MINUTE ITEM
This Calendar Item No. 45
was approved as Minute Item
No. 45 by the State Lands
Commission by a vote of 3
to 0 at its 8/10/88
meeting.

MINUTE ITEM

45

08/10/88
W 40536
Pelka

DENIAL OF PROSPECTING PERMIT - W. L. BURDUE

During consideration of Calendar Item 45, attached, W. L. Burdue appeared to protest staff's recommendation for denial.

After a short discussion, the Commission voted 3-0 to approve Calendar Item 45, as presented. Chairman Davis invited Mr. Burdue to meet with staff to advise him on future applications.

Attachment: Calendar Item 45.

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08/10/88
W 40536
Pelka

S 39, 40

DENIAL OF A PROSPECTING PERMIT
FOR MINERALS OTHER THAN OIL, GAS, GEOTHERMAL RESOURCES,
SAND AND GRAVEL, OFFSHORE SAN DIEGO

APPLICANT: W. L. Burdue
17145 South Pacific Avenue
Sunset Beach, California 90742-0443

PROPOSED ACTION:
Denial of a prospecting permit to prospect for precious metals and other valuable minerals, other than oil, gas, geothermal resources, sand and gravel on approximately 2,240 acres of tide and submerged lands located in San Diego County.

AREA, TYPE OF LAND AND LOCATION:
An irregular rectangular shaped parcel of tide and submerged land, part of which is adjacent to the mean high tide line of Imperial Beach and lying immediately adjacent to upland containing the Tijuana River National Estuarine Research Reserve (Reserve), administered by the National Oceanic and Atmospheric Administration (NOAA). That portion of the permit area adjacent to the reserve that lies within 1,000 feet of the mean high tide line is within the jurisdictional limits of the Department of Parks and Recreation.

BACKGROUND INFORMATION:

The proposed project encompasses a two-phased exploratory program for precious metals and other valuable minerals. Licensed marine vessels or a tug/barge combination would be utilized in water depths of greater than ten feet within the permit area, to perform the sampling and/or dredging project. The vessel would be equipped with a suction dredge with a hose not exceeding one foot in diameter and a quarter inch mesh intake. A maximum of six personnel, including divers, would make up to three trips a day into the permit area. The craft would move at slow speeds yielding to any and all objects within one quarter mile, while the dredge is operating at a low suction velocity.

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Phase One involves extracting approximately 180 one-cubic-foot samples on a grid pattern at 1,000-foot intervals in a north-south direction and 500-foot intervals in an east-west direction. Sample sites would be approximately six feet long by eight inches wide by three inches deep. This dredge material would either be retained and transported onshore or returned to the ocean. Samples would be assayed at various commercial laboratories and the Applicant's own lab to assess the Applicant's recovery system.

Phase Two would involve dredging of larger samples of anomalous areas delineated by the results of Phase One work. The dredge would excavate a trench approximately two hundred feet long by three feet wide by one foot deep taking no more than twenty cubic yards per sample. A maximum of one sample per acre is proposed resulting in a maximum of 2,240 samples or approximately 45,000 cubic yards. In addition, the Applicant has proposed selection of a site near the Mexican border to dredge an area of one acre to bedrock estimated at approximately twelve feet deep. Such a sample would contain approximately 19,000 cubic yards.

As part of the initial processing of the application, staff solicited comments from parties who either would have permitting authority, or could be affected from the proposed project. Those contacted include the following:

1. Tijuana River National Estuarine Research Reserve.
2. Army Corps of Engineers.
3. California Department of Parks and Recreation.
4. California Coastal Commission.
5. California Department of Fish and Game.
6. City of Imperial Beach.

A significant quantity of environmental information has been compiled from these entities, together with that derived from staff biologists of the environmental unit of the State Lands Commission. A discussion of those findings are as follows:

The method of prospecting that has been proposed is known to kill resident biota (infauna and epifauna) and alter the habitats upon which it is used. As a result of the

dredging, a sump containing ultra fine sediment that remains very soft and unconsolidated for long periods of time develops. The species composition of a sump habitat and that immediately surrounding it would likely be completely different than the original habitat. A habitat such as this is often anaerobic, i.e. devoid of oxygen.

The southeastern boundary of the project is adjacent to and shares a border with the Tijuana River National Estuarine Research Reserve (Reserve) which is administered by the National Oceanic and Atmosphere Administration (NOAA). National estuarine research reserves are coastal areas of special richness set aside for research education and protection. This particular reserve includes parcels under various land ownerships including the United States Fish and Wildlife Service, the Department of Parks and Recreation, the United States Navy, both the City and County of San Diego and private lands. These entities function as the Tijuana National Estuarine Reserve Management Authority and meet once a month to discuss the management of these special Reserve lands. Operation of the Reserve will transfer to the Department of Parks and Recreation sometime in the near future.

Some of the special features of these lands include a diversity in land forms and habitats (i.e., sand dunes, marshlands, mudflats, the riverbed and uplands) and a corresponding diversity of plant and animal species. On the Federal Endangered List are three bird species that nest on the Reserve. Specifically, these are the Least Tern, Light-footed Clapper Rail and the Belding's Savannah Sparrow. There are two species that also use the Reserve for resting/foraging or wintering; these include the Peregrine Falcon and California Brown Pelican. In addition, a listed plant also occurs in the area, the Salt Marsh Bird's Beak. Because of their protected status as endangered species, any impact to them is considered a highly significant impact and therefore requires, under CEQA, the preparation of an EIR.

This project has the potential to impact the bird species, particularly the Least-Tern and Light-Footed Clapper Rail in a variety of ways. The mere presence of the project (people, activity, and equipment) would directly disturb the nesting or foraging of the Least-Tern. In fact, the construction of the Imperial Beach Pier was totally stopped from April 1 through mid-September in the interest of

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Least-Tern nesting (Paul Jorgensen, Parks and Recreation, personal communication). In addition, there are several indirect ways the project could impact Least-Tern nesting. One way is "sand starvation" of the beach and sand dune area as a result of the dredging. There is already some history of erosion on this beach. The project could possibly change the natural movements of sand into the beach area thus resulting in "sand starvation". Further, the resultant sump habitat will be significantly different from the existing habitat which consists of a sand/cobble kelp bed (Craig Bariolotti, Kelco, personal communication). This alteration to kelp habitat and the sand and cobble reef in itself would be a significant impact.

The dune area is also in a State Department of Parks and Recreation Dune restoration project, and any impact to the dunes would be considered highly significant.

The turbidity and resulting sedimentation resulting from suction dredging could also have significant impacts on the Reserve by creating a turbid intertidal flushing, that is by flushing sedimentation into the estuary, river mouth and sloughs. This would cause a variety of impacts that may range from the closing of the rivermouth to impeding necessary water flow into the sloughs. These impacts are cumulative to other perturbations the Reserve is presently experiencing; for example, pollution from sewage from Tijuana and the increased fresh water flow that flushes this pollution into the Reserve. The turbidity could also cause problems to the benthos by interfering with kelp reproduction.

In the subtidal area, the kelp bed that is located in the area from the border of Mexico to the northerly boundary of the proposed project area is the Department of Fish and Game's kelp Bed No. 1. This bed is considered to be valuable for harvesting as well as for the habitat it provides. It is an extremely sensitive kelp bed that is subject to storm damage because of its unstable substrate of cobble and sand. Destruction of part or all of this substrate or any kelp bed would constitute a highly significant impact.

Among the organisms that reside in this substrate are two clams, the Clipped Semele and the Sunset Clam. The Spiny Lobster also migrates through the area. Alteration of the

habitat would result in loss of the clams and more than likely, alter this lobster migration or make them more vulnerable to predation. This area is considered to be a valuable dive area because of the habitat and the fact that lobsters and clams, as well as various species of fish, are easily taken by divers.

Further up the project area about one half way between the Imperial Beach Pier and the end of the proposed project is a Sand Dollar bed which would be destroyed if the habitat is altered. Above the Sand Dollar bed is a Department of Fish and Game artificial reef which would be subject to disturbance by suction dredging. Two clams, the Beach Clam and the Pismo Clam are also found in this area and are another set of organisms that would be subject to potential elimination due to habitat alteration.

Fish that depend upon the present environment include the Grunion which spawn on Silver Strand State Beach, California Barracuda, California Sheephead, Kelp Bass, Pacific Bonito, White Seabass, Yellowtail, Anchovies (for bait fish), Surfperch, California Halibut, Pacific Butterfish, Yellowfin and Queenfish. These fish are all taken in the project region in from five (5) to ten (10) fathoms of water and the California State fish, the Garibaldi, also resides there. Habitat alteration could significantly alter this community.

The project includes lands granted to the City of Imperial Beach by Statutes of 1961, Chapter 330, with minerals reserved to the State. P.R.C. Section 5003.05 provides that the California Department of Parks and Recreation exercise certain jurisdiction offshore to 1,000 feet waterward of the ordinary high water mark of the Reserve.

As a result of this review, staff believes the proposed mineral prospecting permit would have an unacceptable level of adverse environmental impacts on the offshore region and the Reserve. To preclude the expenditure of additional effort and funds on a project viewed by staff as infeasible, staff recommends the application be denied.

AB 884: 10/28/88.

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OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Adm. Code 15061), the staff has determined that this activity is exempt from the requirements of the CEQA, because CEQA does not apply to projects which a public agency rejects or disapproves.

   Authority: P.R.C. 21080(b)(5) and 14 Cal. Adm. Code 15270.

EXHIBITS:

A. Land Description.
B. Site Map.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE PROPOSED PROJECT MAY CAUSE AN UNACCEPTABLE DEGREE OF ADVERSE ENVIRONMENTAL IMPACTS TO THE OFFSHORE REGION AND THE TIJUANA RIVER NATIONAL ESTUARINE RESEARCH RESERVE.

2. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA BECAUSE CEQA DOES NOT APPLY TO PROJECTS WHICH A PUBLIC AGENCY REJECTS OR DISAPPROVES, 14 CAL. ADM. CODE 15270.

3. DENY THE APPLICATION OF W. L. BURDUE FOR A PROSPECTING PERMIT FOR MINERALS OTHER THAN OIL, GAS, GEOTHERMAL RESOURCES, AND SAND AND GRAVEL.

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EXHIBIT "A"

LAND DESCRIPTION W 40536

A parcel of tide and submerged land near Imperial Beach, San Diego County, California, said parcel being described as follows:

BEGINNING at the point of intersection of the international boundary line between the United States and Mexico and the ordinary high water mark of the Pacific Ocean; thence from said point of beginning westerly along the westerly prolongation of said international boundary 5,650 feet; thence northwesterly along a line parallel with the westerly line of the Grant to the City of Imperial Beach, Chapter 330, Statutes 1961, a distance of 26,350 feet, more or less, to a point on the southerly boundary of State Lands Commission J.T.O. 4 bearing S 76°03'41" W from the point of intersection of the southerly line of Silver Strand State Beach and the ordinary high water mark of the Pacific Ocean; thence along said southerly boundary N 76°03'41" E 2,650 feet, more or less, to the point of intersection of said southerly boundary and the northwesterly prolongation of said westerly boundary of the Grant to the City of Imperial Beach; thence southeasterly along said northwesterly prolongation and said westerly boundary to a point lying 10,000 feet northwesterly of said international boundary; thence leaving said westerly boundary east to the ordinary high water mark of the Pacific Ocean; thence southerly along said ordinary high water mark to the point of beginning.

END OF DESCRIPTION

PREPARED DECEMBER 2, 1987, BY BIU 1.

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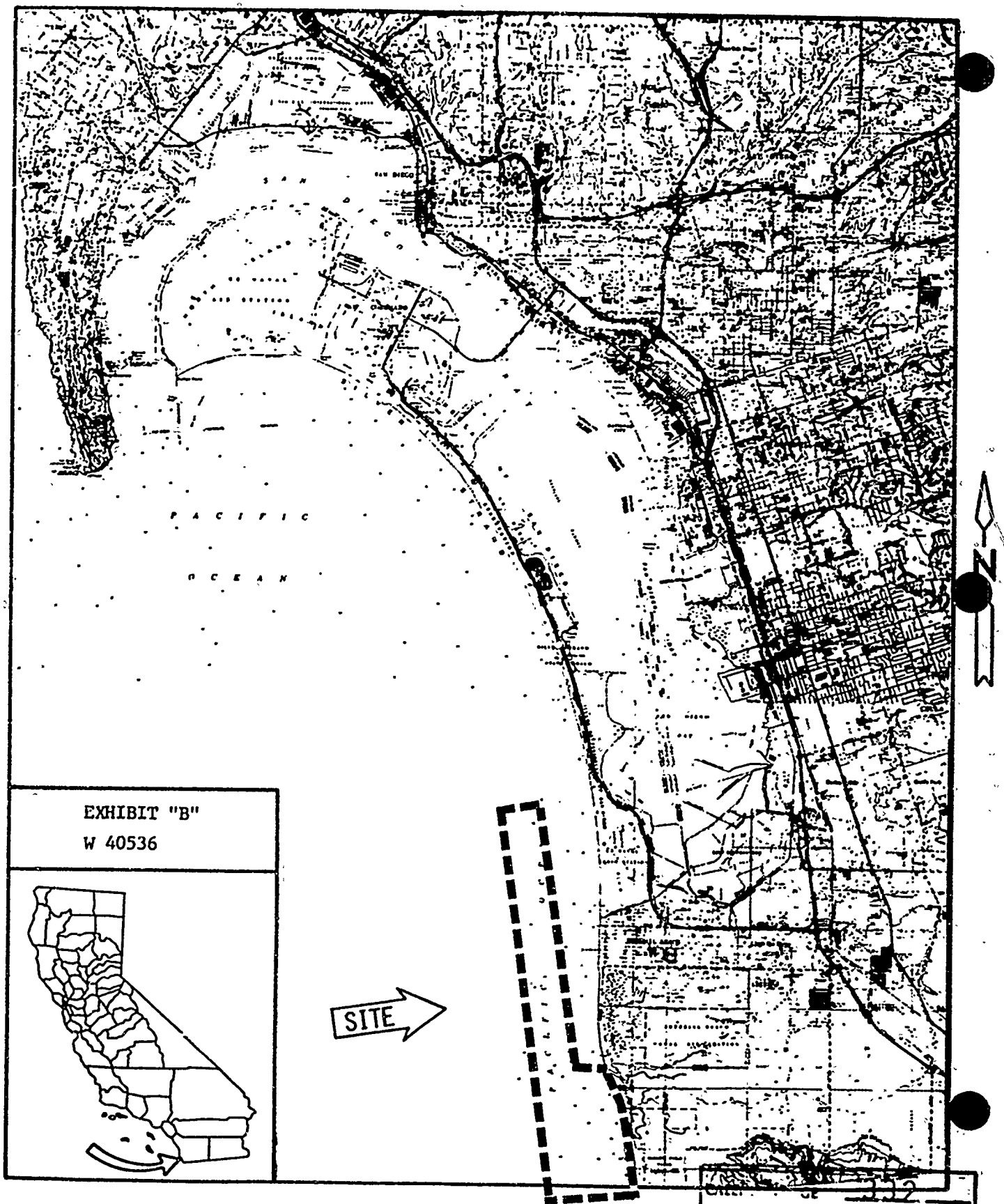

EXHIBIT "B"

W 40536

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