terminate at the end of fourteen years should an ocean entrance system not be constructed. That Department will then assume full responsibility for the administration and development of the 530 acres into a multi-use coastal resource. Development will be in two phases: Phase 1 will create approximately 300 acres of coastal wetland habitat subject to minor tidal flow. Phase 2 will culminate with the major portion of the area, or approximately 400 acres dedicated to the re-establishment of a saltwater marsh and the remainder for a public marina which will include day use launching ramps, permanent berthing and related service facilities. Included in the plan are such options as picnic sites, fishing access and adding off-beach parking to Bolsa Chica State Beach. Said leases specifically provide that before the commencement of any development of the subject lands, the Department will prepare and distribute appropriate environmental impact statements as required by Public Resources Code Section 21000, et seq., as amended, and obtain such permits as required by any governmental agency having jurisdiction over such land.
7. The State will exchange with Signal the 63 acres of mineral interests recognized in State ownership (which have very irregular configurations and in many instances are isolated slivers) for a consolidated 70-acre parcel of mineral rights. The oil and gas rights thereto will be leased to Signal by the State. To insure that the royalty amount received by the State is not reduced by the exchange, the royalty rate has been determined upon the basis of the location of the original location of the State Mineral Lands. See Parcel 6 of Exhibit A.

During said negotiations, the Task Force was developing the outlines of a conceptual plan for the use of the area. Upon agreement in principle being reached, members of the Task Force began a series of more than 25 meetings with numerous representatives of affected federal, State and local agencies, conservation and civic organizations (such as the Sierra Club, Audubon Society, Chambers of Commerce, Environmental Councils, etc.) and interested members of the public. These meetings were held beginning in August 1972, and continued through December. Almost all have been held in various locations in Orange County, two of those having the largest attendance of more than 100 each were held within approximately three miles of the subject property. It is estimated that more than 400 people have attended one or more of those meetings. During this period, considerable newspaper publicity was received in all of the major Orange County newspapers both prior to and following the meetings. The publicity has been favorable for approval of the transaction and has included the editorial endorsement of one major newspaper. Comments received during these meetings have been incorporated in the agreements and conceptual plan.

Following the meetings, the Task Force formalized the Conceptual Plan in a written document which has been approved by Secretary Livermore of the

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Resources Agency. A copy of said Conceptual Plan is on file in the Office of the State Lands Commission and is incorporated herein by reference thereto.

Copies of all documents necessary to accomplish the above transaction are on file in the Office of the State Lands Commission and are incorporated herein by reference thereto.

The exchange of surface and mineral interests is being made pursuant to Section 6307 of the Public Resources Code. Since the State will acquire mineral interests in the lands being received in exchange for those given up in proportion to the amount of such mineral interests it currently possesses, no mineral rights will be retained in State Lands to be exchanged to Signal Oil.

Pursuant to Section 6357 of the Public Resources Code, the State Lands Commission is authorized to enter into boundary line agreements regarding the extent of sovereign lands.

The mineral lease to Signal Oil has been negotiated in accordance with the provisions of Public Resources Code Section 6815, because the provisions of Section 6827 of said code are impracticable due to the irregular configuration of the State's mineral lands, the fact that many parcels thereof are of small size and no drilling will be allowed from the State Mineral Lands.

The 66-year term of the leases to the Department of Fish and Game is considered necessary because of the capital expenditure which will be required for implementation of the Conceptual Plan and desire that the State Lands be preserved for the purposes set forth in said plan. Section 2004 of the California Administrative Code allows the issuance of leases for such a term where the Commission finds that such is in the best interests of the State.

The proposed boundary settlement and exchange agreement is exempt from the provisions of Section 6371 of the Public Resources Code relating to Environmental Impact Reports. Despite that fact a detailed analysis of the environmental considerations involved in the areas affected by this transaction have been considered, discussed and taken into account in negotiations and meetings which have been discussed above. The Conceptual Plan indicates the proposals are environmentally positive. As previously noted such reports must be filed by the Department of Fish and Game prior to the use of any State lands leased to Fish and Game pursuant to said Conceptual Plan.

An appraisal and evaluation has been made by the Division which indicates that the State will receive lands and interests in lands equal or greater in value to those lands and interests claimed by the State and to be surrendered as a result of this exchange.

This matter has been reviewed and approved by the Office of the Attorney General.

EXHIBITS: A. Location Map. B. Location Map.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE EXCHANGE OF LANDS AND RIGHTS SET FORTH IN THE AGREEMENT REFERRED TO IN PARAGRAPH 2 BELOW, IS IN THE BEST INTERESTS OF THE STATE FOR THE IMPROVEMENT OF NAVIGATION AND TO ENHANCE THE CONFIGURATION OF

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THE SHORE LINE OF BOLSA INLET FOR THE IMPROVEMENT OF THE WATERS THEREOF AND THE ADJACENT UPLANDS, AND THAT IT WILL NOT SUBSTANTIALLY INTERFERE WITH THE RIGHTS OF NAVIGATION AND FISHING IN THE WATERS INVOLVED AND IN FACT WILL ENHANCE AND ENLARGE PUBLIC RIGHTS AND UTILIZATION OF SAID WATERWAYS FOR TRUST PURPOSES OF NAVIGATION, COMMERCE AND FISHERIES; AND THAT THE STATE WILL RECEIVE LANDS AND INTERESTS IN LANDS EQUAL TO OR GREATER IN VALUE THAN ANY SUCH LANDS OR INTERESTS RELINQUISHED BY THE STATE PURSUANT TO SAID AGREEMENT.

2. AUTHORIZE THE EXECUTION OF THE BOUNDARY AND EXCHANGE AGREEMENT (BLA 137) BETWEEN THE COMMISSION, CERTAIN SPECIFIED SIGNAL COMPANIES, AND THOSE OTHER PARTIES WHICH EXECUTE SAID AGREEMENT, SAID AGREEMENT BEING ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND BY REFERENCE MADE A PART HEREOF.
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5. FIND AND DECLARE THAT UPON THE DELIVERY OF THE PATENT TO THE PARTIES REFERRED TO IN PARAGRAPH 3 ABOVE, AND THE RECORDATION THEREOF IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, THE REAL PROPERTY DESCRIBED IN SAID PATENT:
 - A. HAS BEEN CUT OFF FROM NAVIGABLE WATERS, IMPROVED, FILLED, AND RECLAIMED BY CERTAIN SIGNAL COMPANIES AND THEIR PREDECESSORS IN INTEREST;
 - B. HAS THEREBY BEEN SEVERED FROM THE PUBLIC CHANNELS AND WATERWAYS AND IS NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR COMMERCE, NAVIGATION AND FISHING, AND IS NO LONGER IN FACT TIDELANDS OR SUBMERGED LANDS AND THEREFORE SHALL BE FREED FROM SUCH PUBLIC TRUST.
6. FIND THAT THE ISSUANCE OF LEASES FOR TERMS OF 66 YEARS TO THE DEPARTMENT OF FISH AND GAME FOR PURPOSES SET FORTH IN THE ABOVE DESCRIBED CONCEPTUAL PLAN ARE IN THE BEST INTERESTS OF THE STATE IN THAT SUCH TERMS ARE NECESSARY FOR THE PROTECTION AND PRESERVATION OF THE LEASED LANDS TO INSURE AMORTIZATION OF CAPITAL INVESTMENT AND AUTHORIZE THE ISSUANCE OF SAID 66-YEAR LEASES.
7. FIND THAT THE ISSUANCE OF AN OIL AND GAS LEASE TO SIGNAL OIL PURSUANT TO SECTION 6815 OF THE PUBLIC RESOURCES CODE IS APPROPRIATE AND PROPER IN THAT THE PROVISIONS OF SECTION 6827 OF SAID CODE ARE DEEMED TO BE IMPRACTICABLE BY REASON OF THE IRREGULAR CONFIGURATION OF THE STATE MINERAL INTERESTS AND SMALL SIZE OF MANY PORTIONS THEREOF, AND AUTHORIZE THE ISSUANCE OF SAID OIL AND GAS LEASE.

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8. AUTHORIZE THE STATE LANDS DIVISION AND OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL FURTHER STEPS NECESSARY TO IMPLEMENT THE ABOVE TRANSACTION INCLUDING, BUT NOT LIMITED TO, APPEARANCES IN ANY LEGAL PROCEEDINGS BROUGHT CONCERNING THE ABOVE TRANSACTION.