

MINUTE ITEM

This Calendar Item No. 44  
was approved as Minute Item  
No. 44 by the State Lands  
Commission by a vote of 3  
to 0 at its 5-27-76 MINUTE ITEM  
meeting.

5/27/76  
GRH

44. PETITION FOR RECONSIDERATION AND/OR REPEAL OF AMENDMENTS TO REGULATIONS OF THE STATE LANDS COMMISSION IN 2 CAL. ADM. CODE, ARTICLE 2, ADOPTED APRIL 28, 1976, RE: VOLUMETRIC RENTAL ALTERNATIVE - W 5125.8.

During consideration of Calendar Item 44 attached, Mr. N. Gregory Taylor, Assistant Attorney General, reported that the Division had received a Petition from Western Oil and Gas Association requesting the Commission to reconsider or rescind regulations adopted at the April 26, 1976, Commission meeting concerning volumetric rental. The Petition was made according to Government Code Section 11426 which requires action within 30 days. Mr. Taylor stated that it is the staff's recommendation the request be denied.

Mr. David Destino of the law firm of McCutchen, Black, Verleger and Shea, representing Western Oil and Gas Association, appeared. Mr. Destino stated that contrary to the staff's opinion, it is their belief that due to the substantial changes which were made to the original regulations, additional hearings should have been held to receive input on the changes. He pointed out the Commission has two alternatives as a result of their Petition:

1. To deny the hearing in writing within 30 days; or
2. Set a hearing pursuant to Section 11427 of the Government Code.

Mr. Destino stated it is their position an adequate public hearing on the original adoption of the regulations has not been held with the required 30-day notice.

Mr. Taylor stated it is the staff's opinion that extensive hearings have been held which were duly noticed. He explained to the Commission that if it feels something would be gained by a further hearing, it would have no effect on the regulations becoming effective. Chairman Cory clarified that if the Commission approved the hearing, the question then before the Commission would be whether or not to repeal an existing regulation.

Chairman Cory requested a two minute recess to discuss possible litigation involved in the proposed action.

After the Commission was reconvened, Mr. Robert Leichtner of the law firm of McCutchen, Doyle, Brown and Enerson, representing Pacific Refining, appeared. Mr. Leichtner stated for the record that Pacific Refining supports the subject Petition and encourages the scheduling of a public hearing.

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At this time, Commissioner Bell moved that a public hearing be scheduled in July; Commission Alternate Richard Thompson seconded the motion.

Mr. Taylor clarified the record by stating that:

1. The hearing authorized will be handled by the Commission pursuant to Government Code Section 11427; and
2. It is not the intent of the Commission that the regulations shall not become effective, but the Commission will have a hearing on whether or not the regulations should be repealed at that time.

At the conclusion of the discussion, the Commission approved the following resolution by a vote of 3-0:

THE COMMISSION AUTHORIZES THE STAFF TO SCHEDULE A PUBLIC HEARING PURSUANT TO GOVERNMENT CODE SECTION 11427 TO RECEIVE COMMENTS AND INFORMATION ON A PETITION FOR REPEAL OF PROPOSED REGULATIONS ADOPTED AT THE APRIL 28, 1976, COMMISSION MEETING, SAID HEARING TO BE HELD AT THE COMMISSION'S JULY MEETING.

Attachment:

Calendar Item 44 (4 pages)

CALENDAR SUMMARY

5/76

GRH

44

W 5125.8

PETITION FOR RECONSIDERATION AND/OR REPEAL OF AMENDMENTS  
TO REGULATIONS OF THE STATE LANDS COMMISSION IN  
2 CALIFORNIA ADMINISTRATIVE CODE, ARTICLE 2,  
ADOPTED APRIL 28, 1976; RE: VOLUMETRIC RENTAL ALTERNATIVE

On May 17, 1976, the Division received a letter from counsel on behalf of the Western Oil and Gas Association petitioning for reconsideration and/or repeal of the Commission's newly-adopted changes to its general leasing regulations in 2 Cal. Adm. Code, Article 2, regarding volumetric rental charges. A copy of the letter is attached as Exhibit "A".

The Western Oil and Gas Association, pursuant to Government Code Section 11426 offered the following reasons in requesting the reconsideration and/or repeal of the newly adopted regulations:

1. A rental based in whole or in part on the volume of commodities passing over State lands has no nexus with the appraised value of that land and as such is beyond the statutory authority of the Lands Commission, as set forth in Public Resources Code SS 6503, in fixing rentals;
2. Many of the easements and rights-of-way which could be affected by this regulation are employed in the transport of commodities which are in interstate commerce and, as such, any rental based, not upon the value of the land or upon services rendered by the State, is an impermissible restraint on interstate commerce and violative of the Federal Constitution;
3. Many of the easements and rights-of-way which could be affected by the regulation service marine terminals and, as such, any charge based on the quantity of commodities passing over State lands would be an impermissible charge on "tonnage", violative of the Federal constitution;
4. Charges imposed based on this regulation could lead to changes in the method of transporting various petroleum products currently passing over State lands pursuant to easements and rights-of-way and such changes in the transportation patterns could have major environmental impacts. Consequently, under the requirements of the California Environmental Quality Act, an Environmental Impact Report should have been prepared prior to the promulgation of this regulation, dealing with these potential consequences; and,

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5. The amendments here in question were adopted without the requisite thirty (30) days notice period required by Government Code § 11423.

Division staff has carefully reviewed the above-cited reasons for requesting reconsideration of the regulations and find that statements essentially the same as Items 1 through 4 above were received by the Division at its initial hearings on the regulations on April 29, 1975 and May 2, 1975. At the informal meetings held with utility and pipeline companies last Summer, the Division also received similar comments.

On July 31, 1975, the Division met with representatives of the oil industry on the proposed regulations. Counsel for the Western Oil and Gas Association (Gregory McClintock for McCutchen, Black, Verleger & Shea, gave staff a Memorandum of Points and Authorities in Support of Argument that Proposed Throughput Rental Charges are Invalid under the Constitution and State Law. This memorandum contained statements found in the subject petition.

At a hearing on the regulations on April 21, 1976, and at the Commission's meeting on April 28, 1976, W.O.G.A.'s counsel again presented the same arguments against adoption of the regulation.

Division staff and the office of the Attorney General have, for nearly a year, studied all the statements and arguments relative to volumetric rentals. The result of this study was a staff report on volumetric rental rates presented to the Commission at its meeting on April 28, 1976. The report summarized the results of staff inquiry into the adoption of volumetric rentals; and included a discussion of the major issues raised by affected interest groups including W.O.G.A.

Relative to Item 5 of W.O.G.A.'s petition, the Commission did give proper notice of adoption of the regulations pursuant to Government Code Sections 11423-25. The regulations were published in the Friday, April 18, 1975 edition of the Sacramento Union under Legal Notices. The notice stated that the State Lands Commission, upon its own motion or at the instance of any interested person, may thereafter adopt the proposal (regulations) substantially as set forth without further notice.

Subsequent to publication of the regulations and until adoption of the regulations by the Commission last month, the Division has been in continuous contact with affected interest groups, including member companies of the Western Oil and Gas Association; advising them that investigation and analysis of the volumetric was continuing.

In sum, staff and the office of the Attorney General believe that the regulations have a sound basis in fact and law and that all comments and arguments regarding the regulations have been

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analyzed and given an appropriate response. Each point raised in the petition for reconsideration and/or repeal was before and considered by the Commission at the time the regulations were adopted last month. No new points have been put forth which would appear to justify granting reconsideration or repeal of the regulations as requested in the W.O.G.A. petition.

IT IS RECOMMENDED THAT THE COMMISSION DENY PETITIONERS REQUEST FOR RECONSIDERATION AND/OR REPEAL OF AMENDMENTS TO REGULATIONS OF THE STATE LANDS COMMISSION IN 2 CALIFORNIA ADMINISTRATIVE CODE, ARTICLE 2, ADOPTED APRIL 28, 1976; AND DIRECT STAFF TO SO NOTIFY PETITIONER.

Attachment' Exhibit "A"

EXHIBIT "A"

MCCUTCHEN, BLACK, VERLEGER & SHEA

COUNSELORS AT LAW  
THIRTIETH FLOOR  
3436 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90010  
TELEPHONE (213) 361-3411  
TELEX: 69826

CERTIFIED MAIL  
RETURN RECEIPT  
REQUESTED

May 14, 1976

Mr. William F. Northrop  
Executive Director  
California State Lands  
Commission  
1807 13th Street  
Sacramento, California 94814

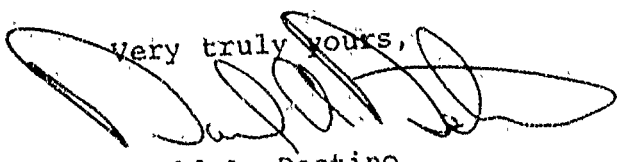
Re: Amendments to Regulations of  
the State Lands Commission in  
2 California Administrative Code,  
Article 2, Adopted April 28, 1976

Dear Mr. Northrop:

We enclose herein, on behalf of Western Oil and Gas Association, an original and five copies of a petition for reconsideration and/or repeal of the captioned amendments to the Commission's regulations. Please distribute the enclosed to the appropriate parties.

We appreciate your cooperation with respect to the above.

Very truly yours,

  
David A. Destino  
For MCCUTCHEN, BLACK, VERLEGER & SHEA

Enclosures

DAD:mm

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Copy forwarded to:

F, PCH

Date: 5-17 by dj



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May 14, 1976

California State Lands  
Commission  
1807 13th Street  
Sacramento, California 95814

Re: Amendments to Regulations of  
the State Lands Commission in  
2 California Administrative Code,  
Article 2, Adopted April 28, 1976

Gentlemen:

On behalf of Western Oil and Gas Association, pursuant to California Government Code § 11426, we hereby petition for reconsideration and/or repeal of the captioned amendments to the State Lands Commission's regulations.

The substance of the amendments subject to this petition allow the Commission to fix annual rentals on certain leases and rights-of-way based upon the volume of commodities passing over State lands.

The reasons for this request are as follows:

1. A rental based in whole or in part on the volume of commodities passing over State lands has no nexus with the appraised value of that land and as such is beyond the statutory authority of the Lands Commission, as set forth in Public Resources Code § 6503, in fixing rentals;

2. Many of the easements and rights-of-way which could be affected by this regulation are employed in the transport of commodities which are in interstate commerce and, as such, any rental based, not upon the value of the land or upon services rendered by the State, is an impermissible restraint on interstate commerce and violative of the Federal Constitution;

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3. Many of the easements and rights-of-way which could be affected by the regulation service marine terminals and, as such, any charge based on the quantity of commodities passing over State lands would be an impermissible charge on "tonnage", violative of the Federal Constitution;

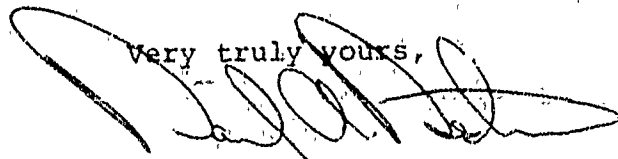
4. Charges imposed based on this regulation could lead to changes in the method of transporting various petroleum products currently passing over State lands pursuant to easements and rights-of-way and such changes in the transportation patterns could have major environmental impacts. Consequently, under the requirements of the California Environmental Quality Act, an Environmental Impact Report should have been prepared prior to the promulgation of this regulation, dealing with these potential consequences; and,

5. The amendments here in question were adopted without the requisite thirty (30) day notice period required by Government Code § 11423.

The Commission's authority to take the action requested herein is included in the general rule-making power set forth in Public Resources Code § 6108.

We look forward to your favorable consideration of this petition.

Very truly yours,



David A. Destino  
For MCCUTCHEN, BLACK, VERLEGER & SHEA

DAD:mmm