TRANSCRIPT OF
MEETING
of
STATE LANDS COMMISSION

SAN FRANCISCO, CALIFORNIA

January 26, 1968
MEETING OF
STATE LANDS COMMISSION
SAN FRANCISCO, CALIFORNIA
January 26, 1968

PARTICIPANTS:
THE STATE LANDS COMMISSION
Hon. Houston I. Flournoy, Controller, Chairman
Hon. Robert H. Finch, Lieutenant Governor
Hon. Gordon P. Smith, Director of Finance
Mr. F. J. Hortig, Executive Officer

OFFICE OF THE ATTORNEY GENERAL
Mr. Jay L. Shavelson, Assistant Attorney General
Mr. N. Gregory Taylor, Deputy Attorney General

APPEARANCES:
(In the order of their appearance)
Mr. Robert Kinzie
Santa Cruz Yacht Club, Inc.
Mr. Kenneth K. Williams
Deputy City Attorney, City of Long Beach
Mr. Richard Dombrink
Chief of Real Estate Branch, Alameda County Flood Control and Water Conservation District
Mrs. Helen Lyons Freeman
President, Alameda Conservation Association

(continued)
APPEARANCES: (continued)

Mr. William Siri
President, Save the San Francisco Bay Association

Mr. Louis Butler
Save the San Francisco Bay Association

Mr. Harry Jackson
Secretary, Leslie Salt Co.

Mr. Walter Cooper
Resident, Foster City
### INDEX
(In accordance with Calendar Summary)

<table>
<thead>
<tr>
<th>ITEM CLASSIFICATION</th>
<th>ITEM ON PAGE OF CALENDAR</th>
<th>PAGE OF CALENDAR</th>
<th>PAGE OF TRANSCRIPT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Call to order</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. PERMITS, EASEMENTS, RIGHTS-OF-WAY, NO FEE:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) City of San Mateo</td>
<td>11</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>(b) Pacific Tel. &amp; Tel. Co.</td>
<td>31</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>(c) South San Luis Obispo County Sanitation Dist.</td>
<td>2</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>(d) State of California, Dept. Public Works Div. of Highways</td>
<td>35</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td>(e) Trans-Bay Constructors</td>
<td>34</td>
<td>9</td>
<td>1</td>
</tr>
<tr>
<td>3. PERMITS, EASEMENTS, LEASES, RIGHTS-OF-WAY, FEE:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) Santa Cruz Yacht Club Inc.</td>
<td>32</td>
<td>11</td>
<td>6</td>
</tr>
<tr>
<td>(b) 7 applicants as listed in Calendar Item 29</td>
<td>29</td>
<td>12</td>
<td>1</td>
</tr>
<tr>
<td>(c) Robert M. Edwards</td>
<td>1</td>
<td>16</td>
<td>1</td>
</tr>
<tr>
<td>(d) Paul F. Keeney, Jr.</td>
<td>27</td>
<td>18</td>
<td>1</td>
</tr>
<tr>
<td>(e) Lake Tahoe Park Ass'n.</td>
<td>30</td>
<td>20</td>
<td>1</td>
</tr>
<tr>
<td>(f) Timber Cove Inn, Inc.</td>
<td>25</td>
<td>22</td>
<td>1</td>
</tr>
<tr>
<td>(g) Jack T. Campbell dba Campbell Const. &amp; Equip. Co.</td>
<td>3</td>
<td>24</td>
<td>1</td>
</tr>
<tr>
<td>(h) K. C. Wells, Jr., Joyce M. Wells, Casiano Land &amp; Livestock Co. Inc.</td>
<td>26</td>
<td>27</td>
<td>1</td>
</tr>
<tr>
<td>(i) Humble Oil &amp; Refining Co.</td>
<td>6</td>
<td>28</td>
<td>1</td>
</tr>
<tr>
<td>(j) Robert W. McCune &amp; Wayne Winther dba Bridge Marina Yacht Club</td>
<td>28</td>
<td>30</td>
<td>1</td>
</tr>
<tr>
<td>(k) Standard Oil Co. of Calif.</td>
<td>4</td>
<td>31</td>
<td>1</td>
</tr>
</tbody>
</table>

continued
<table>
<thead>
<tr>
<th>ITEM CLASSIFICATION:</th>
<th>ITEM ON PAGE OF CALENDAR</th>
<th>PAGE OF CALENDAR</th>
<th>PAGE OF TRANSCRIPT</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. OIL &amp; GAS AND MINERAL LEASES AND PERMITS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) Decon Corporation</td>
<td>16</td>
<td>32</td>
<td>2</td>
</tr>
<tr>
<td>(b) The Bunker Hill Co. (1)</td>
<td>19</td>
<td>33</td>
<td>2</td>
</tr>
<tr>
<td>(b) The Bunker Hill Co. (2)</td>
<td>18</td>
<td>35</td>
<td>2</td>
</tr>
<tr>
<td>(c) Morrison &amp; Weatherly Chemical Products</td>
<td>14</td>
<td>37</td>
<td>2</td>
</tr>
<tr>
<td>(d) Signal Oil &amp; Gas Co.</td>
<td>10</td>
<td>39</td>
<td>2</td>
</tr>
<tr>
<td>(e) Union Oil Co. of Calif.</td>
<td>7</td>
<td>40</td>
<td>2</td>
</tr>
<tr>
<td>(f) Capitol Oil Corp. and Bruce D. Brooks</td>
<td>8</td>
<td>41</td>
<td>2</td>
</tr>
<tr>
<td>(g) Standard Oil Co. of Calif. &amp; Shell Oil Co. (1)</td>
<td>13</td>
<td>42</td>
<td>2</td>
</tr>
<tr>
<td>(g) Standard Oil Co. of Calif. &amp; Shell Oil Co. (2)</td>
<td>12</td>
<td>43</td>
<td>2</td>
</tr>
<tr>
<td>(h) Authorization re offering lease 2800 acres T&amp;S lands Suisun Bay</td>
<td>9</td>
<td>44</td>
<td>2</td>
</tr>
<tr>
<td>(i) Ditto, 140 acres T&amp;S lands Sacramento River, Solano &amp; Sacramento counties</td>
<td>21</td>
<td>45</td>
<td>2</td>
</tr>
<tr>
<td>(j) Authorization re offering lease 208.88 acres of mineral lease on Sherman Island, Sacramento County</td>
<td>22</td>
<td>47</td>
<td>2</td>
</tr>
<tr>
<td>(k) Approval crude oil sales contract Carr &amp; Wrath, Inc. and Shell Oil Co.</td>
<td>5</td>
<td>51</td>
<td>2</td>
</tr>
<tr>
<td>5. CITY OF LONG BEACH</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) Approval First Modif. Plan of Development, Long Beach Unit, THUMS Request 26-67</td>
<td>23</td>
<td>53</td>
<td>2</td>
</tr>
</tbody>
</table>
## INDEX
(in accordance with Calendar Summary)

<table>
<thead>
<tr>
<th>ITEM CLASSIFICATION</th>
<th>ITEM ON PAGE OF CALENDAR</th>
<th>PAGE OF CALENDAR</th>
<th>PAGE OF TRANSCRIPT</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. CITY OF LONG BEACH (continued)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) Approval $5000 for subsidence studies -- Lateral Ground-Surface Motion</td>
<td>20</td>
<td>54</td>
<td>2</td>
</tr>
<tr>
<td>(c) Approval expenditure $906,915 R.M.S. QUEEN MARY</td>
<td>17</td>
<td>55</td>
<td>2</td>
</tr>
<tr>
<td>(d) Determination of subsidence costs, Nos. 401, 539, 684</td>
<td>15</td>
<td>58</td>
<td>2</td>
</tr>
<tr>
<td>6. LAND SALES AND WITHDRAWALS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) Rejection of request of Dept. Fish &amp; Game for withdrawal Sec. 16, T 12 N, R 15 E, and T 13 N, R 15 E</td>
<td>24</td>
<td>60</td>
<td>2</td>
</tr>
<tr>
<td>7. PROPOSED ANNEXATIONS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) Punta del Norte Addition City of San Buenaventura</td>
<td>33</td>
<td>64</td>
<td>5</td>
</tr>
<tr>
<td>8. INFORMATIVE - Litigation</td>
<td>36</td>
<td>67</td>
<td>5</td>
</tr>
<tr>
<td>9. LAND EXCHANGE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) Leslie Salt Co. exchange</td>
<td>37</td>
<td>70</td>
<td>22</td>
</tr>
<tr>
<td>10. Authorization for Attorney General to file amicus curiae brief/s in cases affecting valuation taxable interests arising from drilling and operating contracts, etc.</td>
<td>38</td>
<td>75</td>
<td>10</td>
</tr>
<tr>
<td>11. NEXT MEETING</td>
<td></td>
<td></td>
<td>69</td>
</tr>
</tbody>
</table>

O F F I C E O F A D M I N I S T R A T I V E P R O C E D U R E, S T A T E O F C A L I F O R N I A
## INDEX
(In accordance with calendar items)

<table>
<thead>
<tr>
<th>ITEM ON PAGE OF CALENDAR</th>
<th>PAGE OF CALENDAR</th>
<th>PAGE OF TRANSCRIPT</th>
<th>ITEM ON PAGE OF CALENDAR</th>
<th>PAGE OF CALENDAR</th>
<th>PAGE OF TRANSCRIPT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>16</td>
<td>1</td>
<td>21</td>
<td>45</td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td>5</td>
<td>1</td>
<td>22</td>
<td>47</td>
<td>2</td>
</tr>
<tr>
<td>3</td>
<td>24</td>
<td>1</td>
<td>23</td>
<td>53</td>
<td>2</td>
</tr>
<tr>
<td>4</td>
<td>31</td>
<td>1</td>
<td>24</td>
<td>60</td>
<td>2</td>
</tr>
<tr>
<td>5</td>
<td>51</td>
<td>2</td>
<td>25</td>
<td>22</td>
<td>1</td>
</tr>
<tr>
<td>6</td>
<td>28</td>
<td>1</td>
<td>26</td>
<td>27</td>
<td>1</td>
</tr>
<tr>
<td>7</td>
<td>40</td>
<td>2</td>
<td>27</td>
<td>18</td>
<td>1</td>
</tr>
<tr>
<td>8</td>
<td>41</td>
<td>2</td>
<td>28</td>
<td>30</td>
<td>1</td>
</tr>
<tr>
<td>9</td>
<td>44</td>
<td>2</td>
<td>29</td>
<td>12</td>
<td>1</td>
</tr>
<tr>
<td>10</td>
<td>39</td>
<td>2</td>
<td>30</td>
<td>20</td>
<td>1</td>
</tr>
<tr>
<td>11</td>
<td>1</td>
<td>1</td>
<td>31</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>12</td>
<td>43</td>
<td>2</td>
<td>32</td>
<td>11</td>
<td>6</td>
</tr>
<tr>
<td>13</td>
<td>42</td>
<td>2</td>
<td>33</td>
<td>64</td>
<td>5</td>
</tr>
<tr>
<td>14</td>
<td>37</td>
<td>2</td>
<td>34</td>
<td>9</td>
<td>1</td>
</tr>
<tr>
<td>15</td>
<td>58</td>
<td>2</td>
<td>35</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td>16</td>
<td>32</td>
<td>2</td>
<td>36</td>
<td>67</td>
<td>5</td>
</tr>
<tr>
<td>17</td>
<td>55</td>
<td>2</td>
<td>37</td>
<td>70</td>
<td>22</td>
</tr>
<tr>
<td>18</td>
<td>35</td>
<td>2</td>
<td>38</td>
<td>75</td>
<td>10</td>
</tr>
<tr>
<td>19</td>
<td>33</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>54</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

NEXT MEETING 69
MR. FLOURNOY: The meeting of the Lands Commission will come to order.

We have a rather extensive agenda. It is our understanding, however, that there are only three items on which individuals are here who wish to be heard. Those relate to the Santa Cruz Yacht Club; a matter concerning various suits involving the City of Long Beach, County of Los Angeles, and County of Orange, and certain other companies; and the matter of the proposal concerning the lands of the Leslie Salt Company. Unless we are informed to the contrary, we will proceed on that assumption.

Therefore, we will proceed to the agenda and when we come to those items that are subject to some discussion, we will take them at a later time.

The first item of business is permits, easements, and rights-of-way to be granted to public and other agencies at no fee, pursuant to statutes; and there are some five of those matters.

GOV. FINCH: Move approval.

MR. SMITH: Second.

MR. FLOURNOY: Unless there is objection, they will be approved as indicated.

Item 3 -- Permits, easements, leases, and rights-of-way issued pursuant to statutes and established rental
policies of the Commission. With the exception of the
Santa Cruz Yacht Club, item (a), is there any discussion?

GOV. FINCH: Move approval.

MR. SMITH: Second.

MR. FLOURNOY: There being no objection, the items
indicated will be approved.

Item 4 - Certain items of oil and gas and mineral
leases and permits issued pursuant to statutes and established
policies of the Commission. Is there any discussion or objec-
tion to any of those items as indicated, (a) down through (k)?

GOV. FINCH: Move approval.

MR. SMITH: Second.

MR. FLOURNOY: There being no objection, those
items will be approved.

Item 5, with regard to the City of Long Beach, some
four items, not including the one that we referred to earlier.

GOV. FINCH: Move approval.

MR. SMITH: Second.

MR. FLOURNOY: Without objection, those items will
be approved.

Item 6, having to do with land sales and withdrawals
one item. Is there any discussion on that matter?

GOV. FINCH: I'd like some explanation from

Mr. Hortig on that, please....

MR. HORTIG: Yes. Governor Finch.

GOV. FINCH: ... going to the question of the
relationship here between the State Lands Commission and the Department of Fish and Game. I want to understand the sequence and the recommendation.

MR. HORTIG: The State Lands Commission's rules and regulations provide, with respect to lands that are available for sale from the remainder of the vacant State School Land Trust -- lands which were conveyed by the Congress to the State for education -- that such lands may be withheld from public sale on the request of a State or other California agency, governmental agency, for a period not to exceed two years, on an application of intention of such agency to purchase such lands within two years.

The State lands in this instance have been previously withdrawn on the request of the Department of Fish and Game. This application by the Department of Fish and Game had not been completed. Then there was an additional request, again for a withdrawal, which it was reported to the Commission at an earlier meeting was actually not a request on the part of the Department of Fish and Game, but for the Bureau of Land Management of the Department of Interior -- for which there is no procedure for this type of operation, particularly, as you will recall, you raised the question with the representatives of the Bureau of Land Management how long it would take to accomplish such a transaction, in view of the fact that we have other applications by the State Lands Commission that have been pending for eight to ten years that probably should
be resolved before we get into a different transaction with the Bureau of Land Management.

GOV. FINCH: What indicated purpose did they have at the time they first made the request for these lands?

MR. HORTIG: Fish and Game indicated that this was to be a part of a land acquisition program for a Fish and Game unit; but, as it turns out, then they stated that it is actually a proposal to secure these lands for the Bureau of Land Management for a Federal land management unit of uncertain application or direction and uncertain total acreage.

MR. SMITH: Mr. Chairman, I wonder whether or not unless there is some urgency regarding this item as far as this decision is concerned, we could put it off to the next meeting, where a representative of the Department of Fish and Game could explain this further.

MR. FLOURNOY: Of course we could do that; but, as I recall, we did have a representative of the Department of Fish and Game at this earlier meeting and that there was a representative from the Bureau of Land Management.

GOV. FINCH: I am not asking that this be deferred. I just wanted to be acquainted with the whole program, with the conflict of a State program and Bureau of Land Management program in using this kind of land; and I don't want to prolong the discussion here when we have a long agenda.

MR. FLOURNOY: Isn't it true, Mr. Hortig, that the particular parcels involved have been held in abeyance for
two years by an earlier action, in response to an application
of the Department of Fish and Game, and that expired with?

MR. HORTIG: That's true, Mr. Chairman.

MR. FLOURNOY: And now we are proposing to preserve it for a rather tenuous operation for a long time, if the Bureau of Land Management is the potential beneficiary, on some kind of program?

MR. HORTIG: Because of that nebulous status, the staff has recommended that the withdrawal not be made for the benefit of a tenuous program.

MR. FLOURNOY: What is your desire, gentlemen?

MR. SMITH: I don't have anything.

MR. FLOURNOY: Do I have a motion to approve it?

MR. SMITH: Move it.

GOV. FINCH: No objection.

MR. FLOURNOY: Then that item will be approved.

Item 7 relates to the approval of certain off-shore boundaries of the Punta del Norte Addition to the City of San Buenaventura in an annexation situation and notification of such approval. Is there any discussion or objection to the approval of this item?

GOV. FINCH: Move it.

MR. SMITH: Second.

MR. FLOURNOY: No objection, so ordered.

Item 8 is informative only and that gets it down
to items 9 and 10. Let's move back and take up item 3(a),
the Santa Cruz Yacht Club, Incorporated -- their request for
a hearing with regard to the fees and waiver of fees for cer-
tain buoys in Monterey Bay, offshore Santa Cruz.

MR. HORTIG: Mr. Chairman, the staff recommendation
that fees not be waived on the application of Santa Cruz
Yacht Club for establishment of certain marker buoys the club
desires to establish for control of racing and other recrea-
tional purposes is not being recommended for the reason that
similar, and in one instance at least one identical, types of
installations are being operated by other private yacht clubs
with payment of a rental fee to the State-Lands Commission,
pursuant to its established rental and leasing policies.
Therefore, this would be, in the view of the staff, an excep-
tion -- and for the exception no bases for justification, it
is felt, have been found by the staff.

However, on presentation of this matter to the club,
the applicant, a request was received for permission to appear
before the Commission on behalf of the representative of the
yacht club, to explain to the Commission the yacht club's posi-
tion -- why they feel a waiver is justified -- and a repre-
sentative of the yacht club is here this morning for this
purpose.

MR. FLOURNOY: Could we hear from him, then?
Will you come forward and identify yourself?

MR. KINZIE: Mr. Chairman, gentlemen, I am
Robert Kinzie. I represent the Santa Cruz Yacht Club. We are a nonprofit organization located in Santa Cruz and we wish to have racing markers in the State lands off the shore of Santa Cruz. We are nonprofit. The markers are not only used by us -- the use is extended to anyone who wishes to race there. We have cooperated as much as we can on any other question of the recreation department of the City of Santa Cruz.

In our original application, the Coast Guard expressed no interest in placing markers per se; they aren't interested in buoys. The Army Corps of Engineers are interested in the use of buoys by fishermen for nets.

In view of the fact that there is no profit by the use of these, that they are in during the whole year, and it is approved by the Army Engineers -- particularly, they are used by many other people, including the Santa Cruz Recreation Department -- we ask that the fees be waived.

GOV. FINCH: How do we defend ourselves with other yacht clubs down the shore, if there is a waiver for this one and not a waiver for them?

MR. KINZIE: Most yacht clubs as far as I know, pay no fees for racing markers.

GOV. FINCH: Mr. Hortig, what is the effect on the clubs where a fee is paid? How is the fee established?

MR. HORTIG: The fee is established by regulation at a minimum of $100 per year, which would be the basis here.
for a total permanent fee of $500; and this is currently being paid by one yacht club who applied after the establishment of this rate. The balance of the yacht clubs are paying a lesser fee, but that was before the last revision of rental fees by the State Lands Commission. All permanent installations that have a permanent duration, as the one here, are under a permit with a fee being paid to the State Lands Commission.

GOV. FINCH: Well, you see the policy problem we have on that.

MR. KINZIE: I do see that.

GOV. FINCH: And I, for one, just can't see how we can take one case like this and offer a waiver unless the financial situation of the yacht club is such that $500 is going to jeopardize their very existence, which is hard to believe. I just don't know how we could find an exception in this instance.

MR. KINZIE: In effect, sir, it really would not be an exception; it would be a change in attitude toward racing markers, which are of a recreational character and which don't raise any money for any yacht club.

MR. SMITH: Mr. Chairman, I think this raises a good question.

Mr. Hortig, why do we charge a fee for a buoy? What is the purpose of this?

MR. HORTIG: Because of the occupancy of the tide
and submerged lands -- because of the permanent anchors that are placed on the ocean floor of the submerged lands of the State of California. So, therefore, there is an actual occupancy of State lands for this structure, if it can be defined as such, to which racing markers are affixed.

MR. SMITH: What about a buoy that might be on offshore lands that might be anchored?

MR. HORTIG: If it is anchored and transient, there is of course no fee charged; there is, of course, navigation and fishery occupancy. But I might call your attention to the fact that where there is a permanent mooring on State lands, there is a fee.

GOV. FINCH: Is there any practical distinction between a marker and a buoy for the purpose of a fee?

MR. HORTIG: Because of the anchoring, it occupies a portion of the State lands that a permanent mooring for a boat would occupy.

MR. FLOURNOY: Well, gentlemen, it would seem to me where we are in a position of having an established policy of a fee on mooring and buoys, that we necessarily accept the staff's recommendation to reject the application for waiver of fees, and we have to avoid making specific exceptions; but whether or not you want to make a broader application, that is up to the members of the Commission.

MR. SMITH: Mr. Chairman, I move to approve this; but I would like to know from Mr. Hortig the amount of money
the State derives from such fees and I think we might want
to review this policy; and, in fact, we might want to know,
if this amount of money is small, if it is a harassment, as
the gentleman suggested this morning. But since it is our
policy, I move we reject the application.

MR. HORTIG: Mr. Smith -- and might I refresh the
memory of the members of the State Lands Commission -- the
entire fee policies of the State Lands Commission are under
review, to be reported to the Commission for consideration.

MR. FLOURNOY: Is there any further discussion?
(No response) Without objection, then, we will reject the
application for a waiver, in accordance with the staff's
recommendation on this particular item.

Now, let us proceed. I think, in the interest of
saving time and also in order not to divert attention, we
will move to item 10 with regard to the recommendation to the
Lands Commission to authorize the Attorney General to file an
amicus curiae brief on behalf of the Commission in defending
law suits with regard to the matter of valuation of taxable
interests that arise from drilling and operating contracts
and other similar instruments for the production of oil and
gas.

Mr. Hortig, do you have a report on that matter?

MR. HORTIG: Yes, Mr. Chairman, and to expedite the
proceeding of the Commission, with the approval of the Chair
I will read the report.
MR. FLOURNOY: Surely.

MR. HORTIG: At the December meeting, Deputy City Attorney Kenneth K. Williams of the City of Long Beach presented a statement of the reasons why, in his opinion, the Commission should not authorize the Attorney General to file an amicus curiae brief on behalf of the Commission in pending litigation affecting the method of valuation of taxable interests arising from drilling and operating contracts similar to those involved in Long Beach tideland oil operations. This report is submitted at the request of the Commission, as an expanded statement of the bases of the Division recommendations with special attention to Mr. Williams' contentions:

1. The estimated economic impact upon the State of $100 million resulting from application of the De Luz principle of valuation to the Long Beach contracts is substantiated by reliable data and is conservative. The City's statements concerning the possible statewide impact of the legal principle which the Commission would advocate in any amicus curiae brief are speculative and are not based upon any economic evaluation. It is the advice of the Office of the Attorney General that the outcome of the pending litigation, while not necessarily determinative of the tax treatment of the Long Beach contracts will clearly constitute a most important precedent. While the City has contended that there is no valid legal distinction between an ordinary oil and gas lease and a drilling and operating contract for ad valorem tax purposes, the fact remains
that a very able and conscientious trial judge after long deliberation has drawn this distinction in a very elaborate written decision. Thus, it cannot be said that the arguments presented on behalf of the Commission would be frivolous or ill-founded.

2. One of the duties which the City would ordinarily have as trustee for the State (parenthetically, by the legislative grant of the tide and submerged lands in trust for commerce, navigation and fisheries) is to minimize expenses of oil production deductible by the oil companies, so as to increase both the revenues going to the State and those remaining with the City as the State's trustee. Ad valorem taxes are among the most significant expenses affecting these revenues. Faced with an unavoidable conflict of interest, the City appears to have chosen to subordinate its obligation as trustee to its interests as a collector and beneficiary of local ad valorem taxes. Under these circumstances, there is no entity other than the Commission in a position to protect the interests of the State and of the tideland trust.

3. The City has suggested that the State's legal position will be adequately presented by the oil companies and that the Attorney General could make no substantive contribution in the litigation. Aside from the inherent undesirability of depending upon private oil companies to defend public interests, such dependency would be unsatisfactory for several reasons:
a. The oil companies have only a minor financial interest in the valuation principles applicable to drilling and operating contracts, as compared to the very significant interest of the State. (This is now with specific reference to the Long Beach contract under which THUMS Long Beach Corporation is operating.) Furthermore, the companies' interests greatly differ from those of the State in that the companies are far more concerned with ordinary oil and gas leases than drilling and operating contracts. This is illustrated by the Atlantic and Humble cases, referred to in the calendar item, which involved 62 assessments by the County and 22 by the City. Of these assessments only three drilling and operating contracts were involved, and all the remaining assessments covered ordinary oil and gas leases. Of the $300,000 to $400,000 sought to be recovered, only $20,000 was attributable to such contracts. Moreover, under net profits contracts, the larger portion even of this small recovery would redound to the benefit of the public landowners.

b. Any brief filed on behalf of the Commission would seek affirmance of that portion of the decision in the Los Angeles Superior Court which held that the De Luz principle was inapplicable to drilling and operating contracts. The same decision also held that this principle did apply to ordinary oil and gas leases, thus making a distinction between the two types of instrument. The oil
companies, being primarily interested in the leases, are in no position to emphasize this distinction. Thus, the entire thrust of the State's arguments may be expected to differ from that of the oil companies.

4. The City has made a number of assertions as to the statewide impact of a decision such as that which would be sought by the Commission, and especially the impact of such a decision upon local ad valorem tax revenues throughout the State. The following factors would seem to indicate that this impact is not likely to be nearly so great as the City fears.

a. The Attorney General's office has advised that any brief that might be filed on behalf of the Commission could, in their opinion, be effectively limited to the valuation of taxable interests in drilling and operating contracts and would not affect the Court's determination regarding ordinary oil and gas leases.

b. Aside from the Long Beach tideland contracts, the only presently-existing oil and gas contracts which would be affected by a Court ruling such as that which would be sought by the Commission are the four contracts involved in the Los Angeles and Orange County litigation. These latter contracts are of comparatively minor significance when compared against a statewide scale.

c. The chances of future oil contracts being drafted, or existing oil and gas leases being modified, to take advantage of any ad valorem tax benefits arising from
drilling and operating contracts do not appear to be substantial, for the following reasons:

(1) The greatest amount of new oil and gas development on public lands in California will be upon the Outer Continental Shelf; and oil development upon such lands is exempted from local ad valorem taxes by the Outer Continental Shelf Lands Act. (Parenthetically again, by reason of the fact that these lands are now under the jurisdiction of the Department of the Interior of the United States Government.)

(2) Only a limited amount of new oil and gas leasing may be anticipated upon publicly-owned California uplands.

(3) Existing leases on public lands executed prior to July 26, 1963 (or alternately, prior to the effective date of the De Luz decision in 1955) are expressly exempted from the De Luz rule by Chapter 1684, Statutes of 1967. This exemption would apply to nearly all Federal leases subject to ad valorem taxes in California and (assuming the applicability of the later date) most State leases.

(4) Neither the Federal Government nor the State could issue drilling and operating contracts for oil and gas without drastic revisions in
their present leasing policies and modification of existing law.

(5) Most local entities owning public lands are the beneficiaries of local ad valorem taxes and would not be motivated to tailor their leases so as to minimize such taxes. This is especially true of local entities having legislative tideland grants. Such entities receive the revenues from leases on tidelands subject to a public trust and possible legislative revocation, while they receive tax revenues free from such restrictions and controls.

(6) Net-profits operating contracts can be advantageous to the landowner where the potential resource values can be estimated prior to the issuance of the contract. During the entire history of California tideland oil development the circumstances for such evaluation have occurred only at Long Beach.

5. Finally, as stated at the last meeting of the Commission, there is no known express or implied agreement between City and State representatives that the State would not participate in litigation of this nature. In fact, under the provisions of section 6301 of the Public Resources Code, it could be argued that the Commission, as the repository of all residual authority over granted tidelands, may have an
obligation to protect the tideland trust where the appointed
municipal trustee is unable to do so because of an unavoidable
conflict of interest.

In view of the foregoing, Mr. Chairman, the staff
again recommends that the Commission authorize the Attorney
General to file an amicus curiae brief or briefs on behalf of
the Commission in any appellate proceedings in the above-cited
cases insofar as they affect the method of valuation of taxable
interests arising from drilling and operating contracts or
other similar instruments for the production of oil and gas.
This is the recommendation that appears on page 76 of the
agenda before you.

MR. FLOURNOY: Is there someone here from Long Beach
that would like to be heard on this? Let me say in preface,
however, that we would appreciate if your comments were related
to new material and would not duplicate what was presented to
the Commission last time, and would be, more specifically, what
has not been said before.

MR. WILLIAMS: I certainly understand the Chairman's
desire in that respect -- and, it is true, at the Board of
Equalization hearing also. It is not my intention to repeat
the points which were made at the last hearing, because of the
review both by the Commission and the staff since that time and
we have had some conversations with Commission staff members,
also.

May I say, however, that we are disappointed -- not
just in the recommendation that has been made here today, but
the manner in which the recommendation has been made. It was
our stated request and hope when we presented our views last
time that what would result from our bringing this to your
attention would be a considered economic study of what the
ture fiscal effects would be of the policy proposed and our
remarks would merely be something for rebuttal comment.

Of course, this is a complex field in which to offer
rebuttal on any point which is made; but, as Mr. Hortig stated,
certain of the points which were raised last month were specu-
native and based on the economic evaluation, and this is one
of the things that disturbs us because we are not in a position
to furnish the economic evaluation. It is speculative and
something which should be examined by this Commission before it
adopts this policy.

We do know, of course, that a figure of $100 million
does not stand as any indication as to what the end result will
be for the State of a policy pursued in this manner. We know
this because there is an obvious effect on school districts
alone. What does happen, then, if the $100 million is taken
off local tax rolls and put through the State fiscal operation
is speculative. What is the end result? I am not here to tell
you, gentlemen. It was our feeling that this would be deter-
mined before the State policy was adopted.

It has been suggested that there may exist a feeling
on the part of some of the committee that because it has been
publicly stated that the State has a $100 million interest in
the litigation, the Commission must now resolve to take a
position in this matter. Such a view I think would be a
dangerous view that this issue may have on the credibility of
the administration's policy regarding such important subjects
as taxes and public relief.

Let me cite -- This goes particularly to Mr. Martin's
citation of Chapter 1684. In the last session, in the closing
half of the session, this bill was plucked out from the legis-
lative ashcan and was given new life under the title of Senate
Bill 1368. The bill granted special future tax relief to oil
and gas leases by directing that all government oil leases
signed prior to 1963 be reduced in assessed value by an amount
of all future royalties. In other words, that they not be
assessed according to the rules of the De Luz Homes case, but
be specially exempted from that rule, giving them special
favor over all other taxpayers.

Now, it would be unconstitutional for oil companies
to have their taxes figured at a favorable method, because
everyone is supposed to be taxed equally and everyone is sup-
posed to be taxed at full value. So the legislation was
called legislation for the relief of special hardships. The
claimed hardships and the merits of the legislation were sub-
stantially misrepresented during the course of its passage
by the Legislature.

MR. FLOURNOY: Nobody here participated in that
legislation that I know of.

MR. WILLIAMS: When it came to the attention of the administration for execution at the close of the session, while the concerned public entities had not been able to get going and make their view known in the tremendous melee of the closing week of the Legislature, they were able to approach the administration on this subject and thoroughly informed the administration from competent sources, who we felt certain had the respect of the administration, including requests for veto from the counties of Sacramento, Sonoma, Ventura, Santa Barbara, Los Angeles, Orange, Kern, and Kings County. The legislation was signed, however, and this fact has been a source of substantial and continuing criticism.

I feel the action of this Commission for the presently recommended policy would exacerbate a point that has already been a point of substantial criticism.

MR. FLOURNOY: I don't mean to interrupt, but it doesn't seem to me any criticism of that legislation and the Governor who signed that legislation which is in the law, is relevant. We must respect it as such. I don't know what this has to do with this matter -- an action of the last Commission. We have to accept it from the point of the law, despite the fact that some people might draw the conclusion, wise or unwise, that our act is connected with it.

MR. WILLIAMS: The only connection is that it is the same subject matter, the same principle of law, the same oil
companies, and the same taxpayers.

MR. FLOURNOY: And the same State, I suppose.

MR. WILLIAMS: Yes. So the oil companies are seeking in this litigation a special tax rate on their value in oil leases. The effect they seek would be to tax them at a standard not applicable even to their leases in private properties. The points have been analyzed and presented on both sides now. We feel that the State policy furthering the recommended action would be to seek a dollars gain by the State at a necessary loss to the ad valorem fund. In order for the State to come a dollar ahead by the recommended policy, they will have to destroy from local tax rates more than a dollar's revenue. We think this is a self-duplicating policy and in the broad view we do not feel it is the policy that should be approved by this Commission.

MR. FLOURNOY: Any comments from members of the Commission?

GOV. FINCH: Well, to the extent that any partisanship involved in the action of a Democratic Legislature and a Republican Governor is irrelevant, I move the recommendation of the staff.

MR. SMITH: I second that motion, Mr. Chairman.

MR. FLOURNOY: Before we conclude action on that, I think I do want to make a couple points perfectly clear as to my understanding of the staff's recommendation.

In the first instance, we will be participating only
and exclusively insofar as it relates to drilling and operating contracts and without any relationship to the other things involving any oil and gas leases; is that correct, Mr. Hortig?

MR. HORTIG: Yes, Mr. Chairman.

MR. FLOURNOY: And we have been advised by the Attorney General's Office that it is possible to participate on that basis exclusively?

MR. HORTIG: Yes, sir.

MR. FLOURNOY: Having a motion to approve the item and a second, hearing no objection, the item is approved.

Now we will proceed to Calendar Item Number 9, concerning the staff recommendation to authorize, execute and deliver to Leslie Salt Company a patent confirming and exchanging title to lands previously included within the descriptions of prior State patents, and acceptance from Leslie Salt Co. of a deed confirming in and exchanging to the State title to certain lands located in the southerly portion of San Francisco Bay together with a policy of title insurance, in extended coverage form, guaranteeing the State's title to those certain lands.

This exchange of deeds is a culmination of boundary settlement and exchange authorized by Chapter 1835, Statutes of 1959. State will have its title confirmed and established in 1,601 acres of land valued at $1,557,550 and will confirm and establish title in the Leslie Salt Co. of 420 acres of land valued at $1,277,050 under the recommendation of the staff.
GOV. FINCH: In terms of procedure, I think we should lay some ground for the proceedings. I would like to know how many people are going to be heard; there seem to be some twenty people to be heard. Also, whether it is the desire of the body to stay through and conclude this -- adjourn for lunch or stay through until we are finished. I have no particular preference.

MR. FLOURNOY: It would be my estimation that since this is a public meeting, not a public hearing, and that we have had public hearings on this matter at which we have taken extensive testimony -- and I think every member of the Commission has had an opportunity to review and read and consider the record of that hearing which was held on January 15th in Santa Clara, as well as many consultations that have been undertaken throughout the Bay area with regard to this particular proposal in order to try and facilitate the highest degree of communication with all interested parties in the area -- that it should not be in any way necessary to have a tremendous repetition of statements that have already been made into the record and which we have already had the opportunity to consider prior to this meeting.

It is obviously significant if anyone is interested and does have a new consideration or new aspect that they wish to bring to the attention of the Commission, they should obviously have the opportunity to be heard and we have no intent to preclude such statements. I would, however, feel that
under the circumstances this should not be an extensive and
lengthy peroration and that it would be my intention that we
would continue on this matter until we reach a decision by the
members of the Commission, regardless of the possibility of
infringing on the lunch hour. Unless the Commission objects,
that general method of procedure would be what I would intend
to follow.

How many requests have we really had, Mr. Hortig,
with regard to this hearing? This is a list of people, actu-
ally, who testified at the hearing in Santa Clara.

MR. HORTIG: Yes, Mr. Chairman, and by specific
request; and I am sure the people who attended the Santa Clara
hearing, the majority of whom are here today, would wish to
address the Commission.

GOV. FINCH: Can we have a show of hands of how
many wish to address the Commission? One, two, three, four,
five.

MR. FLOURNOY: I think that is a reasonable number
and we will certainly provide the opportunity.

Would you care briefly, Mr. Hortig, to outline the
aspects of the recommendation -- which I think is probably
fairly familiar to everyone, but we ought to have some outline

MR. HORTIG: May I suggest, Mr. Chairman, in order to
complete the records of the Commission on this matter, that
with your approval I would propose to read into the record the
last letters which have been received by the Commission and
by the Executive Officer on this subject subsequent to the
Santa Clara public hearing on January 15th -- since these
represent matters that would not otherwise have been brought
before the Commission and into the record:

MR. FLOURNOY: Unless there is objection, we will
so proceed.

MR. HORTIG: In chronological order of receipt, on
a letterhead of Bay Land Area Study Team (BLAST), dated
January 22, 1968, addressed to State Lands Commission:

"Gentlemen:

Because Chapter 1885 caps a hundred
years of land scandals and represents the
final attempt of State officials to confirm
South Bay swamped, tide and submerged lands
in private hands against ninety years of
intervening law, the Bay Land Area Study
Team requests:

1. A tabular compilation of: Original
Patentees, statute authorizing sale, plat
of survey, where recorded.

2. Total disclosure of appraisals and
assumptions proving the Leslie Slough Swap
is in the public interest.

3. Permission for members of the Bay
Land Area Study Team to look in W.O. 1339
(parenthetically, that is the work order
file of the State Lands Commission) without
its first being purged.

Very respectfully yours,

BAY LAND AREA STUDY TEAM (BLAST)
Luman C. Drake
Publicity - West Bay"

Excuse me for a moment, Mr. Chairman.

Second in order of receipt, on the letterhead of
Council for Governmental Responsibility, addressed to you,

Mr. Chairman, on January 24th:

"Dear Sir:

The appraisal report concerning this matter is vital to an intelligent and equitable resolution of the problem. Two years ago, a copy of the appraisal report was requested and was refused on the pretext that the information was confidential and could not be disclosed.

Since that time, another appraisal report has been prepared and requests for copies have been met with refusal of complete disclosure. A further request for disclosure has elicited from some of your staff an indication that the appraisal report will be available for viewing by a small group of citizens on the day before your Commission meeting of January 26th.

Since the indication is that the appraisal report is quite lengthy, it would obviously be impractical for this small group of citizens to read and carefully consider the document before the Commission meeting on the following day.

We believe that the present members of the Commission realize the importance of allowing the public complete information and will, in order to rectify matters, (1) insist that copies of the complete appraisal report (without modifications or deletions) be made available immediately to the public; (2) that no decision on this matter of the exchange and boundary settlement between the Commission and Leslie Salt Co. be made at the Commission meeting of Jan. 26, 1968; and (3) that there will be no decision on the matter by the Commission until the public has had ample time to study the appraisal report and make known its findings and opinions to the Commission in public hearings.

Yours truly,
COUNCIL FOR GOVERNMENTAL RESPONSIBILITY
Marcella Jacobson
(Mrs. Ralph N. Jacobson)"
Also, dated January 24th, on the letterhead of the Save San Francisco Bay Association, addressed to all Commissioners:

"Gentlemen:

This is with regard to the proposed exchange of lands between Leslie Salt Co. and the State which is on the agenda of the State Lands Commission for this Friday, January 26, 1968.

We have asked the staff of the Commission, personally and by letter of January 16, 1968, for certain information regarding this exchange. We have asked to see the appraisal upon which the legality of the exchange depends, the details of which up to now they have declined to disclose. We have also asked for certain other information that would be helpful to us in evaluating the exchange. Members of the staff are meeting with us tomorrow to discuss our request.

Because of the great importance of the proposed exchange to the future of San Francisco Bay and the shortness of time before the commission meeting, we would like to make our position clear.

We wholeheartedly support the concept of settling boundary and other disputes regarding Bay lands so that conservation and development of the Bay can be facilitated. We recognize the legitimate rights and needs of private landowners such as Leslie Salt Co. We believe there is a need in the public interest for Leslie and the State to resolve the disputes between them, particularly with regard to the proper boundary lines between Leslie lands and the navigable waterways of the Bay.

However, we strongly oppose the proposed exchange in its present form. The information revealed so far by the Commission staff indicates that there are fundamental defects in the proposal that make
"it contrary to the public interest and unconstitutional. Briefly stated the defects are these:

1) The State of California is not getting value for lands it is giving up, as required by the Constitution and statutes. The exchange is a gift in part of public lands to private interests.

2) The exchange would establish a precedent that would jeopardize preservation of other navigable parts of the Bay, specifically tidelands.

3) The exchange would resolve only part of the State's legal disputes with Leslie, leaving that company free to continue to claim absolute title to contiguous lands in the Bay including the right to fill those lands.

The enclosed memorandum spells out in greater detail the legal and factual matters that lead to these conclusions.

We strongly urge the Commission to review the proposal with these defects in mind and to direct the Commission staff to modify the exchange so as to correct them. In any event we ask the Commission to make sure that the full appraisal and other information upon which the State relies be made available to the public, and that all interested parties have an opportunity to examine it carefully before the Commission makes its final decision. For a transaction of the enormous significance of this one to proceed without full public disclosure of the critical facts can only create distrust and suspicion and make later settlement of Bay problems more difficult.

Sincerely yours,

William D. Siri
President

And, finally, received later but also dated January 22, 1968, on the letterhead of the City of Mountain
View, City Manager Department, addressed to you, Mr. Chairman, and members of the State Lands Commission:

"Gentlemen:

We have reviewed your Commission's proposal to settle outstanding title and boundary problems in the South Bay area. We have also attended several of the excellent public presentations conducted by Mr. Hortig, your Executive Officer, and his staff.

It is our understanding the Leslie Salt Company is in agreement with the proposed settlement and that the proposed settlement will have public interest value in that it will establish precedence from which to define more clearly the public interest in the Bay.

It is primarily for this reason that we urge your favorable consideration of the settlement proposal at your January 26 meeting.

Very truly yours,

John T. O'Halloran
City Manager

Now, to a resume of the summary as you requested, Mr. Chairman, and if I may -- From directions as a result of the review of the legal requirements to be accomplished or to be observed by the Commission in consideration of this matter and of the bases for making any findings on which approval of the proposed transaction would be based, it has been outlined that the Commission can have fully complied with the provisions of Chapter 1885 of the Statutes of 1959 provided the Commission makes the three findings required by Chapter 1885 and authorizes the Executive Officer to accept the lands to be...
conveyed by the Leslie Salt Co. pursuant to the proposal and
further authorizes the Executive Officer to execute and
deliver certifications and patents to Leslie Salt Co. to the
lands it is to receive and have confirmed according to the
proposal.

These four steps are those that are outlined in the
staff recommendation on page 74 of the agenda before you,
with authorizations to the Executive Officer to proceed --
the three steps being the requested findings that would have
to be made as a condition precedent by the State Lands Com-
mission. Again outlining them, after a review of the reports
by staff, by the Office of the Attorney General, the appraisal
report, the testimony for the record that you gentlemen have
all reviewed, in order to proceed with this transaction it
would be required that the Commission find:

First, that the subject boundary settlement and
exchange is necessary in order to settle and confirm the title
of the State and to establish the boundaries thereof;

Second, that the exchange is in the interest of
commerce, navigation, fisheries, and reclamation; and

Third, that the value of the interests of the State
in the parcels of land to be conveyed by it is no greater than
the value of the interests to be acquired by the State.

I emphasize for the information of the Commission
and everyone in the audience that the statutory requirement
is as to the equity or preponderance in favor of the State in
the value of these interests; that, therefore, this appraisal by statute, any appraisal by statute, does not contemplate the normal type of real estate appraisal solely, necessarily, but the valuation of all interests and certainly the public interest and the interests in reserves for commerce, navigation and fisheries -- which previously, with the exception of the Upper Newport Bay exchange transaction which the State Lands Commission approved upon recommendation by the Office of the Attorney General that it could legally be taken into consideration -- that transaction and the transaction before you now are the first in land history in connection with exchanges that give an effective representation to the value of these interests in the considerations that went into the appraisal report which you have had before you and which you have studied, and which result in the staff recommendation that the findings are supportable and can be made by the State Lands Commission.

MR. FLOURNOY: Well, let's proceed, then, with our consideration of this matter. As indicated by the Executive Officer, Mr. Hortig, there are three things that the State Lands Commission obviously has to find prior to consummating their approval or action on their recommendation that we approve the exchange. One, that it is necessary to settle and confirm title and to establish boundaries; two, that it is in the interest of commerce, navigation, fisheries and reclamation; and, three, that the value is at least as great
as that which the State receives against that which the State conveys.

I wonder whether or not it would be expeditious to try to, in terms of those people who wish to address the Commission, address themselves to these three; and, particularly, since there is one which is the primary objection or comment, to isolate that. How many are there that we have? Were there five?

MR. HORTIG: Yes. Mr. Chairman, may I interrupt?

Earlier I indicated that we had not had a specific request, although there was this general interest and the individuals raised their hands. We do have a specific request before us on behalf of the Alameda Flood Control District.

Mr. Dombrink wishes to address the Commission.

MR. FLOURNOY: Then maybe we should proceed. Since it is a limited number, let's hear from Mr. Dombrink and then we will hear from others who indicated they wish to testify.

Mr. Dombrink, will you come to the microphone?

MR. DOMBRINK: I am Richard Dombrink. I am Chief of the Real Estate Branch of the Alameda County Flood Control and Water Conservation District.

The most northerly portion you see on the map is the Alameda Creek Federal Government Flood Control Project and to date the work completed is approximately in blue. In the blue section there, there are two old sloughs -- which are the subject of discussion here today. The map that was used in
1965 did not indicate the two arms presently colored in green.

GOV. FINCH: Where?

MR. DOMBRINK: (Indicating on map) That is the two arms that the original map did not show, that the State was going to give up the rights to. The current maps show that the State is to relinquish their rights in that area.

The Alameda County Flood Control District has filed an eminent domain proceeding for the same area. We have excellent working relationship with the Leslie Salt Co. I have a map here that shows the area that will be the subject of condemnation. The two green arms would be in this area here.

Now, the Flood Control District is interested in the area going up to this point here and I believe the areas would be very close; but I felt it incumbent to call it to the Commission's attention that there is a discrepancy between the two maps. The rights-of-way that the District has to purchase -- the State reimburses the District for the money expended. So the State would be giving up the land, the Flood Control District would be buying the land, the State would be reimbursing the Flood Control District; and the State could possibly lose a thousand dollars if the acreage was different.

We are interested in having the proposed exchange consummated and this is not a formal protest, but I just wanted to bring it to the board's attention.

MR. FLOURNOY: Thank you very much.
MR. HORTIG: Mr. Chairman, may I respond?

MR. FLOURNOY: Yes.

MR. HORTIG: He brought it to our attention for the first time, I believe, yesterday. There is a solution to the problem in that other lands are being obtained in which there will be State title in the general area and the staff will be very happy to continue its cooperative relationships with the Alameda County Flood Control District and with Leslie, to see if we can't consummate an exchange for these particular lands so that the entire situation can be made whole again, even from Mr. Dombrink's viewpoint.

MR. DOMBRINK: Thank you very much.

MR. FLOURNOY: Thank you very much.

Now, let's see. Who has indicated an interest and wishes to address themselves to this matter? I think probably it would be easiest -- I will take this lady first -- if you would give your names to Mr. Hortig, so that I don't have to be trying to pick people out. Those of you who have a desire to speak, if you would come forward and give your names to Mr. Hortig, he will give the list to me and we will have a list of those people who wish to address the Commission. If everyone would at this point give their name to Mr. Hortig, then I will have a complete list. Has everyone come forward that wishes to speak to the Commission on this matter and given their name?

I wish you would hold up a minute, so we can
accomplish this process, then we will be ready to begin.

Do you have a complete list now, Frank?

MR. HORTIG: Yes.

MR. FLOURNOY: Will you please identify yourself and the group whom you represent?

MRS. FREEMAN: Helen Lyons Freeman and I represent the Alameda Conservation Association in Alameda. I am their president.

I'd like to speak to the criteria that's brought up in your decision awaiting today, and I notice that it is fishing, commerce, navigation, and reclamation. We have been concerned -- the Conservation Association has been deeply concerned because your statute under which you are operating is unconstitutional under Article 15, wherein it states that no tide and submerged lands shall pass into private ownership.

We believe that there are tidelands that will be passing into private ownership when this is consummated. The paramount use of tidelands and submerged lands is in public sovereignty and they are for fishing and navigation but reclamation of tide and submerged lands would be no aid to them.

We recommend that you study this further, particularly where it comes to the Constitution -- whether the Constitution is paramount over a statute of the Legislature.

Thank you.

MR. FLOURNOY: Thank you very much.

GOV. FINCH: I'd like to ask Mrs. Freeman a question.
She is obviously very familiar with this problem for some time.

You raised the constitutional question. Of course, we have an opinion from the Attorney General's Office. Isn't it true that there is an unfortunate history on this? You had massive and wholesale give-away of these lands in earlier years, which is the basic problem we are confronted with today.

MRS. FREEMAN: Well, it seems to me you can't give away something that you don't have the title to; and when it comes to navigable waters, they are in sovereign capacity and I doubt if you can dispose of anything like that.

GOV. FINCH: I am talking about what is confronting us in private sales in earlier years.

MRS. FREEMAN: Yes. I believe I raised at an earlier meeting that there was a great deal of fraud in those days. There have been plenty opportunities to get quiet titles to these lands. In 1913 there was legislation that anyone could come forward and quiet title. The fact that they did not come forward then is not our responsibility today.

There is no reason in our opinion to change the line of ordinary tide and to change the lands behind the line of ordinary tide, although you are actually discussing tidelands; and it would result in 44,000 acres. I am quite sure all those titles are not clear. I know from correspondence that I have from the State Lands Commission that the Department of Interior turned down some of their requests.
GOV. FINCH: By the same token, there is some question of our title. There is question by the Attorney General whether we have fee to those submerged lands.

MRS. FREEMAN: I don't think you have fee to those submerged lands, but you have authority on those lands. In other words, they belonged to Spain, and Spain passed them on to the United States. The United States held them in trust until we ceded to the Union. Then they returned the lands to us; but I don't see a ruling of any kind that the State of California could really tend to jeopardize the commerce clause of the United States. Though the United States has not entered into this issue -- it may be a little early -- they may be waiting to see if we can solve our own problems, but I am sure they have the right to come in at any time.

The passing of waters to Leslie I would say could not be done, regardless of the Attorney General's opinion. We don't always agree; and I think it is a matter for the courts to decide.

GOV. FINCH: I think it is clear that there is going to be ultimate litigation involved here in any event, and I think it will probably hasten that litigation if we act, rather than if we fail to act. Would you concede that?

MRS. FREEMAN: No, I don't think so -- because this has been going on, as I understand it, for twenty years. Any day the State decides to say to Leslie Salt: "Now, Leslie you claim ownership to these lands. Bring in your proof of
ownership because it so happens we have a different ...

GOV. FINCH: I think that same dialogue has been
going on for twenty years.

MRS. FREEMAN: That is true; but if the State of
California says, "Get off and get out," that would be manda-
tory until they went to court and sued you -- and I don't
think they have a leg to stand on and I think this is an
outright gift to private ownership. And as one person said:
"You don't save the Bay by giving it away."

GOV. FINCH: Thank you.

MR. FLOURNOY: I would like to make one comment.
The prior administration referred to was a long, long time ago.

MRS. FREEMAN: I can't let that go. That's true.
This happened a long, long time ago; but, if you will look
back in the statutes, I think as recently as 1959 Governor
Brown issued a patent to Ideal Cement Company and those lands
were not high, dry ground.

MR. FLOURNOY: That is not involved in our con-
sideration here today.

MRS. FREEMAN: It will be.

MR. FLOURNOY: Let's proceed with Mr. Butler, if we
may. Mr. Louis Butler.

MR. SIRI: Mr. Chairman, may I proceed for Mr. Butler?

My name is William Siri, representing the Save the San
Francisco Bay Association as its president -- an organization
of about 11,000 members primarily in the Bay area.
Our position was explained to you in the letter that was read to you this morning by Mr. Hortig and presents in general terms our position as of two days ago.

In general, I would point out to you that it is not our object to disclaim the Leslie Salt valid claims to title to lands in the Bay area or to deny them title. This is not our intention at all. We recognize that Leslie Salt and other private owners do have valid claims and that these must be resolved. We are eager, as any citizens' group, to see these problems resolved so they will reflect the State's and the public's interest.

The negotiations have been going on for twenty years now, but they have taken a somewhat different form very recently; only as recently as yesterday did our organization have an opportunity to discuss in detail the nature of the exchange with the Commission staff. Some hours of discussion, in which your staff was most cooperative in answering questions and discussing the details and the methods by which the settlement was arrived at, were helpful; but, in turn, raised other questions and did not wholly answer some of the earlier questions that we still have in our minds.

At the present time it is our feeling that we cannot agree with the present proposal until there is further clarification. We have certain reservations about the proposed exchange and we would not be able to support it until we had had an opportunity to examine further some of the underlying...
procedures that were used in arriving at the proposed exchange. Rather than go into detail here, I'd like to ask your permission to call on Mr. Butler, a member of our organization, who is extremely knowledgeable on these points, to present to you the reason for our reservations and what we believe ought to be the nature of the procedure thereon.

GOV. FINCH: Could I ask one question?

MR. SIRI: Yes.

GOV. FINCH: As I understand it, are you satisfied that under the plan as proposed there is no shrinkage of the Bay?

MR. SIRI: No; on this question we are not yet certain.

GOV. FINCH: You mean in terms of future development or in terms of immediate title vesting?

MR. SIRI: In both -- in terms as regards to future development and to the present boundaries of the lands included.

GOV. FINCH: Are you also a member of BCDC or active with it?

MR. SIRI: No.

GOV. FINCH: Do you have any information as to whether or not they have taken a position in this matter or not taken a position?

MR. SIRI: I don't know what BCDC's position is on this.
MR. FLOURNOY: Thank you, Mr. Siri.

MR. BUTLER: Mr. Chairman, members of the Commission, I'd like, if I could, just take a short time here to go over the matters that we have been discussing since the public hearing and meeting particularly yesterday afternoon with members of the Lands Commission staff -- which, as Mr. Siri says, have helped to clarify the nature of the exchange and unfortunately have raised additional questions in our minds as to its validity.

First, I'd like to bring out some facts that have appeared since those public hearings, as to which we had doubts before. If I may, I think I'll go to the map and perhaps you can still hear me. In the description of the exchange and in the map and in the coloring, it is described as involving some 400 acres going to Leslie and 600, or 1600, depending upon what you are talking about, going to the State.

I think we ought to understand that, in fact, -- and I hope the Lands staff will correct me if I am wrong, but I don't think I am -- that, in fact, as a result of this proposed exchange some 30,000-plus acres of Leslie Salt land in this end of the bay -- that there will be a deed or patent from the State that affects some 36,000 acres of land.

Now, I don't want to go into details now as to what will be in the deed. There has been a discussion between ourselves and the Lands Commission staff whether that is the proper thing and whether the terms are proper. I think for
the moment we have just got to remember the fact that 36,000 --
that is not the exact number; certainly 30,000 acres -- is
involved in this arrangement.

There is a second fact which I think is very perti-
nent because of the arguments made by the Lands Commission
staff at the public hearing; and I think that everyone should
understand that while these have been public hearings in the
sense that people have had an opportunity to present their
views, they have not been hearings before the members of this
Commission or others who are in the position of making the
decision. The hearings have been before the men who have
been involved in the negotiations with Leslie Salt Company
and in this connection I think they have acquired a certain
adversary nature, rather than, in fact, an exposition of the
public concern.

At any rate, in the public hearing the argument has
been made that the ultimate long benefit of this exchange
will be to resolve difficult legal disputes between Leslie
Salt Company and the State of California, some of which mem-
ers of the Commission have referred to as arising over ques-
tions as to the nature of swamp and overflowed patents, what
they conveyed, and so on.

Again, without descending into that somewhat complex
legal argument, I would point out two things: One, this green
line here outlines the lands involved in this transaction that
is proposed -- that is, everything on this side of it and on
this side of it. This leaves the Leslie Salt Company with lands, extensive lands, just in this area of the Bay as to which there are very basic legal disputes. Specifically, it leaves them with lands -- and these are apparently something under 600 acres -- that they acquired under the same patents that are involved in the lands behind the green line. It also leaves the Leslie Salt Company and the State in dispute as to fourteen hundred acres of land that lie in here under a patent; and, perhaps more significantly, although fourteen hundred acres of Bay lands is not insignificant, the area is colored blue on this map -- the implication being somewhat that they are involved in the transaction. In fact, they are not involved in the transaction at all. What it says is:

"Channels or basins open to the Bay as to which navigational servitude will not be affected by this transaction." What that means, translated, is that the Leslie Salt Company and the State have the same disputes, although somewhat modified. How these channels got there, amazes me; but Leslie and the State have the same disputes or will have, after this exchange goes through, have the same disputes that they have over everything else over here. So they really haven't resolved these blue channels.

As a matter of fact, the State's position with regard to some of these channels is not as good as it is with regard to the natural waterways. Leslie might, and for all we know perhaps does, claim the right to block off these
channels. Since they opened them up, some of them, they possibly could claim the right to close them under the doctrine that has developed now on the Delta.

So, since the State says the servitude will not be affected, those facts still remain. So even if this exchange of thousands of acres goes through, we have not settled very seriously the disputes of the Leslie Salt Company.

Now, I'd like to go...

MR. SMITH: Mr. Butler, before you go on, I am interested in what organization you represent.

MR. BUTLER: I am with the Save the Bay Association. I think Mr. Siri made that point.

Now, with regards to the appraisal -- and perhaps a little history would be helpful here -- first off, the full appraisal has never been made available to the public. This appraisal was made by a member of the State Lands Division staff, a gentleman who, I gather, is not available at the present time. He is in the Chocolate Mountains, we were told last night. So, regardless of his whereabouts, the fact is that none of us had a chance to talk to the State's appraiser, nor have we received anything but the bare summary of his findings.

Now, I'll come back to that in a minute, but I think we have to remember that this is not just sort of an incidental part of this dispute -- that is, the appraisal.
As Mr. Hortig pointed out -- and I think the Chairman said we might confine ourselves to the three points mentioned -- one of those is, in fact, is the State getting equal or more than it is giving up; and the way to determine that is to make an appraisal of the lands. The current appraisal was made as of December 1, 1967. The previous appraisal upon which the State relied -- we have asked for a copy of and have never received. When this matter became quiet in 1966, that appraisal apparently was shelved and now they are apparently trying to use another one to justify the exchange.

Now, the current appraisal -- which, as I say, we have not seen the details, but Mr. Taylor and Mr. Hortig were kind enough to discuss with us yesterday and the process by which it was prepared. I'd like to point out a couple things about that appraisal. Perhaps I should wait for Mr. Smith.

MR. SMITH: I am just a little curious. Where are the Chocolate Mountains?

MR. BUTLER: Near the Big Rock Candy Mountain.

MR. HORTIG: In Imperial County. It is a Naval and Marine Corps bombing range.

MR. BUTLER: I assume the appraiser is in no danger.

MR. HORTIG: We are happy to report that he got out just in time. He was supposed to report night before last and yesterday morning Navy search and rescue teams were looking for him. They found him.
MR. BUTLER: If I could ask the members of the Commission to turn to the page of your summary on values, that show the relative values that the State is receiving and giving up...

GOV. FINCH: This is Exhibit C?

MR. BUTLER: That's right. We might start on Exhibit C, page 1. It says: "Lands to be conveyed by Leslie to the State pursuant to the exchange agreement..." Let me set aside for the moment how these values were arrived at and just take the numbers. That shows a figure of $1,035,000.

Now, you will notice there is a $400 million figure down below that, but it's apparently there just for information. It's not put into the ultimate addition. So $1,035,000 is the value of certain tidelands that the State is getting from Leslie, according to the appraisal system.

Now, may I ask you to turn to the next page, page 2. These are lands to be conveyed by the State to Leslie pursuant to the exchange, and if you will look at that figure it is $1,277,000. So if you set those two pages so you can see them together, you will see at the moment, if you were to stop right there, the State is coming out about $240,000 short on this exchange -- which is, when a public agency is doing business, not just a bad deal; it is unconstitutional and a deal that violates the statute.

So how does the appraisal get up to the point it is in the black? That takes you to the last two items on page 1.
We have now disposed of the interests in the lands and we are going into less tangible values to the State. The first one is $272,000. Now, as explained to us recently by the Lands Division staff, that represents litigation costs, money that the State would have to pay to quiet title to some submerged lands. The claim is they won't have to pay the costs now, therefore that adds $272,000 to the deal.

Well, apart from the enormous difficulty in estimating legal costs, obviously as a very basic principle there is nothing in the appraisal that shows the benefits for Leslie for its avoiding legal costs. So here is an item that appears on the State's side of the ledger, but not on the Leslie side. I would point out right there that even if that item is permitted in a deal that involves over $2 million in land title, that item lies on either side. The State thereby edges into the black by $30,000; and, keeping in mind the very difficult nature of appraisals, it is not a science and certainly estimating litigation costs is not a science -- but, in any event, through this procedure the appraiser of the Lands Division staff has edged the State into the black by $30,000.

Then you get to the last item -- value of waterways of public benefit, and that's about $250,000; and if I go back to the map, that is a value in these blue areas. Now, as hard as we have tried, I have to confess we do not understand how the State is getting anything of value in these blue areas. I am willing to listen to more argument on it, but it seems
inconceivable when it says, "Navigational servitude will not be affected by transaction" how the State doesn't come out just where it is now. But somehow or another the appraiser claims that that adds $250,000 in value and thereby he makes the proposed transaction to the favor of the State of California. So even if we are to accept the method of appraisal -- the figures which the appraiser used, which we have never seen -- if we were to take in faith everything that has been told to us, the arrangement is unconstitutional because there are these $500,000 in benefits in the proposal which, in fact, do not exist.

Let me go beyond that to what we understand the appraiser did even to get up to what he did, $1 million worth of lands going to the State. And at the risk of going into repetition, all we know is what we have been told by members of the Division staff. We have never seen the papers. It has gotten to the position, as I said yesterday -- unfortunately, it has gotten to the position of an adversary proceeding. We thought it was the public interest and the State, but it has gotten to be an adversary proceeding. I understand this when it is one citizen against another, but when it is for the benefit of the State, I don't understand it.

Here is this slough here, which we discussed yesterday, that is a navigable waterway. It can be dredged by anybody interested in navigation -- the Federal government, the Corps of Engineers, the State, and so on. Now, the State
claims, and we agree, that they own the center submerged part
of that slough. We are not discussing that. There are mud
edges to these sloughs and the contention is that Leslie has
the mud, which is under water at high tide, and the State has
the water; that is, the people have the water.

Now, what Leslie is giving up -- and that's where
the whole million dollars comes from -- are these tidelands,
the mud; and the question is: How much is it worth if you
own something that is under water at high tide and somebody
can dredge it? You can't use it without permits. In fact,
you may not be able to use it at all if the State says that
it is vital to navigation. The uses that you can have, if
you get a permit, are perhaps to put a pier on it, and so on.

Now somehow, by a system that we do not understand,
the appraiser says that that underlying land -- let's say if
in a piece altogether would be worth $10,000 an acre -- that
that underlying land is worth an average of about sixty-five
hundred dollars, even though it has all these problems we have
described, and that being able to navigate over the top of it
is only worth thirty-five hundred. Our contention is that
now we understand the system, we would like to get appraisal
information to support it. Our contention is that is contrary
to all common sense -- that nobody is going to pay sixty-five
hundred dollars for an acre of land under water at high tide,
that the State or Federal government can dredge any time it
wants, and subject to whether you can get a permit, and so on.
So, in our view, the million dollars going to the State may come out to mean something more like $200,000 or $300,000 -- but, again, we need to see the appraisal. We have not been told of any comparable sales. And to show you what can happen, we discovered yesterday that in this particular slough -- take my piece over here; in fact, it was appraised on this bank at thirty-five hundred dollars. They said Leslie had twenty-five hundred dollars worth of mud, if you will, and the State had a thousand dollars worth of water. Directly across the way the land was appraised at twenty-five hundred, which I think might be legitimate because there are differences in the two locations. Over here, the mud was worth fifteen hundred and the water, the easement, was worth a thousand. So, in effect, on both sides, both little tidal banks here, the State's interest was worth a thousand dollars even though on one side Leslie's mud went up in value. There is no relation between the two. It sounds almost impossible to me that that could be the case in market value.

So what seems clear is that the appraiser arbitrarily picked a thousand dollars as the value of the navigational easement, regardless of what the land was worth, and through that arbitrary system finally came up to this million dollars; and finally boosted it up to where the transaction was constitutional. This is complicated and I'll stop right there, with what is obviously a difficult question, except to say this and it takes a little history. We have to keep in mind that...
this transaction was proposed in 1966, when there were other members on this Commission. At that time Leslie was receiving more acres than are presently involved. Objections made and litigation was discussed, and the matter was then dropped for renegotiation with the Leslie Salt Company -- at which time areas that are presently navigable, giving that water to Leslie in fact, were pulled out of the deal and a whole new arrangement was proposed.

I would like to be corrected if I am wrong about this, but my understanding of the sequence of time was this: that negotiations were carried on with the Leslie Salt Company, arrangements on all land on that map were completed, and then the appraiser was told to go out and see how this would come out, with that map in mind.

Please keep in mind the appraiser is a member of the State Lands Division staff and he went off to do his job. I would say a man would be less than human if his employers sent him out to do a job and he would come back without trying to come back with an appraisal that would fit his employer's arrangement.

MR. SMITH: Just a moment. I'd like you to explain that remark you just made, giving the impression that an appraiser went out and came back with a report that his employer wanted.

MR. BUTLER: I say the appraiser...

MR. SMITH: I don't want any insinuations, Mr. Butler.
that you can't back up.

MR. BUTLER: I can't back it up.

MR. SMITH: Then I don't think it should be made.

GOV. FINCH: For the record, is this appraiser an employee of the Lands Commission or is he an independent contractor?

MR. HORTIG: This appraiser and the lands appraisal Mr. Butler discussed was made by an employee of the State Lands Division. I think we should bring to the attention of the Commission for the record -- this appraisal was predicated on the most conservative approach to see if there was a value for the State and the conservative values have already been pointed out by Mr. Butler. There was a prior fee appraisal made by a member of the Appraisal Institute, made jointly for the Leslie Salt Company and the State, which showed values in favor of the State in preponderance of $2 million.

GOV. FINCH: Was this in connection with this transaction in 1966?

MR. HORTIG: In 1966; but generally, the magnitude of the shifts and changes that have been involved were such that the appraiser that made the previous appraisal would still stand by it.

MR. BUTLER: Let me make it clear I certainly didn't mean to insinuate anything about the integrity of this individual. If there was any such suggestion, I withdraw any insinuation. All I wanted to point out was the nature of his
MR. HORTIG: Mr. Chairman, might I just to complete the record - -

Mr. Butler, this is one point I think we can clarify and that is that the staff-appraiser who was associated with the project and with the negotiations from the onset of the negotiations that resulted in this present proposal was not handed a fait accompli.

MR. BUTLER: That's why I asked at the beginning what the timing was. Did he make his appraisal of the values first and was the transaction derived from that, or did it go the other way around?

MR. HORTIG: The appraisal of the State Lands Division was started in 1966.

MR. BUTLER: Did he complete his appraisal, for example, before that map was prepared?

MR. HORTIG: No, sir, but he was advising as to values in connection with the negotiation. Since it is a proposed negotiated settlement, patently other negotiations could well have been necessary if it were not possible to accomplish the balance at the conclusion of the negotiations.

MR. BUTLER: I think this kind of illustrates the sort of misunderstanding that can arise with regard to such things, but let us make this point clear. You know, this is the kind of argument you get into over a proposal that no one has ever seen, with an appraiser that no one has talked to.
So I am not anxious to take the Commission's time to debate a document that no one has examined, other than to talk of the results.

MR. SMITH: I'd like to ask the Attorney General's opinion on comparable sales — when they affect the State and particular parties, whether or not these are to be held in confidence or to be released to the public.

MR. SHAVELSON: Where, as in this case, data was submitted by members of the public on the understanding that it would be kept confidential, it would be my opinion that under the Government Code provisions the disclosure of that information would be against the public interest and it may be kept confidential. In other words, these people disclosed comparable sales only on condition that they be kept confidential and I believe under those circumstances they may be kept confidential.

MR. SMITH: I think the same thing is true when we condemn property by the State for right-of-way or certain universities, when a proposal is made on a piece of property.

MR. TAYLOR: Mr. Smith, when we acquire property for the State, our appraisals are not public knowledge until the matter goes into court; and it is our policy to receive protective orders that we do not disclose our appraisals until we have like appraisals from someone else. We would like to see the art of the other side before we disclose our side in a condemnation.
MR. SMITH: That was my understanding, sitting as Chairman of the Public Works Board, where we purchase a great deal of property for universities and such -- that the value of property is kept confidential until it goes to litigation.

MR. BUTLER: I think that is correct; but I would like to point out this is an entirely different procedure. The statute requires that State lands cannot be conveyed until you have a public hearing and a finding by the Commission that the State is getting equal value. How that public determination can be made without public knowledge of the underlying documents....

MR. SMITH: It is my understanding, Mr. Butler, that an appraisal has been made. Insofar as this Commission is concerned, it is valid; and the same course would follow here if litigation follows -- the same way if we purchased property for other purposes in the State.

MR. BUTLER: I guess I disagree with you.

MR. SMITH: I happen to agree with the Attorney General.

MR. BUTLER: I think the Attorney General was talking about condemnation; but let me say this -- You will recall that I said without even going into what we think is the doubtful nature of the appraisal, it shows on its face that the State comes out $240,000 short in land, and then you have the question as to whether these other values are legitimate.

Perhaps just by the nature of my comments and
discussion here, you have the feeling that we are in an adversary position; and while some may have difficulty believing it, our view is we are not. I think our goal is simply this: To have a very careful study made by those who are responsible for this decision of the details of this transaction, so that a transaction can be developed which, in fact, will accomplish what I think the State's objectives, the Land Division's objectives, and the public's objectives are. That would be to protect the Bay, to resolve all the outstanding legal disputes with the Leslie Salt Company, to arrive at appraisal figures that are not going to create suspicion and doubt but can be accepted by the public; and in that way to have Leslie and the citizens and everyone else proceed with the protection and development of this area.

Specifically, what I think we would have in mind is this: First, we would ask that the Commission not approve the transaction in this form, and I would hope it would be prepared to do that. If it is not, we would ask that it take time to have the transaction looked into other than by the Lands Division staff, which understandably is committed to it because they have borne the very difficult burden of this negotiation for years and years and under different guidelines with different administrations, and so on; to bring in others with the citizens' groups that would like to present appraisal information.

We think it would be helpful to invite the Bay
Conservation and Development Commission staff—You may not want to become involved with the commission because of the delays, and we are not interested in delays; but the staff of the Bay Conservation and Development Commission has extensive information and background on this problem—to invite them as friends of this Commission to examine the things, for example, I have said here today, to see that they are justified or if we have somehow misunderstood the facts, that they be corrected. But our view is unless this is done, this kind of transaction if approved would really create public misunderstanding of a sort which would not be in the public interest or anyone else's.

I am sorry to have taken so much time.

GOV. FINCH: Mr. Butler, as a laywer and conceding the desirability of wrapping up the whole package as soon as possible, do you agree with the contention of the staff that the package embraces the more difficult, the more complex, legal problems than the center of the Bay? Aren't we talking of apples and oranges?

MR. BUTLER: I don't think so. There are some additional complexities because these are swamp and overflow patents and most of the Bay lands are under tidelands patents. Mr. Taylor has made that point. The law is less clear because it has not been litigated in the State on swamp and overflow patents. On the other hand, there are swamp and overflow patents that are not in this transaction, so ultimate
litigation could still involve the same complex problems that
are involved down here.

There is another consideration. I do not know
whether it is really in the long-range interest of the State
to speculate that it may have a bad legal case. I don't
think the State does. To me, it may be more important to
resolve what the rights are on swamp and overflowed patents
than it is to try to settle the issue as a boundary issue --
because there are swamp and overflowed patents in the Delta,
in the North Bay, I am not familiar with. All I am going to
say -- These complex legal issues are probably going to have
to be answered some day.

GOV. FINCH: What about the point we have a whole
series of large landowners around the Bay? Presumably many of
those questions will be raised in that litigation. Leslie
was at least willing to negotiate; and, in terms of the overall
question of the Bay, is there anything to be said for an
accommodation here which might then make it easier to solve
the long-term development than litigation, which is going to
establish impossible pressures for a long period of time?

MR. BUTLER: Mr. Taylor has made this point. I
think this is what has so convinced him of the need to go
ahead with the transaction even though it may not be particu-
larly advantageous in these terms. I and others of our group
have difficulty understanding this benefit. There is no
legal precedent set by the fact that you settle one boundary
dispute and leave others. The practical precedent, the
argument made — "Well, these sloughs are confirmed to the
State and you can't have a slough without having it connected
to the Bay; therefore, you have a stronger case in the Bay."
To me, that kind of practical precedent is not of very much
value. For example, suppose there is any litigation over the
Bay itself. It is very difficult for me to conceive, for any
reason — legal or other reason — that the owners of these
lands out here would want to cut off these sloughs if they
could. So the access up here is going to exist, whether this
settlement goes through or not.

So, to answer your question, Governor Finch, we
have not been able to see the benefit, no.

Thank you very much.

MR. FLOURNOY: Thank you very much. I would just
make one comment with regard to your exploratory one on the
appraisal information. I think we are on the horns of a
dilemma — that had we not kept back all confidential informa-
tion, we would have been subject to criticism; and now we are
under criticism for not making it public. We are criticized
either way — we are on the horns of a dilemma.

MR. BUTLER: Perhaps it would be solved by going
back to the people who released the information and explaining
the matter to them; and under a procedure under which they and
the members of the Commission would be satisfied, that matter
could be looked into. I would think the individual members
of the Commission would want to know more about the appraisal and how it was made.

MR. FLOURNOY: I think that, with the exception of Mr. Cooper, was our last individual ...

MR. HORTIG: Mr. Chairman, another gentleman has just risen.

MR. JACKSON: Gentlemen of the Commission, I am Harry Jackson, the Secretary of Leslie Salt Company, and I think it is incumbent upon me to correct certain statements Mr. Butler made for the record.

I think our position has been stated abundantly and clearly by Mr. Schilling in the Santa Clara City Hall, in the hearing held there on the 15th of January in the evening. However, in view of the fact Mr. Butler has made certain statements here which might be misleading, I ask your indulgence to address myself to those.

First, with respect to the appraisal, I want the record to show that Leslie Salt Company had its appraisal made some years ago on a fee basis, fee ownership basis — because that is what this statute contemplates when the transaction is concluded, if the exchange is approved, the lands are exchanged; and what the State receives is fee title which has been vested in Leslie Salt Company since 1936; and its predecessors in title have held this patent by the 1872 Curative Act, paid for them as any bona fide purchaser, and paid taxes and assessments on them; and they are so indicated on assessment maps in
all three counties. Now, what Lestie Salt is guaranteeing is fee title.

For the purposes of your State appraisal, I give great credit to your staff for being hard bargainers. They insisted on specifying this on their theory of sovereign ownership, their theory of legal ownership -- not our theory that we felt could be substantiated in the courts; but we agreed to making their appraisal on their theory, and possibly a fallacious theory, to satisfy themselves that the State was, in fact, receiving equal value.

Now, when you give instructions to an appraiser and those instructions embrace legal concepts and assumptions which are not tested and not proven and not established either by statute, constitutionally, or by stare decisis, and you accept an appraisal based on those legal theories -- which we have been willing to do in this matter -- it does not follow that values based upon those theories are the true values. We still stand by the fee appraisal, which showed our lands to be three to one to the State. I think that's in the record, and you have ample basis to make a finding.

This is always a difficult point in any settlement situation because each side is conceding the validity of each other's legal argument. We are not conceding the State's legal argument except for the point of compromise. That's why the law erects barriers on compromise leading to settlement; that is, none of the admissions made in a negotiation
are acceptable in a court proceeding. It is also a good policy; it is also desirable in our opinion to open up these waterways and establish State ownership there.

Finally, I want to point out what Mr. Butler is saying here, shorn of all the elaborate syllogisms and elaborate explanations, what he is saying is that his group, Save San Francisco Bay Association -- a group before whom I spoke some three weeks ago and presented in the most possible detail the nature of this transaction at my request; not theirs that that group and other citizens' groups, however they may be defined, are the guardians of the public interest -- not you nor the Commission, not the public officers we have voted in. We elected you to turn over to you the questions of public interest and voluntary citizens' groups fly in the face of that.

Thank you.

MR. FLOURNOY: Is Mr. Cooper still here? Will you identify yourself?

MR. COOPER: Thank you, gentlemen. My name is Walter Cooper and I reside in Foster City.

First off, I'd like to state that my comments are limited specifically to the boundaries of the Estero Municipal Improvement District, which lie in this area right here, and the reference in my discussion will be to this body of water here, known as Seal Creek, and it is approximately 100 acres.

My statement is in the form of a letter that I have
addressed to this Commission; but I don't think you have received it yet, as I mailed it late last night, and I will read the letter.

"State Lands Commission:

The presentation the Lands Division staff and the Attorney General's office have made on behalf of the Leslie Salt Company concerning the Leslie Slough Swap is difficult to believe. What I want to know is, who is working in behalf of the people of California? Isn't public office a trust of some sort, with public officials acting not as owners but as trustees of the common wealth and the common good? How can public officials give lands away they don't own, give funds away that aren't theirs, and incur public debts they don't pay?

When Leslie Salt Company, Schilling Estates Company, T. Jack Foster, Senator Dolwig, Ernie Wilson and Bert Leavit went into the real estate business in San Francisco Bay in 1960, Leslie required that Foster get the lands filled four feet deep to meet FHA requirements for homebuilding with public funds of the Estero District before Leslie would release the lands to Foster for resale. The total cost of filling Foster City will run in the neighborhood of $39 million for 2600 acres, or about $15,000 an acre. This is public money spent for private profit under the Estero Act setup.

Foster City used to be called Brewer Island. The body of navigable water that made it an island was called Seal Creek and later Angelo Slough. In 1960 T. Jack Foster dewatered this creek entirely and filled it with public moneys of the Estero Municipal Improvement District, which he still runs and controls. The Leslie Salt Company couldn't have sold Foster these 100 acres of sloughs if it wanted to, because it didn't own them. Now, in 1968, the State Lands
"Commission wants to donate these lands to Leslie so it can release them to Foster to build on, in order to make the best of a fraudulent situation.

A State Lands Division memo dated December 8, 1966 stated that the fee value of all the lands being given to Leslie (460 acres then) was $1,170,200. And that the fee value of the 1550 acres of sloughs being returned to the people of California was $2,869,350. On January 15, 1968 the State said orally in a public hearing in Santa Clara that the average value of the public easement for commerce, navigation and fisheries in San Mateo County was $1,380 an acre, in Santa Clara County $660 an acre, and in Alameda County $770 an acre.

In my opinion these figures are phony and even ridiculous. The 100 acres of Seal Creek the Commission now proposes to give to Leslie in Foster City is now assessed at $4 millions alone. Your Mr. N. C. Taylor, Deputy AG, has acknowledged the sovereignty of Seal Creek and pointed to Chapter 1885, State. of 1959 as his political instructions to get rid of it.

Gentlemen, the Leslie Slough Swap is an outright fraud on the people of California who can tell one when they see it, by now. San Francisco Bay is irreplaceable. None of it should be given away. Public land is public land. You are its trustees and should be its conservators.

Very respectfully yours,

Walter Cooper

Gentlemen, I'd also like to point out that in addition to the 100 acres of Seal Creek originally in the early maps, both the Federal and San Mateo County official maps show that this original waterway that made Brewer Island
an island actually came from this boot area at this point, came to this point and then intersected Seal Creek. However, now and for the last forty, perhaps fifty, years Seal Slough -- which now opens at this point -- has been dredged periodically and we have now completely lost by filling one of these earlier creeks, which was also a navigable waterway, and up until 1960 this boot area was approximately eighteen acres that was omitted specifically from the original Estero Act as being property owned by Ideal Cement.

However, to go back in the records, you will find that this was also sovereign land and was an easement, to go back to its early history, and also this slough here goes back a hundred years; but I do not have documents. This, we have proven records on and we can trace it back to 1850 and show it has been filled. We can also show records where this was called to the attention of various public agencies, including the State Lands Commission, and it has been consistently ignored.

You might say: What is my reason for appearing here and opposing the so-called swap. It is very simple. My particular interest, insofar as I am situated and obligated in Foster City -- I have purchased a $40,000 home and in so doing thought that I was purchasing something that I was no further obligated to except for my mortgage and for public utilities. I was told that everything was in and paid for. Today, I am obligated in excess of $90,000 in addition to my
mortgage, by the so-called legal maneuvering that has been done by the developer and by the District, which is more or less an arm of the Jack Foster Enterprise insofar as their construction division; and the ad valorem tax on the entire Municipal Improvement District is a per capita obligation of approximately $12,000. I have a family of eight, so consequently I am obligated for $90,000 if we take it on a partial basis and I would be obligated for an approximate $60,000 over and above the mortgage.

At this time I have instituted a law suit, and a small group of other people in a similar situation in Foster City; and this slough that we are discussing within the boundaries of the Estero District, they have spent $15,000 an acre filling it, developing it -- not with our approval, but for the private profit of the developer.

Now, I'd like to know how sovereign lands can come into the hands of a private developer, public moneys be spent upon it, and then obligate the purchasers of the property, whether it be fee simple or leasehold -- in this particular case I think leasehold -- but all of these expenditures when they don't even have a title to a good number of the acreages within the District. The original district was 400 acres. So far as my knowledge, no Legislature, no governmental body has authorized the further development other than the original 400. Here we find we have an assessed value of $4 million on this district, which the present homeowners are obligated to
$1\frac{1}{2}$ million of that developmental cost.

I think it's time that the various government agencies get together and go back and separate that that is truly fee simple land and that that is State land, and keep people such as I out of hock for obligations that are completely illegal. I feel somewhere down the line there must be a public trust that can be exercised by some governmental agency.

MR. FLOURNOY: Thank you, Mr. Cooper.

Is there anyone else who wishes to testify before this Commission on this item that we are considering now on our agenda? (No response)

Does the staff have anything they wish to add at this point?

MR. HORTIG: No, Mr. Chairman -- although we, of course, stand ready if the Commission has any questions on specifics.

GOV. FINCH: I'd like to put the question to the staff, first -- Is there any shrinkage involved in this so-called swap?

MR. HORTIG: Shrinkage in the area of San Francisco Bay? None. What is not resolved, as Mr. Butler said -- there are other claims waterward of the areas which would be resolved by this transaction; and these claims are still subject to future litigation. In other words, the problem is that the present proposal would only represent a solution of part
of the land title problems in and surrounding San Francisco Bay -- but a very important portion and, in the view of the staff, a very important first step.

MR. FLOURNOY: In the light of that comment, let me just read the recommendation that has come to us by the staff and then we will determine what action the Commission wishes to take:

It is recommended that:

I. The Commission find:

1. That the subject boundary settlement and exchange is necessary in order to settle and confirm the title of the State and to establish the boundaries thereof;

2. That the exchange is in the interest of commerce, navigation, fisheries and reclamation.

3. That the value of the interests of the State in the parcels of land to be conveyed by it is no greater than the value of the interests to be acquired by the State; and

II. Authorize the Executive Officer:

1. To accept on behalf of the State of California and the State Lands Commission deeds conveying to the State of California those lands described as Parcels A"A" through "S" on file in the office of the State Lands Commission and by reference made a part hereof;

2. To execute and deliver certificates and patents to Leslie Salt Co., a Delaware corporation; to the lands described as Parcels A-1 through A-18, SC-1 through SC-10, and Parcels SM-1 through SM-12 on file in the office of the State Lands Commission and by
reference made a part hereof, reserving and excepting those interests specified as Parcels 1 through 19 on file in the office of the State Lands Commission and by reference made a part hereof;

3. To receive a policy of title insurance, in limited extended coverage form, guaranteeing the title of the State to the lands described in 1 above, in the amount of $3,000,000;

4. To cause all documents of title received by the State by virtue of this boundary settlement and exchange to be recorded in the respective counties of Alameda, Santa Clara and San Mateo.

MR. FLOURNOY (continuing) That's the recommendation before us, gentlemen. What is your pleasure?

MR. SMITH: Mr. Chairman, I move that we approve the proposed boundary settlement and exchange of lands between the State of California and Leslie Salt Company, and that all necessary legal and executive steps be taken to consummate that settlement and that exchange of lands.

GOV. FINCH: I'll second it.

MR. FLOURNOY: It has been moved and seconded that the recommendation of the staff be approved in this matter. Without objection, it will be so ordered.

The only remaining item that we have on our calendar is with regard to the next meeting of the Lands Commission, which is set forth in the calendar for Thursday, February the 29th, 1968 at ten o'clock in Sacramento.

Without objection, the meeting of the Lands Commission is adjourned.

Adjourned 12:25 p.m.
REPORTER'S CERTIFICATE

I, Louise H. Lillico, reporter for the Office of Administrative Procedure, hereby certify that the foregoing pages 1 through 69 contain a full, true and accurate transcript of the proceedings in the meeting of the State Lands Commission held in San Francisco, California, on Friday, January 26, 1968.

Dated: Los Angeles, California, February 14, 1968.

/s/ Louise H. Lillico