MEMBERS PRESENT

Hon. Kenneth Cory, State Controller, Chairman
Hon. Mervyn M. Dymally, Lt. Governor, Commissioner
Hon. Roy M. Bell, Director of Finance, Commissioner,
represented by Mr. Sid McCausland

MEMBERS ABSENT

NONE

STAFF PRESENT

Mr. William F. Northrop, Executive Officer
Mr. Robert C. Hight, Staff Counsel
Mr. James F. Trout, Manager, Land Operations
Mr. W. M. Thompson, Manager, Long Beach Operations
Ms. Diane Jones, Secretary

ALSO PRESENT

Mr. N. Gregory Taylor, Assistant Attorney General

PETERS SHORTHAND REPORTING CORPORATION
26 NESS COURT
SACRAMENTO, CALIFORNIA 95826
TELEPHONE (916) 383-3601
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CHAIRMAN CORY: Call the meeting to order.

Note the presence of a quorum, Mr. McCausland and myself.

We have noncontroversial items that we can perhaps dispose of, and in the interim I think the Lieutenant Governor should be here so we can go ahead with the more difficult part of our Agenda.

The first item is confirmation of the minutes of the meeting of June 24th. Are there any corrections or additions?

Hearing none, they will be approved as presented.

Mr. Northrup, you have a report for us?

EXECUTIVE OFFICER NORTHRUP: Yes, sir, I do.

At the meeting of December, 1975, of the State Lands Commission they approved a motion designating a 130-acre parcel of land in Lake County to be known as a Geothermal Resources Area.

The parcel, in which the State has reserved ownership of minerals, is near the Geysers Geothermal Field and is part of a larger 1,800-acre leasehold known as the "Davies Estate."

The Public Resources Code provides that a Known Geothermal Resources Area, KGRA, shall contain at least one
well capable of producing geothermal resources in commercial quantities. At the December meeting, staff recommended the KGRA designation because the State parcel is surrounded on three sides by producing commercial steam wells and is underlain by the same rocks that occur in the proven steam field.

The Code also provides that lands within a KGRA may be leased by competitive public bid on the basis of a cash bonus, net profit, or other single biddable factor. At the December meeting, the Commission authorized staff to proceed with a competitive lease and revise the format of geothermal lease form to provide for a royalty of ten percent of gross revenue, an annual rental of one dollar per acre and the biddable factor to be a percentage of net profits.

That form has now been revised and we are prepared to conduct the lease sale. The schedule calls for advertising on July 22 and 29, and opening the bids on September 1.

At the December meeting you authorized staff to determine the highest qualified bidder and then to proceed to notify the surface landowner. Since the surface landowner, by law, has the option to submit, within ten days, a bid identical to the highest acceptable bid, and thus qualify as the successful bidder, award of the lease probably will not be made until the Commission's October meeting, assuming that
an acceptable bid is received.

I might add that this proposed sale is the first competitive lease sale ever held for geothermal resources from State-owned lands. It's the first time the net profits concept of bidding has been used for geothermal resources.

In line with the geothermal resources, staff has been working with the Department of Water Resources in attempting to solve energy problems for the Water Project by seeking ways in which they could develop electricity from geothermal resources.

During these negotiations, questions were raised as to whether legally DWR really could make such a bid, and an opinion was issued by the Attorney General that the Legislature never intended the State agencies to be eligible to bid on and develop geothermal resources. So the question of priority of application was moot.

Yesterday, the staff was suddenly informed by the Resources Agency that DWR had prepared amendments to Assemblyman Kapiloff's Bill 3590, which would permit State agencies to bid for geothermal resources from State Lands and which would give the State agency a priority.

As this has just come before you, we haven't really discussed it. Staff feels that we should take a position perhaps in opposition to this bidding because it might tend to discourage geothermal development.
CHAIRMAN CORY: Mr. Northrop, we will acknowledge that Governor Dymally is here. We started on some of the noncontroversial things.

At this point there is one thing here, in the Executive Officer's Report, there has been an amendment to a Kapiloff Bill, which I believe was requested by the Department of Water Resources which will give the Department of Water Resources priority treatment with respect to geothermal bidding.

EXECUTIVE OFFICER NORTHROP: And staff feels that if this were granted, knowing that whenever a State agency came in and bid, they would have priority to an award without regard to what the competitive bids were, it would tend to discourage anyone from taking a look at geothermal on State lands. So staff is coming to the Commission saying: What should we do? Should we take an active opposition in this or should we attempt amendments to the bill?

CHAIRMAN CORY: I think what you should do is, one, draft something relatively brief, but outlining what the proposal does and your concerns with it. Make sure that the three members of the Commission get a copy of that. Send a copy of it to Ron Robie in Water Resources, and try to get them to respond as quickly as possible. And then you can poll the members rather than us trying to --

EXECUTIVE OFFICER NORTHROP: It's something that is
thrust on us immediately, very shortly, because it's going to
be handled --

COMMISSIONER DYMALLY: My own view is opposed to
the amendment as a start.

EXECUTIVE OFFICER NORTHROP: Okay. Fine.

CHAIRMAN CORY: I think that's where I would
probably end up, too. But rather than appear to take it
without them getting a crack at what it is, make sure they do.

EXECUTIVE OFFICER NORTHROP: Last Wednesday through
Saturday, the staff toured the greater part of Northern
California, covering approximately 1400 miles. We looked at
14 plowing units available of BLM public domain land. As a
result of this trip, we now for the first time have an
appreciation of the kinds of lands available from the Bureau
of Land Management for land consolidation and exchange
purposes. Frankly, the lands that are available are probably
not worth or even worthy of the Commission's consideration
for management and exchange with State lands, with the
exception of: Some limited areas of merchantable timber and
some areas in the Surprise Valley that have some
gеothermal resources; or we could use some of this land
perhaps in exchange to acquire coastal properties or other
properties having multi-purpose use.

What we found is they just have adjoining parcels
to our sagebrush and it really was very disappointing. We
hope to see much better representative. So in line with our own consolidation program, it will be revised after we take a look at it.

And the last item, I appeared, along with the Chairman, before Senator Johnston's Subcommittee of the Senate Interior and Insular Affairs on Senator Cranston and Senator Johnston's from Louisiana Bill Number S3660, which directed State-owned crude oils to be sold at reduced prices. And in addition to this, the bill would allow State-owned crude oil to be exempted from the Entitlements Program and this price to be excluded from the national mix.

Also appearing, in addition to Mr. Cory, were Congressmen Hannaford and Governor Edwards of Louisiana, and Mr. Zarb of FEA.

Zarb did not speak in direct opposition to the bill. He felt the bill would be much more palatable if Federal oil were exempted.

It is clear that the FEA is holding our proposal for parity for California crude oil for ransom in an attempt to get California Delegation support for other Assembly or Administration energy bills.

And the last item, Item Number 47, the Sonoma Grant Revocation, on today's Calendar. I have received a letter from Assemblyman Barry Keene and a letter from the Sonoma County Board of Supervisors, requesting that Calendar...
Item 47 be put over for 30 days. It is recommended this be granted.

CHAIRMAN CORY: Without objection, Item 47 will be put over.

EXECUTIVE OFFICER NORTHROP: That's my report, Mr. Chairman.

CHAIRMAN CORY: With respect to the Cranston bill we testified on, I failed to acknowledge that I spoke at the same meeting which Governor Edwards did and we were in support of that particular bill, but Merv, I want you to realize that somehow he felt that that bill would overcome some difficulty that was caused in this nation due to the Supreme Court and busing regulations that I really never understood.

(Laughter.)

CHAIRMAN CORY: But he seemed to be right for the wrong reasons that I figured I didn't need to make that differentiation.

COMMISSIONER DYMALLY: It also should be noted that he seconded the Governor's nomination.

(Laughter.)

CHAIRMAN CORY: We were there to talk about oil and all of a sudden we had a busing. It was an amazing topic of discussion.

Okay. Any questions from other members of the
Okay. Finished the report.

Any items on the Consent Calendar that any Commissioners want removed?

MR. McCAUSLAND: Move adoption.

CHAIRMAN CORY: Before we do that, is there anybody in the audience who wishes to address themselves to any of the Consent Calendar items?

They are designated with the letter "C" and then numbers 1 through 19.

Is there anyone in the audience on any of the Consent Calendar items?

Without objection, the Consent Calendar items will be approved as presented.

Item 20, Public Hearing on Volumetric Rental Regulations. This hearing is a request of Western Oil and Gas Association.

MR. TAYLOR: Mr. Chairman, this action was authorized pursuant to a letter on May the 14th, received from the Western Oil and Gas Association through their attorneys, the firm of McCutchen, Black, Verleger & Shea.

At the May Commission meeting the Commission granted their request to treat this as a request for revocation.

Pursuant to the Commission's action on that date, on June the 8th, 1976, legal notice was given in the Sacramento
Union, a copy of which will be included in the minutes of today's meeting. In addition to giving the legal notice required --

CHAIRMAN CORY: Pardon me for asking, but where was that notice given?

MR. TAYLOR: In the Sacramento Union.

CHAIRMAN CORY: I wish those people who are interested would please note my fairness.

(Laughter.)

MR. TAYLOR: On June 3rd, 1976, notice was sent to all parties who had requested information or would be potentially affected by the regulations by certified letter, were also notified of the hearing to be held at today's date. And receipts for acceptance of these letters have been received. And copies of these also will be made copies of today's minutes, with your permission, Mr. Chairman.

In addition, prior to the adoption of the regulation by the Commission, similar legal notice was given in the Sacramento Union on April the 18th, 1975, and a copy of that notice is here. And similarly, on April 8th, 1976, copies of the proposed changes to the regulations were mailed to all parties who had expressed an interest or who would potentially be affected by the proposed amendments. And return receipts were received from the recipient of the letters. This April 8th letter would also be a part of the minutes of
today's meeting, with the Chairman's permission.

In addition, a calendar of today's meeting or
notification of today's meeting with calendar summaries were
sent to the attached list of people designated as List C,
Summary List C Revised 3/76. All of them were given copies,
all of them were given notice of this meeting that this
hearing was to take place today.

I believe that that concludes the items as far as
notices were concerned both as to the original adoption of
the regulations and as to the notice required by law to be
given for this hearing to be held today.

CHAIRMAN CORY: Okay. I would guess that
Mr. Destino, might as well start with you.

MR. DESTINO: My name is David Destino with the
law firm of McCutchen, Black, Verleger & Shea, appearing
today on behalf of the Western Oil and Gas Association.

A few preliminary matters. Counsel went through
the notice question quite extensively. I would like to make
a couple of comments on that. I suppose initially I should
note for the record that the notice I received had the meeting
in a different building. Fortunately, we were advised while
we were waiting in the State Capitol that the meeting was
over here. Several of us came over. I don't know if anyone
else is there, but I did request through your office --

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, the
record might reflect that we have had a person stationed at
that room continuously since 8:00 o'clock this morning to
divert people to this location.

MR. TAYLOR: There also is a printed notice which
is posted on the wall.

MR. DESTINO: I don't wish to get in an argument.
I was at that place from about 9:00.

EXECUTIVE OFFICER NORTHROP: We just wanted the
record to reflect the actual facts.

MR. DESTINO: Well, I was there from about 9:00
o'clock until about ten minutes of ten when I was advised
it was here, and I was the only person in the hall. But in
any event, I'm not raising that, but I do want to point that
out that it is a possibility that --

MR. TAYLOR: Well, Mr. Destino, we will have an
affidavit of the person who was there inserted in the minutes
of the record today together with a copy of the statement
that was posted. I don't know the exact time the person was
there, but we will have a statement supplied to you of the
person that was there.

MR. DESTINO: On behalf of Western Oil and Gas,
I am not raising that objection, but you went into such
detail I did want to point that out.

CHAIRMAN CORY: Let the record show that it's now
10:17. I want one of the staff members to go over and stay
there and send anybody along. Make sure somebody's there now.

MR. DESTINO: One other preliminary point. We did, as pointed out at the May 27 meeting of the Commission, request a subsequent hearing on behalf of Western Oil and Gas. That petition was filed on behalf of Western Oil and Gas to avoid a multitude of petitions by various members. And while I'm appearing only on behalf of Western Oil and Gas today, I believe as far as any exhaustion question should be presented, I think that notice should be sufficient for all members as well.

Back to where I was, subsequent to the May 27th hearing, it occurred to me, in fact, as I went back to the airport, that a misconception might have arisen from my presentation that it was our view that this hearing would cure any notice defect that may have existed in the original promulgation of this regulation.

To clear that up I sent a letter to Mr. Northrop and requested copies be distributed as he deemed appropriate. I received a response from Mr. Taylor. And basically where that is, is our position was and is that if the regulation was improperly promulgated and it was void at the time it was adopted and this hearing will not resurrect it. Mr. Taylor's position is, as I understand it, that this hearing will render that question moot. It's a point I think
we've covered and I see no reason to go into detail other than to indicate that we do not and have not waived that objection.

MR. TAYLOR: Mr. Destino, I have a copy of your June 1st letter to Mr. Northrop together with a copy of the June 22nd letter, my response to you. A copy of your letter-

CHAIRMAN CORY: Can we just stipulate that that will go into the record? And I've seen them and the other Commission Members have seen that correspondence.

MR. TAYLOR: I think that my response, Mr. Chairman, was also shown to the various Commission Members prior to being sent and that the Commission Members concurred in the comments which I conveyed to you in that letter; is that correct?

CHAIRMAN CORY: I saw it at least.

MR. TAYLOR: And I think Mr. McCausland did and Mr. McGuire on behalf of Mr. Dymally.

MR. DESTINO: My point on that was that I wanted the record to be clear that it was not -

CHAIRMAN CORY: Yes.

MR. DESTINO: Passing now to the actual rule itself, various WOGA member and company representatives have testified as well as Mr. McClintock of our office. Our office has basically addressed itself to the legal questions that we see with the rule. We've gone into those at some length at various
hearings as well as submitting fairly extensive written
memorandums to the staff on those. I would, however, like
to, if I may, outline our objections once more for this
record, and I will attempt to be brief because I think they
are in the record.

Initially, we object to the rule as being beyond
the authority of the State Lands Commission to adopt.
Public Resources Code, Section 6503, provides that the
Commission shall, and I emphasize the "shall," appraise the
land and fix an annual rental or other consideration
therefor. That section requires, in our view, that the
rental be based on the appraised value of the land; that is,
there be some reasonable nexus between the appraised value
and the amount of money going to the State for the easement.

The regulations as we read them do not provide
for that. Rather, the incident of the money going to the
State is not based on the appraised value of the land, but
rather what's passing over it. It's difficult to conceive
how the value of the land changes. One barrel, a thousand
barrels, or a million barrels of oil passes over, the land
remains the same.

The second argument, which in part takes in some
of the same considerations on the statutory authority
question, is directed to Congress law as well as the Federal
Constitution. And that law is, briefly, prevents the states
from imposing undue burdens on interstate commerce. I don't think there's any question but that interstate commerce is very definitely involved, certainly in the wharf situation which all applies to passing, by definition of interstate commerce, as to pipe lines, the uplands. There, too, I believe are substantially all, if not all, the oil is interstate commerce. There is no question but that interstate commerce must pay its own way in interstate commerce and as such comply with all nondiscriminatory state regulations and fees.

However, the cases are very clear that the burden of any charge by a state must be based on the local incident of the activities and must bear some reasonable relationship between the services rendered by the state and the benefits or the benefits foregone by the state.

I don't believe any of those characteristics are present with this regulation. Initially, the incident is not on the land, as we pointed out earlier, but is rather for the recommended product which is on interstate commerce.

Secondly, the State provides little or no service. I believe it's closer to no. And the benefits foregone by the State do not have any relationship to the amount of product passing through the pipe line.

Similarly, and this would be restricted to the wharf situation, further constitutes the provision preventing
a duty on tonnage. Again, the same requirements or the same considerations as to the incident of the burden, benefits received by the State, services rendered would apply in the wharf situation for the same reasons to the extent the regulation applies in that situation. We believe it to be an unconstitutional duty on tonnage.

The fourth legal argument today is the necessity for an Environmental Impact Statement in passing a regulation which, as this one, we believe would likely result in a substantial change in transportation patterns for crude oil and refined petroleum products, that such a statement is necessary. While I understand that one of the guidelines in the regulation directs the consideration of the possibility of the rate to be charged, the possibility that that rate may lead to changes in transportation patterns, I don't believe resolves the environmental impact problem mainly because, our argument at this point, has been based, the ripple effect that is likely to result from such a regulation; that is, the cities, the counties, other municipalities adopting and private landowners seeking to adopt it over which the State had no control over could very well lead to changes in the transportation patterns which would be, could be very directly the result of State action.

I'd like to comment briefly on the staff report that was distributed at the April 28th, 1976, hearing.
There are several of the points we have raised that were addressed and point out where I think there may be some fallacies there.

Initially, the report itself did not go into great detail, and I don't claim it should have, but it does make it a little more difficult to determine the basis for some of the statements, but it is our view that it did not come to grips with the argument as outlined today.

Initially, it refers to various situations where it is stated that throughput or throughput-like charges have been collected by private situations, business situations, one city, and claims that this provides, as I understand the report, indicates that this is some sort of a precedent to allow the State to adopt this throughput. Later on the report indicates or at least suggests that no precedent is needed.

But in any event, I think it is clear that the State in adopting rentals or rental regulations, unlike private landowners, must operate within the confines of statutory law giving it the authority over it and with the Federal Constitution, specifically the commerce clause and the tonnage clause.

Therefore, even if it can be established, and I by no means would submit it can, that other landowners, private landowners have adopted such regulations or have
leases that simply are developed for the purpose of the
authority of the State.

The same would be true of the situation of franchise
as pointed to in two Federal, excuse me, two State statutes
in the report. Again, the statutory scheme there is substantially
different and, in fact, specifically allows for the recovery
of a percentage of the gross receipts on the franchise.

Another analogous or supposedly analogous situation
you pointed to is that of various ports in California. Again,
this is a clearly factually distinguishable situation. Many
other factors are involved in the port situation than the
mere granting of an easement such as this regulation entails.
Services rendered by the ports are substantial as is the
investment on the port which the various authorities certainly
have a right to recover a reasonable return on.

The report seems to assume that the charges
received by ports for products passing over it, passing
through the port, somehow provide for a return on the
unimproved land. That certainly is not our understanding and
I don't see how it can be related to the various, many factors
of the ports involved. Certainly there may be some return,
reasonable rate of return again on the unimproved land which
we feel can't be disputed but that is a legitimate concern
and legitimate charge, but we don't see where that provides
any basis for the charge here.
Finally, the report goes into the statutory interpretation with the staff's interpretation of Public Resources Code, Section 6503. Again, as I understand the staff report, it is suggesting that the other consideration language -- Let me repeat it. It is paraphrased, but I think it's pretty close. That the Commission is to appraise the land and fix an annual rental or annual consideration therefor. The report takes the position, as I understand it, that the other consideration somehow is separate and apart from the very explicit directive action that the land shall be appraised.

I would submit that if the statute wasn't clearly intended to base the rental on the appraisal, the language that the land shall be appraised, would be merely surplusage. Clearly it must be read in connection with, the remainder of the section must be read in connection with that directive.

One other point I would like to touch on is the question of rental rates in this regulation. I believe there are others who will touch on it in a little more detail, so I won't delve on it too much. But the main point here is, under this regulation, it is next to impossible for someone with an existing lease or someone with a lease coming up or time to get a new lease, to in any way project what its rentals are likely to be. This is particularly true if you look at the factors set forth in Section 2006(H), speaking of
such things as considering the environmental significance of the land, potential harm and such other factors as the Commission may reasonably consider as bearing on the rental. We just simply do not see any relationship between these factors and the amount of the rents. This really relates back to the statutory interpretation, consideration which does not bring these factors into effect.

While they may, in fact, be factual consideration of whether or not a lease would be entered in the first instance, particularly in the environmental concerns, once that decision has been made, the amount of the rental has no basis, excuse me, the environmental concerns just don't have any basis to relate them to the amount of rent to be received.

Similarly, there's no definition as to the basis for the rental, none that one can address itself to. We believe that's why the statute specifically directed that the land shall be appraised. And while, to be sure, that there will be disagreements as to the appraisal, that's at least a factor that experts can be brought into, the matter can be looked at and hopefully some compromise can be arrived at.

The regulation as it now exists, we believe, provides for arbitrary and discriminatory actions by the Commission and for that reason should be revoked.

That, I believe, concludes the statements I had.
Thank you for your consideration.

CHAIRMAN CORY: Any questions by members of the Commission?

May I ask one question?

Do you believe that the State Lands Commission has an obligation to lease this property to you? I mean, all of your arguments seem to be based on the premise that we somehow or that you somehow have some inalienable rights to the people's property. I mean, do we not have a right to say we don't want a pipe line there, period? As I read the law I think we have that right. Now, if I'm wrong, I'd like to know where I'm wrong because it would help me put all your arguments into perspective, because if I'm correct, all the rest of your arguments appear to be irrelevant.

MR. DESTINO: The basis of our argument is that the State in leasing the land as it is empowered to do, must do so in accordance with the statutes and the Federal Constitution.

CHAIRMAN CORY: We have the power to act but not the obligation to act.

MR. DESTINO: I am not really in a position to take a position at this point as to whether it's an obligation to act. I believe the Lands Commission probably, and I say probably because I haven't researched it, has an obligation to administer the State lands in the public interest. And I
think in adhering to the public interest, it must consider various factors and one of them would be, I believe, the most efficient environmentally safe way to transport necessary petroleum products. And in that sense, I think it probably is an obligation to, not as an inalienable right, but certainly an obligation to provide for such services. There may, in fact --

CHAIRMAN CORY: If at any time in the future you come across a statute or part of the Constitution that would bolster that argument, you might send it in a letter to me because I find it very hard to take much of what you say beyond that very seriously because I don't believe you have that right. I think this Commission has the right to conclude that it is not in the public interest to have a pipe line in a given place. Thus, endeth the argument.

And the question before the body at each time is: What do you private entrepreneurs want to offer to the public in exchange for your exclusive right and use of the piece of property? The same as I don't think that we have any great concern over how your member organizations rent their property to other people if they own that property in fee simple and they choose to rent it. And I just got to tell you where my head's at. You have a lot of words, but it didn't seem to be relevant to the issue before us.

MR. DESTINO: As I view the issue before the
Commission; that is, the regulation to guide the Commission in setting rentals on the easements and industrial leases. To the extent such a regulation is adopted, to the extent the State is leasing the land, it is our position that they have an obligation to do so consistent with their statutory mandate and consistent with the Federal Constitution. I think it is a far different question as to whether the Lands Commission can decide on its own that there shall be no easement or no pipe lines. I do see some --

CHAIRMAN CORY: Let me put it to you this way and the member organizations that are here. Implicit in that fundamental question and what the rental rate will be is very likely to determine whether or not there will be any lease. And to win the battle is not necessarily to win the war on your side of the table.

MR. DESTINO: I would submit as a matter of law, and I believe this is a very sound proposition, and that is to the extent we're dealing in interstate commerce that the State cannot, consistent with the commerce clause, adopt unreasonable barriers to oil or refined products passing interstate commerce. I don't think that --

CHAIRMAN CORY: If I owned a piece of property at Malibu and I owned it as an individual in fee simple, you aren't suggesting that Western Oil and Gas is going to come in and tell me that I have some obligation to allow you to
run a pipe line through my property, are you?

MR. DESTINO: I'm certainly not suggesting that there's an obligation to run a pipe line through any specific piece of property. What I am suggesting is that the commerce clause requires the states not create unreasonable barriers to interstate commerce, and I have no trouble at all seeing --

CHAIRMAN CORY: I want to make it clear to members of Western Oil and Gas that they have every right to go out and lay a pipe line on any property that the landowners are willing to rent to them. And I don't think that our actions as the landowner in any way affect that right. That's my view.

Do you have any particular order you want to present the people here? I have a bunch of blue cards here of people who want to testify. Is there any particular order you want them in? I'd be glad to call them in that order. If not, I'll just read them off the way I have them.

MR. DESTINO: Unfortunately, in the back-and-forth of other things, I haven't had an opportunity to find out exactly who was going to be here to speak. And I think probably you might just as well take them in the order you have them.

CHAIRMAN CORY: Mr. Taylor.

MR. TAYLOR: Mr. Destino, in reviewing your
arguments that you have made today, is it a fair
characterization to say that they are a reiteration of the
arguments that were made to the Commission previously?

MR. DESTINO: I believe that, save -- Well, 
b briefly taking in all meetings and written memorandas
submitted, --

MR. TAYLOR. That's correct.

MR. DESTINO: -- save for some specific comment on
the staff report really I addressed the same arguments I had
before.

MR. TAYLOR: Thank you. And there's no
misunderstanding that the discussions we're talking about are
those discussions held at public hearings and at meetings and
at the public hearing at which these regulations were
adopted, at that time and prior thereto, is that correct?

MR. DESTINO: I believe there was also a meeting
in July of '75, with some oil company representatives which
I was not at the meeting, and I'm not sure what arguments
were presented there. But it's reflected, I think, in the
staff report.

MR. TAYLOR: But essentially everything you've
said today is a repetition of what was previously said prior
to the Commission's adoption of the regulations?

MR. DESTINO: I believe that's correct.

CHAIRMAN CORY: Any questions?
I have Mr. Ed Taaffe from Standard Oil Company.

MR. TAAFFE: Mr. Chairman, Members of the Commission, my name is Ed Taaffe. I represent Standard Oil Company of California. I have a statement here that I would like to file for the record.

CHAIRMAN CORY: It will be entered into the record.

MR. TAAFFE: It is, with minor corrections and additions, essentially the same set of contentions that we made in our statement at the hearing on April the 21st of this year.

I would, however, like to make one point, Mr. Cory, in connection with your discussions just now with Mr. Destino, in which you inquired whether he felt that a member of the public or Western Oil and Gas Association had an inalienable right to lease a piece of State land.

I don't contend that an individual has such a right. The State has the right to determine whether it's in the best interests of the State to lease a piece of State land, but I think the point here under discussion is this: There is a regulation here which purports to set rentals for State lands which certainly implies or premises the idea that a piece of State land will be available or has been requested and is being considered for rental by the State Lands Commission. So our comments, that is, those in our statement and so that presented by Mr. Destino, relate to the subject...
of how the rent is to be computed rather than the basic
question of whether a particular piece of land is to be
leased. Is that a fair statement?

CHAIRMAN CORY: That's a fair statement, but it
tends to avoid the fundamental issue that as you and a
company-owned filling station have gasoline in the ground in
the tank available and ready for sale at certain terms and
conditions that you're willing to make it available, you seem
to imply that if I drive into that station, I can haggle over
the price and that because you have it in the tank and the
ground ready for sale, that I have some obligation or you
have some obligation to me to sell it at something other than
what you're willing to sell it at.

MR. TAAFFE: No, I don't think that's so.

CHAIRMAN CORY: That's only because our roles have
been reversed in terms of buyer and seller. And it seems to
me that what we are talking about here is arguing about price.
And it seems to me that if you can come up with a price that
we feel is worthwhile for the public, if they receive that
consideration, then it would be worthwhile to grant a given
individual company or person exclusive rights to a certain
piece of shoreland. And if you don't come up with that price,
you aren't entitled to it.

And that's what the public interest is all about
and that's the question before us.
MR. TAAFFE: But the regulation as drafted, we contend, aside from any legal arguments that surround the subject, is that it's so vague and indefinite that a person who would intend to apply to the State to lease a piece of land, whether the State's going to lease it to them or not, as a matter of principle, cannot reasonably tell from a reading of the regulation how the rent's going to be computed or have any particular idea of what his economic cost is going to be. And that's what we're talking about.

CHAIRMAN CORY: Is there any detrimental reliance on a person at the point of submitting an application or starting to negotiate? I mean, we're not asking to sign the contract to have those terms, we're saying that the contract will conform and it will be finite but it will conform to the terms of these regulations. And you aren't expected to sign the contract until it's finite.

MR. TAAFFE: Well, I wouldn't expect we would. But on the other hand, if the criteria that are mentioned in the regulations, not mentioned, but set out in the regulation are so vague and indefinite that they don't establish a good ground rule for the purpose of determining rental, then the negotiation is pretty much in the hands of the Lands Commission as to what they think should be charged. I don't want to prolong the argument, but --

CHAIRMAN CORY: Okay. As long as you clearly
understand that when I drive into a Standard Oil station, I can look on the pump and I see a price and if I don't want to buy gas, I can drive out.

MR. TAAFFE: That's right.

CHAIRMAN CORY: And it would seem to me you can sit down and specify what piece of property you want and the staff can come up with a recommendation and maybe it will come before the Commission and we can say, okay, this is the price and if you don't like it, you can drive out.

MR. TAAFFE: That's a valid argument in a situation, Mr. Cory, where a person has not theretofore used a piece of State land. He's applying to you to lease a piece of State land. But I don't think that's necessarily the case in the situation where a person has already secured a lease, made a capital investment, and the time has come for, under the terms of the lease, for renegotiation of rent. He is there and is not then completely free from an economic standpoint to move his operation.

CHAIRMAN CORY: But does not that same point of renegotiation enable the State to come to the conclusion for the public interest that we no longer want the line there.

MR. TAAFFE: I'm not just quite sure about that. I think that the leases do provide that if there is not complete agreement on the rental within a particular period of time, that the State can give the lessee notice to quit,
that's right.

CHAIRMAN CORY: So that it seems to me that's sort of where we're at and, you know, we've made some progress with this hearing. At least there's an acknowledgement, as I hear you, from Standard Oil's part, that on any new and future leases this is an appropriate mechanism.

MR. TAAFFE: I'm not admitting that, Mr. Cory.

CHAIRMAN CORY: I'm sorry.

MR. TAAFFE: I'd like to have the record clear on that.

CHAIRMAN CORY: Oh, I'm sorry, I thought you were. I thought we'd made some progress.

MR. TAAFFE: No.

CHAIRMAN CORY: Okay. One forward and two back. Go ahead.

MR. TAAFFE: Okay. Any questions?

CHAIRMAN CORY: Sid?

Thank you.

COMMISSIONER DYMALLY: One question. The Western Oil and Gas Association is not claiming that this is going to impose a financial hardship on the company, is it?

CHAIRMAN CORY: Mr. Taaffe is with Standard Oil Company.

COMMISSIONER DYMALLY: Let's say Standard then.

MR. TAAFFE: That it is going to impose a financial
hardship?

COMMISSIONER DYMALLY: Yes.

MR. TAAFFE: We think it could, yes.

COMMISSIONER DYMALLY: Given the profits of the oil companies?

MR. TAAFFE: Given the restraints in the statute with respect to the computation of rentals and what the new regulation proposes, I would say that there would be a substantial additional rental burden.

COMMISSIONER DYMALLY: I just have to tell you that if I felt that, despite the fact that the oil companies are not enjoying the best public relations in the country right now, if I felt that the imposition of this new regulation would create a financial hardship on the oil companies, I would be courageous enough to vote against it, believe it or not, because I'm not one of those who believe that we ought to put the oil companies out of business to prove a point that you're tough or that you're liberal or you're an environmentalist. I'm not in that bag. But given the profits of the oil company and given the fact that the public is not sharing in the benefits of the oil company, because I don't know if the oil companies are pioneering social reform for anything like that. I mean, the Rockefellers have the Rockefeller Foundation and Ford has the Ford Foundation, you could forgive them their profits because they
do send some of the money back into the colleges and social programs. I don't know if the oil companies have that sense of social consciousness.

So given all of those facts, I would be prepared to vote against this measure if I thought it presented a financial hardship, but I see no evidence of that.

MR. TAAFFE: Well, that's where we disagree.

MR. TAYLOR: Mr. Chairman.

CHAIRMAN CORY: Yes.

MR. TAYLOR: Pursuant to your request, Mr. Goldman went over to the room that was scheduled for the hearing originally today, which the Legislature has pre-empted, and found Mary Munso of the State Lands Division staff who has been there and is still outside the room, 2170, of the State Capitol. And there is a sign there indicating the change in the room. And she stated to Mr. Goldman, she has been there since 9:45 or 9:50 a.m., and she will remain there until the end of this meeting. And we will attach an affidavit or sworn statement of hers to this.

CHAIRMAN CORY: Mr. Paul Hughey.

MR. HUGHEY: Mr. Chairman, Members of the Commission, my name is Paul Hughey. I'm the General Manager of the Contra Costa County Economic Development Association, which is a County official economic development agency.

COMMISSIONER DYMALLY: They're part of the good
guys. They're my friends. So be nice to them.

MR. HUGHEY: And I'm very happy to see you here, Governor Dymally, because I think that you're one of the very few people in State Administration that has indicated an understanding of the necessity of creating new jobs and doing something about economic development in the State.

CHAIRMAN CORY: You picked up one vote and lost two.

(Laughter.)

MR. HUGHEY: Because frankly, of the other departments in the State, Office of Planning and Research, Resources Agency, ARB, Water Resources Control Board, all take negative, even antagonistic positions towards additional industrial development in the State.

COMMISSIONER DYMALLY: At the risk of interrupting you, let me announce to you and to the meeting that the Commission's economic development is coming into Fairfield or your county to review this whole question of agency procrastination bureaucracy in October.

MR. HUGHEY: We're delighted to hear that.

My task is to try to create new jobs, and obviously that's in Contra Costa County. And I realize, as the Governor said, that the oil industry, and I think they admit this themselves, probably have the worst public relations of any major segment of industry in the United States over the past few years. I think hopefully they're trying to change
that somewhat. And obviously a major concern here is the
cost on crude oil and on fuel oil to the utilities, but there
are many other products that pass over our docks: Steel --
where American Bridge just closed a plant in Pittsburgh,
because they cannot compete with Japanese steel. I would be
interested to know what kind of charges you propose to levy
on the steel products that go across the U. S. steel dock at
Pittsburgh. Sugar, a million tons of sugar cross the docks
at Crockett. Varieties of chemicals, paper, bulk commodities
of many different kinds. So we're not just talking about
crude oil and fuel oil.

In the case of fuel oil, obviously, PG&E or any
other utility is going to go before the PUC and request a
rate increase. The consumer is going to pay for these
charges and this is also true of the oil companies.

I do not think that this single charge will have
caused a very large problem for the companies, but you are
only one agency. There are many other agencies that are
doing the same thing. The Air Pollution Control District is
now proposing to go back and make a charge, require a permit,
on every single stationary source of emission over a period
of time which emits 25 tons or more per year. Twenty-five
tons per year is a relatively small amount. Here's another
charge that comes on.

The other thing that concerns me is that one of your
first people to apply to you, the Pacific Refining Company, here's a company that came in and took over a refinery that was closed down that we were very concerned about.

COMMISSIONER DYMALLY: This is Gulf?

MR. HUGHEY: That's correct.

And their welcome to California is to be greeted with an additional charge which I'm sure that they did not expect at the time this thing was coming up.

To the extent that other companies have a long period of time to run on their leases, they're in a competitive disadvantage. I won't exaggerate it, but there is a problem here of charges. And we have other companies in the county. And you're familiar with Urich Oil Company and their brand-new gasoline, vending and storage terminal there in Martinez. They've been back to this Commission several times for amendments to their lease as they add a crude oil line or they make a change in their line. And it appears, from reading the regulation, that every time a company comes back for an amendment to their lease, you got them. You can talk to them about your new charge.

Now, we have a, right now we have a little problem down there in the Bay Area, as you might have read, concerning the Dow Chemical Plant. It would appear that if Dow Chemical cannot build a plant between in an isolated location of the Montezuma Hills, I don't
see how we can build any other substantial industrial plants anywhere in the Bay Area. If you can't do it in the Bay Area, I don't see how you can do it in the Los Angeles area basin.

The point I'm making here is that we have a very difficult problem right now in trying to attract industry, not only in the Bay Area, but in the State of California. And so the first rule of industrial development is to hang on to what you got. Case example is San Francisco, where they've had to form a committee to try to keep the businesses there that have been leaving. And the most common cause is excessive taxation.

CHAIRMAN CORY: Do you have any documentation for that?

MR. HUGHEY: Yes, I do. Supervisor Nelder is the Chairman of that committee and he's quoted in a recent article, which I'll be happy to send you, where there are 80 businesses that left San Francisco in the last couple of years. They surveyed them and the common cause that they indicated was they were concerned about payroll tax, the property transfer tax, increasing taxation that is not levied elsewhere.

COMMISSIONER DYMALLY: I'd be interested in that information, too. Again, the Commission is conducting a study on this very issue and will be in touch with you.
MR. HUGHEY: Very good. What I'm trying to say, Mr. Chairman and gentlemen, I recognize that the oil companies make a beautiful target, but I think there is a public interest in seeing that we don't lose the job we've already got and that we try to stimulate additional jobs in the State.

Security Pacific Bank has just concluded a survey where they feel that we're losing, we're going in the hole 40,000 jobs a year. We're not creating enough jobs to take care of what we've got now. And if we continue that very long, we're going to have a horrendous unemployment rate.

There's an article in the Daily Commercial News of a day or two ago, and I'll send you a copy of it, which indicates that California is beginning to fall behind in industrialization, absolutely, not relatively. And the study says that the implications of this is something to be very concerned about and I'm concerned about it.

So what we suggest to you is that there is a public interest in levying a charge which can be calculated. How do I tell a company that's looking for a location in Contra Costa County what their charges are going to be, approximately what they're going to be? I cannot determine that from the regulations. And they are interested in what their costs are going to be because there are other states where those charges are not levied and where the unemployment rate is a hell of a
lot lower than in California. But I think there is a public interest here and certainly I think the Lands Commission has a great deal of latitude in determining whether or not it is a public interest as to each particular piece of land. But I would also submit to you that in many of these cases, particularly in the Bay Area where there are navigable waters, jurisdiction of the Federal Government, that there is some public interest in seeing that these are properly utilized in the public interest. And I'm sure you would agree that we have to have a lot of jobs. We need more jobs than we've been creating. And we're not doing it.

So what I'm asking you to do is please reconsider this charge, try to make it easier to calculate. I don't think there's anything wrong with levying a rental charge based on assessed evaluation, which would obviously change every year as our home evaluations have been changing. A fair rental where the public interest would be served, because a healthy industry is going to pay a hell of a lot taxes.

In connection with oil company profits, I have yet to find an oil company that was not spending their entire profits in capital investment and borrowing a lot more money besides. They look large, the profits look horrendous --

CHAIRMAN CORY: Want to start with Mobil Oil which bought Montgomery Ward?

MR. HUGHEY: Point. However, if I was in the oil
company, I might be looking for other investments right now, too. But in any event, the point is, I wish you would give some consideration to the effect upon creating new jobs in Contra Costa County and the State.

CHAIRMAN CORY: How would the question of whether the rental is based upon a volumetric or assessed evaluation affect jobs?

COMMISSIONER DYMALLY: Let me respond to that, if I may.

I think what Mr. Hughey is saying, in effect, is that a number of State agencies -- Fish and Game, Resources -- everybody is getting into the act now and everyone, he's suggesting, now the Lands Commission is imposing an additional burden on employers and potential employers and industry and creating a climate in California that's very adverse to business expansion. And is that basically --

MR. HUGHEY: That's exactly correct.

CHAIRMAN CORY: I'm sympathetic to your problems and there are times when I try to solve those as best I can, but I still lack the specificity of what it is, that this particular way we arrive at it, I don't see how if we arrive at it through assessed value that that's going to create any more jobs than if we arrived at the same dollar amount based upon assessed values.

COMMISSIONER DYMALLY: It's creating a climate that
California is a bad State to go to because they are contemplating imposing taxes and the Lands Commission --

CHAIRMAN CORY: It's not tax. It's a rental fee. What bothers me, Mr. Hughey, is it's okay for the -- we're talking about a rental fee, not a tax. And the same companies, when they deal with their other counterparts within the industry, charge rental fees based upon volumetric basis and why --

MR. HUGHEY: Aren't they recapturing?

CHAIRMAN CORY: -- does that not adversely affect the job community more so than this little piddling amount that we're talking about?

MR. HUGHEY: I think, in their case, they're recapturing a capital investment. The State has no investment; you have land. You haven't spent a dime on docks, dredging --

CHAIRMAN CORY: The land's not capital?

MR. HUGHEY: -- or anything like that.

CHAIRMAN CORY: I think the land is one of the fundamental elements of capital as I remember economics.

MR. HUGHEY: Could be, but land you're not recapturing investment.

MR. TAYLOR: Mr. Hughey, are you familiar with the rate charges of ports?

MR. HUGHEY: Yes, I am.

MR. TAYLOR: And would you say that the rate
charges of the Richmond Port are unreasonable?

MR. HUGHEY: I would say that the Port of Richmond is recapturing investment in property. They have invested money and they have to get it back. They not only have to get it back, they have to get enough, hopefully, to have a little bit to build some more facilities there.

MR. TAYLOR: Well, if we used the raw land value of the Richmond Port area and excluded all capital investments, would you say that a rental charge based on the raw rental value of the land as determined by the Port of Richmond would be a fair comparable amount to use for the charging of State lands elsewhere in your County?

MR. HUGHEY: I think the rental charge should be based on bare land.

MR. TAYLOR: And that's all that we have said in these regulations that we're doing.

MR. HUGHEY: Well, then, what has volume got to do with the value of the land?

MR. TAYLOR: It's part of the rate-making process, the same as any port.

MR. HUGHEY: The port is recapturing a capital investment, you're not.

MR. TAYLOR: It's also recapturing an investment on the use of its property.

CHAIRMAN CORY: Mr. Hughey, I think the question, as I see it, the businessman would be better off if his
rentals were based on how well he was doing. And if for some reason there was an economic down-turn and he wasn't doing as well, he wouldn't have to pay as much tax, and if things got very good and he had a lot of volume, he would pay more. All sorts of business are based on that sort of rental fee.

I just really have trouble with those of you from the private sector -- and when I wear another hat I participate in the private sector -- I find this to be a very normal portion of the private sector.

MR. HUGHEY: Well, how are you going to adjust for companies that are not doing so good?

CHAIRMAN CORY: Their volume is less.

MR. HUGHEY: Not necessarily. But what are you going to do with a company like U. S. Steel, who is fighting a battle against foreign imports and have quite a few people on layoff? How about PG&E? They're forced to import fuel oil. Consumers are going to pay for it; the ratepayers are going to pay for that.

CHAIRMAN CORY: That philosophy would take us to the position that we shouldn't charge anybody for any public lands because, therefore, we could lessen their expenses and, therefore, they would pass it on to the consumer and everybody would be better off.

MR. HUGHEY: I think you should charge a fair rental to cover the expense of administration. I think it
should be based on the assessed valuation of the property.

CHAIRMAN CORY: All I can say is it appears to be
a logical non sequitur because you don't seem to connect
them for me, and that's what I keep asking for. I'm trying,
but I don't get there.

MR. HUGHEY: All right. I think the cumulative
effect of all of the agency action is going to have a very
detrimental effect upon business in California.

CHAIRMAN CORY: Mr. Hugh Earley.

MR. EARLEY: Mr. Chairman, Members of the Commission,
I'm Hugh Earley of Western Airlines. And I'd like to make a
brief statement on behalf of Western Airlines and the Air
Transport Association.

I'd like to express our industry's concern over
the increased charges associated with transporting oil that
could lead to an increase in our fuel cost.

Our industry's problems have been well publicized
in recent years and most of them have been associated with
increased fuel costs. The increased charges being
considered will be passed along to the airline industry,
which we will be unable to pass along to the consumer. It
could represent double or compounded charges of the charges
applied to crude oil and the refined products that we use.

Our industry is having problems living with the
increases in recent years since the oil embargo and we're
hard-pressed to face any additional increases. To give you an idea of what we have experienced since the oil embargo, our fuel costs have gone up 160 percent. One cent of increase in fuel price to our industry means 80 to $100 million a year. To Western alone, it means three and three-quarters million per year.

Your consideration of the impact on our industry in this matter will be greatly appreciated.

CHAIRMAN CORY: Mr. Earley, you have not been here before on this issue?

MR. EARLEY: I have not.

CHAIRMAN CORY: When did you become aware of this regulation?

MR. EARLEY: I am substituting for another gentleman who is the airline representative here in Sacramento, Mr. Ryan. And it has just come to my notice just within the last week or two.

CHAIRMAN CORY: Okay. Then to your knowledge, your association was not precluded from appearing earlier due to any short notice or anything of that nature, but it's been a relatively recent thing that you've been aware of this?

MR. EARLEY: Not to my knowledge.

CHAIRMAN CORY: Any questions?

Thank you very much.
MR. EARLEY: Yes.

CHAIRMAN CORY: Robert Leichtner.

MR. LEICHTNER: Gentlemen, my name is Robert Leichtner. I appear here today as an attorney on behalf of Pacific Refining Company. I'd like to make a couple of remarks about --

CHAIRMAN CORY: You are with the same firm as Mr. Destino?

MR. LEICHTNER: No. He's with the Southern McCutchen and I'm with the Northern McCutchen.

CHAIRMAN CORY: You are not representing Western Oil and Gas but Pacific Refining?

MR. LEICHTNER: Right.

COMMISSIONER DYMALLY: Your company has just taken over the old Gulf?

MR. LEICHTNER: Right.

COMMISSIONER DYMALLY: Are you part of the Coastal --

MR. LEICHTNER: Coastal States Gas and Oil.

COMMISSIONER DYMALLY: And Pacific is a West Coast subsidiary?

MR. LEICHTNER: That's right.

As far as notice is concerned, I appeared at the meeting in May in support of the petition to reconsider or repeal. And I personally don't recall receiving notice of
this meeting. I'm here because I received the ordinary
circular of the meeting about a week ago. Now, it's possible
it went to somebody else at my address, but just for the
record, I did not receive notice of this meeting by the
channels that you mentioned before.

Pacific has appeared before the Commission on prior
occasions to contest the illegality of the regulations for
volumetric charge and particularly to object to the
imposition of a volumetric formula in PRC 3414.1, which is
for the pipe line right-of-way pertinent to Pacific's
refinery.

Now that the Commission is hearing testimony on
the petition to reconsider the volumetric rental regulations,
we once again would like to contend that the regulations
violate both the law of this State and the United States
Constitution. We urge that the volumetric rental regulation
be repealed.

I think Mr. Destino and others have summarized the
major legal arguments and we join in those arguments and
won't take the Commission's time running across familiar
ground.

I would, however, like to emphasize a further
point beyond the legal objections that have been made, along
the lines of Mr. Hughey's argument.

We strongly agree that there are very powerful
policy reasons for repealing this law, this regulation. I think few would dispute that in the present foreseeable future difficult economic problems challenge California. To avoid economic stagnation and produce the high rates of unemployment with which the State is currently struggling, it would seem imperative to promote the development of new and existing business. Viewed from this perspective, new volumetric charges appear highly impolitic, the imposition of what effectively amounts to a new tax on the transfer of industrial and commercial --

CHAIRMAN CORY: Pardon me, you represent Pacific Refining?

MR. LEICHTNER: Right.

CHAIRMAN CORY: And I thought a month ago at a hearing we had a discussion with representatives from Pacific Refining, in which we went very explicitly through, and there was clear understanding on the part of Pacific Refining, that this in no way was a tax but was a rental.

MR. LEICHTNER: My understanding of that discussion was that we conceded that there wasn't a tax on land. What I'm saying here today is it's my own impression that this has the effect of being a tax on the commodities that are crossing the land.

CHAIRMAN CORY: Now, it's my recollection that we were prepared at that point, if we didn't understand what
we were doing, that we had nothing more to talk about and we
shouldn't continue to discuss anything with Pacific Refining
and the gentleman representing -- I don't know if it was you
or someone else --

MR. LEICHTNER: No, it wasn't me.
CHAIRMAN CORY: They said, no, they clearly
understood that this was a rental payment based upon a
volumetric charge and was not a tax. And I'm having trouble
with you now changing the game because I stopped the whole
proceeding and said, hey, --

MR. LEICHTNER: I don't feel I'm changing the game.
What I'm saying is we signed the lease and it provided for
a rental. Okay. I'm saying that --

CHAIRMAN CORY: You knew it provided for a rental
when you signed it?

MR. LEICHTNER: Right.
CHAIRMAN CORY: It's not a tax. And now you guys
want to talk about tax.

MR. LEICHTNER: What I'm saying is that the way
that the rental is being computed has the effect of a tax
as far as the commodities are concerned.

CHAIRMAN CORY: No.

MR. LEICHTNER: Can I explain for a second?

CHAIRMAN CORY: No, wait. Let me make something
very clear to you.
There's a piece of property that is owned in fee by the State of California, and you want to use it. And we negotiated that you could use that property and this is what you're going to have to pay for it. If you don't want to use the property, you don't have to pay. I don't see how that's a tax.

MR. LEICHTNER: Okay. Look at it this way: If every barrel of oil --

CHAIRMAN CORY: I have trouble looking at it any way because when your representative was here a month ago, we laid it right on the line and the guy said, "Okay. I agree it is not a tax." So I don't want to engage in this sophistry.

MR. LEICHTNER: Okay. I don't feel that this is a matter of sophistry. If you don't want to call it a tax, I don't want to argue with you about it. The int I'm trying to make is every barrel of oil that crosses the pipe line facility on State lands, saying our lease, is going to be charged for that barrel of oil. It's going to carry a charge as payment to the State for crossing that land, and the charge is on the barrel, per se. It's not on the land. It's not even on the business operation. It's on each barrel, per se.

Now, perhaps that doesn't seem to be a tax to you. It sounds sort of like a tax to me.
CHAIRMAN CORY: I thought Pacific Refining told me last month that they knew it wasn't and that's the point I'm trying to make.

MR. LEICHTNER: Okay. In any case, the imposition of that charge for the transfer of commodities across State lands will surely be perceived as evidencing a hostile business climate which can only discourage the development of new industries and the new jobs it would bring to the State.

Therefore, we would respectfully urge the Commission to repeal the recently-enacted volumetric rental regulations and return to fixing rent for State lands based on appraised value pursuant to Public Resources Code, Section 6503.

MR. TAYLOR: Mr. Leichtner, may I ask you a couple of questions with regard to -- First of all, were you one of the parties that negotiated the lease?

MR. LEICHTNER: Was I personally involved in negotiations, no.

MR. TAYLOR: You were not personally involved in negotiations?

MR. LEICHTNER: I wasn't present at the negotiations.

MR. TAYLOR: Now, at the last Commission meeting we had a partner of your firm, is that correct?
MR. LEICHTNER: Yes.

MR. TAYLOR: That appeared on behalf of Coastal States and argued in support of the Commission approving that lease, is that correct?

MR. LEICHTNER: Yes.

MR. TAYLOR: I'm a little fascinated. I come from an office that has five offices throughout the State. Is there some corporate difference between your San Francisco Office and your Los Angeles Office?

MR. LEICHTNER: They're two separate firms.

MR. TAYLOR: They're separate firms?

MR. LEICHTNER: Right.

MR. TAYLOR: Carrying virtually the same name?

MR. LEICHTNER: Just the first name of the partners.

MR. TAYLOR: Did you ever request notice of any of the hearings?

MR. LEICHTNER: I was personally at the meeting on May, whatever the date was, the Commission's meeting, and I appeared to support the petition for repeal. Now, I did not personally -- I'm not sure whether I actually signed a certificate asking to be personally notified or not, but I did submit a statement. I did sign the --

MR. TAYLOR: You have never filed, pursuant to regulation, a request for notice, is that correct?
MR. LEICHTNER: I personally have not.

MR. TAYLOR: Do you have any knowledge of whether the people that actually negotiated the lease -- because I take it that you didn't from your statement --

MR. LEICHTNER: Right.

MR. TAYLOR: -- whether they were aware or not of these hearings? Because I believe that there was indication made at the last hearing that they were aware of these hearings.

MR. LEICHTNER: I believe that they were aware. I'm not complaining that we didn't know of the meeting. I'm saying we didn't get notice via the channels that you mentioned.

MR. TAYLOR: But at least as of the last meeting, you had some notice that the meeting was going to be held and it was presumably discussed in the negotiations, is that correct?

MR. LEICHTNER: I don't know if it was discussed in the negotiations.

MR. TAYLOR: You have no knowledge of those negotiations?

MR. LEICHTNER: Right.

MR. TAYLOR: I take it you have no knowledge of the statement of your partner --

MR. LEICHTNER: No.
MR. TAYLOR: -- to the Commission at the last meeting with regard to the time that we did treat --

MR. LEICHTNER: No.

MR. TAYLOR: Do you have any specific comments to make with regard to rental charge contained in the Sequoia lease?

MR. LEICHTNER: Pardon?

MR. TAYLOR: Do you have any specific comments to make with regard to the effect of the rental charge imposed in the Sequoia lease?

MR. LEICHTNER: I think his comments were quite thorough at the meeting on June 24th.

MR. TAYLOR: Do you know what they were?

MR. LEICHTNER: Yes. I don't recall exactly, but I was present.

MR. TAYLOR: Do you have anything specific to offer with regard to the specific rental schedule set forth in the Sequoia lease at this hearing today?

MR. LEICHTNER: No, I think we closed that business at the meeting on June 24th.

Any further questions?

CHAIRMAN CORY: Thank you, sir.

We have a letter here from Mr. T. B. Peecook, who is the Manager of Right-of-Way and Land Department of Southern California Edison Company. Is he here in the
audience? Does he wish to make any statement?

If not, we will enter this into the record.

COMMISSIONER DYMMALLY: Mr. Chairman, could you, for the benefit of those people who are here, tell me what the rates are?

CHAIRMAN CORY: You're talking about in Pacific Refining?

COMMISSIONER DYMMALLY: No, in general.

CHAIRMAN CORY: The regulations do not have specific ones in it.

COMMISSIONER DYMMALLY: Give me the specific one.

CHAIRMAN CORY: The only specific one is the one that was approved last month. And my recollection is that that includes not just bare land but includes a wharf. And there are some other facilities, are there not?

EXECUTIVE OFFICER NORTHROP: Wharf area.

CHAIRMAN CORY: Wharf area. There's something more than just ocean land. It's one cent per barrel for the basic rental rate up to cover the minimum of thirty-seven five. Then it drops to one-tenth of one cent per barrel for the next three point five million barrels and then goes up in a graduated scale of three-tenths, six-tenths, and nine-tenths, for the added increments based upon volume.

A barrel is --

EXECUTIVE OFFICER NORTHROP: Forty-two gallons,
Mr. Chairman.

CHAIRMAN CORY: -- 42 gallons.

Do you want to extrapolate it back to the burden?

COMMISSIONER DYMALY: Need a computer.

How would it apply to future customers or old customers?

CHAIRMAN CORY: The regulations, as I understand them, as proposed, set up a list of criteria that shall be negotiated which include the length of the pipe line over State property as opposed to the entire length of the pipe line. And there are a lot of other factors that come in. So that this particular rate would not necessarily apply to anyone else unless they were similarly situated, with similar wharves, with similar types of products. This would be the order of magnitude of the burden.

COMMISSIONER DYMALY: I want to have some assurances for myself and for the public that the staff does not have arbitrary power to increase these rates or set rates without the Commission.

CHAIRMAN CORY: No, every lease must be approved by the Commission.

COMMISSIONER DYMALY: And that further, that these costs are not going to be prohibitive in the process of negotiation.

EXECUTIVE OFFICER NORTHRUP: Mr. Chairman,
Governor Dymally, let me explore that with you for just a moment. As you recall several months ago, Shell Oil Company came to the Commission and asked to build a line from roughly the Sacramento Airport to their facility in the Bay Area. We looked at the project and staff recommended that, in this particular case, throughput not be used even though it covered a considerable portion of State land, but rather we use the previous method.

So it's a balance that's quite close. And I think maybe Mr. Taylor would like at this time to give you the reasons or rationale that we feel that this area of volumetric, aside from being more fair when the business is down, it was the industry's suggestion that we change the format to negotiation because in the early meetings they felt it was just arbitrary and capricious for us to put an "X" cent per barrel or "X" mills per barrel because everybody was different. So in line, so in order to accomplish this at their suggestion, we changed it to negotiating each one.

So one wonders whether they really are concerned or whether this is really a straw man and they really would like to have the State give them everything for free.

However, Mr. Taylor will address us as to the rationale for the way we handle it at the present time.

MR. TAYLOR: Governor Dymally, we have approached this in the same way the ports by analogy have handled it for
uncapitalized, for unimproved water-covered land. We have answered in the regulation which you adopted the contention about multiple charges by allowing that only one charge be made for multiple crossings between facilities on pipe lines. We have modified the original ones to allow questionable rates to be imposed depending upon the facts and circumstances presented in each case because each case is unique. We stretch all over the State, and the kind of situation that will be encountered will be different in almost all instances.

I think that there were two other things that we made changes in response to comments made at the public meetings beforehand. Basically, we're proceeding by analogy to situations of ports and in connection with -- Oh, we also would apportion, if a volumetric charge was to be adopted, we apportion the charge, the percentage, in a pipe line situation, to the percentage of the pipe line on the State land to the percentage of the total pipe line. We have three bases in some instances under these leases which you can adopt.

In the case of pipe lines, there's three. And that is, one, you can do strictly on appraised value. The other is a penny and a half per diameter inch and the third is volumetric. And taking all the criteria that is included in the regulations and through negotiations is the
way in which it will be determined which one will apply.
And this is similar to the negotiations with the ports and
it's similar to negotiations with cities under the Broughton
Act, and it's similar to the approach, I believe, the
Public Utilities Commission takes in looking at these items.

But each item will be brought to the Commission;
each lease will be brought to the Commission for
consideration. And if the Commission isn't satisfied with
the particular lease, certainly the Commission has the
option not to approve it.

EXECUTIVE OFFICER NORTHROP: It was our plan by
negotiating individually each, we haven't arbitrarily and
capriciously decided on a rent that would be unfair.

CHAIRMAN CORY: Is there anyone else in the
audience who wishes to address themselves on Item 20 on
calendar?

Yes, sir, would you come forward and identify
yourself.

MR. BAUMGARTNER: Mr. Chairman, Members of the
Commission, my name is Peter Baumgartner. I'm an attorney
for Pacific Gas and Electric Company in their Law Department
in San Francisco.

PG&E has opposed, on every occasion open to it,
certain features present in these regulations now being
reconsidered. In order to supply the more than eight million
people living in the service area in Northern California, PG&E operates several marine terminals in an integrated natural gas system consisting of over 30,000 miles of natural gas transmission distribution pipe lines located primarily in the northern part of the State.

Legal objection to the regulation is based primarily, though not exclusively, on Public Resources Code 6503, which requires that the Commission appraise the lands to be leased and fix the annual rental. We don't think that the Legislature had in mind when it used the terms "appraisal," "fixed," and "annual rental," the imposition of a system of rents which varied from day-to-day and hour-to-hour, not tied in any way to the value of the land or the quantity of the land. The legal objections are well-known and have been voiced here already.

In addition to the legal objections, there are in our view important policy considerations, all of which tend to argue against the imposition of throughput charges. These charges seem particularly inappropriate for electric utility fuel because except for very small quantities of low sulfur crude imported from overseas, almost all of our low sulfur fuel is residual fuel oil from California refineries. Our electric customers will pay the throughput charges as many as three times: Once when the oil company brings the crude in, once when the residual commodity is
shipped out, and once when it's delivered to PG&E through our facilities.

CHAIRMAN CORY: Pardon me, sir.

MR. BAUMGARTNER: Yes.

CHAIRMAN CORY: How much of your volume of residual supply after it comes ashore, goes back to sea and is delivered by barge or boat?

MR. BAUMGARTNER: Right now I would say close to a hundred percent. The Richmond-Antioch pipe line is not completed. When it is completed, of course, it still passes through a significant portion of State land. So with respect to throughput that would apply there as well as the Pittsburg dock, the marine terminal at Moss Landing, and the marine terminal at Morro Bay.

Now, Moss Landing is not on State land so throughput does not apply there. We have pending, and have had for a long time pending, an application for a project which we have not firmly decided to go ahead with which would have the effect of moving the Moss Landing terminal outside the harbor district; and therefore, in State land which would therefore make 100 percent.

In order to serve our seven million gas customers, PG&E has more than 4800 miles of transmission pipe lines and 26,000 miles of distribution pipe lines through which we deliver about 672 billion cubic feet of
natural gas annually. The pipe lines form a spaghetti-like network of transmission and distribution systems many miles of which are located in State lands. The Commission staff has been furnished with a map which shows the network of pipe lines located beneath the San Francisco Bay and the Sacramento and San Joaquin River Delta areas, for example.

Throughput charges would, in effect, place an indirect tax on utility customers within the service areas since such a charge would become a part of the operating expenses in deriving electric and natural gas rates. The additional cost of metering facilities necessary to actually determine gas flows, we believe, would be added to the rate base. Such indirect taxation seems unjust in the light of the large increases in the gas rates that have already occurred due to rising costs of energy-producing fuels.

In view of our public utility duty to dedicate these properties to public use, we have long advocated throughout these proceedings an exemption from the imposition of throughput royalties on fuel oil and natural gas passing through the public utility facilities.

In addition to the general policy issue of placing indirect taxes on utility customers, there is specific policy issues relating to natural gas. Over 80 percent of the natural gas used in Northern California must be imported. The domestic supplies from California sources are rapidly
declining. Forty percent of the total supply must be imported from Canada. The Canadian Government has already more than doubled the price per unit of natural gas exported from their country. The American utilities and the American Government have consistently argued that artificial raising of natural gas prices by Canadians have had and will have serious effects in the American economy. However, when the Canadians see an American state charging a royalty to its own citizens, our arguments against such charges by the Canadians are greatly weakened. Anyone who thinks the Canadians lack the resolve or the power to define and act in their own economic self-interests need only reflect on the current controversies surrounding the sale of grain to China in the Olympic Games.

We also believe that imposition of throughput charges in California would inevitably bring about imposition of throughput charges by all the American states through which our natural gas pipe lines pass. I think it illogical for the State to be pursuing a policy which has the potential for such a negative impact on California.

There are also serious technical problems in calculating the units of gas upon which throughput charges would be placed. I referred earlier to the spaghetti-like network of pipe lines located in State lands. The direction of gas flow and the quantity of gas flow varies
allocations of additional quantities of natural gas to reduce the problem of air pollution in the San Francisco and Los Angeles Air Basins, the Commission appears intent upon imposing economic barriers which can only have the effect of undercutting our arguments with both the Federal and the Canadians for the need of additional quantities of natural gas at a price that we can afford.

I strongly urge the Commission's consideration of an exemption of throughput charges for California utilities. At least the Commission should give serious consideration to the political, economic and technical problems resulting from this addition of throughput charges on natural gas systems. California will be a natural gas importing State for at least the next 15 years.

The requirements within the State for natural gas are so great that even assuming a construction of several large facilities for processing LNG, it is possible that natural gas may not be exported from the State in significant quantities in this century. Because natural gas is the cleanest possible fuel which you can obtain, I believe that California should and will do everything within their power to obtain and retain all the natural gas we can get until our own State requirements are satisfied. Because of the serious implications of throughput regulations on natural gas availability and cost, I strongly urge the Commission
to consider exempting natural gas from the payment of
charges based on throughput.

Thank you for your consideration.

CHAIRMAN CORY: Thank you.

MR. TAYLOR: Mr. Baumgartner, I believe you were
at the last hearing on the subject prior to the adoption of
the rule?

MR. BAUMGARTNER: The hearing Mr. Northrop held.

MR. TAYLOR: Yes. I think you were also at the
other hearing, but you didn't speak.

MR. BAUMGARTNER: I was at all of them.

MR. TAYLOR: Is there anything today that you have
covered that you didn't cover at those prior discussions?

MR. BAUMGARTNER: No, I think it's a degree of
emphasis. What I attempted to do today is to emphasize the
serious problems which throughput as the principal is posing,
not only for the utilities, but for everybody else who's
trying to deal with this natural gas situation, and
particularly with the negotiations with the Canadian
Government.

MR. TAYLOR: But you had raised the points
previously?

MR. BAUMGARTNER: As far as I know there's nothing
new in this presentation that was not raised previously.

MR. TAYLOR: Thank you.
CHAIRMAN CORY: Yes, sir.

MR. SIMONSEN: Mr. Chairman and Members of the Commission, my name is Henry W. Simonsen. I'm a resident of Rio Vista. I've been a citizen of California for some 55 years. I also have been in business, a small business, for some 30 years. During that time I've had the opportunity of talking to industrial plant managers for well over 20 years. And the problems of California in the business climate has been getting steadily worse through the years and it's a real problem right now.

There's a feeling of frustration on the part of business, small business as well as large business. And my thought was, first of all, I feel that the State is getting a good return when they get paid for the use of the land on a basis of the value.

Secondly, I think the State has gotten a windfall from the fact that we have pipe lines throughout the State because underneath the land isn't normally usable. In fact, a lot of land that you get paid for would have no other use.

So I think the State is getting a windfall. I think, however, that at this particular time, with the unemployment of nearly ten percent, that it's time to assist industry in order to create jobs.

And one of the gentlemen that I was friendly with
in years past said, "Hank," he said, "You must remember that in a big corporation they have a Board of Directors meeting at the headquarters of the corporation and they review --" they only have a certain amount of money to spend in a given year -- and they review -- well, where can we spend it and get the best return without harassment? And he said, "Frankly, California doesn't fair very well in that category."

In other words, California does not create a good business climate, especially at this time.

And, like I say, we have nearly ten percent unemployment. If you compare us with Texas, which is an industrial state that is expanding, their -- and I just checked this yesterday -- their current unemployment is 5.3 percent. The City of Houston is 2.5 percent. So it's pretty obvious that industry creates jobs and this is good. It creates a tax basis.

And so what little bit you can gain by this kind of an increase which gets business upset, I think you're going to lose in the long run.

The other thing that concerns me is we have an opportunity with the Alaskan Oil coming down to California. It doesn't have to come to California. Refineries can be built in the State of Washington in Puget Sound where they have deep water. They can be expanding there and we can merely end up with marketing facilities. And conceivably, we
can lose the tax base and the job opportunities of the refineries in our State. And this is real. It's real. It isn't something that somebody can just talk about. And the same thing with Texas. Logically, if I were Chairman of the Board of an oil company, I would put my money in Texas and pipe line it out here or bring it out by super tankers. When you can expand there and your -- they have no income tax in Texas. That's one of the competitions we have. Texas does not have income tax. State income tax, whereas our State does.

So there's just so many things that I think the State Government should consider in creating new taxes or new costs for business. The question comes up, when does the straw break the camel's back. And I just think that we're in a very poor position now to add any additional cost to industry.

I think the oil companies need profits, especially for exploration. I think we should have a strong industry and we shouldn't penalize them because they have brought us the cheaper petroleum products in the world. And I think we ought to try to work with them because I think with spirit of cooperation between Government and industry, we can beat this unemployment problem and get California back -- at present, as I understand, it is 47th in business climate in the nation. Let's get it back to that top five where it
should be.

So, gentlemen, please reconsider this action that you have taken. I don't think it's to the best interest of this State and I think in the long run by going back to where it was, you'll find you'll get a better spirit of cooperation. And I know that you can find fault with the oil companies just like you can find fault with any industry, but I think they do a hell of a good job. I've been associated with their people through the years and they're all good people. They work hard and they try to bring the product to the public at the lowest cost.

Thank you very much.

COMMISSIONER DYMALLY: One comment. I don't think that this is the straw. Dow Chemical might be the straw, but not this one.

MR. SIMONSEN: I'm just saying that, you know, it's just one thing after another. I think that, here, again, can we get a turnaround. This could be a turnaround in the State actually saying: Look, unemployment is our biggest problem. Here perhaps is a way of getting industry to sit down. Let's work together and solve the big problem.

COMMISSIONER DYMALLY: I like your testimony. I want you to come to testify before the Commission on Economic Development in October.
MR. SIMONSEN: I'd be glad to.

COMMISSIONER DYMALLY: Thank you.

CHAIRMAN CORY: Anyone else in the audience who wishes to present any testimony on Item 20 on our Agenda?

Mr. HUGHEY: Pardon me, Ron Henrekin of the Solano Development --

COMMISSIONER DYMALLY: Please put your name and address on that.

MR. SIMONSEN: I will send a letter outlining my thoughts.

MR. HUGHEY: Mr. Ron Henrekin had to leave, so he left that for the Board.

CHAIRMAN CORY: You will add that letter to the record.

Yes, sir, you have a statement? Come forward and identify yourself.

MR. FLANNERY: My name is Gerry Flannery. I'm an attorney with the Department of Defense. And I'm here primarily to answer some questions that Mr. Taylor and Mr. Northrop had at the last hearing.

And I'd like to address myself to those questions.

First of all, Mr. Taylor wanted to know how the $100,000 figure had been arrived at. What we did or I should say what the people in Los Angeles did who take care of the Defense Fuel Supply Agency, they computed the number of barrels that go to Nellis Air Force Base in Nevada over
California and using the Cal-Nev Pipe Line Company facility. At the 1.7 cent per barrel figure, arriving at a total of 17,000, roughly $18,000. All other pipe line usage, which totaled about eight million barrels, was computed at a 1.2 cent per barrel figure resulting in a $98,000, close to $99,000 figure for a total of $116,000, roughly. 

I might add that, in my own mind, I believe that there, because of the indefiniteness of the regulations and its future possible applications, the true impact may not be known for years. It will be almost impossible to compute at this time.

COMMISSIONER DYMALLY: Because it's so small?

MR. FLANNERY: No, because the regulation is so indefinite and its application to existing leases, for instance, is unknown. It's an unknown quantity.

CHAIRMAN CORY: You should feel very comfortable with that if you're with the Department of Defense. Most of your contracts are let that way.

MR. FLANNERY: I couldn't argue with that.

(Laughter.)

MR. FLANNERY: I'm inclined to agree with you, as a matter of fact, but that's generally due to the nature of our business and the fact that we do have an unending need for most services and supplies.

The total impact would, for fiscal year '77, be on
about nine million barrels. And that would be increasing annually depending on what the Defense Department needs are in the future.

Mr. Northrop asked a question on the ownership of pipe lines. We do own 160 miles of pipe line in California.

EXECUTIVE OFFICER NORTHROP: On State property?
MR. FLANNERY: I would assume that the pipe lines cross State property. I have the locations.

EXECUTIVE OFFICER NORTHROP: That's fine.
MR. FLANNERY: Okay.

Now, Mr. Taylor wanted to know what the annual budget of the Department of Defense was in California. I don't believe anyone in the Department of Defense could tell you that. When you add payroll, the contracts that were let with California firms, transportation charges paid to California firms, I would assume that that figure would exceed the billion-dollar mark at least.

Another question that Mr. Taylor had was concerning rail rates in California, free rail rates. I'm not sure why he wanted to know that, but we don't have any free rail rates in California. We do have tariffs and tenders which may provide costs at more favorable rates, but they are by and large the same rates that any other user of rail service would pay.

I think when you boil the Department of Defense's
position down, it's really a dollar-and-cent argument. The legal arguments --

COMMISSIONER DYMALLY: C-e-n-t-s or s-e-n-s-e?

MR. FLANNERY: Dollar and cents, c-e-n-t-s.

And we're only looking at the economic impact. And every time the cost of maintaining facilities and personnel in California goes up, the economic analysis are impacted upon. And as the gentleman before me said, there are other states where the environment may be cost-favorable, so I would urge that the Commission reconsider its decision and favorably consider the repeal action before it.

COMMISSIONER DYMALLY: I just want to warn you that if the Department of Defense doesn't pay its bill, we intend to bring out the National Guard.

(Laughter.)

EXECUTIVE OFFICER NORTHRUP: Mr. Chairman, I'm interested in the Department of Defense's statement on a couple of things, particularly when already the Department of Defense is in debt to the State Lands Commission for over 44,000 acres of land they put bombs and mines on that we can no longer use.

CHAIRMAN CORY: Mr. Northrop, we have a lot of problems with the Department of Defense, but I don't think that we should take time at this hearing to --

MR. FLANNERY: I would agree. There were a lot of
irrelevancies at the last hearing.

EXECUTIVE OFFICER NORTHROP: Where did you get your 1.2, 1.7 figure?

MR. FLANNERY: They were from the fuel experts in Los Angeles.

EXECUTIVE OFFICER NORTHROP: From Cal-Nev?

MR. FLANNERY: Now, I'm --

EXECUTIVE OFFICER NORTHROP: Doesn't it seem strange that you people should do the calculation, not Cal-Nev?

MR. FLANNERY: Well, I don't -- We do business with a lot of entities throughout the State of California. And who's responsible for the figures, these are figures presented by us. I don't know what the ultimate source of them was.

EXECUTIVE OFFICER NORTHROP: Why didn't you take five cents? Why did you take 1.7, 1.2? It would make a better story.

MR. FLANNERY: Because we believe that these figures were the most accurate for your purposes and I believe that's probably in accord with your regulations.

MR. TAYLOR: I think that the gentleman that appeared from Oakland the last time, he had based it upon regulations which were not ultimately adopted by the Commission. In other words, that the amount of the rate
charge that you have that were in the original statement, I believe, were admitted that they were prepared from the original rate schedule that we had published and we decided that we could not go to a fixed rate schedule.

MR. FLANNERY: Mr. Taylor, I'm answering the question that you asked. That is how we arrived at the approximate $100,000 figure.

CHAIRMAN CORY: And since we know how they arrived at it, we are free to take into consideration its relevance to the regulations before us --

MR. FLANNERY: Exactly.

CHAIRMAN CORY: -- and he's done us a favor for which we thank you. I don't think we need to argue that any longer.

MR. TAYLOR: But I believe that it was stated by your man that the rate -- the question we asked was where did you get the figures from and you said you get it from Department of Defense people at your Procurement Office in Los Angeles; is that correct?

MR. FLANNERY: They're the ultimate source within the Department of Defense, correct.

MR. TAYLOR: In Los Angeles?

MR. FLANNERY: Correct.

MR. TAYLOR: I think, though, that the gentleman has testified --
MR. FLANNERY: I've also stated that that calculation may be completely extraneous now. In other words, the impact in view of a number of considerations under the Department of Defense, is almost impossible to calculate at this time. That's how we arrived at the $100,000 figure.

MR. TAYLOR: I believe it was admitted by the gentleman that testified before that he used, in order to come up with this figure, he also used the originally proposed rate schedule and that rate schedule was not adopted by the Lands Commission.

MR. FLANNERY: Fine.

CHAIRMAN CORY: To put it into perspective for those in the audience, Mr. McCausland in his wealth of information happened to carry with him a National Journal which has in it the Capital Federal Spending by Program. And I believe the subcategories in that are Defense contracts and Defense salaries. You take the per capita expenditure in California for those two items, 396 for Defense contracts and 191 for Defense salaries, assuming that that's valid taking the $20 million population figure, you're at 11.8 billion to which we would add the tremendous burden of $100,000. Overwhelming.

MR. FLANNERY: Mr. Cory, I might point out that that is going to decline and it's in the process of
declining for a number of reasons.

CHAIRMAN CORY: That's the reason why we want to
go to volumetric because then as your value declines, we'll
charge you less.

Thank you.

MR. HIGHT: Could you spell your name for the
record, please?

MR. FLANNERY: I filled out an appearance form.

MR. HIGHT: Okay. Fine.

CHAIRMAN CORY: I don't have the appearance slip.

COMMISSIONER DYMALLY: The gentleman who preceded
you, your name, please?

MR. SIMONSEN: Simonsen, S-i-m-o-n-s-e-n, from
Rio Vista.

CHAIRMAN CORY: Is there anyone else in the
audience who wishes to speak to us on Item 20?

All right.

All right. I guess we should inquire of our legal
staff as to where we are at this point in time. Apparently
we've exhausted the public hearing. Everybody has spoken that
desires to speak other than the staff who would like to rebut
a whole lot of arguments.

(Thereupon a brief recess was taken.)

CHAIRMAN CORY: Okay. We'll be back in session,
the machine having corrected its deficiencies.
We have concluded the hearing and we have, I believe, basically three options before the Commission; that is, to amend the adopted regulation; to appeal the adopted regulation; or to leave it unchanged.

Is there --

MR. McCausland: Moved.

CHAIRMAN CORY: We have a motion that they be left unchanged. There's a motion and a second.

All those in favor signify by saying aye.

(Ayes,)

CHAIRMAN CORY: The record will show a unanimous vote.

MR. Taylor: Mr. Chairman, then the petition will be deemed to be denied?

CHAIRMAN CORY: That is correct.

Okay. Back on the Agenda. Item 21. This is an item that has been before us previously on the agency permit by the Truckee-Donner Public Utility District with respect to a 24-inch pipe line that extends 690 feet into Donner Lake.

And we have some people who wish to appear before us.

Steve Grumer, who is, I believe, the attorney for the Truckee-Donner Utility District.

MR. GRUMER: Mr. Chairman, Members of the Commission, today with me are Mr. Jim Thompson, the attorney for Dart; Don Strand, the Project Manager for Tahoe-Donner; Dan Cook,
our District Engineer, and Paul Hopensack, our District Manager.

On behalf of the Truckee-Donner Public Utility District, I respectively request that the Commission adopt Alternative 2, as presented by your Committee, approving the request for an extension of time for processing the application and provide that progress reports be made.

Our District Engineer will address two issues in support of Alternative 2. One, that nobody stands to lose anything in the event that this matter is held in abeyance; and, two, that project progress has been made since the May 27th meeting. We now have a detailed plan of action.

On the May 27th meeting, it was decided that this matter be placed on today's Agenda to allow us time to get our act together and come in with specific alternate proposals.

Mr. Cook will present these proposals.

CHAIRMAN CORY: Mr. Cook.

MR. COOK: Thank you, Mr. Chairman, Members of the Commission. We submitted some time back, I believe, June 25th, a letter to Mr. Trout, Manager of the Division, outlining the progress that had been made, together with an activity diagram, code diagram, as to how the ultimate disposition of this matter --

CHAIRMAN CORY: Even in Truckee they've gotten to you with this nonsense. Nothing is sacred.
MR. COOK: That's true.

CHAIRMAN CORY: Go ahead, sir.

MR. COOK: If you just for the first time are having an opportunity to look at that, it may be a little bit wonderous as to the result and to the activity that has been undertaken.

At this particular time, I'd like to address the three issues that we spoke of on May 27th, that relate to the diagram. Specifically what has occurred.

The element that occurred since our last meeting were that the logs have been obtained for what we call the sales office wells. The result of those logs have been interpreted by the hydrologist and his indications are favorable.

The second activity there that was to take place was the analysis or reanalysis, if you will, of the recharge subarea --

CHAIRMAN CORY: Did you say that that sales office well, production well logs have been checked and it's favorable? That puts it where on this magic chart, in 750, 750 gallons per minute or more?

MR. COOK: No, we're not quite that far, Mr. Cory. Unfortunately, we're further to the left. We're at the negative declaration stage which is the third group reading in.
CHAIRMAN CORY: Okay.

MR. COOK: That was one of the items that we projected would be obtained between the May 27th hearing and today. So the three items that we discussed have, in fact, been accomplished. The logs have been completed. Projections made on the basis of those logs. The analysis of Subarea G, reanalysis, has been completed, and the negative declaration was filed with the County Clerk shortly after our meeting of July the 8th.

The completion of the sales office well is the next element that has to be reamed out and the full value of the gravel pack installed. And once that is undertaken, then the absolute interference or lack thereof with the district facility can be determined as well as the total yield from that area.

As you see, in summary here, the results of the sales office well will be in hand on October the 30th, 1976, in the balloon at the top there.

The chart was prepared at your suggestion with the cooperation of Dart's hydrologist and our staff. It represents the path that we feel can be followed to the point where the application may be withdrawn. In the interim, we ask that you accept the Alternative Number 2 that's been placed before you. However, there are listed some ten items that we felt were, at least partly, values with the adoption of the
Alternative 2 that you have before us.

There is an eleventh one that comes to mind this morning that is not in the letter and I won't read all those in the interest of time. And that eleventh item is that the State Water Resources Control Board is noticing all the committees and Water Rights people in the Truckee Basin as to hearings to determine the validity and the quantity. I would hope that you would not terminate our application as it may relate to those other hearings on our permits for the water that we now have and change the diversion on our springs.

CHAIRMAN CORY: I'm sorry, but this thing just continually overwhelms me. Any questions by the members?

I mean, it always take me like 45 minutes into this until I understand what your problem is and why we're in it.

MR. COOK: Yes, sir.

MR. McCausland: As I understand it, we have an illegally installed pipe in the lake that the Truckee Utility District has attempted to take over to legitimate and we have to decide whether --

CHAIRMAN CORY: Yes, and they want more time to decide whether or not they want to leave it there or take it out.

MR. COOK: That's right.

CHAIRMAN CORY: And there's some local pressure within the community so that -- at least previously there has
not been a united front as to what the local community wants.

MR. COOK: That is still true today.

CHAIRMAN CORY: So that's why we're . . . I guess.

MR. COOK: We see a solution and we ask your indulgence with us while we arrive at that solution.

CHAIRMAN CORY: Okay. One of the questions,

Mr. Hight, you should be keeping in mind is how do we preserve our options vis-a-vis an illegally installed pipe line, that we don't inadvertently end up through some detrimental reliance or some other Mickey Mouse concept you flaky lawyers come up with, con us into having to approve it.

MR. HIGHT: Mr. Chairman, there's an existing lawsuit that takes this pipe line into effect, and there's an injunction prohibiting them from using it until the Commission makes a determination as to its use.

COMMISSIONER DYMALLY: And all they want today is an extension?

MR. COOK: Yes, sir, that's correct.

COMMISSIONER DYMALLY: Is there any reason why we shouldn't give it to them?

CHAIRMAN CORY: Well, because we've had a few of these. And I think what we're trying to do -- a lot of people in the community had some problems -- and what we're trying to do is mediate a family problem and keep our own options intact and it's difficult. But it takes time and I
guess we're going to have to take the time. So why don't you go ahead with your further presentation and I don't know any way out, but hopefully lunch is coming and everybody will be hungry and the meeting will end.

(Laughter.)

CHAIRMAN CORY: Go ahead.

MR. THOMPSON: Members of the Commission, my name is James Thompson. I'm an attorney for Dart Industries and I'm here simply to assure the Commission that Dart has been consulted in the development of Mr. Cook's proposal and that my client fully concurs in the time line that's been established there and has in writing given the District assurances of its willingness to go along with that schedule. I simply wanted to make a brief statement to you to let you know that that was indeed our position and that we have since the last meeting developed this schedule in cooperation with the District.

We strongly support Alternative 2 which we believe keeps all options open at no detriment to any person until this matter can eventually be decided on the basis of all of the relevant information.

CHAIRMAN CORY: I'm not sure I want to ask a question, but was it Dart that put the illegal line in to begin with? If that's the case, what in the hell are you doing here? Go ahead.
MR. THOMPSON: That's a good question. I think, frankly, Mr. Cory, that we do have a lawsuit that's on file in which I'm not the attorney that's handling the suit, but your people have brought an injunctive action against the District. I don't think it would be appropriate for me to respond to that question in regard to that litigation.

CHAIRMAN CORY: All right. Would you tell me how Dart or the District would be adversely affected if we approve Option 1 by saying, you know, go away and come back when you decide what you want to do?

EXECUTIVE OFFICER NORTHROP: Give us another permit.

CHAIRMAN CORY: And file again.

MR. THOMPSON: Well, I think that the effect of such a decision may very well be to rule out the possibility that, regardless of need at a future date, whatever need develops, Donner Lake water would ever be available for serving the needs of the Truckee-Donner Public Utility District. I think the effect of that action would be simply to rule out the contingency that it might at some time be needed.

MR. McCAUSLAND: Why is that?

CHAIRMAN CORY: How does that work? How does that adverse reaction happen? That's what I don't understand. If we dismiss the application without prejudice, what is to preclude you from coming back in and filing a new one?
MR. THOMPSON: I think, Mr. Cory, first of all, if this application were to be dismissed at this time, -- Well, while there's no reason to do it, if you decided to do it -- the main effect of it would be that it would establish, it would take away a part of the necessary basis for any proceedings through the regulatory agencies that establish water rights.

The effect of that would be that the priority dates of the water rights would be set back to be compensurate with the new and later priority dates would be subordinated through any intervening rights.

MR. McCAUSLAND: May I ask another question, then?

Not only was the line installed in violation of the State Lands Commission law, but in addition there were no existing water rights?

MR. THOMPSON: No, I don't think that's correct. First of all, I think that the matter of the line is in litigation. You're asking me to comment on litigation that I'm not handling.

MR. McCAUSLAND: I apologize for that.

MR. THOMPSON: Secondly, the impact of your decision would be as I've outlined it to you. I don't think that it's a matter before this Commission to rule upon the respective rights of the applicant as to water. That's in the jurisdiction of another agency.
CHAIRMAN CORY: Has that issue been adjudicated?

MR. THOMPSON: Has it been adjudicated?

CHAIRMAN CORY: Yes.

MR. THOMPSON: Not to my knowledge.

CHAIRMAN CORY: Has it been dealt with administratively by any agency?

MR. THOMPSON: Not to my knowledge. Correct me if I'm wrong. I'm not handling that part of this matter.

CHAIRMAN CORY: It seems like when I look at this that we're going to be sitting around maybe until 12/1/78 with this somewhere sitting around. I start to worry about whether or not our actions are going to start influencing other people and other decisions, be they the local community in Donner-Truckee or be they other agency boards, that we have somehow, some way blessed this thing. Or even worse yet, having to adjudicate that administratively as to what somebody's rights are or are not based upon some time frame.

And that's what I don't understand.

MR. THOMPSON: Mr. Cory, it takes time to develop with assurance a ground water source which would enable the Donner Lake water source option be ruled out. What we're asking you for today is nothing more than the preservation of the status quo while we in an orderly and reasonable and conscientious way proceed to develop in accordance with the schedule that you've outlined and in accordance with, as we
propose, periodic reports to you. The program --

CHAIRMAN CORY: But at the same time --

MR. THOMPSON: -- that', been outlined there --

CHAIRMAN CORY: But like you just told us, there

is some need on your side of the table of priority in terms

of water rights application somewhere else if we leave this

in the --

MR. THOMPSON: Well, that's correct. The priority
date of an application for water rights depends upon the date

of its file.

CHAIRMAN CORY: That's a filing for an illegal

pipe line before the Lands Commission, and it seems to me

somebody connected with water ought to be making that
determination.

Greg, are you involved in this case?

MR. THOMPSON: The current decision as to water is

not --

CHAIRMAN CORY: Greg, are you representing the Lands

Commission in this case?

MR. TAYLOR: Yes, Dennis Goldstein's case.

CHAIRMAN CORY: I hope he's young.

(Laughter.)

CHAIRMAN CORY: What are we giving away by letting

the application stay pending? Are we giving a priority

right before some other agency or just before us or do you
MR. TAYLOR: I don't know about the other agencies. We haven't considered that. As far as with this agency, you would have a priority right as far as this agency is concerned. You'd be preserving in place --

CHAIRMAN CORY: So that nobody else could come in and ask to put a pipe under the lake. Or if somebody else did, they would have priority over them.

MR. TAYLOR: It wouldn't be in the same sense as an oil lease, but he would have a pending application. So it would be an inequitable situation to try to give him first treatment. He wouldn't have a lock similar to an oil or geothermal situation.

CHAIRMAN CORY: But we would have from our side of the table -- you don't need to comment on this because it probably doesn't relate to how you view the facts -- but as the Lands Commission staff views them, they would have a priority for somebody who put in an illegal pipe line without our permit to begin with and we're going to bless them and give them priority over somebody else who wants to put a straw in our malt.

MR. TROUT: Mr. Chairman, I think that's really the succinct statement of the problem as we see it. One, the District has an application with the State Water Resources Control Board, the Water Rights Division; however, water
rights are a separate issue normally and usually one protects one's water rights before you come to the State and ask for permission to withdraw the water across through a pipe line on State lands. So it's really a separable issue.

The issue was raised about the Environmental Impact Report. And, again, that's a separable issue because the Water Rights people can continue with the existing EIR if they choose to continue the processing. They would have, by leaving this application in place, a priority for this location, the location that they filed on. However, one, it's a District application. The District is a public agency and public agencies have priority over private individuals in terms of issuing permits by the Commission.

So, one, the only person who could come in and disrupt them, if the application were terminated, would be another public agency. And it's unlikely that there would be another public agency that would have the same needs in this area because the established agency is the Truckee-Donner Public Utility District.

Mr. Cook said nobody stands to lose anything and yet by my calculations I've lost something close to four man months in the last year in terms of things I can do for Mr. Northrop.

CHAIRMAN CORY: I would like to think you're doing those things for the people of California.
MR. TROUT: So from that standpoint, we frankly are looking at Mr. Cook's chart and I think that I would agree that we're looking at something in 1978. And with that in mind and with the priority of things that the Commission has directed be done, we seriously question the validity of Option 2, although it has been presented to you and lean more towards supporting a recommendation or making a recommendation that the application be terminated. We frankly have difficulty seeing who would be heard.

CHAIRMAN CORY: Okay. Why don't you go ahead with your presentation and then we'll let the other side and then we'll let the Commission.

MR. THOMPSON: Mr. Cory, I think our presentation is very brief and our point is quite simple. What we're asking for is nothing more than a preservation of the status quo until the development of the ground water sources is completed. We are willing to and endorse the second alternative which would require us to report so that you can see the progress that is being made, so that you can evaluate it, and if we fail to be diligent, you can certainly act with that.

What I am concerned about is various groups of people who are philosophically opposed to development may exert pressure on you as they have on other agencies which
will lead to precipitous action being taken. There is no compelling need here to terminate this application today and nobody stands to lose anything, anything at all, if you simply follow that second alternative and that's all we ask you to do.

CHAIRMAN CORY: You are the attorney for Dart?

MR. THOMPSON: I am.

CHAIRMAN CORY: Is there anybody else in your group that wishes to comment on where we are because we're going to let some other people talk and then let you talk at the end to get another crack at us.

MR. THOMPSON: I think we have Don Strand, our Project Manager here to respond to any questions that you have concerning facts, concerning what's been done, and what is to be done.

CHAIRMAN CORY: Let me just give you some things that are going through my head so you understand what might be affecting my decision.

I'm sitting here with my staff guy saying he spent four man months of staff time already and you're saying that we got a lot of options here and at some point you're going to make a decision based upon rational business decisions and all that. And that's fine except our requirement to have you report to us seems like that's just going to cost us more grief and a problem that I'm not so sure we should be this
intimately involved. And then the other thing that's really bothering me, and I got to lay it to you cold turkey, somebody put a line in where they didn't have a legal right to put it in our opinion and why should we do anything for you.

FROM THE AUDIENCE: Hurrah.

MR. THOMPSON: Well, this is what we're up against.

CHAIRMAN CORY: I'm laying that out in the open so you can, at the close, if you've got some way to help me out of that box, because I'm sitting here why should we spend more State employees' time to accommodate a trespasser. And that's what's going through my head. Maybe I'm wrong. Maybe I'm seeing it wrong, but I want you to have the last crack at that issue. You don't have to respond now, you know, mull it over, but that's where I am. And I don't know where the other Commissioners are, but that's starting to bother me.

I mean, I'm overwhelmed at this. I wish I hadn't seen it. I just want it to go away and I'm sure you do, too.

MR. THOMPSON: Yes, we do, Commissioner. And what we are trying to do here today is to respond to the request that was made of us at the last meeting and we feel that we have done that. And we feel in fairness since we have done that, that some consideration should be given to our response and that our status be preserved and that's all we ask.

CHAIRMAN CORY: Okay. We have some other people that wish to speak.
Pat Sutton.

MS. SUTTON: I didn’t fill out the slip. This is the original. I would like to read this prepared statement and then I would like to submit to any questions that you have.

I am an elected director of the Truckee-Donner Public Utility District, serving since November, 1973, after the pipe line was in the lake. I do not own property at Donner Lake and I oppose the District’s alternative plan.

When I appeared before you on May 27, I had hoped that I would be back today to speak in support of the District’s position. Even a few days ago, when I asked to be on the calendar, I still hoped that some sort of compromise would evolve that I could support.

I believe that the Commission gave a clear message on May 27th, that the District and Dart and the people of the community should go back home to Truckee and get their act together.

I’m sorry to tell you that this has not happened and I base this on several observations:

The Board of Directors of which I’m a member was not involved in any consideration of the problems or the solution until two weeks ago. Whether thorough consideration of all the implications of this plan has taken place is questionable. And as a minority member of the Board, I do
not believe it has.

The community has had very little opportunity to review the problems or the solution and no effort was made by the District to invite consideration and input or to enlist public support.

Dart has acknowledged that its representatives participated in the creation of the flow diagram, which is the plan for ground water exploration as an alternative to Donner Lake water, but Dart's endorsement of this plan is conditional, despite what Mr. Thompson has told you. In fact, Dart's letter of July 31st, 1976, to the District, is not a commitment to do anything except as they please. And if Dart has come up with a more solid commitment, I am unaware of it and I picked up my mail at the District office before I left Truckee this morning.

Number four, -- that was one, two, and three -- this plan for ground water exploration does not speak to the options that are outlined in the staff recommendations. The game the District is inviting you to participate in could take two and a half years to play out. In effect, if you accept the District's proposal as a viable plan, you must grant an extension of time of two and a half years before the final disposition of the Donner Lake permit application.

Five. In 1970, the community indicated its opposition to the use of Donner Lake water when the
District's water rights application was first advertised. There is no indication that the community has changed its mind in 1976. There is no visible support within the community for either the water rights application or for the State Lands lease application.

The only people I know for certain that want these applications pursued are the three majority members of the Board of Directors and apparently Dart's representatives who have rejected, without even cursory consideration, the suggestion that I offered as a compromise on the ground water exploration on July 8th and again on July 20th.

Six. The Board majority refused to consider alternative ideas, and they appeared to regard today's hearing as an exercise in futility. This places their authorized representatives in a very difficult position and affects the credibility of some of the information and arguments that are presented in the District's behalf. These agents are obliged to try to justify the Board majority's position, but I hope that you will excuse the inconsistencies that appear in the verbal testimony that was given at your May 27th meeting, a letter purporting to represent the District's position which is attached to your calendar item, and perhaps what you are hearing today.

On May 27th, the District Engineer and the General Counsel used the argument that one of the important issues at
stake in this matter is a "loss of water right," quote, unquote. The District has no water rights at Donner Lake; it has an application for water rights which is pending with the State Water Resources Control Board and which has been held in abeyance until your deliberations are completed.

The District has not purchased water rights from Sierra Pacific Power Company at Donner Lake; it has a 1970 contract -- which was signed about a month before the contract that brings us to where they are today -- has a 1970 contract with Sierra Pacific to purchase water as a commodity from Donner Lake. Whether or not Sierra Pacific has rights to sell water to the PUD is really unknown at this time because Sierra Pacific's rights at Donner Lake have not been adjudicated.

Since I have been a Director of this District, I have sought clear answers about this issue through official channels. Apparently the answers that I seek will come out in the hearings and decisions if the District's water rights application reaches the State Water Resources Control Board.

Your decision on the question of the public interest to be served by the lease of State land at Donner Lake should not be determined on the basis of the loss of possible access to water which at this time the District has no assurance of obtaining.

Although this has not come to the Board's attention
in a clear manner, a new concern has been expressed just this week in a newspaper comment by the District Engineer. The concern he expressed is that the loss of Donner Lake as a source means a loss of leverage with Dart. The District lost its leverage, if it ever had any, with Dart last December, when the Board majority accepted an incomplete, deficient water distribution system some 65 miles in length without the source of water being assured.

Leverage is an illusion. It doesn't really exist. Any position of vulnerability the District has is due to the actions of past and present Directors who appear to have a more highly developed sense of responsibility to the developer's pocketbook than to the welfare of the community. Despite a cooperative Board majority it could depend on, Dart filed a hundred million dollar claim against the District last month regarding water problems that Lakeworld/Dart representatives actively helped to create by their own manipulation since they first arrived in town almost seven years ago.

And in that manipulation I include their desire to invest their money and proceed with the construction of the pipe line into Donner Lake knowing that a permit to lease State land would be required.

A Dart spokesman appeared before you on May 27th and expressed the opinion that it would be imprudent for the Donner Lake source to be cut off as an alternative to ground
water before the source has been determined. I believe it would be imprudent for you to allow this charade to continue any longer, and I ask you to terminate the permit application. And I would like to answer any questions.

COMMISSIONER DYMALLY: How many members are there of the Board?

MS. SUTTON: There are five. And each of them is elected by the voters within the District.

COMMISSIONER DYMALLY: Three are for the project?

MS. SUTTON: Three is the majority.

COMMISSIONER DYMALLY: Are there four for it and you against it?

MS. SUTTON: No. Three for it; two against it.

COMMISSIONER DYMALLY: I take it you campaigned against this when you ran?

MS. SUTTON: That is right.

COMMISSIONER DYMALLY: Has there been a referendum on this?

MS. SUTTON: No, not on this matter.

CHAIRMAN CORY: Okay. Any questions by the members?

MS. SUTTON: No questions. Thank you.

CHAIRMAN CORY: Thank you.

Marge Adkerson.

MS. ADKERSON: I am Marge Adkerson and I'm Secretary of Plug-the-Pipeline Committee, a Committee appointed
by the Donner Lake Property Owners Association, some 420 --
How many do we have now, Patty?

MS. McClAIN: Four hundred and sixty-nine families.

MS. ADKERSON: Four hundred and sixty-nine --
we've grown a bit more -- 469 families, the majority of whom
are tax-paying, non-voting people of this area.

COMMISSIONER DYMA LLY: How come non-voting?

MS. ADKERSON: They are part-time residents. They
pay taxes there. They support the schools. They support the
community and have so little voice in what goes on there.

CHAIRMAN CORY: Do you live there yourself?

MS. ADKERSON: I am living there now since
retirement, since you've started signing my checks as an
ex-school teacher.

(Laughter.)

MS. ADKERSON: I am living there.

CHAIRMAN CORY: I hope they're coming on time.

(Laughter.)

MS. ADKERSON: They are. Bless you. I hope they
keep coming on time.

COMMISSIONER DYMA LLY: We have to change that to
permit the Lieutenant Governor, who's a former teacher, to
sign those checks.

(Laughter.)

MS. ADKERSON: I had a very short prepared text here,
but you have asked so many questions I'm going to try to
field a few of those things. And it's going to be impossible
to bring you up-to-date from 19 and 70 with this mess --
and I'm going to lay it on the line -- with this mess because
of the inconsistencies that have existed in the behavior of
Dart Industries in the interim of this.

I am sorry to disagree with the attorney from Dart
about how they concur in the present plan. I'd like to read
you a one-paragraph letter from the President, Sid Karsh, of
Dart Resorts, Dart's land-arm subsidiary.

"Gentlemen, This is to confirm that Dart Resorts
consulted with Mr. Cook in respect to the flow diagram
attached to his letter of June 25th, 1976, to James Trout,
Manager of State Lands Division, and concur with it." Period
there, but he goes on to add one more sentence.

"Dart intends to proceed in accordance with the
diagram except as new information or unanticipated future
events may indicate that changes should be made." Totally
negating the whole affair as far as I'm concerned.

As you say, Mr. Cory, it's come across to me, he
says, we'll do it as long as it's convenient to us.

Now, I base my charge that that's what they mean
on past records. Let's see, I've got it here in order some-
where. Their track record for deciding on new directions of
action is quite excellent.
Number one, they worked for purchase of airport well for months, almost a year, only to suddenly drop that alternative as a water source. Then they quickly came up with alternative plans A through I, dealing with eight or nine possible routes for obtaining water. Then they went in a new direction when Dr. Sharp, their hydrologist, who has quite a thick little book out, and plainly states that there is water everywhere in that district, you only have to drill for it. There are areas of very high probable yield, but those areas do not happen to lie immediately adjacent to already installed transmission lines. So Dart drills the sales office well which is very close to the already placed 18-inch transmission line from Donner Lake.

Now, these areas of probability were changed by Dr. Sharp just this past year to include a higher rating for sales office. So Dart immediately drilled a sales office well. I asked Dr. Sharp what his reasons for changing those probability lines, and he gave me a great deal of geological talk which I have no way of combating, ending up with the fact that he had found a pipe sticking out of a certain portion of land which indicated that there had been a well in that area at some time, and I'm quoting.

Going back to how Dart darts about, they then changed Dr. Sharp's probability table to give higher ratings and then they started drilling the sales office well.
Now, this well has not been pump tested in any manner. And according to a statement made to me, evening before last by Mr. Cook, he has not seen any moisture out of that hole. And, admittedly, it is a deep well, but if they're in as favorable a strata as they have claimed for months now, it seems to me that that core might have come up with a bit of damp something on it.

I asked Mr. Strand, the Project Manager, night before last, when they were going to get Sage, the drill company, back on the well. He said, "Well, we hope by the end of the month or sometime in August." And it's going to take two full months before they can finish their pump testing. So they're already behind their schedule on the flow chart, and I'm sorry you gentlemen didn't get the nicely colored one that I got.

 Everywhere that you see a change of color is decision-making time. And I would refer you back to Mr. Sid Karsh's letter in which they can change their minds any time decisions are necessary.

I'd like to address myself now, please, to this statement that I have heard made time and again and I'm -- do anything, but don't ignore me -- and I'm being ignored in this situation when they say no damage to anyone. Not only you, Mr. Trout, have put out man hours on this. Plug-the-Pipeline has spent over $2,000 in expenses alone, let alone
the hundreds of man hours we have dedicated to it. And we, being a committee of 12, our first honest effort at this was when we combated the Environmental Impact Report that Dart bought through Jones and Stokes. And some of you may have seen the Plug-the-Pipeline's counter Environmental Impact Report.

I've done a Master's thesis and I did the equivalent or more in six weeks in putting together a rebuttal to that Jones and Stokes document. So I feel that I personally and these other committee members are being worked to death trying to ride herd on a project that's trying to get out of hand.

Secondly, as long as that illegal pipe line lies on the bed of Donner Lake, it is a personal threat to Donner Lake; and, secondly, it's a financial threat to the property owners around Donner Lake. And our 460 members of the Property Owners Association does not represent even half of the people who own property adjacent to Donner Lake. So our property values are threatened as long as that pipe line is in the lake.

CHAIRMAN CORY: What do you mean by that?

MS. ADKERSON: Well, as long as it's there, there is the possibility that Dart is going to be able to use it. At least they seem very positive of it. That's the only reason I can see for the justification of --
CHAIRMAN CORY: Your fear is that if they start taking water out of there, it will diminish the water level and thus the value of the property in the area?

MS. ADKERSON: Oh, definitely.

COMMISSIONER DYMalLY: Would not the corresponding development enhance your property?

MS. ADKERSON: The corresponding development of Dart, you mean?

COMMISSIONER DYMalLY: Yes.

MS. ADKERSON: No, it's way over the hill.

COMMISSIONER DYMalLY: I see.

MS. ADKERSON: Maybe you're not familiar with the --

COMMISSIONER DYMalLY: No, I am not.

MS. ADKERSON: Well, the geographic situation -- As I said, it's awfully hard to bring you up six years of proceedings -- the geographic situation is that Dart bought a small wedge of property on the east end of Donner Lake. And from this wedge of property, they drove their pipe line into the lake. In fact, this is part of the basis of the Class Action suit Harold Berlinger and the landowners of Dart have against Dart at this point, the lack of amenities. And that beach is certainly not large enough to handle the anticipated number of people who would be there if they sell out their lots as anticipated.

So my personal feeling is that they may have
selected that site and purchased that site for reasons other than a beach, cabana, and boat launching property. That's my personal viewpoint.

I might be more helpful to you if you have any questions that you would like to ask. Otherwise, I'll say that it's not for lack of being asked to address themselves to the issue that the Board of the Public Utility District did not respond to your request, Mr. Cory, for the reasons that the request of extension of time should be given because of public benefit, because Plug-the-Pipeline spent $240 right here to remind them that this is what they were supposed to address themselves to. We sent a personal carbon of this ad to each of the Board of Directors. So they had the information in front of them. They have chosen to ignore it.

And this flow chart that is in front of you will benefit, number one, Dart, possibly the District in the very distant future because -- Mr. Cook speaks of the recharge of Subarea G, that simply gives the District a little more knowledge, a little more refined knowledge of what Dr. Sharp has in his book. So that would be a future benefit to the District.

Right at the moment, the District has more than sufficient water for its customers other than Dart's sales program. So I say that to leave the application open is
simply to benefit a commercial concern at the expense of the taxpayers and property owners of Donner Lake.

CHAIRMAN CORY: You talk about this wedge of property, can you give us some indication of where the development of this pipe line would serve, is located?

MS. ADKERSON: How many miles does it extend?

MR. COOK: I can draw you a little sketch on the blackboard if it would help.

CHAIRMAN CORY: Yes.

MS. ADKERSON: It's some five to eight miles away.

MR. TROUT: Mr. Chairman, I think if you and the Commissioners would look at Exhibit A in your calendar, following page 56, there is a reproduction of a governmental topographic chart. And the arrow indicated by site is the corner of the lake where the wedge is located and where the pipe line is on the bed of the lake. The basic Dart development is to the north of that in the areas of Sections 5 and 6 that you can see there in that general area.

CHAIRMAN CORY: Now, there is a dotted line as you go north, currently north from the lake to get to Sections 5 and 6.

MR. TROUT: This is a fairly old quadrangle sheet and that's a prior, existing dirt road. There is now some 2700 lots up in there, I think. Isn't it somewhere in that neighborhood?
MS. ADKERSON: Six thousand.

MR. TROUT: Six thousand lots.

MS. ADKERSON: That's the reason they need so much of Donner Lake or want so much of Donner Lake.

CHAIRMAN CORY: But there are three dotted lines traversing. Is that a dirt road?

MR. TROUT: That is a symbol for a dirt road on the Government Quadrangle Chart. There are now paved roads, a ski run, a restaurant --

CHAIRMAN CORY: Not in 5 and 6, below 5 and 6 running all the way across the page.

MR. TROUT: That's the power line.

CHAIRMAN CORY: My recollection is that Interstate 80 runs somewhere across.

MR. TROUT: It doesn't show on this quadrangle.

CHAIRMAN CORY: Where would it be? The development property is to the north of the freeway?

MS. ADKERSON: Right, it is.

CHAIRMAN CORY: And beyond the ridge.

MS. ADKERSON: And the transmission line has been laid underneath the freeway there in an existing culvert which was asked for when the highway was made.

CHAIRMAN CORY: You know roughly where it is then, okay. Thank you.

District, you're bleeding. You aren't dead yet, but
you're close.

MS. McClAIN: May I speak?

CHAIRMAN CORY: If somebody else wants to speak, we'll --

MS. McClAIN: And I would like to address myself not only to the Board, that I consider a very hard-working Board, but I would like to introduce myself as the instigator of your whole problem. Mr. Cook and Dart, my name is Patty McClain. I am the lady that wrote the very first letter to Mr. Trout as Secretary of the Donner Lake Property Owners Association, calling attention to the fact that there was work going on during the night and through the ice.

My husband and I were driving by the lake in May. We thought a plane had crashed in the lake. We stopped to investigate. I walked up to a hardhat of Sub-Terra and was ordered off the land because he would not show me, posted in a conspicuous place, a permit. I asked a stupid question and this is why we've all been working for four years.

Now, the question I would like to state today is: If this Board has any concern about the people of California, I'd like to remind you of Dan Cook's statement to the Reno Gazette on which I have challenged him enumerable times. He has never denied it. His statement was at the inception of this whole thing, quote, "All they'll get is a slap on the hand." And I want you to know, Mr. Cook, that from the hearing
that took place in Truckee till today, to the book that I am writing entitled "The Rape of Donner Lake," which has been purchased by a publisher, I intend to quote you. And I hope that I make a liar out of you on that statement.

This Committee is having notes taken today and I am writing the book. I would like to remind you of one other thing. The Department of Transportation wrote me a letter stating -- and this will also be printed in the book -- that the passage for connection of the Interstate 80 was pushed through their department without their knowledge that there was any pending litigation. I contend that Dart knew it. Mr. Cook knew it. Mr. Cook knew he had to have a permit. It's shown there in the background. And we have before us what is tantamount to a criminal act against the State of California.

Their toe hold lots on the shores of Donner Lake does not serve the recreational needs in any way, shape, or form of 6,000 lots with an average of four people per family or 24,000 people. Children and older persons who would have to be bused by shuttle to and from that site, there is parking for not more than 60 cars.

In addition, they have put on their so-called recreational facility beach, their toe hold a pumping tank and an out building which has got to be the most god-awful, ugly building I have ever seen in my entire life. I have sent a
picture of it to Business Week magazine who saw fit to cover this. It was quoted in an article, "When the Land Boom Backfires." And I countered that with the fact that Business Week at that time -- and this will also be in the book -- Business Week at that time quoted only the large corporation people. I wrote them a letter and I said here I am, I'm Mrs. Housewife, talk to me if you want to get some real facts.

I will also tell you that Dr. Wayne K. Smith, who boasts of having been a one-time friend of Henry Kissinger, challenged my Republican blood badly when he transported in front of this ugly building which now has one tank in front of it and if this application is approved will have to have four additional tanks added to it, to pump out 4,000 acre feet annually, he transported at the wrong time of the year a number of our precious trees. Now, I am not an ecologist, but I'll be damned if I can see why Dr. Wayne K. Smith who is a very highly paid man for Dart, could be spending his time racing up to Truckee and supervising the planting of trees if we didn't have him on the run. And I'm proud to say that I was nipping at his heels every inch of the way.

(Laughter.)

MS. MCCLAIN: I own a six-bedroom lodge at the end of Donner Lake. That lodge is going to be shown on nationwide television this Thanksgiving Day. It was the scene of the
filming by Charles Schultz and Corti Films of Bob and Dorothy DeBolt of Piedmont and their 19 crippled children who use my house every year for their summer vacations. I volunteer and offer that house. This year when the children go up they won't be able to fish off the pier because God saw fit to give us a drought year. But I can tell you that if on top of that Dart had been permitted to pump four more acre feet, we would have had a very difficult time justifying to the people who are going to see this picture, that what exists there as you drive by this year and maybe next year, if we have another drought year, is a lake at all.

Dart and the PUD, the Truckee-Donner PUD, the existing Board at the time who made the deal with the Nevada County Board of Supervisors -- they also dealt with Lakeworld at that time buying the contracts over -- showed a lack of interest in the people of the State of California by processing and progressing without permit.

We have, as a matter of fact, in your text, a letter addressed to you, Dan Cook, stating that a permit was permitted. And I contend that when Dart gets finished with you, you may not even have a job. But I'll tell you one thing, you're fired and I admit that and I'll fight with you at any time.

(Laughter.)

MS. McClAIN: I would like to close in saying please
to this Committee. I know this has been an emotional plea.
I've been accused of being emotional.

(Laughter.)

MS. MCCLAIN: I was so emotional I am boasting of
the fact that I will be printing in my book a letter from
Justin Dart, dated London, stating to me that he didn't
normally let letters go unanswered, but he felt that everything
had been said to me that conceivably could be said and,
therefore, he was going to say nothing. And in that letter
he as much as told me you little devil, you're winning.

I just want to remind you one more time: Don't
let this happen at this Committee. Don't let Dart or anybody
else go into the few remaining glacial lakes we have in the
State of California and then have their engineer come out and
say, all they're going to get is a slap on the hand. Please,
gentlemen, write the last chapter of my book so that Donner
does not lay raped and I don't have to be her voice.

COMMISSIONER DYMALLY: The only point you missed
in your thesis is whether you were going to support Reagan
or Ford.

(Laughter.)

MS. MCCLAIN: Mr. Dymally, you might be
interested to know, you will be extremely interested to know,
that there is a political chapter in this book --

(Laughter.)
MS. McCLELLAN: -- dealing with the fact that when

now Governor Jerry Brown was running against Flournoy, I

challenged Mr. Flournoy to step down as Chairman of the

State Lands Commission feeling that since Justin Dart had
donated $4,400 to him in his campaign, that he could not be

without prejudice. I have two letters that will be printed

in this book signed by Houston Flournoy: One in which he
denies that there's a problem at all. One an entire year

later where he admitted to me that he and Justin Dart were

personal friends and that perhaps I might be right in my

assumption that this was why good old Justin felt he could

keep on raping Donner Lake.

Thank you.

MS. ADKERSON: She votes democratic now.

(Laughter.)

CHAIRMAN CORY: Moving right along, yes, sir.

MR. BEARDSLEY: I'll be brief. I'll try to be

very quick here. My name is Frank Beardsley, a property

owner at Donner Lake, who lives there six months out of the

year. I'm a retired engineer for PG&E.

I would like to comment on one thing that Pat

Sutton said. She said there was a question about the

legality of the ownership of that water. In the large EIR

which has been referred to, Jones and Stokes, in the back

there is a, to Appendix C, is a copy of a deed from -- Wait
a minute, I'll read it off the top here -- from the Donner
Lake Company to the Sierra Pacific Power Company, and the
Truckee-Carson Irrigation District. Appendix D is a copy of
the contract of sale between the Public Utility District and
Sierra Pacific Power. Now, that was not signed by the Carson
Irrigation District nor is that point covered in this EIR.
So it might leave a question, is that even a valid contract
that they claim is a water right.

I had a number of things to say, but I'll hurry
along.

The question was asked about the effect of the
water draw out. Now, this report -- and these people did
a very professional job, I'll say that. There are voluminous
tables back here to show the effect under the withdrawal of
two different volumes of water. We're concerned with the
4,000 acre feet in this case. That the maximum draw-out would
be about two feet. The great fault with this whole thing is
that they only use 13 years of water records. They took
1961 as a dry year, which was not very dry. I had records
from the PG&E, records for a hundred years,
and we pointed out in our Environmental Report that there were
12 years that were drier than 1961. I had no idea that 1976
was going to come along and add one more year to it.

The water right now, last night, is three feet
below the maximum level. Now, had they been drawing, by the
end of August it would be down six feet. Now, that lake
cannot stand to draw down the water no more than about a
foot and a half before you start to destroy its esthetic and
recreational values.

CHAIRMAN CORY: You're opposed, then, to us
continuing the application, sir?

MR. BEARDSLEY: Absolutely.

CHAIRMAN CORY: Okay. I think your side has made
a very good case and I think by all rights we should let the
ox have a final shot at it before they're gored.

Would you spell your name, please?

MR. BEARDSLEY: B-e-a-r-d-s-l-e-y, Frank D.

CHAIRMAN CORY: We have one other person apparently
who wants to speaks. And you better take the last shot
because it gets wilder as we go on.

MR. CHRISTENSEN: My name is Bob Christensen. I'm
a member of the Board of the TDPUD. I didn't come here to
speak, but I felt that I ought to say something.

One thing is quite obvious, that the Plug-the-
Pipeline Committee is very well organized. The people in
town are not organized. But the other two members and myself,
the so-called majority, ran as a unit and we were elected.
Therefore, I think we do speak for the majority of the people
in Truckee.

We do not have any connection with Dart at all, as
Mrs. Sutton perhaps suggested. We are only interested in resolving the problem. And one fact that you might be interested in is the so-called pipe line would only draw a maximum of between three and 400,000 gallons a day out and Sierra Pacific drains a million three hundred thousand out a day.

Thank you.

CHAIRMAN CORY: Okay.

MR. BEARDSLEY: May I answer that, please?

CHAIRMAN CORY: No. Sir, really the amount of water coming out is not relevant to our discussion. I think, if I read the Members of the Commission, I think they probably know more about this than they probably care to. And our bottom line is: Why is there an illegal pipe line there and why should we do anything for somebody who trespassed on our land to put in an illegal pipe line? I think there might have been more staff time spent in tracking this problem, why don't we just kick it out and you guys go peddle your own wares and do what you want.

We'd like to hear from you why that view isn't if I'm assessing my fellow Commissioners correctly.

MR. McCausland: I would like to make one brief statement, if I could.

I understand the motion to say that we are terminating the application without prejudice. And I think
that that law is totally clear on that matter that when you're ready to know what you're going to do for sure, you come back and file for a permit and it will be considered in due course. There's never been anybody before this Commission, or any other Board that I serve on as an alternate, that ever willingly participated in an activity with the State. And for somebody who suddenly wants the State to be a partner in this activity while it's in litigation, doesn't make me comfortable at all.

MR. THOMPSON: I just have a brief closing statement.

Gentlemen, I think that you have heard from an active and determined group of citizens. I think that the majority of the Board of the Public Utility District, who is the applicant here -- the Public Utility District, not Dart. I want to keep that clear -- speaks for the majority of the community who elected them. I think that you have heard a number of hysterical attacks directed to, if they're directed to anything, to the alleged merits of this controversy. While what we have before you and all that we have requested you to do is to preserve the existing status quo until an appropriate time to decide the merits.

Now, the position that Mr. Trout has taken is that staff time is involved, and that is certainly true. It is also true that if you take the action that these opponents
of my client want you to take, that what you will have done
effectively is to throw that staff time away. And we don't
see any reason for doing that. And we think this action that's
being urged on you is ill-advised. We feel that this is not
an appropriate time to preclude any options and we promise
to you to work diligently toward arriving at a point of time
where that can be done.

I think that the letter that Ms. Adkerson, I
believe it was, read to you, while I disagree violently with
her interpretation of it and the editorial comments she made
on it which were totally unfair, deserves that in careful
consideration that letter should be in the record and I trust
that it is.

I think that she submitted it; therefore, I don't
need to submit it again. That letter speaks for itself and
does, indeed, contain a valid commitment on my client's part,
subject only to contingencies that are set forth there and
I think they're clearly set forth.

All we're asking for is a preservation of the
existing status. Now, you've asked us why you should grant
that to us. Well, perhaps that's a fair question. Perhaps
a better way of phrasing the same question is, why shouldn't
you. And the answer is, there is no compelling reason at all.

CHAIRMAN CORY: Let me suggest to you a question
you haven't addressed yourself to that I thought I put very
explicitly. Somebody there put a pipe line into that lake without legal authority to do so. Now, it was either the District, the contractor for the District, or your client. And it seems to me you come to us with unclean hands, sir. And do you want to disabuse me of that fact, because I'm sitting here of the opinion -- and it got worse when somebody said it was done in the middle of the night --

MR. THOMPSON: Yes, there's a lot of allegedly factual testimony, things in the nature of testimony.

CHAIRMAN CORY: Who put the pipe line in there?

MS. MCCLAIN: Sub-Terra Contracting Company at their instruction.

CHAIRMAN CORY: I'm asking you, sir.

MR. THOMPSON: I believe that that insofar as that statement is accurate, that's true.

CHAIRMAN CORY: Your client hired a contractor to have it put in?

MR. THOMPSON: I'm not going to -- I not only come before you with hands, I come before you with hands that are tied. This matter is in dispute. It's in litigation. It's not appropriate for me to comment upon that at this time.

I'm not handling that and it's not a fair question.

CHAIRMAN CORY: If you don't want to get into it because of litigation, that's fine. But I'm telling you that because that exists, it's weighing overwhelmingly in my
decision. I don't know how it's affecting the others. But if you want to comment, I'm willing to hear it.

MR. THOMPSON: Well, to this extent, sir, the litigation has proceeded to a point where there has been an agreement as to its status, as to preserve the status until a decision is reached by your Board on the application. We feel it would not be necessary or desirable from anybody's point of view to disturb that status quo by threatening to remove an existing pipe line which has been agreed is not to be used until the matter is determined. We feel that there's no need to do that and we think that that danger is inherent in your decision. And that, in fact, Mr. Cory, is a very valid reason why you should grant our application to keep this matter pending. That's an entirely appropriate thing for us to request.

It's only a preservation of our rights and the status quo.

CHAIRMAN CORY: Okay. Before I entertain a motion, my views -- I want those people who represent the homeowners' group, because maybe they can perceive some of the things that they don't like this Commission is doing in a little better light. I'm going to entertain a motion that we terminate the application that Mr. Dymally indicated that he wishes to make and I think that's the wish of the Commission.

Mr. Dymally moves, Mr. McCausland seconds that we
terminate the application without prejudice. But I want to make this point to those of you who are property owners on that lake who have any kind of structures, wharfs, piers, what have you, that don't have leases, the reason we want those leases is to preclude these kinds of problems. And a lot of homeowners get very upset of having to have that red tape, but the very reason we have it is to avoid spending hours sitting here haggling over this.

We have a motion; we have a second.

All those in favor signify by saying aye.

(Ayes.)

CHAIRMAN CORY: Motion is carried.

MS. MCCLAIN: Mr. Cory, one little question.

I hope you would also entertain requesting that this pipe line either be plugged with Gunite so that it cannot be used in the future or totally removed, as well as the pump building and the tanks.

CHAIRMAN CORY: At some point we will deal with that issue. At some point today we've got to get lunch.

(Laughter.)

CHAIRMAN CORí: Okay. What is the wish of the Commission? Those of you who are exiting, if you could do it quietly. We have several other items that we have to try to get to.

We completed Item 21.
Item 22, authorization to initiate proceedings regarding adoption of the regulation to implement the Coastal Plan. This is conditional only if legislation --

EXECUTIVE OFFICER NORTHROP: Well, it's a hearing only based on --

MR. McCausland: Mr. Chairman, I have read the staff report. I recommend that the staff be instructed to initiate proceedings regarding the adoption of the Coastal Zone Plan as it applies to this Commission.

CHAIRMAN CORY: Without objection, such will be the order.

Item 23, approval of Gas Sale Agreement between Pacific Gas and Electric Company.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, this is a new two-year contract. When you look at it, dollar twenty per Mcf, when you look at it in the light of the fact that the Occidental Petroleum has a higher price, a one thirty-three, but it's in litigation. It probably will last for another 18 months. And together with that and the fact that gas is being requested, it's a little --

CHAIRMAN CORY: Okay. Is there a representative from PG&E here?

MR. DeYOUNG: I'm a representative from PG&E. My name is Phil DeYoung, but I'm here only as regards to our land matters. I don't believe we have someone here to speak
to that.

CHAIRMAN CORY: Yes, sir.

Could you come forward, please. I had raised a question yesterday with some people who brought this to me, I guess, your intermediaries. The question of instead of something that nets out the same dollar figure to you instead of writing the contract for two years at a dollar twenty per Mcf, if we approve it at a dollar thirty-one per Mcf, less compression charges not to exceed eleven cents per Mcf, which will net you the one twenty, would that be acceptable to PG&E so we can approve this and have this contract issued.

MR. CAMPBELL: I think the problem with that, Mr. Cory, is there are changes planned in compression facilities at the Rio Vista field, and I am not intimately familiar with the compression facility out there, but it's my understanding that the present charges there are going to increase.

MR. FINICAL: Mr. Cory, I'm Tom Finical of Standard Oil Company. And I talked yesterday afternoon to Mr. John Sproul. He's the Vice President of Gas Supply for PG&E. I posed the question to him. And after several hours of study, he came back and said that, no, PG&E would not be willing to sign a contract with a dollar thirty-one primarily because they are conducting simultaneously negotiations with about 89 or 90 different producers. And each of these
producers is endeavoring to get the highest price that PG&E will agree to. And they feel that if they have a variance for the Rio Vista contract, then they would have to abide by that with all of their other contracts and with all the other producers.

CHAIRMAN CORY: What I'm inclined to do is give you tentative approval for a contract at the one thirty-one, less compression charges and put the burden on them if they want to say no. To see what they do, if they want to come back in next month and argue.

Now, what's that do to us if we do that? What happens if they're a month without a contract? Do you deliver gas at the old price or what?

EXECUTIVE OFFICER NORTHRUP: We would make the condition be retroactive without prejudice.

CHAIRMAN CORY: What would that do to you, Tom?

MR. FINICAL: We would continue to get 75 cents until we get a signed, fully executed agreement with PG&E, and that would just delay that one month. But I believe that PG&E will not voluntarily agree to the dollar thirty-one.

CHAIRMAN CORY: I think they will. The price is going to be too high for them is what I'm saying to you. And I'll get on the phone and see what I can do to convince them of the propriety of the proceeding, if that does not adversely affect you in a major way. If not, the alternative
would be a special meeting on this one item. Is that okay, Sid?

MR. McCUSLAND: No objection.

MR. FINICAL: Mr. John Sproul, Vice President of the Gas Supply is the gentleman to contact.

CHAIRMAN CORY: Okay. I will entertain a motion now for tentative approval of the one thirty-one, less eleven, with the understanding if PG&E rejects that, we'll call a special meeting of the Lands Commission so we can try to get it hammered out, so we don't go the whole month.

Mr. McCausland moves; I will second.

Without objection, such will be the order.

EXECUTIVE OFFICER NORTHROP: Would the gentleman from PG&E please identify himself to the reporter?

MR. CAMPBELL: Campbell, Colin, C-a-m-p-b-e-l.

CHAIRMAN CORY: Okay. Item 24, 49-year public agency permit.

Does anyone in the audience wish to address themselves on this item?

MR. McCUSLAND: Move adoption.

CHAIRMAN CORY: Without objection, Item 24 will be adopted as presented.

Item 25, PG&E right-of-way for Montezuma Slough, Solano.

Anybody in the audience who wishes to address
themselves to this item?

MR. McCausland: I have one question on it, Mr. Chairman.

I notice that there was no reference made to the wheeling requirements which we've been discussing and I was wondering what the status of that portion of the proposal is.

MR. HIGHT: Yes, Mr. Chairman, we have been investigating the legality of imposing such a requirement. And tentative review indicates that such a requirement would be legal. We haven't completed our review. I think it would be possible to approve this item with the recommendation or with the condition that wheeling language be added to the item.

MR. McCausland: Move adoption.

Chairman Cory: Mr. McCausland moves as staff recommends putting the wheeling thing in. If not, you'll bring it back to us.

MR. McCausland: I move it as recommended without the wheeling.

Chairman Cory: Without the wheeling.

MR. McCausland: I'm sorry, I move it as is.

MR. HIGHT: As is without the wheeling?

MR. McCausland: How do you have it now?

MR. HIGHT: Right now there is no wheeling.

Chairman Cory: You want it approved without the
wheeling.

MR. McCausland: All right. What you just said then in your statement was you think you can package that and that it's within our legal --

Chairman Cory: Right.

MR. McCausland: All right, then, I'll make the motion.

Chairman Cory: With the further caveat that if they have problems with that, they'll bring it back to us rather than --

MR. McCausland: I thought I heard you asking for more time.

Chairman Cory: All right. Without objection, Item 25 will be approved with the wheeling requirement added.

Item 26, applicant Grace Christiansen, 11-year commercial lease, Seven-Mile Slough.

Any questions?

Anybody in the audience who wishes to address themselves to this item?

Without objection, the item will be approved as presented.

Item 27, application of Tom and Jo Ann Snyder.

MR. Christiansen: One moment, sir.

Chairman Cory: Oh, okay. Item 26?

MR. Christiansen: Item 26.
CHAIRMAN CORY: Without objection, we'll rescind the action whereby that was approved, that lease. And you are, sir?

MR. CHRISTIANSEN: Carroll Christiansen, husband of Grace E. Christiansen.

I just wanted to make a short statement here. I'd like to request a monetary adjustment in my lease compatible to other marinas in the area. I understand there's one or two lawsuits in the courts at the present time objecting to the increase that we received on our State land leases. I had no alternative but to sign mine because as of April 26th, I would have been without a lease.

CHAIRMAN CORY: Staff, what is the status of litigation?

MR. HIGHT: Mr. Chairman, there is no litigation on Seven-Mile Slough. The only litigation currently is on Sacramento River. I think it's staff's opinion that the rental for half an acre in this area at $488 an acre is fair and just in that area.

CHAIRMAN CORY: What were you paying previously, sir?

MR. CHRISTIANSEN: A hundred and sixty-two fifty. This is exactly a 300 percent increase. In my former lease it said reasonable increase. This may be the State Lands' idea, but I don't think that's a reasonable increase.
CHAIRMAN CORY: So you were concerned that the increase of 488 you do not consider reasonable and would like an adjustment.

Do you have any --

MR. McCAUSLAND: I have a question, Mr. Chairman. Did you pay the 162.50 for the entire eight years from April 28th, 1968, to this time?

MR. CHRISTIANSEN: Yes, sir.

MR. McCAUSLAND: Does it seem reasonable to you that rental rates in 1968 of 162.50 did not escalate at all during the eight-year term of the lease? Do you believe that the value of the land in Seven-Mile Slough appreciated substantially during that eight-year lease?

MR. CHRISTIANSEN: Are you talking about the land under the water that I rent from the State?

CHAIRMAN CORY: Yes.

MR. CHRISTIANSEN: That it increased in value? I don't see --

MR. McCAUSLAND: The desire in the Delta.

MR. CHRISTIANSEN: In 1968, when I started business there I charged my customers $49 a month rental. And, of course, as you know, increase in insurance rates, I've had to increase now to $65 to cover my other increases including this State Land increase now.

CHAIRMAN CORY: How many slips do you rent?
MR. CHRISTIANSEN: I have 12. I have a very small operation. I have no land where to store, liquor place, restaurant or anything like that to increase my income. All I can use the land site for is a parking facility and restrooms.

CHAIRMAN CORY: The increase represents about three dollars. And during that same period of time for other reasons you've gone up from 49 to 65?

MR. CHRISTIANSEN: That is correct.

CHAIRMAN CORY: And to absorb the full cost of this you'd have to go to 68.

MR. CHRISTIANSEN: I lost four customers this spring when I went up to $65. I went from 60 at that time to $65. However, I'm not saying that this is reasonable or is not reasonable, but as I understand it, one of the other, possibly two other marinas in the area -- I'm speaking of the area, not Seven-Mile Slough expressly -- that they are in the process of preparing Court action in regard to their rent increase. And all I want you people to tell me, yes, if somebody else gets a lesser rate, I'm entitled to it also. Is that unreasonable?

CHAIRMAN CORY: You're saying that if they prevail in their case, you'd like to benefit?

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, we're facing a situation, an attempt to put it together with the
River Advisory Committee or the liaison committee in which we're attempting to evaluate because it's been pointed out to the staff that it's not possible for every marina to -- some marinas have a much better location because of nature and so forth, the locations are more favorable or less favorable, and so we're attempting to come to grips with this problem and with the establishment, at least staff has recommended to the Commission, the establishment of a River Advisory or River Liaison Committee and which will be represented by both the private sector and government in an attempt to work this out.

So as far as that matter, the staff counsel tells me there is no litigation pending where rental rate is the issue. There are some litigation pending, but not with this as the issue. So we have no litigation based on dollars, no.

CHAIRMAN Cory: Whether or not we own anything?

EXECUTIVE OFFICER NORTHROP: It is where the boundary line or something of that nature, but not our right to it. But it's not involved in dollar value.

CHAIRMAN Cory: But it is theoretically possible Mr. Christiansen knows of somebody who's going to sue us tomorrow on the basis of rental, but it's awfully hard for us to act accordingly. I would think that if somebody decided we were acting illegally or contrary to our powers, that you would have the right to come before this Commission commensurate with the settlement of some, as yet, unfiled,
unknown litigation. And if somebody says we're wrong and
it's been finally adjudicated, I would think the Commission
would look favorably upon equality of treatment.

MR. CHRISTIANSEN: This is all I ask.

MR. McCausland: I agree with the principle, but
I don't know I'm sure what it means.

CHAIRMAN CORY: The principle, but I would think
where we are that we don't have a specific lawsuit on rate
that has yet been filed, amending this lease would only
encourage such litigation. To say if anybody bothers to sue
we'll come back and adjust your rate, that would make a lot
of sense from our side of the table. But, if, in fact, we
should lose the lawsuit based on rate, the burden would be on
you. But if you filed, I, for one Commissioner, would be
inclined to make sure that we conformed to the law in finding
with the Court with your lease as with any other without
necessitating you to file suit and just waste time on the
thing and money on lawyers.

MR. CHRISTIANSEN: Well, I have no facts on this
other, shall we say, possible lawsuit. Fairly solid rumor.
Now, this I would have to check into, but, as I say, all I
wanted was fair treatment with what the other people in the
area were paying. And as much as mine was up before theirs,
I had to sign the agreement to not be in violation of no
agreement with you people.
MR. TROUT: Mr. Chairman, the significance of the April 28th date is that that was the date of the longest lease at the old rental rates. And all leases in this general area have been adjusted to the same basic per-acre charge as of that same date. So Mr. Christiansen or his wife stand in the same place as far as their operation is concerned as others in the same general vicinity.

CHAIRMAN CORY: Okay. And if somebody wants to argue whether or not that's reasonable or fair and we've exceeded our thing, there may be a lawsuit, but we don't know about it yet and there's nothing we can really do. When that takes place, if we lose it, come on in and we'll talk. And I would think you would get charged the same rate as your competitors.

MR. CHRISTIANSEN: Thank you.

CHAIRMAN CORY: Thank you.

Without objection, then, we will approve Item 26 as presented.

Item 27, application of Thomas G. and Jo Ann Snyder. Is there anyone in the audience who wishes to address themselves to this item?

MR. McCASLAND: Move adoption.

CHAIRMAN CORY: Without objection, Item 27 will be approved as presented.

Item 28. Is there anybody in the audience on 28?
MR. McCausland: Move adoption.

Chairman Cory: Without objection, it will be approved as presented.

Item 29, who's going to give us this report?

Mr. Hight: Mr. Chairman, this is an informational item to tell you that a suit that was authorized two Commission meetings ago on Lake Tahoe, since that time we've entered into a lease and it will be coming to you at the next Commission meeting. Informational only.

Chairman Cory: Okay. Item 30, assignment from Norris Oil Company to Cabot Oil Company; Rincon Offshore Field.

Is there anybody in the audience who wishes to address themselves to that item?

Mr. McCausland: Move adoption.

Chairman Cory: Without objection, Item 30 will be approved as presented.

Item 31, geothermal leases with Union Oil, Magma and Thermal Power Company.

Executive Officer Northrop: Mr. Chairman, you may want to take 31 and 33 at the same time.

Chairman Cory: Okay. Okay. We'll take 31 and 33.

Is there anyone in the audience on 31 and 33?

No one before us on those items.
Without objection, 31 and 33 will be approved as presented.

Item 32, Q. B. Resources International; application for permit to prospect. Is there anyone in the audience on this item?

MR. McCUSLAND: Move adoption.

CHAIRMAN CORY: Without objection, it will be approved as presented.

Mineral extraction, Lake Minerals Corporation, Item 34; Owens Lake, Inyo County; extraction of Trona. Is there anyone here for Item 34?

MR. McCUSLAND: Move adoption.

CHAIRMAN CORY: Without objection, 34 will be approved as presented.

Item 35.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item 35, 37, and 38 are modifications and cost proposals by the City of Long Beach. Staff has reviewed them and signing them would be in order; however, we would like to just take a second on 36.

MR. McCUSLAND: Move adoption of 35, 7 and 8.

CHAIRMAN CORY: Is there anybody on 35, 7 and 8?

Without objection, they will be approved as presented.

Item 36.
EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item 36 is a cost sharing contract between the City of Long Beach and ERDA on the polymer flood. Mr. Thompson, you want to give us a couple of quick words on that.

MR. THOMPSON: All right. Following our Arab Oil Embargo, why, the Federal Government started looking at the situation of energy. They looked at three things: increasing oil and gas, conservation, and alternate sources. As part of this, then, they looked into the question of developing additional reserves either from discoveries or from recoveries from existing fields.

We have the Energy Resource and Development Administration which is part of this which is working on enhanced recovery, an enhanced recovery process known as the micellar process. This involves projection of an effective material that would cause oil and water to mix. Normal water and oil will not be mixable to any degree. It will separate. Therefore, we inject this material down there that will create an emulsion.

What we're talking about here is taking a pilot flood project which involves, as you see, a very small part of one of the four zones in the field. This is actually a 12-acre parcel here. There will be five injection wells, five producing wells. And the Federal Government will enter into a cost sharing on this. The total project will be
about $7 million. So they will come in for three and a half million dollars.

At face value, the potential of this pilot plan paying out is very remote, but the future is large. In this part of Wilmington field --

CHAIRMAN CORY: Are you telling me we're going to lose money on every barrel but make it up on the volume?

MR. THOMPSON: That's the potential. Not in the pilot, but in the potential overall.

In the Wilmington field, for example, there we have 7.8 originally and we placed 7.8 billion barrels. We covered about 1.8, leaving 6 billion barrels in place. It only takes a very small recovery of that. Ten percent additional recovery is 600 million barrels. So what we're doing is trying to run a pilot demonstration to demonstrate the feasibility, economic feasibility of whether we can do initial recovery on the balance of a large amount of oil in place.

So basically, what we're involved in here is to take and inject into these five wells this micellar material. It's very expensive. It costs about $17 a barrel. We have to inject about 100,000 barrels of this. This becomes mixable with the oil in place, moves on. We then follow this with a polymer material to separate and maintain the integrity of this, and then we follow this with regular water.
And the economics of this --

CHAIRMAN CORY: Back out of the ground can you use the micellar material to pull it back out?

MR. THOMPSON: Unfortunately, no. It's all mixed in with crude oil and has lost its identity as such and has a new process started in another area.

So actually the State's exposure then of this $7 million, three and a half million dollars being the State, city side, this is not completely our exposure because there is some operating cost that would go on normally. The three and a half million dollars from the Federal is real. To us, then, we would have actual exposure as far as the State's concerned, taking out their share of the net profits in this thing, we would have a possible exposure --

CHAIRMAN CORY: Whose share of the net profits?

MR. THOMPSON: State's share. Contract will pick up nine percent of the cost and share nine percent. All of the oil from the project belongs to the City and the State. The Federal Government shares only in the cost. They get no share of the oil.

So the State, since there is to be a fixed amount to the City of Long Beach, the State then is in the incremental position of the profit or loss from it. Maximum exposure could be about $1.9 million. And if the project is a complete failure, we think then we would probably end up with a little
less than a million dollars in the red, with a potential of coming out and making a million three. Somewhere is our unknown technology and I feel applications will be somewhere between these two ranges. It's a potential of having a cost sharing proposition for a very large future potential and getting someone else to pick up part of the cost. And this is applicable to other parts of the United States.

MR. McCausland: Mr. Chairman, I think that given the status of crude oil production in the United States and the pressing need to further develop secondary and tertiary recovery techniques, that while there is a risk factor involved in this particular enterprise, it is clearly a worthwhile experimental effort and I move adoption.

Chairman Cory: Anybody in the audience on this item?

Without objection, the item will be approved as presented.

Item 39.

Without objection the staff is authorized to hold a public hearing on the draft EIR for resumption of drilling in the Orange County area pursuant to the existing contracts; that is, we're contractually obligated to proceed in this area.

Executive Officer Northrop: Right, on existing areas.
CHAIRMAN CORY: Item 40.

EXECUTIVE OFFICER NORTHROP: This is the litigation on Elmer D. Hill.

MR. HIGHT: Yes, Mr. Chairman, Mr. Hill has an unauthorized facility on State lands. This is authorization to either collect rents or remove that facility.

CHAIRMAN CORY: Anybody in the audience on Item 40?

Without objection, be approved as presented.

Item 41.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item 41 and 42 and 43 all deal with litigative work that the staff has done. And the issuance in 43 of the lease to Mr. Johnson, Ms. Patching and John D. Cox.

CHAIRMAN CORY: Let me disclose that I happen to know two or maybe three of those people. I don't have any financial involvement in the project, but I do know them as social friends.

MR. McCausland: Mr. Chairman, while they're not social friends, I also know all three of them. I am not aware of the location of their facility nor have I been contacted in this matter by any individual.

CHAIRMAN CORY: Is there anybody in the audience on any of these items?

MR. McCausland: Move adoption.

CHAIRMAN CORY: Without objection, Items 41 through
43 will be approved as presented.

Item 44.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, this is an intervention by the Attorney General on behalf of the State Lands Commission on the Heck versus Arta, which is rafting on the American River.

CHAIRMAN CORY: Anybody in the audience on this item?

Without objection --

MR. McCausland: Move adoption.

CHAIRMAN CORY: -- be approved as presented.

Item 45.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, this is to authorize me to establish a River Marina Liaison Committee to overcome some of the problems, communications going both ways, both from the Commission and to the Commission, in these areas of riverway marinas.

CHAIRMAN CORY: Okay. I've got no objection to that. I think we should probably try the liaison committee, but I would think that you should circulate, before they are appointed, the various Commissioners to make sure --

EXECUTIVE OFFICER NORTHROP: We will look --

CHAIRMAN CORY: -- make sure that we know who they are.

Without objection, be approved as presented.
EXECUTIVE OFFICER NORTHROP: Mr. Chairman, may I do this. May we circulate the names and if we receive no objections --

CHAIRMAN CORY: That's fine. All we want is the veto power. If you mess up, we'll get even.

EXECUTIVE OFFICER NORTHROP: All right.

CHAIRMAN CORY: 46.

EXECUTIVE OFFICER NORTHROP: This is a resolution, Mr. Chairman. The Western States Land Commission has been in existence for some time and consists of all of the State Lands Commissioners west of the Mississippi, including Louisiana.

Actually not west of the Mississippi, the western states lands. The Mississippi block is excluded excepting Louisiana. It's been traditional that they meet in various states and I would ask the Commission to adopt a resolution encouraging them to come to California. We have had contact with the City of San Diego and they seem to be most willing to accommodate the convention. It may require a slight budget augmentation to handle this, but certainly I think it's something we should do.

CHAIRMAN CORY: Okay. Any questions? Anybody in the audience on this item? Okay. Without objection, the resolution will be adopted.
Item 47.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item 47 has asked to be put over for one month. You have one other item, Mr. Chairman, that is not on the Agenda. We did not receive it in time.

CHAIRMAN CORY: I have an attendance card here from Patrick Porgans. And you wish to discuss the Mathews Readymix issue?

MR. PORGANS: Yes, sir.

CHAIRMAN CORY: Come forward, and somebody tell us what it is or isn't. Before we get into a full discussion I want to find out if we can, in fact, legally do anything on this item. You have an informational item. You realize since the public has not been given adequate notice of this, we would be in no position to act on this.

MR. PORGANS: Exactly. But this will give you some time to think about it and also take steps.

EXECUTIVE OFFICER NORTHROP: Would you rather we put it on next month's Agenda in a formal manner?

CHAIRMAN CORY: He's here. Shoot quick, everybody's hungry and angry.

MR. PORGANS: I can understand that.

Basically our organization, Safeguard Environmental Protection Agency, has been doing research up in the Lake Oroville area, Feather River. And there was a proposed
land exchange to take place between the State of California and a private entity, Mathews Readymix. Now, we were concerned about the exact amount of property that the Mathews Readymix people owned and the status determined requested by my organization through the State Lands Commission. And they found that it was 23 acres of land outside of 115 acres of property that was owned by Mathews that the State was going to take claim to.

Now, what our organization is proposing to do is to hire an engineer seeing as the State Lands Commission is sort of low on staff and have a lot of work to do and a lot of priorities. And we'd hire an engineer and also pay for signs in connection with other fishing groups to post the area as public access. That's what we want to do now. It's a good fishing area.

CHAIRMAN CORY: I'm kind of at a loss. Did we approve something relating to this land transfer?

MR. LIGHT: No.

EXECUTIVE OFFICER NORTHROP: Jim.

MR. TROUT: Mr. Chairman, some time ago Ray Johnson introduced a bill which allowed the construction of a diversion dam. The dam has been unpopular. And as a result, Assemblyman Chappie has proposed legislation that would authorize in exchange a construction of a recreation area along the Feather River. The Department of Water Resources
is getting involved in the land exchange and has formally asked staff to comment on the ownership. We've looked at it and tentatively advised the staff of Water Resources that a portion of the property claimed by Mathews Readymix appears to be State-owned property. However, there is no access from the highway to this property. What it would mean is that a certain portion of the frontage from the river might be a State-owned property, and we think it's State-owned property.

I'm not certain that we understand exactly how Mr. Porgans would accomplish this and I think that the point may well be moot if the land transaction exchange goes ahead. As Mr. Northrop suggested, I think that we'd like to get together with Mr. Porgans and come back to you with a full blown calendar item next month.

CHAIRMAN CORY: What you're wanting to do is you want to try to see that there's some public access, some public right-of-way to those areas --

MR. PORGANS: Yes, there is.

CHAIRMAN CORY: -- and you want us to notify the public.

MR. PORGANS: Yes.

CHAIRMAN CORY: Okay. Go ahead. I'm not sure what we can do. The avenues of communication have been opened up and they're going to deal with you. Tell us whatever else you
need to tell us.

MR. PORGANS: Well, basically that's all we'd like to do is open up a channel. And we will meet with you sometime between now and next month and get together and find out what we can do and what we can't do. And this way nobody will trespass on property that doesn't belong to them, the company or the public.

CHAIRMAN CORY: I appreciate you taking the time to bring this to us. And you'll meet with the staff, somebody immediately after this meeting and figure out how you can get together with him and proceed.

MR. PORGANS: Thank you. Yes.

CHAIRMAN CORY: And the other question that I have, did Jim say there is a diversion -- Jim, there's a diversion dam that was put in by a bill carried by Assemblyman Ray Johnson?

MR. TROUT: No dam was built. Ray Johnson had legislation that appropriated about two and a quarter million dollars to construct this diversion dam. It was unpopular. There were environmental problems. And in Assemblyman Johnson's absence from the Legislature, Assemblyman Chappie is carrying legislation now that would take that money and put it instead of the diversion dam, into a recreation area that occupies the site now owned by Mathews Readymix. So if the exchange goes through, the State would own the whole
property.

CHAIRMAN CORY: All right. Are there any other
items to come before this group?

MR. TAYLOR: Mr. Chairman, we'll be suing the
Federal Government over the ownership of one-mile built
around the Channel Island National Monument during the month
of August, probably prior to our meeting. And that will be
the first of two lawsuits, the first of two portions of that
lawsuit. The other portion will be the argument over
groins and closing lines and rocks offshore which could
cause some conflict between Lease Sale Number 40, the Federal
Government's proposed lease sale on State claim.

EXECUTIVE OFFICER NORTHROP: 38.

MR. TAYLOR: That will be a little bit later.

CHAIRMAN CORY: Okay. We're on notice. We're
holding the birthday boy's gray beard.

All right. We stand adjourned.

(Thereupon the July 22, 1976 meeting of the
State Lands Commission adjourned at the
hour of 1:40 p.m.)

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STATE OF CALIFORNIA )  ss.
COUNTY OF SACRAMENTO )

I, CATHLEEN SLOCUM, C.S.R., a Notary Public in and for the County of Sacramento, State of California, duly appointed and commissioned to administer oaths, do hereby certify:

That I am a disinterested person herein; that the foregoing State Lands Commission Meeting was reported in shorthand by me, Cathleen Slocum, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this 17th day of August, 1976.

[Signature]

CATHLEEN SLOCUM, C.S.R.
Notary Public in and for the County of Sacramento, State of California
C.S.R. License No. 2822

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