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MEETING
STATE LANDS COMMISSION

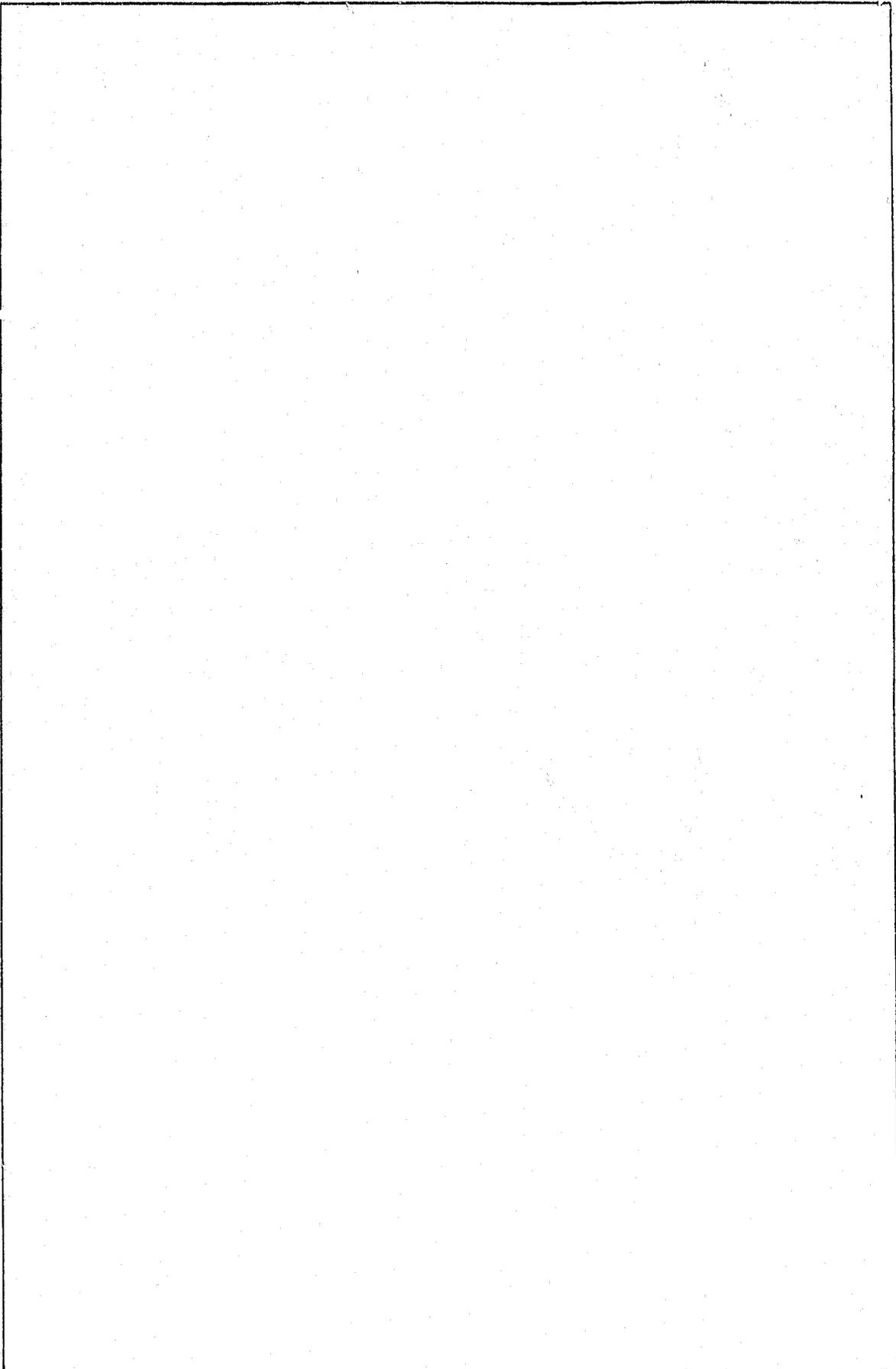
ASSEMBLY ROOM 127
SACRAMENTO, CALIFORNIA

THURSDAY, JULY 22, 1976
10:05 A.M.

ORIGINAL

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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

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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 NORTHROP: 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

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1 well capable of producing geothermal resources in commercial
2 quantities. At the December meeting, staff recommended the
3 KGRA designation because the State parcel is surrounded on
4 three sides by producing commercial steam wells and is
5 underlain by the same rocks that occur in the proven steam
6 field.

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

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

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

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1 an acceptable bid is received.

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

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

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

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

22 As this has just come before you, we haven't really
23 discussed it. Staff feels that we should take a position
24 perhaps in opposition to this bidding because it might tend
25 to discourage geothermal development.

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1 CHAIRMAN CORY: Mr. Northrop, we will acknowledge
2 that Governor Dymally is here. We started on some of the
3 noncontroversial things.

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

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

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

25 EXECUTIVE OFFICER NORTHROP: It's something that is

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1 thrust on us immediately, very shortly, because it's going to
2 be handled --

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

5 EXECUTIVE OFFICER NORTHROP: Okay. Fine.

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

9 EXECUTIVE OFFICER NORTHROP: Last Wednesday through
10 Saturday, the staff toured the greater part of Northern
11 California, covering approximately 1400 miles. We looked at
12 14 planning units available of BLM public domain land. As a
13 result of this trip, we now for the first time have an
14 appreciation of the kinds of lands available from the Bureau
15 of Land Management for land consolidation and exchange
16 purposes. Frankly, the lands that are available are probably
17 not worth or even worthy of the Commission's consideration
18 for management and exchange with State lands, with the
19 exception of: Some limited areas of merchantable timber and
20 some areas in the Surprise Valley that have some
21 geothermal resources; or we could use some of this land
22 perhaps in exchange to acquire coastal properties or other
23 properties having multi-purpose use.

24 What we found is they just have adjoining parcels
25 to our sagebrush and it really was very disappointing. We

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1 hope to see much better representative. So in line with our
2 own consolidation program, it will be revised after we take
3 a look at it.

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

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

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

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

22 And the last item, Item Number 47, the Sonoma
23 Grant Revocation, on today's Calendar. I have received a
24 letter from Assemblyman Barry Keene and a letter from the
25 Sonoma County Board of Supervisors, requesting that Calendar

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1 Item 47 be put over for 30 days. It is recommended this be
2 granted.

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

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

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

15 (Laughter.)

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

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

21 (Laughter.)

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

25 Okay. Any questions from other members of the

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1 report?

2 Okay. Finished the report.

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

5 MR. McCAUSLAND: Move adoption.

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

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

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

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

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

18 MR. TAYLOR: Mr. Chairman, this action was
19 authorized pursuant to a letter on May the 14th, received
20 from the Western Oil and Gas Association through their
21 attorneys, the firm of McCutchen, Black, Verleger & Shea.
22 At the May Commission meeting the Commission granted their
23 request to treat this as a request for revocation.

24 Pursuant to the Commission's action on that date,
25 on June the 8th, 1976, legal notice was given in the Sacramento

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1 Union, a copy of which will be included in the minutes of
2 today's meeting. In addition to giving the legal notice
3 required --

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

6 MR. TAYLOR: In the Sacramento Union.

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

9 (Laughter.)

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

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

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1 today's meeting, with the Chairman's permission.

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

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

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

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

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

25 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, the

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1 record might reflect that we have had a person stationed at
2 that room continuously since 8:00 o'clock this morning to
3 divert people to this location.

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

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

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

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

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

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

24 CHAIRMAN CORY: Let the record show that it's now
25 10:17. I want one of the staff members to go over and stay

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1 there and send anybody along. Make sure somebody's there
2 now.

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

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

18 To clear that up I sent a letter to Mr. Northrop
19 and requested copies be distributed as he deemed appropriate.
20 I received a response from Mr. Taylor. And basically where
21 that is, is our position was and is that if the regulation
22 was improperly promulgated and it was void at the time it
23 was adopted and this hearing will not resurrect it.
24 Mr. Taylor's position is, as I understand it, that this
25 hearing will render that question moot. It's a point I think

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1 we've covered and I see no reason to go into detail other
2 than to indicate that we do not and have not waived that
3 objection.

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

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

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

15 CHAIRMAN CORY: I saw it at least.

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

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

20 CHAIRMAN CORY: Yes.

21 MR. DESTINO: Passing now to the actual rule itself,
22 various WOGA member and company representatives have testified
23 as well as Mr. McClintock of our office. Our office has basi-
24 cally addressed itself to the legal questions that we see with
25 the rule. We've gone into those at some length at various

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1 hearings as well as submitting fairly extensive written
2 memorandums to the staff on those. I would, however, like
3 to, if I may, outline our objections once more for this
4 record, and I will attempt to be brief because I think they
5 are in the record.

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

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

22 The second argument, which in part takes in some
23 of the same considerations on the statutory authority
24 question, is directed to Congress law as well as the Federal
25 Constitution. And that law is, briefly, prevents the states

1 from imposing undue burdens on interstate commerce. I don't
2 think there's any question but that interstate commerce is
3 very definitely involved, certainly in the wharf situation
4 which all applies to passing, by definition of interstate
5 commerce, as to pipe lines, the uplands. There, too, I
6 believe are substantially all, if not all, the oil is
7 interstate commerce. There is no question but that
8 interstate commerce must pay its own way in interstate
9 commerce and as such comply with all nondiscriminatory state
10 regulations and fees.

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

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

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

24 Similarly, and this would be restricted to the
25 wharf situation, further constitutes the provision preventing

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1 a duty on tonnage. Again, the same requirements or the same
2 considerations as to the incident of the burden, benefits
3 received by the State, services rendered would apply in the
4 wharf situation for the same reasons to the extent the
5 regulation applies in that situation. We believe it to be an
6 unconstitutional duty on tonnage.

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

24 I'd like to comment briefly on the staff report
25 that was distributed at the April 28th, 1976, hearing.

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1 There are several of the points we have raised that were
2 addressed and point out where I think there may be some
3 fallacies there.

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

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

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

23 Therefore, even if it can be established, and I
24 by no means would submit it can, that other landowners,
25 private landowners have adopted such regulations or have

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1 leases that simply are developed for the purpose of the
2 authority of the State.

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

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

16 The report seems to assume that the charges
17 received by ports for products passing over it, passing
18 through the port, somehow provide for a return on the
19 unimproved land. That certainly is not our understanding and
20 I don't see how it can be related to the various, many factors
21 of the ports involved. Certainly there may be some return,
22 reasonable rate of return again on the unimproved land which
23 we feel can't be disputed but that is a legitimate concern
24 and legitimate charge, but we don't see where that provides
25 any basis for the charge here.

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1 Finally, the report goes into the statutory
2 interpretation with the staff's interpretation of Public
3 Resources Code, Section 6503. Again, as I understand the
4 staff report, it is suggesting that the other consideration
5 language -- Let me repeat it. It is paraphrased, but I
6 think it's pretty close. That the Commission is to appraise
7 the land and fix an annual rental or annual consideration
8 therefor. The report takes the position, as I understand it,
9 that the other consideration somehow is separate and apart
10 from the very explicit directive action that the land shall
11 be appraised.

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

17 One other point I would like to touch on is the
18 question of rental rates in this regulation. I believe
19 there are others who will touch on it in a little more detail,
20 so I won't delve on it too much. But the main point here is,
21 under this regulation, it is next to impossible for someone
22 with an existing lease or someone with a lease coming up or
23 time to get a new lease, to in any way project what its
24 rentals are likely to be. This is particularly true if you
25 look at the factors set forth in Section 2006(H), speaking of

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1 such things as considering the environmental significance of
2 the land, potential harm and such other factors as the
3 Commission may reasonably consider as bearing on the rental.
4 We just simply do not see any relationship between these
5 factors and the amount of the rents. This really relates
6 back to the statutory interpretation, consideration which does
7 not bring these factors into effect.

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

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

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

25 That, I believe, concludes the statements I had.

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1 Thank you for your consideration.

2 CHAIRMAN CORY: Any questions by members of the
3 Commission?

4 May I ask one question?

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

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

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

21 MR. DESTINO: I am not really in a position to
22 take a position at this point as to whether it's an obligation
23 to act. I believe the Lands Commission probably, and I say
24 probably because I haven't researched it, has an obligation
25 to administer the State lands in the public interest. And I

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1 think in adhering to the public interest, it must consider
2 various factors and one of them would be, I believe, the
3 most efficient environmentally safe way to transport
4 necessary petroleum products. And in that sense, I think it
5 probably is an obligation to, not as an inalienable right, but
6 certainly an obligation to provide for such services. There
7 may, in fact --

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

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

25 MR. DESTINO: As I view the issue before the

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

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

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

22 CHAIRMAN CORY: If I owned a piece of property at
23 Malibu and I owned it as an individual in fee simple, you
24 aren't suggesting that Western Oil and Gas is going to come
25 in and tell me that I have some obligation to allow you to

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1 run a pipe line through my property, are you?

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

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

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

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

24 CHAIRMAN CORY: Mr. Taylor.

25 MR. TAYLOR: Mr. Destino, in reviewing your

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1 arguments that you have made today, is it a fair
2 characterization to say that they are a reiteration of the
3 arguments that were made to the Commission previously?

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

7 MR. TAYLOR: That's correct.

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

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

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

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

24 MR. DESTINO: I believe that's correct.

25 CHAIRMAN CORY: Any questions?

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1 I have Mr. Ed Taaffe from Standard Oil Company.

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

6 CHAIRMAN CORY: It will be entered into the record.

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

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

16 I don't contend that an individual has such a
17 right. The State has the right to determine whether it's in
18 the best interests of the State to lease a piece of State land,
19 but I think the point here under discussion is this: There
20 is a regulation here which purports to set rentals for State
21 lands which certainly implies or premises the idea that a
22 piece of State land will be available or has been requested
23 and is being considered for rental by the State Lands
24 Commission. So our comments, that is, those in our statement
25 and also that presented by Mr. Destino, relate to the subject

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1 of how the rent is to be computed rather than the basic
2 question of whether a particular piece of land is to be
3 leased. Is that a fair statement?

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

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

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

24 And that's what the public interest is all about
25 and that's the question before us.

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

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

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

25 CHAIRMAN CORY: Okay. As long as you clearly

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1 understand that when I drive into a Standard Oil station,
2 I can look on the pump and I see a price and if I don't want
3 to buy gas, I can drive out.

4 MR. TAAFFE: That's right.

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

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

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

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

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1 that's right.

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

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

8 CHAIRMAN CORY: I'm sorry.

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

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

13 MR. TAAFFE: No.

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

16 MR. TAAFFE: Okay. Any questions?

17 CHAIRMAN CORY: Sid?

18 Thank you.

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

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

24 COMMISSIONER DYMALLY: Let's say Standard then.

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

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1 hardship?

2 COMMISSIONER DYMALLY: Yes.

3 MR. TAAFFE: We think it could, yes.

4 COMMISSIONER DYMALLY: Given the profits of the oil
5 companies?

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

10 COMMISSIONER DYMALLY: I just have to tell you that
11 if I felt that, despite the fact that the oil companies are
12 not enjoying the best public relations in the country right
13 now, if I felt that the imposition of this new regulation
14 would create a financial hardship on the oil companies, I
15 would be courageous enough to vote against it, believe it or
16 not, because I'm not one of those who believe that we ought to
17 put the oil companies out of business to prove a point that
18 you're tough or that you're liberal or you're an
19 environmentalist. I'm not in that bag. But given the
20 profits of the oil company and given the fact that the
21 public is not sharing in the benefits of the oil company,
22 because I don't know if the oil companies are pioneering
23 social reform for anything like that. I mean, the Rockefellers
24 have the Rockefeller Foundation and Ford has the Ford
25 Foundation, you could forgive them their profits because they

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1 do send some of the money back into the colleges and
2 social programs. I don't know if the oil companies have
3 that sense of social consciousness.

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

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

8 MR. TAYLOR: Mr. Chairman.

9 CHAIRMAN CORY: Yes.

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

20 CHAIRMAN CORY: Mr. Paul Hughey.

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

25 COMMISSIONER DYMALLY: They're part of the good

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1 guys. They're my friends. So be nice to them.

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

7 CHAIRMAN CORY: You picked up one vote and lost two.
8 (Laughter.)

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

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

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

20 My task is to try to create new jobs, and obviously
21 that's in Contra Costa County. And I realize, as the
22 Governor said, that the oil industry, and I think they admit
23 this themselves, probably have the worst public relations of
24 any major segment of industry in the United States over the
25 past few years. I think hopefully they're trying to change

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1 that somewhat. And obviously a major concern here is the
2 cost on crude oil and on fuel oil to the utilities, but there
3 are many other products that pass over our docks: Steel --
4 where American Bridge just closed a plant in Pittsburgh,
5 because they cannot compete with Japanese steel. I would be
6 interested to know what kind of charges you propose to levy
7 on the steel products that go across the U. S. steel dock at
8 Pittsburgh. Sugar, a million tons of sugar cross the docks
9 at Crockett. Varieties of chemicals, paper, bulk commodities
10 of many different kinds. So we're not just talking about
11 crude oil and fuel oil.

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

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

25 The other thing that concerns me is that one of your

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1 first people to apply to you, the Pacific Refining Company,
2 here's a company that came in and took over a refinery that
3 was closed down that we were very concerned about.

4 COMMISSIONER DYMALLY: This is Gulf?

5 MR. HUGHEY: That's correct.

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

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

21 Now, we have a, right now we have a little problem
22 down there in the Bay Area, as you might have read,
23 concerning the Dow Chemical Plant. It would appear that if
24 Dow Chemical cannot build a plant between
25 in an isolated location of the Montezuma Hills, I don't

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1 see how we can build any other substantial industrial plants
2 anywhere in the Bay Area. If you can't do it in the Bay
3 Area, I don't see how you can do it in the Los Angeles area
4 basin.

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

13 CHAIRMAN CORY: Do you have any documentation for
14 that?

15 MR. HUGHEY: Yes, I do. Supervisor Nelder is the
16 Chairman of that committee and he's quoted in a recent
17 article, which I'll be happy to send you, where there are
18 80 businesses that left San Francisco in the last couple of
19 years. They surveyed them and the common cause that they
20 indicated was they were concerned about payroll tax, the
21 property transfer tax, increasing taxation that is not
22 levied elsewhere.

23 COMMISSIONER DYMALLY: I'd be interested in that
24 information, too. Again, the Commission is conducting a
25 study on this very issue and will be in touch with you.

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1 MR. HUGHEY: Very good. What I'm trying to say,
2 Mr. Chairman and gentlemen, I recognize that the oil
3 companies make a beautiful target, but I think there is a
4 public interest in seeing that we don't lose the job we've
5 already got and that we try to stimulate additional jobs in
6 the State.

7 Security Pacific Bank has just concluded a survey
8 where they feel that we're losing, we're going in the hole
9 40,000 jobs a year. We're not creating enough jobs to take
10 care of what we've got now. And if we continue that very
11 long, we're going to have a horrendous unemployment rate.

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

18 So what we suggest to you is that there is a public
19 interest in levying a charge which can be calculated. How do
20 I tell a company that's looking for a location in Contra
21 Costa County what their charges are going to be, approximately
22 what they're going to be? I cannot determine that from the
23 regulations. And they are interested in what their costs are
24 going to be because there are other states where those charges
25 are not levied and where the unemployment rate is a hell of a

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1 lot lower than in California. But I think there is a public
2 interest here and certainly I think the Lands Commission has
3 a great deal of latitude in determining whether or not it is
4 a public interest as to each particular piece of land. But
5 I would also submit to you that in many of these cases,
6 particularly in the Bay Area where there are navigable
7 waters, jurisdiction of the Federal Government, that there
8 is some public interest in seeing that these are properly
9 utilized in the public interest. And I'm sure you would
10 agree that we have to have a lot of jobs. We need more
11 jobs than we've been creating. And we're not doing it.

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

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

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

25 MR. HUGHEY: Point. However, if I was in the oil

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1 company, I might be looking for other investments right now,
2 too. But in any event, the point is, I wish you would give
3 some consideration to the effect upon creating new jobs in
4 Contra Costa County and the State.

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

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

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

17 MR. HUGHEY: That's exactly correct.

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

25 COMMISSIONER DYMALLY: It's creating a climate that

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1 California is a bad State to go to because they are
2 contemplating imposing taxes and the Lands Commission --

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

9 MR. HUGHEY: Aren't they recapturing?

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

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

17 CHAIRMAN CORY: The land's not capital?

18 MR. HUGHEY: -- or anything like that.

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

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

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

25 MR. HUGHEY: Yes, I am.

MR. TAYLOR: And would you say that the rate

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1 charges of the Richmond Port are unreasonable?

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

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

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

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

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

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

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

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

25 CHAIRMAN CORY: Mr. Hughey, I think the question,
as I see it, the businessman would be better off if his

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1 rentals were based on how well he was doing. And if for some
2 reason there was an economic down-turn and he wasn't doing
3 as well, he wouldn't have to pay as much tax, and if things
4 got very good and he had a lot of volume, he would pay more.
5 All sorts of business are based on that sort of rental fee.
6 I just really have trouble with those of you from the
7 private sector -- and when I wear another hat I participate
8 in the private sector -- I find this to be a very normal
9 portion of the private sector.

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

12 CHAIRMAN CORY: Their volume is less.

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

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

24 MR. HUGHEY: I think you should charge a fair
25 rental to cover the expense of administration. I think it

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1 should be based on the assessed valuation of the property.

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

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

9 CHAIRMAN CORY: Mr. Hugh Earley.

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

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

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

24 Our industry is having problems living with the
25 increases in recent years since the oil embargo and we're

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1 hard-pressed to face any additional increases. To give you
2 an idea of what we have experienced since the oil embargo,
3 our fuel costs have gone up 160 percent. One cent of
4 increase in fuel price to our industry means 80 to \$100
5 million a year. To Western alone, it means three and three-
6 quarters million per year.

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

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

11 MR. EARLEY: I have not.

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

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

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

23 MR. EARLEY: Not to my knowledge.

24 CHAIRMAN CORY: Any questions?

25 Thank you very much.

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1 MR. EARLEY: Yes.

2 CHAIRMAN CORY: Robert Leichtner.

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

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

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

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

13 MR. LEICHTNER: Right.

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

16 MR. LEICHTNER: Right.

17 COMMISSIONER DYMALLY: Are you part of the
18 Coastal --

19 MR. LEICHTNER: Coastal States Gas and Oil.

20 COMMISSIONER DYMALLY: And Pacific is a West Coast
21 subsidiary?

22 MR. LEICHTNER: That's right.

23 As far as notice is concerned, I appeared at the
24 meeting in May in support of the petition to reconsider or
25 repeal. And I personally don't recall receiving notice of

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1 this meeting. I'm here because I received the ordinary
2 circular of the meeting about a week ago. Now, it's possible
3 it went to somebody else at my address, but just for the
4 record, I did not receive notice of this meeting by the
5 channels that you mentioned before.

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

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

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

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

25 We strongly agree that there are very powerful

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

11 CHAIRMAN CORY: Pardon me, you represent Pacific
12 Refining?

13 MR. LEICHTNER: Right.

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

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

24 CHAIRMAN CORY: Now, it's my recollection that we
25 were prepared at that point, if we didn't understand what

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1 we were doing, that we had nothing more to talk about and we
2 shouldn't continue to discuss anything with Pacific Refining
3 and the gentleman representing -- I don't know if it was you
4 or someone else --

5 MR. LEICHTNER: No, it wasn't me.

6 CHAIRMAN CORY: They said, no, they clearly
7 understood that this was a rental payment based upon a
8 volumetric charge and was not a tax. And I'm having trouble
9 with you now changing the game because I stopped the whole
10 proceeding and said, hey, --

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

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

16 MR. LEICHTNER: Right.

17 CHAIRMAN CORY: It's not a tax. And now you guys
18 want to talk about tax.

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

22 CHAIRMAN CORY: No.

23 MR. LEICHTNER: Can I explain for a second?

24 CHAIRMAN CORY: No, wait. Let me make something
25 very clear to you.

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1 There's a piece of property that is owned in fee
2 by the State of California, and you want to use it. And we
3 negotiated that you could use that property and this is what
4 you're going to have to pay for it. If you don't want to use
5 the property, you don't have to pay. I don't see how that's
6 a tax.

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

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

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

24 Now, perhaps that doesn't seem to be a tax to you.
25 It sounds sort of like a tax to me.

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1 CHAIRMAN CORY: I thought Pacific Refining told me
2 last month that they knew it wasn't and that's the point I'm
3 trying to make.

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

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

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

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

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

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

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

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1 MR. LEICHTNER: Yes.

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

5 MR. LEICHTNER: Yes.

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

10 MR. LEICHTNER: They're two separate firms.

11 MR. TAYLOR: They're separate firms?

12 MR. LEICHTNER: Right.

13 MR. TAYLOR: Carrying virtually the same name?

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

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

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

24 MR. TAYLOR: You have never filed, pursuant to
25 regulation, a request for notice, is that correct?

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1 MR. LEICHTNER: I personally have not.

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

5 MR. LEICHTNER: Right.

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

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

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

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

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

22 MR. LEICHTNER: Right.

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

25 MR. LEICHTNER: No.

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1 MR. TAYLOR: -- to the Commission at the last
2 meeting with regard to the time that we did treat --

3 MR. LEICHTNER: No.

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

7 MR. LEICHTNER: Pardon?

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

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

13 MR. TAYLOR: Do you know what they were?

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

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

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

21 Any further questions?

22 CHAIRMAN CORY: Thank you, sir.

23 We have a letter here from Mr. T. B. Peacock, who
24 is the Manager of Right-of-Way and Land Department of
25 Southern California Edison Company. Is he here in the

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1 audience? Does he wish to make any statement?

2 If not, we will enter this into the record.

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

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

8 COMMISSIONER DYMALLY: No, in general.

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

11 COMMISSIONER DYMALLY: Give me the specific one.

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

16 EXECUTIVE OFFICER NORTHROP: Wharf area.

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

24 A barrel is --

25 EXECUTIVE OFFICER NORTHROP: Forty-two gallons,

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1 Mr. Chairman.

2 CHAIRMAN CORY: -- 42 gallons.

3 Do you want to extrapolate it back to the burden?

4 COMMISSIONER DYMALLY: Need a computer.

5 How would it apply to future customers or old
6 customers?

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

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

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

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

25 EXECUTIVE OFFICER NORTHROP: Mr. Chairman,

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

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

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

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

24 MR. TAYLOR: Governor Dymally, we have approached
25 this in the same way the ports by analogy have handled it for

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1 uncapitalized, for unimproved water-covered land. We have
2 answered in the regulation which you adopted the contention
3 about multiple charges by allowing that only one charge be
4 made for multiple crossings between facilities on pipe lines.
5 We have modified the original ones to allow questionable
6 rates to be imposed depending upon the facts and circumstances
7 presented in each case because each case is unique. We
8 stretch all over the State, and the kind of situation that
9 will be encountered will be different in almost all
10 instances.

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

21 In the case of pipe lines, there's three. And
22 that is, one, you can do strictly on appraised value. The
23 other is a penny and a half per diameter inch and the third
24 is volumetric. And taking all the criteria that is
25 included in the regulations and through negotiations is the

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1 way in which it will be determined which one will apply.
2 And this is similar to the negotiations with the ports and
3 it's similar to negotiations with cities under the Broughton
4 Act, and it's similar to the approach, I believe, the
5 Public Utilities Commission takes in looking at these items.

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

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

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

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

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

23 PG&E has opposed, on every occasion open to it,
24 certain features present in these regulations now being
25 reconsidered. In order to supply the more than eight million

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1 people living in the service area in Northern California,
2 PG&E operates several marine terminals in an integrated
3 natural gas system consisting of over 30,000 miles of natural
4 gas transmission distribution pipe lines located primarily
5 in the northern part of the State.

6 Legal objection to the regulation is based
7 primarily, though not exclusively, on Public Resources Code
8 6503, which requires that the Commission appraise the lands
9 to be leased and fix the annual rental. We don't think that
10 the Legislature had in mind when it used the terms "appraisal,"
11 "fixed," and "annual rental," the imposition of a system of
12 rents which varied from day-to-day and hour-to-hour, not
13 tied in any way to the value of the land or the quantity of
14 the land. The legal objections are well-known and have been
15 voiced here already.

16 In addition to the legal objections, there are
17 in our view important policy considerations, all of which
18 tend to argue against the imposition of throughput charges.
19 These charges seem particularly inappropriate for electric
20 utility fuel because except for very small quantities of
21 low sulfur crude imported from overseas, almost all of our
22 low sulfur fuel is residual fuel oil from California
23 refineries. Our electric customers will pay the throughput
24 charges as many as three times: Once when the oil company
25 brings the crude in, once when the residual commodity is

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1 shipped out, and once when it's delivered to PG&E through our
2 facilities.

3 CHAIRMAN CORY: Pardon me, sir.

4 MR. BAUMGARTNER: Yes.

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

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

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

22 In order to serve our seven million gas
23 customers, PG&E has more than 4800 miles of transmission
24 pipe lines and 26,000 miles of distribution pipe lines
25 through which we deliver about 672 billion cubic feet of

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1 natural gas annually. The pipe lines form a spaghetti-like
2 network of transmission and distribution systems many miles
3 of which are located in State lands. The Commission staff
4 has been furnished with a map which shows the network of
5 pipe lines located beneath the San Francisco Bay and the
6 Sacramento and San Joaquin River Delta areas, for example.

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

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

21 In addition to the general policy issue of placing
22 indirect taxes on utility customers, there is specific
23 policy issues relating to natural gas. Over 80 percent of
24 the natural gas used in Northern California must be imported.
25 The domestic supplies from California sources are rapidly

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1 declining. Forty percent of the total supply must be
2 imported from Canada. The Canadian Government has already
3 more than doubled the price per unit of natural gas exported
4 from their country. The American utilities and the American
5 Government have consistently argued that artificial raising
6 of natural gas prices by Canadians have had and will have
7 serious effects in the American economy. However, when the
8 Canadians see an American state charging a royalty to its
9 own citizens, our arguments against such charges by the
10 Canadians are greatly weakened. Anyone who thinks the
11 Canadians lack the resolve or the power to define and act
12 in their own economic self-interests need only reflect on
13 the current controversies surrounding the sale of grain to
14 China in the Olympic Games.

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

21 There are also serious technical problems in
22 calculating the units of gas upon which throughput charges
23 would be placed. I referred earlier to the spaghetti-like
24 network of pipe lines located in State lands. The
25 direction of gas flow and the quantity of gas flow varies

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32 PUBLIC UTILITIES COMMISSION are attempting to obtain
 34 customers. While the State Air Resources Board and the
 33 or regulatory circuit are likely to many of our existing
 32 obtain large quantities of supplies from outside California
 31 naturally gas for this kind of use, either we will have to
 30 generation. In order for our gas utilities to supply
 29 natural gas into California for use in electric power
 28 manufacturing for the incorporation of additional quantities of
 27 the head of the State Air Resources Board has been
 26 failure to come up with a national energy policy. Now,
 25 severely criticized in past hearings of this Commission for
 24 and state energy policy. I've heard the Federal Government
 23 attention to the serious problems of developing national
 22 finally, I would like to praise the Commission's
 21 regulations there is no need for it.
 20 marketing through state legislatures, for present these
 19 the system was never designed to provide for
 18 times associated with the system.
 17 is stored at any given incident time in the various pipe
 16 separate the U.S. market circuits, goes back and forth on
 15 customers through western, it is impossible to accurately
 14 we know how much is in storage and how much is sold to the
 13 know how much gas is entering the system at the borders and
 12 and produced gas demanded by the customers. Although we
 11 from point-to-point and day-to-day, depending upon actual

1 allocations of additional quantities of natural gas to
2 reduce the problem of air pollution in the San Francisco and
3 Los Angeles Air Basins, the Commission appears intent upon
4 imposing economic barriers which can only have the effect
5 of undercutting our arguments with both the Federal and
6 the Canadians for the need of additional quantities of
7 natural gas at a price that we can afford.

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

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

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1 to consider exempting natural gas from the payment of
2 charges based on throughput.

3 Thank you for your consideration.

4 CHAIRMAN CORY: Thank you.

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

8 MR. BAUMGARTNER: The hearing Mr. Northrop held.

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

11 MR. BAUMGARTNER: I was at all of them.

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

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

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

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

25 MR. TAYLOR: Thank you.

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1 CHAIRMAN CORY: Yes, sir.

2 MR. SIMONSEN: Mr. Chairman and Members of the
3 Commission, my name is Henry W. Simonsen. I'm a resident
4 of Rio Vista. I've been a citizen of California for some
5 55 years. I also have been in business, a small business,
6 for some 30 years. During that time I've had the opportunity
7 of talking to industrial plant managers for well over 20
8 years. And the problems of California in the business
9 climate has been getting steadily worse through the years
10 and it's a real problem right now.

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

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

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

25 And one of the gentlemen that I was friendly with

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

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

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

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

20 The other thing that concerns me is we have an
21 opportunity with the Alaskan Oil coming down to California.
22 It doesn't have to come to California. Refineries can be
23 built in the State of Washington in Puget Sound where they
24 have deep water. They can be expanding there and we can
25 merely end up with marketing facilities. And conceivably, we

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1 can lose the tax base and the job opportunities of the
2 refineries in our State. And this is real. It's real. It
3 isn't something that somebody can just talk about. And the
4 same thing with Texas. Logically, if I were Chairman
5 of the Board of an oil company, I would put my money in
6 Texas and pipe line it out here or bring it out by super
7 tankers. When you can expand there and your -- they have
8 no income tax in Texas. That's one of the competitions we
9 have. Texas does not have income tax, State income tax,
10 whereas our State does.

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

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

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1 should be.

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

12 Thank you very much.

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

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

23 COMMISSIONER DYMALLY: I like your testimony. I
24 want you to come to testify before the Commission on
25 Economic Development in October.

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1 MR. SIMONSEN: I'd be glad to.

2 COMMISSIONER DYMALLY: Thank you.

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

5 MR. HUGHEY: Pardon me, Ron Henrekin of the Solano
6 Development --

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

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

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

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

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

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

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

21 First of all, Mr. Taylor wanted to know how the
22 \$100,000 figure had been arrived at. What we did or I
23 should say what the people in Los Angeles did who take care
24 of the Defense Fuel Supply Agency, they computed the number
25 of barrels that go to Nellis Air Force Base in Nevada over

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1 California land using the Cal-Nev Pipe Line Company facility.
2 At the 1.7 cent per barrel figure, arriving at a total of
3 17,000, roughly \$18,000. All other pipe line usage, which
4 totaled about eight million barrels, was computed at a 1.2
5 cent per barrel figure resulting in a \$98,000, close to
6 \$99,000 figure for a total of \$116,000, roughly.

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

12 COMMISSIONER DYMALLY: Because it's so small?

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

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

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

20 (Laughter.)

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

25 The total impact would, for fiscal year '77, be on

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1 about nine million barrels. And that would be increasing
2 annually depending on what the Defense Department needs are
3 in the future.

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

6 EXECUTIVE OFFICER NORTHROP: On State property?

7 MR. FLANNERY: I would assume that the pipe lines
8 cross State property. I have the locations.

9 EXECUTIVE OFFICER NORTHROP: That's fine.

10 MR. FLANNERY: Okay.

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

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

25 I think when you boil the Department of Defense's

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1 position down, it's really a dollar-and-cent argument. The
2 legal arguments --

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

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

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

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

15 (Laughter.)

16 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, I'm
17 interested in the Department of Defense's statement on a
18 couple of things, particularly when already the Department of
19 Defense is in debt to the State Lands Commission for over
20 44,000 acres of land they put bombs and mines on that we can
21 no longer use.

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

25 MR. FLANNERY: I would agree. There were a lot of

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1 irrelevancies at the last hearing.

2 EXECUTIVE OFFICER NORTHROP: Where did you get your
3 1.2, 1.7 figure?

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

6 EXECUTIVE OFFICER NORTHROP: From Cal-Nev?

7 MR. FLANNERY: Now, I'm --

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

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

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

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

22 MR. TAYLOR: I think that the gentleman that
23 appeared from Oakland the last time, he had based it upon
24 regulations which were not ultimately adopted by the
25 Commission. In other words, that the amount of the rate

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1 charge that you have that were in the original statement, I
2 believe, were admitted that they were prepared from the
3 original rate schedule that we had published and we decided
4 that we could not go to a fixed rate schedule.

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

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

11 MR. FLANNERY: Exactly.

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

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

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

22 MR. TAYLOR: In Los Angeles?

23 MR. FLANNERY: Correct.

24 MR. TAYLOR: I think, though, that the gentleman
25 has testified --

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1 MR. FLANNERY: I've also stated that that
2 calculation may be completely extraneous now. In other
3 words, the impact in view of a number of considerations
4 under the Department of Defense, is almost impossible to
5 calculate at this time. That's how we arrived at the
6 \$100,000 figure.

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

12 MR. FLANNERY: Fine.

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

24 MR. FLANNERY: Mr. Cory, I might point out that
25 that is going to decline and it's in the process of

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1 declining for a number of reasons.

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

5 Thank you.

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

8 MR. FLANNERY: I filled out an appearance form.

9 MR. HIGHT: Okay. Fine.

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

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

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

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

17 All right.

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

23 (Thereupon a brief recess was taken.)

24 CHAIRMAN CORY: Okay. We'll be back in session,
25 the machine having corrected its deficiencies.

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1 We have concluded the hearing and we have, I
2 believe, basically three options before the Commission; that
3 is, to amend the adopted regulation; to appeal the adopted
4 regulation; or to leave it unchanged.

5 Is there --

6 MR. McCAUSLAND: Moved.

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

9 All those in favor signify by saying aye.

10 (Ayes.)

11 CHAIRMAN CORY: The record will show a unanimous
12 vote.

13 MR. TAYLOR: Mr. Chairman, then the petition will
14 be deemed to be denied?

15 CHAIRMAN CORY: That is correct.

16 Okay. Back on the Agenda. Item 21. This is an
17 item that has been before us previously on the agency permit
18 by the Truckee-Donner Public Utility District with respect
19 to a 24-inch pipe line that extends 690 feet into Donner Lake.
20 And we have some people who wish to appear before us.

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

23 MR. GRUMER: Mr. Chairman, Members of the Commission,
24 today with me are Mr. Jim Thompson, the attorney for Dart;
25 Don Strand, the Project Manager for Tahoe-Donner; Dan Cook.

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1 our District Engineer, and Paul Hopensack, our District
2 Manager.

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

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

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

16 Mr. Cook will present these proposals.

17 CHAIRMAN CORY: Mr. Cook.

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

24 CHAIRMAN CORY: Even in Truckee they've gotten to
25 you with this nonsense. Nothing is sacred.

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1 MR. COOK: That's true.

2 CHAIRMAN CORY: Go ahead, sir.

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

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

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

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

18 CHAIRMAN CORY: Did you say that that sales office
19 well, production well logs have been checked and it's
20 favorable? That puts it where on this magic chart, in 750,
21 750 gallons per minute or more?

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

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1 CHAIRMAN CORY: Okay.

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

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

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

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

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1 Alternative 2 that you have before us.

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

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

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

15 MR. COOK: Yes, sir.

16 MR. McCAUSLAND: As I understand it, we have an
17 illegally installed pipe in the lake that the Truckee Utility
18 District has attempted to take over to legitimize and we have
19 to decide whether --

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

23 MR. COOK: That's right.

24 CHAIRMAN CORY: And there's some local pressure
25 within the community so that -- at least previously there has

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1 not been a united front as to what the local community wants.

2 MR. COOK: That is still true today.

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

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

6 CHAIRMAN CORY: Okay. One of the questions,
7 Mr. Hight, you should be keeping in mind is how do we preserve
8 our options vis-a-vis an illegally installed pipe line, that
9 we don't inadvertently end up through some detrimental
10 reliance or some other Mickey Mouse concept you flaky
11 lawyers come up with, con us into having to approve it?

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

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

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

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

21 CHAIRMAN CORY: Well, because we've had a few of
22 these. And I think what we're trying to do -- a lot of
23 people in the community had some problems -- and what we're
24 trying to do is mediate a family problem and keep our own
25 options intact and it's difficult. But it takes time and I

1 guess we're going to have to take the time. So why don't
2 you go ahead with your further presentation and I don't know
3 any way out, but hopefully lunch is coming and everybody will
4 be hungry and the meeting will end.

5 (Laughter.)

6 CHAIRMAN CORY: Go ahead.

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

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

22 CHAIRMAN CORY: I'm not sure I want to ask a
23 question, but was it Dart that put the illegal line in to
24 begin with? If that's the case, what in the hell are you
25 doing here? Go ahead.

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1 MR. THOMPSON: That's a good question. I think,
2 frankly, Mr. Cory, that we do have a lawsuit that's on file
3 in which I'm not the attorney that's handling the suit, but
4 your people have brought an injunctive action against the
5 District. I don't think it would be appropriate for me to
6 respond to that question in regard to that litigation.

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

11 EXECUTIVE OFFICER NORTHROP: Give us another permit.

12 CHAIRMAN CORY: And file again.

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

21 MR. McCAUSLAND: Why is that?

22 CHAIRMAN CORY: How does that work? How does that
23 adverse reaction happen? That's what I don't understand.
24 If we dismiss the application without prejudice, what is to
25 preclude you from coming back in and filing a new one?

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1 MR. THOMPSON: I think, Mr. Cory, first of all, if
2 this application were to be dismissed at this time, -- Well,
3 while there's no reason to do it, if you decided to do it --
4 the main effect of it would be that it would establish, it
5 would take away a part of the necessary basis for any
6 proceedings through the regulatory agencies that establish
7 water rights.

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

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

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

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

20 MR. McCAUSLAND: I apologize for that.

21 MR. THOMPSON: Secondly, the impact of your
22 decision would be as I've outlined it to you. I don't think
23 that it's a matter before this Commission to rule upon the
24 respective rights of the applicant as to water. That's in
25 the jurisdiction of another agency.

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1 CHAIRMAN CORY: Has that issue been adjudicated?

2 MR. THOMPSON: Has it been adjudicated?

3 CHAIRMAN CORY: Yes.

4 MR. THOMPSON: Not to my knowledge.

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

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

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

18 And that's what I don't understand.

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

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1 propose, periodic reports to you. The program --

2 CHAIRMAN CORY: But at the same time --

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

4 CHAIRMAN CORY: But like you just told us, there
5 is some need on your side of the table of priority in terms
6 of water rights application somewhere else if we leave this
7 in the --

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

11 CHAIRMAN CORY: That's a filing for an illegal
12 pipe line before the Lands Commission, and it seems to me
13 somebody connected with water ought to be making that
14 determination.

15 Greg, are you involved in this case?

16 MR. THOMPSON: The current decision as to water is
17 not --

18 CHAIRMAN CORY: Greg, are you representing the Lands
19 Commission in this case?

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

21 CHAIRMAN CORY: I hope he's young.

22 (Laughter.)

23 CHAIRMAN CORY: What are we giving away by letting
24 the application stay pending? Are we giving a priority
25 right before some other agency or just before us or do you

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1 know?

2 MR. TAYLOR: I don't know about the other agencies.
3 We haven't considered that. As far as with this agency, you
4 would have a priority right as far as this agency is
5 concerned. You'd be preserving in place --

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

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

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

22 MR. TROUT: Mr. Chairman, I think that's really the
23 succinct statement of the problem as we see it. One, the
24 District has an application with the State Water Resources
25 Control Board, the Water Rights Division; however, water

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1 rights are a separate issue normally and usually one protects
2 one's water rights before you come to the State and ask for
3 permission to withdraw the water across through a pipe line
4 on State lands. So it's really a separable issue.

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

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

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

24 CHAIRMAN CORY: I would like to think you're doing
25 those things for the people of California.

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1 (Laughter.)

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

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

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

23 What I am concerned about is various groups of
24 people who are philosophically opposed to development may
25 exert pressure on you as they have on other agencies which

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1 will lead to precipitous action being taken. There is no
2 compelling need here to terminate this application today and
3 nobody stands to lose anything, anything at all, if you
4 simply follow that second alternative and that's all we ask
5 you to do.

6 CHAIRMAN CORY: You are the attorney for Dart?

7 MR. THOMPSON: I am.

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

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

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

19 I'm sitting here with my staff guy saying he spent
20 four man months of staff time already and you're saying that
21 we got a lot of options here and at some point you're going
22 to make a decision based upon rational business decisions and
23 all that. And that's fine except our requirement to have you
24 report to us seems like that's just going to cost us more
25 grief and a problem that I'm not so sure we should be this

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1 intimately involved. And then the other thing that's really
2 bothering me, and I got to lay it to you cold turkey, somebody
3 put a line in where they didn't have a legal right to put it
4 in our opinion and why should we do anything for you.

5 FROM THE AUDIENCE: Hurrah.

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

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

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

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

24 CHAIRMAN CORY: Okay. We have some other people
25 that wish to speak.

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1 Pat Sutton.

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

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

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

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

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

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

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1 not believe it has.

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

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

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

24 Five. In 1970, the community indicated its
25 opposition to the use of Donner Lake water when the

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1 District's water rights application was first advertised.
2 There is no indication that the community has changed its
3 mind in 1976. There is no visible support within the
4 community for either the water rights application or for the
5 State Lands lease application.

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

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

24 On May 27th, the District Engineer and the General
25 Counsel used the argument that one of the important issues at

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1 stake in this matter is a "loss of water right," quote,
2 unquote. The District has no water rights at Donner Lake;
3 it has an application for water rights which is pending with
4 the State Water Resources Control Board and which has been
5 held in abeyance until your deliberations are completed.

6 The District has not purchased water rights from
7 Sierra Pacific Power Company at Donner Lake; it has a 1970
8 contract -- which was signed about a month before the
9 contract that brings us to where they are today -- has a
10 1970 contract with Sierra Pacific to purchase water as a
11 commodity from Donner Lake. Whether or not Sierra Pacific
12 has rights to sell water to the PUD is really unknown at this
13 time because Sierra Pacific's rights at Donner Lake have not
14 been adjudicated.

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

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

25 Although this has not come to the Board's attention

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1 in a clear manner, a new concern has been expressed just this
2 week in a newspaper comment by the District Engineer. The
3 concern he expressed is that the loss of Donner Lake as a
4 source means a loss of leverage with Dart. The District lost
5 its leverage, if it ever had any, with Dart last December,
6 when the Board majority accepted an incomplete, deficient
7 water distribution system some 65 miles in length without the
8 source of water being assured.

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

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

23 A Dart spokesman appeared before you on May 27th
24 and expressed the opinion that it would be imprudent for the
25 Donner Lake source to be cut off as an alternative to ground

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1 water before the source has been determined. I believe it
2 would be imprudent for you to allow this charade to continue
3 any longer, and I ask you to terminate the permit application.
4 And I would like to answer any questions.

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

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

9 COMMISSIONER DYMALLY: Three are for the project?

10 MS. SUTTON: Three is the majority.

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

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

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

16 MS. SUTTON: That is right.

17 COMMISSIONER DYMALLY: Has there been a referendum
18 on this?

19 MS. SUTTON: No, not on this matter.

20 CHAIRMAN CORY: Okay. Any questions by the members?

21 MS. SUTTON: No questions. Thank you.

22 CHAIRMAN CORY: Thank you.

23 Marge Adkerson.

24 MS. ADKERSON: I am Marge Adkerson and I'm
25 Secretary of Plug-the-Pipeline Committee, a Committee appointed

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1 by the Donner Lake Property Owners Association, some 420 --
2 How many do we have now, Patty?

3 MS. McCLAIN: Four hundred and sixty-nine families.

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

7 COMMISSIONER DYMALLY: How come non-voting?

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

11 CHAIRMAN CORY: Do you live there yourself?

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

15 (Laughter.)

16 MS. ADKERSON: I am living there.

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

18 (Laughter.)

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

21 COMMISSIONER DYMALLY: We have to change that to
22 permit the Lieutenant Governor, who's a former teacher, to
23 sign those checks.

24 (Laughter.)

25 MS. ADKERSON: I had a very short prepared text here.

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1 but you have asked so many questions I'm going to try to
2 field a few of those things. And it's going to be impossible
3 to bring you up-to-date from 19 and 70 with this mess --
4 and I'm going to lay it on the line -- with this mess because
5 of the inconsistencies that have existed in the behavior of
6 Dart Industries in the interim of this.

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

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

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

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

22 Now, I base my charge that that's what they mean
23 on past records. Let's see, I've got it here in order some-
24 where. Their track record for deciding on new directions of
25 action is quite excellent.

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1 Number one, they worked for purchase of airport well
2 for months, almost a year, only to suddenly drop that
3 alternative as a water source. Then they quickly came up
4 with alternative plans A through I, dealing with eight or
5 nine possible routes for obtaining water. Then they went
6 in a new direction when Dr. Sharp, their hydrologist, who has
7 quite a thick little book out, and plainly states that there
8 is water everywhere in that district, you only have to drill
9 for it. There are areas of very high probable yield, but
10 those areas do not happen to lie immediately adjacent to
11 already installed transmission lines. So Dart drills the
12 sales office well which is very close to the already placed
13 18-inch transmission line from Donner Lake.

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

23 Going back to how Dart darts about, they then
24 changed Dr. Sharp's probability table to give higher
25 ratings and then they started drilling the sales office well.

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1 Now, this well has not been pump tested in any manner. And
2 according to a statement made to me, evening before last
3 by Mr. Cook, he has not seen any moisture out of that hole.
4 And, admittedly, it is a deep well, but if they're in as
5 favorable a strata as they have claimed for months now, it
6 seems to me that that core might have come up with a bit of
7 damp something on it.

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

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

20 I'd like to address myself now, please, to this
21 statement that I have heard made time and again and I'm --
22 do anything, but don't ignore me -- and I'm being ignored in
23 this situation when they say no damage to anyone. Not only
24 you, Mr. Trout, have put out man hours on this. Plug-the-
25 Pipeline has spent over \$2,000 in expenses alone, let alone

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1 the hundreds of man hours we have dedicated to it. And we,
2 being a committee of 12, our first honest effort at this was
3 when we combated the Environmental Impact Report that Dart
4 bought through Jones and Stokes. And some of you may have
5 seen the Plug-the-Pipeline's counter Environmental Impact
6 Report.

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

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

21 CHAIRMAN CORY: What do you mean by that?

22 MS. ADKERSON: Well, as long as it's there, there is
23 the possibility that Dart is going to be able to use it. At
24 least they seem very positive of it. That's the only reason
25 I can see for the justification of --

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1 CHAIRMAN CORY: Your fear is that if they start
2 taking water out of there, it will diminish the water level
3 and thus the value of the property in the area?

4 MS. ADKERSON: Oh, definitely.

5 COMMISSIONER DYMALLY: Would not the corresponding
6 development enhance your property?

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

9 COMMISSIONER DYMALLY: Yes.

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

11 COMMISSIONER DYMALLY: I see.

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

13 COMMISSIONER DYMALLY: No, I am not.

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

25 So my personal feeling is that they may have

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1 selected that site and purchased that site for reasons other
2 than a beach, cabana, and boat launching property. That's
3 my personal viewpoint.

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

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

23 Right at the moment, the District has more than
24 sufficient water for its customers other than Dart's sales
25 program. So I say that to leave the application open is

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1 simply to benefit a commercial concern at the expense of the
2 taxpayers and property owners of Donner Lake.

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

6 MS. ADKERSON: How many miles does it extend?

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

9 CHAIRMAN CORY: Yes.

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

11 MR. TROUT: Mr. Chairman, I think if you and the
12 Commissioners would look at Exhibit A in your calendar,
13 following page 56, there is a reproduction of a governmental
14 topographic chart. And the arrow indicated by site is the
15 corner of the lake where the wedge is located and where the
16 pipe line is on the bed of the lake. The basic Dart
17 development is to the north of that in the areas of Sections
18 5 and 6 that you can see there in that general area.

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

22 MR. TROUT: This is a fairly old quadrangle sheet
23 and that's a prior, existing dirt road. There is now some
24 2700 lots up in there, I think. Isn't it somewhere in that
25 neighborhood?

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1 MS. ADKERSON: Six thousand.

2 MR. TROUT: Six thousand lots.

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

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

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

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

12 MR. TROUT: That's the power line.

13 CHAIRMAN CORY: My recollection is that Interstate
14 80 runs somewhere across.

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

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

18 MS. ADKERSON: Right, it is.

19 CHAIRMAN CORY: And beyond the ridge.

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

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

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

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1 you're close.

2 MS. McCLAIN: May I speak?

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

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

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

19 Now, the question I would like to state today is:
20 If this Board has any concern about the people of California,
21 I'd like to remind you of Dan Cook's statement to the Reno
22 Gazette on which I have challenged him enumerable times. He
23 has never denied it. His statement was at the inception of
24 this whole thing, quote, "All they'll get is a slap on the
25 hand." And I want you to know, Mr. Cook, that from the hearing

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1 that took place in Truckee till today, to the book that I am
2 writing entitled "The Rape of Donner Lake," which has been
3 purchased by a publisher, I intend to quote you. And I hope
4 that I make a liar out of you on that statement.

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

16 Their toe hold lots on the shores of Donner Lake does
17 not serve the recreational needs in any way, shape, or form
18 of 6,000 lots with an average of four people per family or
19 24,000 people. Children and older persons who would have to
20 be bused by shuttle to and from that site, there is parking
21 for not more than 60 cars.

22 In addition, they have put on their so-called
23 recreational facility beach, their toe hold a pumping tank and
24 an out building which has got to be the most god-awful, ugly
25 building I have ever seen in my entire life. I have sent a

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1 picture of it to Business Week magazine who saw fit to cover
2 this. It was quoted in an article, "When the Land Boom
3 Backfires." And I countered that with the fact that
4 Business Week at that time -- and this will also be in the
5 book -- Business Week at that time quoted only the large
6 corporation people. I wrote them a letter and I said here I
7 am, I'm Mrs. Housewife, talk to me if you want to get some
8 real facts.

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

22 (Laughter.)

23 MS. McCLAIN: I own a six-bedroom lodge at the end
24 of Donner Lake. That lodge is going to be shown on nationwide
25 television this Thanksgiving Day. It was the scene of the

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1 filming by Charles Schultz and Corti Films of Bob and Dorothy
2 DeBolt of Piedmont and their 19 crippled children who use my
3 house every year for their summer vacations. I volunteer
4 and offer that house. This year when the children go up
5 they won't be able to fish off the pier because God saw fit
6 to give us a drought year. But I can tell you that if on top
7 of that Dart had been permitted to pump four more acre feet,
8 we would have had a very difficult time justifying to the
9 people who are going to see this picture, that what exists
10 there as you drive by this year and maybe next year, if we
11 have another drought year, is a lake at all.

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

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

24 (Laughter.)

25 MS. McCLAIN: I would like to close in saying please

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1 to this Committee. I know this has been an emotional plea.
2 I've been accused of being emotional.

3 (Laughter.)

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

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

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

21 (Laughter.)

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

25 (Laughter.)

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1 MS. McCLAIN: -- dealing with the fact that when
2 now Governor Jerry Brown was running against Flournoy, I
3 challenged Mr. Flournoy to step down as Chairman of the
4 State Lands Commission feeling that since Justin Dart had
5 donated \$4,400 to him in his campaign, that he could not be
6 without prejudice. I have two letters that will be printed
7 in this book signed by Houston Flournoy: One in which he
8 denies that there's a problem at all. One an entire year
9 later where he admitted to me that he and Justin Dart were
10 personal friends and that perhaps I might be right in my
11 assumption that this was why good old Justin felt he could
12 keep on raping Donner Lake.

13 Thank you.

14 MS. ADKERSON: She votes democratic now.

15 (Laughter.)

16 CHAIRMAN CORY: Moving right along, yes, sir.

17 MR. BEARDSLEY: I'll be brief. I'll try to be
18 very quick here. My name is Frank Beardsley, a property
19 owner at Donner Lake, who lives there six months out of the
20 year. I'm a retired engineer for PG&E.

21 I would like to comment on one thing that Pat
22 Sutton said. She said there was a question about the
23 legality of the ownership of that water. In the large EIR
24 which has been referred to, Jones and Stokes, in the back
25 there is a, to Appendix C, is a copy of a deed from -- Wait

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

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

11 The question was asked about the effect of the
12 water draw out. Now, this report -- and these people did
13 a very professional job, I'll say that. There are voluminous
14 tables back here to show the effect under the withdrawal of
15 two different volumes of water. We're concerned with the
16 4,000 acre feet in this case. That the maximum draw-out would
17 be about two feet. The great fault with this whole thing is
18 that they only use 13 years of water records. They took
19 1961 as a dry year, which was not very dry. I had records
20 from the PG&E, records for a hundred years,
21 and we pointed out in our Environmental Report that there were
22 12 years that were drier than 1961. I had no idea that 1976
23 was going to come along and add one more year to it.

24 The water right now, last night, is three feet
25 below the maximum level. Now, had they been drawing, by the

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1 end of August it would be down six feet. Now, that lake
2 cannot stand to draw down the water no more than about a
3 foot and a half before you start to destroy its esthetic and
4 recreational values.

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

7 MR. BEARDSLEY: Absolutely.

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

11 Would you spell your name, please?

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

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

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

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

25 We do not have any connection with Dart at all, as

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1 Mrs. Sutton perhaps suggested. We are only interested in
2 resolving the problem. And one fact that you might be
3 interested in is the so-called pipe line would only draw a
4 maximum of between three and 400,000 gallons a day out and
5 Sierra Pacific drains a million three hundred thousand out a
6 day.

7 Thank you.

8 CHAIRMAN CORY: Okay.

9 MR. BEARDSLEY: May I answer that, please?

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

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

22 MR. McCAUSLAND: I would like to make one brief
23 statement, if I could.

24 I understand the motion to say that we are
25 terminating the application without prejudice. And I think

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1 that that law is totally clear on that matter that when you're
2 ready to know what you're going to do for sure, you come back
3 and file for a permit and it will be considered in due course.
4 There's never been anybody before this Commission, or any
5 other Board that I serve on as an alternate, that ever
6 willingly participated in an activity with the State. And
7 for somebody who suddenly wants the State to be a partner in
8 this activity while it's in litigation, doesn't make me
9 comfortable at all.

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

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

23 Now, the position that Mr. Trout has taken is that
24 staff time is involved, and that is certainly true. It is
25 also true that if you take the action that these opponents

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1 of my client want you to take, that what you will have done
2 effectively is to throw that staff time away. And we don't
3 see any reason for doing that. And we think this action that's
4 being urged on you is ill-advised. We feel that this is not
5 an appropriate time to preclude any options and we promise
6 to you to work diligently toward arriving at a point of time
7 where that can be done.

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

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

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

24 CHAIRMAN CORY: Let me suggest to you a question
25 you haven't addressed yourself to that I thought I put very

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1 explicitly. Somebody there put a pipe line into that lake
2 without legal authority to do so. Now, it was either the
3 District, the contractor for the District, or your client.
4 And it seems to me you come to us with unclean hands, sir.

5 And do you want to disabuse me of that fact,
6 because I'm sitting here of the opinion -- and it got worse
7 when somebody said it was done in the middle of the night --

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

10 CHAIRMAN CORY: Who put the pipe line in there?

11 MS. McCLAIN: Sub-Terra Contracting Company at
12 their instruction.

13 CHAIRMAN CORY: I'm asking you, sir.

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

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

18 MR. THOMPSON: I'm not going to -- I not only come
19 before you with hands, I come before you with hands that are
20 tied. This matter is in dispute. It's in litigation. It's
21 not appropriate for me to comment upon that at this time.
22 I'm not handling that and it's not a fair question.

23 CHAIRMAN CORY: If you don't want to get into it
24 because of litigation, that's fine. But I'm telling you that
25 because that exists, it's weighing overwhelmingly in my

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1 decision. I don't know how it's affecting the others. But
2 if you want to comment, I'm willing to hear it.

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

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

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

25 Mr. Dymally moves, Mr. McCausland seconds that we

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

9 We have a motion; we have a second.

10 All those in favor signify by saying aye.

11 (Ayes.)

12 CHAIRMAN CORY: Motion is carried.

13 MS. McCLAIN: Mr. Cory, one little question.

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

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

20 (Laughter.)

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

25 We completed Item 21.

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1 Item 22, authorization to initiate proceedings
2 regarding adoption of the regulation to implement the Coastal
3 Plan. This is conditional only if legislation --

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

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

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

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

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

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

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

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1 to that.

2 CHAIRMAN CORY: Yes, sir.

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

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

18 MR. FINICAL: Mr. Cory, I'm Tom Finical of
19 Standard Oil Company. And I talked yesterday afternoon to
20 Mr. John Sproul. He's the Vice President of Gas Supply for
21 PG&E. I posed the question to him. And after several hours
22 of study, he came back and said that, no, PG&E would not be
23 willing to sign a contract with a dollar thirty-one primarily
24 because they are conducting simultaneously negotiations with
25 about 89 or 90 different producers. And each of these

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1 producers is endeavoring to get the highest price that PG&E
2 will agree to. And they feel that if they have a variance
3 for the Rio Vista contract, then they would have to abide by
4 that with all of their other contracts and with all the other
5 producers.

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

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

14 EXECUTIVE OFFICER NORTHROP: We would make the
15 condition be retroactive without prejudice.

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

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

21 CHAIRMAN CORY: I think they will. The price is
22 going to be too high for them is what I'm saying to you.
23 And I'll get on the phone and see what I can do to convince
24 them of the propriety of the proceeding, if that does not
25 adversely affect you in a major way. If not, the alternative

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1 would be a special meeting on this one item. Is that okay,
2 Sid?

3 MR. McCAUSLAND: No objection.

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

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

11 Mr. McCausland moves; I will second.

12 Without objection, such will be the order.

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

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

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

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

20 MR. McCAUSLAND: Move adoption.

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

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

25 Anybody in the audience who wishes to address

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1 themselves to this item?

2 MR. McCAUSLAND: I have one question on it,
3 Mr. Chairman.

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

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

14 MR. McCAUSLAND: Move adoption.

15 CHAIRMAN CORY: Mr. McCausland moves as staff
16 recommends putting the wheeling thing in. If not, you'll
17 bring it back to us.

18 MR. McCAUSLAND: I move it as recommended without
19 the wheeling.

20 CHAIRMAN CORY: Without the wheeling.

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

22 MR. HIGHT: As is without the wheeling?

23 MR. McCAUSLAND: How do you have it now?

24 MR. HIGHT: Right now there is no wheeling.

25 CHAIRMAN CORY: You want it approved without the

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1 wheeling.

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

5 CHAIRMAN CORY: Right.

6 MR. McCAUSLAND: All right, then, I'll make the
7 motion.

8 CHAIRMAN CORY: With the further caveat that if
9 they have problems with that, they'll bring it back to us
10 rather than --

11 MR. McCAUSLAND: I thought I heard you asking for
12 more time.

13 CHAIRMAN CORY: All right. Without objection,
14 Item 25 will be approved with the wheeling requirement added.

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

17 Any questions?

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

20 Without objection, the item will be approved as
21 presented.

22 Item 27, application of Tom and Jo Ann Snyder.

23 MR. CHRISTIANSEN: One moment, sir.

24 CHAIRMAN CORY: Oh, okay. Item 26?

25 MR. CHRISTIANSEN: Item 26.

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1 CHAIRMAN CORY: Without objection, we'll rescind
2 the action whereby that was approved, that lease. And you
3 are, sir?

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

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

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

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

20 CHAIRMAN CORY: What were you paying previously,
21 sir?

22 MR. CHRISTIANSEN: A hundred and sixty-two fifty.
23 This is exactly a 300 percent increase. In my former lease
24 it said reasonable increase. This may be the State Lands'
25 idea, but I don't think that's a reasonable increase.

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1 CHAIRMAN CORY: So you were concerned that the
2 increase of 488 you do not consider reasonable and would like
3 an adjustment.

4 Do you have any --

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

8 MR. CHRISTIANSEN: Yes, sir.

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

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

16 CHAIRMAN CORY: Yes.

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

19 MR. McCAUSLAND: The desire in the Delta.

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

25 CHAIRMAN CORY: How many slips do you rent?

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1 MR. CHRISTIANSEN: I have 12. I have a very small
2 operation. I have no land where to store, liquor place,
3 restaurant or anything like that to increase my income. All
4 I can use the land site for is a parking facility and
5 restrooms.

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

9 MR. CHRISTIANSEN: That is correct.

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

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

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

24 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, we're
25 facing a situation, an attempt to put it together with the

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1 River Advisory Committee or the Liaison committee in which
2 we're attempting to evaluate because it's been pointed out to
3 the staff that it's not possible for every marina to -- some
4 marinas have a much better location because of nature and so
5 forth, the locations are more favorable or less favorable, and
6 so we're attempting to come to grips with this problem and
7 with the establishment, at least staff has recommended to the
8 Commission, the establishment of a River Advisory or River
9 Liaison Committee and which will be represented by both the
10 private sector and government in an attempt to work this out.

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

15 CHAIRMAN CORY: Whether or not we own anything?

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

19 CHAIRMAN CORY: But it is theoretically possible
20 Mr. Christiansen knows of somebody who's going to sue us
21 tomorrow on the basis of rental, but it's awfully hard for us
22 to act accordingly. I would think that if somebody decided
23 we were acting illegally or contrary to our powers, that you
24 would have the right to come before this Commission
25 commensurate with the settlement of some, as yet, unfiled,

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1 unknown litigation. And if somebody says we're wrong and
2 it's been finally adjudicated, I would think the Commission
3 would look favorably upon equality of treatment.

4 MR. CHRISTIANSEN: This is all I ask.

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

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

19 MR. CHRISTIANSEN: Well, I have no facts on this
20 other, shall we say, possible lawsuit. Fairly solid rumor.
21 Now, this I would have to check into, but, as I say, all I
22 wanted was fair treatment with what the other people in the
23 area were paying. And as much as mine was up before theirs,
24 I had to sign the agreement to not be in violation of no
25 agreement with you people.

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1 MR. TROUT: Mr. Chairman, the significance of the
2 April 28th date is that that was the date of the longest
3 lease at the old rental rates. And all leases in this general
4 area have been adjusted to the same basic per-acre charge as
5 of that same date. So Mr. Christiansen or his wife stand in
6 the same place as far as their operation is concerned as
7 others in the same general vicinity.

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

15 MR. CHRISTIANSEN: Thank you.

16 CHAIRMAN CORY: Thank you.

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

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

22 MR. McCAUSLAND: Move adoption.

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

25 Item 28. Is there anybody in the audience on 28?

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1 MR. McCAUSLAND: Move adoption.

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

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

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

10 CHAIRMAN CORY: Okay. Item 30, assignment from
11 Norris Oil Company to Cabot Oil Company; Rincon Offshore
12 Field.

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

15 MR. McCAUSLAND: Move adoption.

16 CHAIRMAN CORY: Without objection, Item 30 will be
17 approved as presented.

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

20 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, you may
21 want to take 31 and 33 at the same time.

22 CHAIRMAN CORY: Okay. Okay. We'll take 31 and
23 33.

24 Is there anyone in the audience on 31 and 33?
25 No one before us on those items.

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1 Without objection, 31 and 33 will be approved as
2 presented.

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

6 MR. McCAUSLAND: Move adoption.

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

9 Mineral extraction, Lake Minerals Corporation, Item
10 34; Owens Lake, Inyo County; extraction of Trona. Is there
11 anyone here for Item 34?

12 MR. McCAUSLAND: Move adoption.

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

15 Item 35.

16 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item 35,
17 37, and 38 are modifications and cost proposals by the City
18 of Long Beach. Staff has reviewed them and signing them
19 would be in order; however, we would like to just take a
20 second on 36.

21 MR. McCAUSLAND: Move adoption of 35, 7 and 8.

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

23 Without objection, they will be approved as
24 presented.

25 Item 36.

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

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

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

20 What we're talking about here is taking a pilot
21 flood project which involves, as you see, a very small part
22 of one of the four zones in the field. This is actually a
23 12-acre parcel here. There will be five injection wells,
24 five producing wells. And the Federal Government will
25 enter into a cost sharing on this. The total project will be

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1 about \$7 million. So they will come in for three and a half
2 million dollars.

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

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

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

10 In the Wilmington field, for example, there we have
11 7.8 originally and we placed 7.8 billion barrels. We covered
12 about 1.8, leaving 6 billion barrels in place. It only takes
13 a very small recovery of that. Ten percent additional
14 recovery is 600 million barrels. So what we're doing is
15 trying to run a pilot demonstration to demonstrate the
16 feasibility, economic feasibility of whether we can do
17 initial recovery on the balance of a large amount of oil in
18 place.

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

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1 And the economics of this --

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

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

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

15 CHAIRMAN CORY: Whose share of the net profits?

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

21 So the State, since there is to be a fixed amount
22 to the City of Long Beach, the State then is in the incremental
23 position of the profit or loss from it. Maximum exposure
24 could be about \$1.9 million. And if the project is a complete
25 failure, we think then we would probably end up with a little

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1 less than a million dollars in the red, with a potential of
2 coming out and making a million three. Somewhere is our
3 unknown technology and I feel applications will be somewhere
4 between these two ranges. It's a potential of having a cost
5 sharing proposition for a very large future potential and
6 getting someone else to pick up part of the cost. And this
7 is applicable to other parts of the United States.

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

14 CHAIRMAN CORY: Anybody in the audience on this
15 item?

16 Without objection, the item will be approved as
17 presented.

18 Item 39.

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

24 EXECUTIVE OFFICER NORTHROP: Right, on existing
25 areas.

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1 CHAIRMAN CORY: Item 40.

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

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

7 CHAIRMAN CORY: Anybody in the audience on Item 40?
8 Without objection, be approved as presented.
9 Item 41.

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

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

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

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

24 MR. McCAUSLAND: Move adoption.

25 CHAIRMAN CORY: Without objection, Items 41 through

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1 43 will be approved as presented.

2 Item 44.

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

7 CHAIRMAN CORY: Anybody in the audience on this
8 item?

9 Without objection --

10 MR. McCAUSLAND: Move adoption.

11 CHAIRMAN CORY: -- be approved as presented.

12 Item 45.

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

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

22 EXECUTIVE OFFICER NORTHROP: We will look --

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

25 Without objection, be approved as presented.

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1 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, may I do
2 this. May we circulate the names and if we receive no
3 objections --

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

6 EXECUTIVE OFFICER NORTHROP: All right.

7 CHAIRMAN CORY: 46.

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

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

22 CHAIRMAN CORY: Okay. Any questions?

23 Anybody in the audience on this item?

24 Okay. Without objection, the resolution will be
25 adopted.

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1 Item 47.

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

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

9 MR. PORGANS: Yes, sir.

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

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

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

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

22 MR. PORGANS: I can understand that.

23 Basically our organization, Safeguard Environmental
24 Protection Agency, has been doing research up in the Lake
25 Oroville area, Feather River. And there was a proposed

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1 land exchange to take place between the State of California
2 and a private entity, Mathews Readymix. Now, we were
3 concerned about the exact amount of property that the
4 Mathews Readymix people owned and the status determined
5 requested by my organization through the State Lands
6 Commission. And they found that it was 23 acres of land
7 outside of 115 acres of property that was owned by Mathews
8 that the State was going to take claim to.

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

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

18 MR. LIGHT: No.

19 EXECUTIVE OFFICER NORTHROP: Jim.

20 MR. TROUT: Mr. Chairman, some time ago Ray Johnson
21 introduced a bill which allowed the construction of a
22 diversion dam. The dam has been unpopular. And as a result,
23 Assemblyman Chappie has proposed legislation that would
24 authorize in exchange a construction of a recreation area
25 along the Feather River. The Department of Water Resources

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1 is getting involved in the land exchange and has formally
2 asked staff to comment on the ownership. We've looked at
3 it and tentatively advised the staff of Water Resources that
4 a portion of the property claimed by Mathews Readymix
5 appears to be State-owned property. However, there is no
6 access from the highway to this property. What it would mean
7 is that a certain portion of the frontage from the river might
8 be a State-owned property, and we think it's State-owned
9 property.

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

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

19 MR. PORGANS: Yes, there is.

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

22 MR. PORGANS: Yes.

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

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1 need to tell us.

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

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

12 MR. PORGANS: Thank you. Yes.

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

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

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1 property.

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

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

13 EXECUTIVE OFFICER NORTHROP: 38.

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

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

17 All right. We stand adjourned.

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

21 --oOo--

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1 STATE OF CALIFORNIA)
2 COUNTY OF SACRAMENTO) ss.

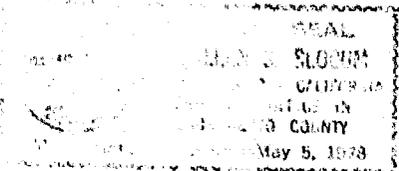
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I, CATHLEEN SLOCUM, C.S.R., a Notary Public in and for the County of Sacramento, State of California, duly appointed and commissioned to administer oaths, do hereby certify:

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.



Cathleen Slocum
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Notary Public in and for the County of Sacramento, State of California
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