MEETING
STATE LANDS COMMISSION

ROOM 2133
STATE CAPITOL
SACRAMENTO, CALIFORNIA

ORIGINAL

WEDNESDAY, NOVEMBER 30, 1977
10:00 A.M.

Reported by: PAUL D. PAMSHAW
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PETERS SHORTHAND REPORTING CORPORATION
26 NESS COURT
SACRAMENTO, CALIFORNIA 95811
TELEPHONE (916) 382-3601
MEMBERS PRESENT

Mr. Sid McCausland, Acting Chairman, for Roy M. Bell
Mr. Carl J. D'Agostino, for Kenneth Cory

MEMBERS ABSENT

Hon. Mervyn Dymally, Lieutenant Governor

STAFF PRESENT

Mr. Robert S. Golden
Mr. Robert C. Hight
Mr. James F. Trout
Mr. Jan S. Stevens
Mr. Donald J. Everitts
Mr. David K. Hayward
Mr. Steven C. Lindfieldt
Mr. Stephen Mills
Mr. Randy Moory
Mr. Dwight Sanders
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PROCEEDINGS

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ACTING CHAIRMAN McCAUSLAND: The meeting of the State Lands Commission will come to order. The chairman, State Controller Cory, is in Washington, D.C., today and I am acting as chairman. My name is Sid McCausland. I am deputy director of finance. I am joined today by Deputy Controller D'Agostino.

Are there any corrections or additions to the minutes of October 27, 1977? If not, they will be deemed approved as submitted.

Before we go on to the report of the Executive Officer, I would like to inform you that I intend to go through the agenda in fairly rapid order today. If you want to testify on any agenda item, please raise your hand, and we will get an appearance form passed to you right now so you can fill it out and I can know ahead of time that I am to call on you on that agenda item. So if there is anyone who has not completed a form requesting an appearance, please do so now. There is an individual there in the second row who would like one.

The Executive Officer's report.

MR. GOLDEN: Mr. Chairman, the City of Stockton has requested that the Commission express its intent to enter into negotiations with the city for a lease covering
an area of Ten Mile Slough adjacent to the city's Buckley Cove development, which is in an area of the original bed of the San Joaquin River previously granted to the city.

Because of the withdrawal last month of a private applicant's application on Ten Mile Slough near Buckley Cove in the city of Stockton, it is the intent of staff to negotiate a revenue-producing lease covering the same area with our remaining applicant, the City of Stockton.

Negotiations will be conducted in the same manner as would any negotiations for a commercial lease, and will require a monetary rental from the City of Stockton.

Calendar item number 7 and calendar item number 27 have been taken off the agenda.

I don't know whether the Commission wishes to express -- or whether the statement I just read would take care of the City of Stockton's request in this area.

ACTING CHAIRMAN McCausland: Without objection, the request of the City of Stockton will be granted.

The next item on the agenda constitutes the consent calendar. That includes items C1 through item C13. Item C7 has been removed from the calendar. Unless there are objections, the Commission will approve the staff recommendations for consent calendar items C1 through C6, C8 through 11, and C13. In addition, the Commission will acknowledge receipt of staff report on item C12. Are there
any objections?

MR. D'AGOSTINO: No.

ACTING CHAIRMAN McCausland: Such will be the order.

The next item is calendar item 14 regarding a prospecting permit for geothermal resources at Boggs Mountain State Forest. Mr. Golden.

MR. GOLDEN: Mr. Chairman, I have a statement to read into the record on Boggs Mountain.

At the September meeting the Commission considered the request of Geothermal Kinetics, Inc., for permits to prospect for geothermal resources on Boggs Mountain State Forest in Lake County. Because of questions raised about possible impacts to cultural or historical resources and also about the size of the area to be covered by the proposed permits, the Chairman directed that staff meet with the parties involved in an attempt to resolve the issues raised at that meeting.

On October 12 Mr. Northrop, along with members of the staff, met with Mr. Clyde Kuhn, who had raised questions about the need for additional archaeological studies of the site. Also present was Mr. William C. Seidel, archaeologist with the Office of Historic Preservation of the Department of Parks and Recreation.

Mr. Kuhn renewed his request that a cultural
resource study be done of the entire forest so that proper interpretation could be made of any resources found at drillsites. He also stressed the need for consultation with the Native American Heritage Commission. He restated his position that damage to cultural resources could occur from pre-drilling geophysical surficial exploration.

Staff pointed out that because of questions raised by the Commission as to the size of the proposed permit, any permit issued would probably be reduced in size, therefore reducing potential impacts. Based on the Division's study, it has been determined that:

1. Two of the four proposed drillsites have no archaeological or cultural values.

2. The exact types of geophysical exploration to be utilized were unknown at the time. However, all activities would be restricted to existing roads, and if there was a possibility of damage, an archaeologist would monitor these activities.

3. The cultural resource overview to establish the relationship of any cultural resources which might be discovered could probably be accomplished by a literature review.

4. No decisions on specific impacts on specific sites can be made until the applicant does his surficial geophysical exploration, and the applicant cannot do anything
until he has received a prospecting permit from the Commission.

It was agreed that most of the archaeological concerns could be satisfied with proper monitoring after the permit had been issued. The Office of Historic Preservation offered to provide a plan for cultural resource management to be utilized if a discovery is made and the applicant applies for a lease for full field development. Cost figures for archaeological studies will also be provided.

On October 14th staff met with representatives of the applicant, Geothermal Kinetics, Inc., in the division office in Long Beach. They indicated they did not intend to drill temperature holes as part of their initial exploration, a procedure which has the potential for damage to cultural resources. If the applicant finds he is unable to obtain sufficient data to target drill sites without utilization of "off the road" temperature holes, it will be a requirement of the permit that an archaeologist monitor any such activity.

After further review of the work already done, staff has concluded that there is sufficient information and resource data in the archaeological study already performed to provide tools to interpret any finds of cultural or historical values during this preliminary exploratory project. If either one of the two sites identified as having potential values are chosen for exploration, the applicant has agreed
to participate in a limited, controlled archaeological survey of the sites in a 100-yard radius from the center of the drill site. Such a survey will be performed by a qualified archaeologist.

Additionally, Mr. Northrop has reviewed the testimony of Mr. Kuhn from the September meeting where he quoted Mr. Northrop as saying that his comments to the draft and final EIR's were "not in keeping with law".

Mr. Northrop's statements were taken somewhat out of context by Mr. Kuhn from a letter which he wrote to Mr. Kuhn responding to his comments to the EIR's. Mr. Northrop's comments were concerning a request by Mr. Kuhn that the environmental documentation should consider not only the prospecting aspect of this project, but also full field development.

Mr. Northrop's specific reference was to recent California appellate court decisions, which have stated that when a lead agency is considering the issuance of a permit for a geothermal exploration, only the impacts of the exploratory aspects of the project need be discussed, and not those potential impacts associated with full field development. As such, Mr. Kuhn's quotation of Mr. Northrop's statement was taken out of context, and is therefore a misquotation of what was intended to be conveyed. It is staff's belief that the record should be so clarified.
Lastly, as a result of several meetings, the applicant has agreed to reduce the application for two prospecting permits for the entire 3460 acres of the forest to one application for approximately one-half of the forest, encompassing approximately 1784 acres.

On November 3rd staff met with Mr. Stephen Rios, executive secretary of the Native American Heritage Commission, to discuss the commission's concerns over possible project impact on Native American resources. Mr. Rios indicated that he had been contacted by a member of his commission, as well as a member of the staff of Sonoma State College, suggesting that religious or ceremonial sites of importance to the Native American community may be present in the project area.

He said he was checking the statements and asked for another ten days to confirm the sites. On November 14th Mr. Northrop received a letter from Mr. Rios indicating that due to his small staff and tremendous workload, he would not be able to follow up this matter in a timely fashion and requested that staff members or consultants pursue this issue. Yesterday staff met with Ms. Mabel McKay, a member of the Native American Heritage Commission, noted Indian medicine woman, and expert in local Indian history. The purpose of this meeting was to take Ms. McKay to the project area and to attempt to ascertain the existence and significance.
if any, of any Native American religious, cultural and ceremonial sites within the project area.

Staff has been advised by Ms. McKay that although the general area has been used by various Indian groups in the past, this area is now a (quote) "dead" (unquote) area, without significance as an Indian religious, cultural or ceremonial site. She stated that the project would not therefore have any impact on the cultural resources.

Following this meeting, staff consulted with Mr. Rios regarding the findings of Ms. McKay. Based upon that discussion, he advised that he is removing his previous objection to the EIR.

Also contacted was Dr. David A. Frederickson of California State College, Sonoma, an expert in local archaeology. He advised the staff that although he had expressed some concerns to Mr. Rios, he was satisfied that the project as proposed, with its numerous safeguards, would adequately protect the existing archaeological resources.

Additionally, Mr. Northrop received a letter November 4th from the Office of Historic Preservation as a result of staff's earlier meeting with Mr. William Seidel of that office. It had been staff's understanding that Historic Preservation would provide us with a format for a cultural resource management plan to be enacted if a discovery was made and the applicant requested a lease.
The material received thus far calls for large-scale expenditures of money, but is somewhat too general to be of great use at this point. Staff plans to ask Historic Preservation for additional assistance and information. In any case, the project before you is of an exploratory nature, and the proposal made by Historic Preservation is one for full field development at some time in the future if a commercial development is made.

It is staff's belief that through these meetings and consultations, most of the concerns voiced by the public and by members of the Commission have now been resolved, and staff recommends approval of this modified application.

ACTING CHAIRMAN McCausland: Thank you, Mr. Golden. Is there anyone who wishes to testify on calendar item 14, the prospecting permit at Boggs Mountain?

Let me say one last time that if you wish to testify, I would appreciate it if you fill out a blue form, because I'm going to move through the agenda rather rapidly. At this time I am only aware of individuals wishing to testify on items 23 and 36. If you do want to testify, raise your hand and one will be passed to you immediately.

The Commission has spent a considerable amount of time on the Boggs Mountain prospecting permit. We have greatly scaled down the scope of the prospecting permit and put additional constraints on the nature of the activity.
that can be undertaken pursuant to the permit.

Without objection, we will authorize staff to
issue the permit for prospecting for geothermal resources
at Boggs Mountain State Forest.

MR. D'AGOSTINO: Let me ask one question.

ACTING CHAIRMAN McCausland: Mr. D'Agostino.

MR. D'AGOSTINO: You indicated that most of the
objections have been answered. Are there any other objections
that have not been?

MR. GOLDEN: Bob, do you want to take that?

MR. HIGHT: Mr. D'Agostino, no. I think all of
the objections have been answered in a fashion acceptable
to the staff.

MR. D'AGOSTINO: This is only an exploratory
permit?

MR. HIGHT: Yes, this will only authorize exploration.

MR. D'AGOSTINO: No objections to item 14.

ACTING CHAIRMAN McCausland: Item 15 would place
into the investigatory record all the materials received as
a result of subpoenas issued in the course of this Commission's
investigation on the reasonable market value of natural gas
in California. Is there anyone in the audience wishing to
testify on item 15?

MR. D'AGOSTINO: No objection.

ACTING CHAIRMAN McCausland: Without objection,
item 15 is adopted.

Item 16 concerns a supplement of litigation and issuance of a 15-year lease to lands in the Sacramento River, Yolo County, to Patricia Avila and M. R. Richards. Any objections?

MR. D'AGOSTINO: No.

ACTING CHAIRMAN McCUSAULD: Without objection, item 16 is adopted.

Item 17 regards a lease in the bed of the Albion River in Mendocino County to Northern Headlands, a partnership. Any objections?

MR. D'AGOSTINO: No.

ACTING CHAIRMAN McCUSAULD: Without objection, item 17 is adopted.

Item 18 relates to a permit in Lake Tahoe at Tahoe City to Associated Timber Products. Any objection?

MR. D'AGOSTINO: No.

ACTING CHAIRMAN McCUSAULD: Without objection, item 18 is adopted.

Item 19 relates to the amendment and assignment of a lease for marine land in the Pacific Ocean at Long Point, Palos Verdes Peninsula. Is there any objection?

MR. D'AGOSTINO: No.

ACTING CHAIRMAN McCUSAULD: Without objection, item 19 is adopted.
Item 20 relates to the termination of a lease
in the Sacramento River near Glenn, Glenn County. Any
objections?

MR. D'AGOSTINO: No.

ACTING CHAIRMAN McCASLDAN: Without objection,
item 20 is adopted.

Item 21 relates to a negotiated lease from the
Department of Water Resources: lands in Contra Costa County
for the McCulloch Oil Corporation. Any objections?

MR. D'AGOSTINO: No objections.

ACTING CHAIRMAN McCASLDAN: I have one question
on this one. Are there any similarities between the
producing properties of this land and the Union Island field?

MR. EVERITTS: I don't understand the question.

ACTING CHAIRMAN McCASLDAN: I will ask you
sometime in a staff meeting.

(Laughter.)

ACTING CHAIRMAN McCASLDAN: Without objections,
item 21 is adopted.

Item 22 relates to a modification of drilling
requirements on state oil and gas leases in Santa Barbara
County to Chevron, Exxon and Atlantic Richfield to allow
the orderly development of the field. Any objections to
item 22?

MR. D'AGOSTINO: No.
ACTING CHAIRMAN McCausland: Without objections, item 22 is adopted.

Item 23 is an information item on the status of negotiations with Aminoil under oil and gas leases in Orange County. We have requests for appearances from two employees of Aminoil USA, Incorporated: C. D. Howald, division project engineer, and J. H. Loeb, regional counsel. Would you like to come forward.

Mr. Golden, would you like to present your report on this matter first?

MR. GOLDEN: It might be helpful if Mr. Everitts would give us a brief summary. This is a very complicated item to go over in brief.

MR. EVERITTS: This item has to do with an undeveloped fault block in the Huntington Beach oil field. It involves approximately, depending on various cases, four to five million barrels of oil, secondary and primary.

In order to encourage secondary development, the law allows negotiation of a special royalty rate in order to allow for the added expenditures of a secondary recovery project. The law says that the secondary royalty shall be no less than the remaining primary royalty. That's a negotiated thing, but the minimum it can be is the remaining primary.

In this instance the field has not been drilled.
It's been determined to exist by virtue of coreholes and other geological data. Through engineering calculations we have determined that the primary royalty would probably be around 23 percent. That therefore would also be the minimum secondary royalty.

The state has gone through various computer models and determined that the most advantageous position for the state would have been 23 percent for the primary and 35 percent gross, or approximately 50 percent of the net, on the secondary. We proposed that to Aminoil.

Aminoil responded that they weren't interested in that proposal and came back with a 23 percent primary, 23 percent secondary. We countered with 25 percent of the net, which is equivalent to about 30 percent of the gross on secondary, with 23 percent primary. They countered with the same original offer: 23 percent, 23 percent.

They have now said that if we don't go for the 23 percent primary, 23 percent secondary, they will not even go into the secondary project, which will of course mean a loss of revenue to the state of quite a few dollars. However, that is their option, I guess.

From our own calculations it appears that on a discounted, cash flow basis probably they will do as well on just straight primary as they would on a secondary project unless they can have their 23 percent, 23 percent thing. So
there's really no basis for them to go any other way.

ACTING CHAIRMAN McCausland: Mr. Loeb?

MR. LOEB: I'm Joe Loeb, attorney with Aminoil.

Don stated the case pretty accurately. We have
an undeveloped reservoir, and we can develop it two ways.
We can just drill it and produce it and deplete it under
primary circumstances, or conduct secondary recovery operations
immediately by injection of water.

We have been negotiating very strenuously with
the state's staff for, I'd say, 18 months in order to
convert the leases to the point where the expense of a
secondary recovery project can be undertaken. Under the
existing sliding-scale royalty formula, a secondary recovery
program is impossible, because the royalty rates are
gеометрически пропорциональны к объему производства
per day, and it just won't support the expense of a secondary
recovery project.

We have done this many times in the past at
Huntington Beach: revised each lease to accommodate secondary
recovery projects. In each case the resulting royalty --
well, the top royalty that has ever been negotiated before
was 17 percent. We have a history of something like 30
leases where this has been accomplished and the State Lands
Commission has approved.

Now we come to this project. It's a little bit
different in that there have been no wells drilled yet. We have no production history at all. But we thought that it would be a reasonable offer to go through the same tabulations which resulted in a 23-percent gross royalty to be applied to the secondary projects.

This wasn't acceptable to the state staff. They had several counter-offers, all of which boiled down to the fact that we, the lessee, would make about the same amount of money under primary production, without going to extra expense of drilling additional wells and setting up secondary recovery equipment, as going into a full-scale secondary recovery.

The answer was just evident: there was no sense in investing additional risk capital -- we estimate somewhere between two and a half and three million dollars -- with no return, and in fact a chance of losing that. There are several projects at Huntington Beach, the same kind of waterflood projects, that have not returned their capital.

So we have to face the decision of whether to just go ahead and drill the wells and produce primary and make the same amount of money, or to accept the state offer with considerable risk.

The legislation that accommodates the secondary recovery amendments was designed to encourage secondary recovery and to increase production. It sets forth a
procedure for establishing the minimum royalty. This is what we did. But in effect we think that this is really more than the minimum royalty. In the ordinary circumstance a field is pretty well along in depletion before we commence secondary recovery operations, and the primary production is down, and you come up with a much lower figure through this legislative calculation. As I said before, the highest one that ever came up before was 17 percent.

So in effect the 23-percent calculation is really a six-percent gross royalty kicker or bonus. In effect, the state gets a much bigger return from this project than the oil company lessees. The 23-percent gross royalty that we are offering and willing to settle for is approximately 70 percent of the net profits. In other words, of the entire net income derived from this project, the state will end up with 70 percent at no risk, and the lessee will end up with 30 percent, which is an incentive for the state to want to go ahead on this project.

The way it stands right now, we are forced to just drill the wells and produce primary. This will result in a loss to the state of approximately $4 million according to our calculations and the state's too -- comparing the state's return under the secondary recovery at the 23-percent figure with what would happen if we hadn't gone into it at all.
From a management point of view, there is just no alternative but to continue to develop this pool, the Fault Block 28 pool, as a primary project. The money that would have been invested in this project at a reasonable royalty rate of 23 percent will just be spent elsewhere, outside of California of course, because of the barriers put up by the Division.

ACTING CHAIRMAN McCausland: Do you want to respond to those comments in any fashion?

Mr. Everettt: I think you would say they are basically correct. Seventy percent of the net profits: it's closer to 60 percent at today's prices, and it would be closer to 55 percent if crude oil prices are allowed to escalate over the life of the field. Nevertheless, it is a high percentage of net profits.

We did offer a net-profits concept after payout. From that standpoint they wouldn't be risking any more capital than they are under their 23-23 thing, because you're saying, "If you didn't get any payout, you'd never get to the 50 percent of the net profits."

Mr. D'Agostino: That offer was made and rejected?

Mr. Everettt: They really are rejecting the concept of net profits.

ACTING CHAIRMAN McCausland: Mr. Loeb, you've read the calendar items prepared by staff. Is that a fair
reflection of the proceedings we've been through to date from your perspective?

MR. LOEB: Yes, that's a detail of the history of the negotiations.

ACTING CHAIRMAN McCausland: Basically this is a matter of principle in this particular instance as much as a matter of economics? On a cash flow basis, if push comes to shove, it's a zero-sum game for you, and it's the principle of a net profit participation formula that perturbs you as much as anything? Is that a fair characterization?

MR. LOEB: Well, I think the former outweighs the latter. If you reduce the gross royalty and added net profits -- net profits doesn't bother us. We would rather not, because it gets complicated, and there are always arguments in the accounting portion of a net-profits calculation. But it's the return.

ACTING CHAIRMAN McCausland: Are these guys unreasonable when it comes to reviewing your accounting techniques with you? Do we have a reasonable staff or unreasonable staff when it comes to accounting?

(Laughter.)

MR. LOEB: We generally reach an accommodation.

ACTING CHAIRMAN McCausland: I thought they were pretty levelheaded.

MR. LOEB: Well, there are some things that
reasonable people can disagree about in accounting matters.

ACTING CHAIRMAN McCAUSLAND: Especially net profits in the oil industry. It has a history of being fraught with public misunderstanding.

The item before us today is an information item. The staff is advising the Commission that they wish to leave the door open for continued discussions with you. Do you have something that you would like us to consider in terms of guidance for staff: where we go from here?

MR. LOEB: All we can say is that the time is getting short, because we have requested permits to drill wells for the primary production, and we would be going into this program shortly. It is more advantageous to both parties to commence the secondary recovery operation along with the drilling of these original wells.

ACTING CHAIRMAN McCAUSLAND: It appears to be the most technically sound approach to the management of that formation. We would like very much for everybody to continue discussing the matter. If it's necessary for the Commission itself to act on the matter in the near future, I think we would like to see some accommodation reached, but it has clearly been the intent of the current chairman of this Commission to do everything he can to maximize the state's returns from its vanishing resource. This happens to be one of the reasons why 30 past leases may not be the
perfect precedent for the discussions that are underway at the present time.

This will be upper-tier oil; is that correct?

MR. LOEB: Yes. Upper tier regardless of whether there is a waterflooding project or otherwise.

ACTING CHAIRMAN McCUSAULD: I understand that Are there any additional questions?

I appreciate your coming today. We would like to continue discussing this matter with you, and I hope we can have a forthright sharing of the profits soon.

At a time when we're closing down wells, it's nice to see somebody getting ready to open some.

MR. LOEB: All we need is some encouragement.

ACTING CHAIRMAN McCUSAULD: At the present time I am still only aware of individuals wishing to testify on item 36.

Mr. Loeb, the other gentleman who was with you was Mr. Howald; is that correct?

MR. LOEB: Yes.

ACTING CHAIRMAN McCUSAULD: We will move on then to item 24. If you wish to testify on any items between this item and number 36, please fill out a blue form.

Item 24 relates to a permit to drill two soil test holes on the westerly side of the San Francisco Peninsula for the City and County of San Francisco. Are there any
objections to the issuance of the permit? If not, the staff recommendation is deemed adopted.

Item 25 regards the approval of the third modification of the 1977-1978 Plan of Development and Operations and Budget for the Long Beach Unit.

MR. GOLDEN: We have a brief statement, Mr. Chairman, from Mr. Hayward of the Long Beach staff.

ACTING CHAIRMAN McCausland: Our net profits are going down, by the way, so I hope Aminoil's go up.

MR. HAYWARD: Mr. Chairman, the third modification of this present plan and budget of the Long Beach Unit is primarily an updated estimate of the expenditures and revenues. The budget remains unchanged at $82,737,000. Based on estimated gross revenue of a little over $152 million from the sale of oil and gas, the resulting net revenue would be a little over $69 million.

These revenue figures are down from previous estimates as a result principally of a continuing decline in oil production rate. The average price paid for crude oil remains at its depressed level of $5.36 per barrel, and no increase in oil price is foreseen during the current fiscal year. This is the point we wanted to emphasize for the benefit of the Commission: we remain at this depressed level of $5.36.

ACTING CHAIRMAN McCausland: One of the questions
that I have is: we went through an extended strike, and we haven't made any really serious modifications to our work plan as far as I can tell. Are we making all reasonable efforts to keep the field fully functional, and are the improvements on schedule, or should we be looking at spending more money on upgrading the field in order to keep it current? Or is our current plan of operation and improvements still the most reasonable approach for the present time?

MR. HAYWARD: Yes, Mr. Chairman. Under the present situation everything is being done that can be done to maintain an orderly operation there in Long Beach. In other words, the pressure maintenance operation is going ahead. The water injection program is going ahead. The necessary maintenance and operational work is going ahead to the existing wells. But there is a feeling at this depressed level of $5.36 it is difficult to generate much enthusiasm to do a whole lot more in the way of new development and enhanced recovery projects.

ACTING CHAIRMAN McCausland: Are there any objections to the adoption of the third modification?

MR. D'AGOSTINO: No.

ACTING CHAIRMAN McCausland: The third modification will be deemed approved without objection.

Item 26 is an informational review of the caustic waterflooding pilot project in the Long Beach Unit.
of the Wilmington Oil Field.

MR. GOLDEN: Mr. Hayward has a very brief report on that item as well.

MR. HAYWARD: Mr. Chairman, this is a semi-annual review of the pilot-scale field demonstration of waterflooding with a caustic solution in the Long Beach Unit. It is being conducted with the cooperation of the Federal Energy Research and Development Administration on a cost-sharing basis. The hoped-for effect is to create an emulsion in the petroleum reservoir which would improve the injection sweep efficiency and thereby increase the oil recovery.

Thus far we are about one year into the project. A small-scale injection test has indicated that the caustic solution can be injected successfully. A larger test is expected to commence in March 1978 to determine the effect of the caustic in recovering additional crude oil. About $2.4 million has been spent on this project so far out of a total of $11.6 million that was approved by the federal government for cost sharing.

Laboratory tests have indicated that an additional four to five percent of the reservoir oil in place can be recovered by this means. It does have the advantage of being a relatively low-cost method of enhanced recovery, although as we know, no method is inexpensive.

I might just add one thing too: in the older part...
part of the field there is another pilot test going on. It is a smaller one. It is known as a micellar injection project. It too is a cost-sharing, pilot-scale enhanced-recovery project in its early stages.

It is planned to inject an emulsion of crude oil and sulfonate, known as a micellar solution. A large, 90,000-barrel mass of this material will be injected and then pushed through the reservoir by a polymer solution that is injected behind it, hopefully resulting in an increase in oil recovery.

In this case it's a much more expensive type of operation, but it is hoped that approximately ten percent more of the crude oil in place can be recovered.

So far we've had a mini-injection test of a laboratory mix of sulfonated oil, and it is scheduled to now go into operation in December, this next month, and it will determine hopefully whether a micellar solution can be injected. But much more work does remain to be done on that project.

ACTING CHAIRMAN McCausland: Thank you very much.

Since there are additional individuals in the room, let me say one last time that I am going to move through this agenda rapidly. If you want to testify, please fill out a blue form, and I will stop at the item that you wish to participate in.
Item 27 is off the agenda.

Item 28: there is an error in the designation of the county the item relates to. It is not Contra Costa County. Item 28 authorizes a boundary line agreement with Florence L. Comfort in the city of San Jose. Without objection --

MR. D'AGOSTINO: No objection.

ACTING CHAIRMAN McCausland: -- item 28, the staff recommendation, will be deemed adopted.

Item 29 regards the commencement of procedures to make general revisions to the Commissions regulations. Those matters will be distributed to all interested parties. There will be public hearings and the matter will be back to the Commission for action at a later date. Without objection, item 29 will be adopted.

Item 30 regards a finding that the tide and submerged lands granted to the County of Sonoma in 1959 have been substantially improved as required. Are there any questions on item 30?

MR. D'AGOSTINO: No.

ACTING CHAIRMAN McCausland: Item 30 is deemed adopted.

Item 31 regards a disclaimer of compensation in United States v. 74.42 Acres of Land, etc., in Tuolumne County.

MR. D'AGOSTINO: No objection.
ACTING CHAIRMAN McCausland: Item 31 will be deemed adopted.

Item 32 regards a disclaimer of interest in United States of America v. 6.80 Acres of Land, et al., in Santa Clara County.

Mr. D'Agostino: No objections.

ACTING CHAIRMAN McCausland: Item 32 will be adopted.

Item 33 regards the mariculture areas for South San Francisco Bay and Tomales Bay, San Mateo and Marin Counties. Are there any questions on item 33?

Mr. D'Agostino: No.

ACTING CHAIRMAN McCausland: Item 33 will be adopted.

Item 34 authorizes the staff to terminate negotiations and find another developer for its parcel in Seal Beach. Any questions on item 34?

Mr. D'Agostino: No.

ACTING CHAIRMAN McCausland: Item 34 will be deemed adopted.

Item 35 regards a compromise settlement of disputed titles along the San Leandro shoreline in Alameda County. Any questions on item 35?

Mr. D'Agostino: No.

ACTING CHAIRMAN McCausland: Item 35 will be deemed
Item 36 regards the acceptance of a bid for removal of submerged hazards from the Sacramento-San Joaquin River Delta. There are a number of parties wishing to testify on this item. Mr. Golden, would you like to make a presentation?

MR. GOLDEN: Mr. Lindfeldt of our staff will give a brief resume of where we are at this point, along with Mr. Sanders.

MR. LINDFELDT: I believe Dwight Sanders of the planning unit can discuss the factual events that have occurred in this bid process, and I can address the legal problems that may have developed. Dwight would like to analyze the factual situation.

MR. SANDERS: Mr. Chairman, on September 16th the State Lands Commission received a grant from the federal government, from the Economic Development Administration, to remove the hazards and obstructions within the Sacramento-San Joaquin Delta area. Subsequently the State Lands Commission requested bids for the project from contractors properly licensed by the Contractors' State License Board. The bids were requested on October 24, 1977, and due on November 22, 1977.

In this procedure three bids were received and opened as prescribed by law. The bids that were received are outlined in the calendar item. I think one further
clarification should be brought to the Commission's attention in this regard, and that is that acceptance of the grant includes a mandate to begin operations within the delta area within 90 days of September 16th. Therefore the date by which we must be underway in the delta is December 15th.

MR. LINDFELDT: Basically, unsuccessful bidders have raised a number of questions concerning the applicability of various Government Code sections and the State Contract Act to the bid opening and the requirements of the bid package.

The first issue that arises is whether or not this is a project as defined in 4254 of the Government Code, and therefore even subject to the State Contract Act. Our prior hazard-removal program -- when we sat down and discussed it with the legal staff of General Services, they gave us their opinion that this type of hazard removal was not a project as defined in that section of the Government Code and would therefore not be subject to the State Contract Act.

Assuming though that it is subject to the Contract Act, the specific section being raised in discussions is Section 14311.5, which states that if a party has been pre-qualified to bid on a project -- and a pre-qualification is a financial analysis of the prospective bidders and a statement to the bidders that: "We have reviewed your financial situation and your capabilities, and we say you are qualified to bid
on this project." If that has been done, then if the contractor's license required to operate the project is not in the possession of the bidder, he has until the initial project is started or the first progress payment is made -- under 14311.5 -- to obtain that license. But if there has been no pre-qualification -- in this case there was no pre-qualification, no financial analysis of prospective bidders, no statement to prospective bidders that they were qualified and acceptable to bid -- then that Section 14311.5 does not apply to this bid. That is the situation that we have.

The requirement that we made in our bid package was that the license be in the possession of the bidder at the time of the bid opening. That was done to protect the state, because of the critical nature of the timing of this project: that it has to be underway, with actual work being done, by December 15. We had to meet that 90-day requirement by law. So to protect the state's interests in this project, it was required that the license be in the possession of the bidder at the time of the bid opening. I think that is the basic legal dispute that the parties will raise.

Now there may be other factual questions about the calculations of the low bid, the issuance and the placement of the bidding bond, and things of this nature. But those are the legal issues that have been raised prior to this meeting.
ACTING CHAIRMAN McCausland: Did we use any pre-bidding procedure, qualification procedure, in this project?

Mr. Lindfeldt: No.

ACTING CHAIRMAN McCausland: There were no pre-qualification procedures.

Mr. Sanders: No, sir.

ACTING CHAIRMAN McCausland: So that anyone who received or was aware of the opportunity to bid could file a bid as long as it was in a timely fashion?

Mr. Lindfeldt: Yes.

ACTING CHAIRMAN McCausland: What procedure did you use to determine average cost in the two of the three bids that you did not disqualify?

Mr. Sanders: Mr. Chairman, in the two of the three bids that we did not disqualify, the average cost was specified by the bidder. There was no calculation made by the staff.

ACTING CHAIRMAN McCausland: What basis for comparison was there with the American Leadburning Company bid, in which there was no average cost offered? How could you compare the three bids?

Mr. Sanders: Since there was no average cost given in the Leadburning bid, we went item by item, Mr. Chairman, within the bidder's proposal on the equipment
ACTING CHAIRMAN McCausland: Can you advise us of the comparability of costs under that formula of analysis?

Mr. Sanders: Yes, sir. For example, on the bid from Dutra and Company -- I'm going to have to do a little laying out here.

ACTING CHAIRMAN McCausland: I'm sorry I wasn't aware that I was going to ask this questions ahead of time.

Mr. Sanders: That's all right. I brought the bids along in anticipation of it, Mr. Chairman.

All right. This may be laborious here, but we will go item by item.

On the equipment schedule number one, we required one crane barge with a capacity of 400 to 600 tons, et cetera. Mr. Dutra wanted $96.25 for an hourly rental rate for 1 to 240 hours; $87.50 for 240 to 720 hours; and $81 for 720 hours or more.

ACTING CHAIRMAN McCausland: That's probably a good example. Let's just look at that example across the three. I don't think we should go item by item.

Mr. Sanders: That's fine, Mr. Chairman. In the Jensen and Reynolds Construction Company proposal, the hourly rates for the same piece of equipment, 1 to 240 hours, was $90; 240 to 720 hours, $82.50; 720 hours or more, $75. That is lower than Mr. Dutra's.
In the Leadburning proposal, same piece of equipment, the hourly rental rate for 1 to 240 hours was $223.79; 240 to 720 hours, $212.60; 720 hours or more, $201.97. That is roughly 50 percent higher than the two other parties.

ACTING CHAIRMAN McCausland: One hundred percent.

MR. SANDERS: One hundred percent.

MR. STEVENS: Mr. Chairman, just by way of clarification, could I ask the basis for which this bid was rejected? The agenda item appears to simply state that it doesn't conform to the bid specifications. Was it in fact rejected because it was not the lowest bid and also because bid specifications were not met by virtue of nonpossession of the requisite contractor's license? Also, was there a problem with the required filing of a bond?

MR. SANDERS: Mr. Stevens, the bid can be rejected on a number of factors you mentioned. Number one, we first looked at the license, since it was a pre-requested or pre-qualified portion of the bid package. Since the Leadburning Company does not possess the proper license, the bid can be rejected on that particular issue.

Secondly, a bidder's bond of ten percent of the contract amount was required with the bid. The Leadburning proposal was not accompanied by a bond in that amount. In fact, the bond submitted was $120, although a bond of $107,000-plus was required to have been attached to the bidding
proposals, as was done with the other two proposals.

ACTING CHAIRMAN McCausland: On the question of
the bond -- let me save that question, because we have an
individual from the California Office of Minority Business
with whom I can raise that question, and then we can discuss
it.

Perhaps I should ask if the item that we selected
for cost comparison is representative, or is that an
aberration? Did we compare prices on an item --

MR. SANDERS: An item-by-item basis, Mr. Chairman.

ACTING CHAIRMAN McCausland: On an item-by-item
basis, all items were substantially higher than the other
two bids?

MR. SANDERS: Mr. Chairman, the items in which --

ACTING CHAIRMAN McCausland: Why don't you research
that while I go on?

MR. D'AGOSTINO: I just wondered if the staff had
made an effort to at least establish ballpark figures for
the average per-hour cost.

MR. SANDERS: Not per se, Mr. D'Agostino. The
project is one in which the Commission is in effect breaking
new ground as far as experience is concerned. We have relied
heavily on the United States Corps of Engineers' experience
in similar projects. Based on contacts with that entity and
what staff experience we had, the cost figures submitted by
the Dutra people and the Jensen and Reynolds people are
indeed reasonable and ballpark figures for this type of work.

MR. D'AGOSTINO: Is it possible, based on the
data submitted by American Leadburning, to know whether their
average cost per hour would be higher?

MR. SANDERS: You mean to actually figure it out?

MR. D'AGOSTINO: Yes.

MR. SANDERS: That --

ACTING CHAIRMAN McCAUSLAND: Perhaps the answer
to my question helps lead to the answer to that question.

On an item-by-item basis, is there any consistent pattern to
the bid of American Leadburning Company to the others? For
instance, on the item we compared there is a 100-percent
difference.

MR. SANDERS: That's correct. The items on which
American Leadburning is substantially lower -- or lower, I
should say -- are items six and seven. Item six consists of
two front-end loaders, basic, heavy pieces of equipment,
and item seven consists of three ten-yard dump trucks. Those
two items would be used perhaps ten to twenty percent of the
project life. On those pieces of equipment the American
Leadburning Company is approximately one-fifth to one-sixth
of the bid of the other two individuals.

ACTING CHAIRMAN McCAUSLAND: So the others are
several hundred percent greater?
MR. SANDERS: On those two items, Mr. Chairman, yes. On the items which would be used 70 to 100 percent of the time, the other two individuals, Dutra Company and Jensen and Reynolds, are in the relationship which we explored with that one item.

ACTING CHAIRMAN McCausland: Unless there is objection from the American Leadburning Company spokesman, I'd like to ask Juan Flores to testify next, procurement manager for the California Office of Minority Business. Following his testimony, then I would like Robert Gonzalez to come forward, and he can decide whether he wants Richard Bartee and Alan Carey with him or following him. Mr. Flores.

MR. FLORES: Thank you, Mr. Chairman. My name is Juan Flores, and I represent the California Office of Minority Business within the Department of General Services. Specifically we are interested in the rejection consideration based upon the failure to provide a license at the time of the bid response. As I think has already been indicated, both federal EDA guidelines and the State Contract Act, as well as the California Government Code, spell out that where federal funds are involved in state contracting, a license is not required at the time of the bid submittal nor at the time of the award and should not be considered in conjunction with those two procedures.

I think it is an irrelevant consideration in terms
of a firm needing to be qualified in order to fall under
the section within the State Contract Act, because the EDA
grant programs do not require any bidder to become pre-
qualified in any way, shape or form. I think that particular
section of the language gave consideration to firms interested
in being pre-qualified to do business through the normal
State of California bid procedures.

I should also indicate that in communication with
the Office of the State Architect and also in communication
with the legal division within the Department of General
Services, the procedures being applied in terms of licensing
consideration are consistent with EDA's guidelines and with
the language spelled out in the State Contract Act.

I think the way this law is interpreted by the
Department of General Services through the Office of the
State Architect, as well as the Office of Procurement, the
purchasing office for most segments of the State of California,
should be taken into strong consideration by other depart-
ments in attempting to apply the same program.

Additionally, the creation of more stringent specs
in this instance is counterproductive to the intent of the
Congressional legislation in itself, and the purpose for
coming up with the more stringent specs in terms of meeting
the time guidelines that they are confronted with is a
little bit inappropriate. There are many departments within
the State of California that are also project grantees by
the federal Economic Development Administration. Each of
those grantees as state entities are confronted with the
same stringent guidelines, time guidelines, as is the
State Lands Commission. To my understanding, neither the
State Architect's office, which is handling a large number
of the contracting of those grant projects for the various
agencies, nor any other departments, are in this particular
instance applying more stringent specs for the purpose
of meeting those time guidelines.

I think for the State Lands Commission to uphold
or apply more stringent guidelines for that purpose is
contradictory to accepted practice in the application of
the EDA guidelines by the remainder of the state entities
applying these guidelines, and is contradictory to the
intent and purpose of the EDA guidelines themselves.

It's my understanding, in talking with the
Contractors' State License Board, and also in talking with
the construction manager at the Office of the Architect,
that American Leadburning Company should have no problem
securing the required Class A license in sufficient time
to meet the time guidelines that the State Lands Commission
is subject to.

Separate from that, I would also like to raise
the point of the ten-percent minority requirement as one of
the conditions of the EDA project grants. I don't know specifically whether or not American Leadburning Company is in fact the low bidder. I don't know whether in fact they did submit the appropriate bid bond. Your staff suggests they did not. But it is my understanding that the firm is 100-percent minority-owned, or the majority of the firm is owned by legitimately minority individuals.

If everything else fell into place, in terms of their being the low bidder and in terms of meeting the bonding requirements, I think that rejection of the bid on the basis of the licensing consideration is both unfair and unreasonable and contradictory to, as I indicated, the EDA guidelines and the State Contract Act.

Our office is in the process of doing the verification of those firms claiming the minority status for the purpose of the ten-percent requirement for most state grantees, as well as for other government entities. In this particular instance, we weren't requested by the State Lands Commission to do the verification. There are certain stringent steps, I think, that have to be adhered to in order to conduct that verification process. I would be interested in knowing what verification process was applied in ensuring that the other bidders did meet that ten-percent minority requirement.

I know in our verification procedures there has
been just an array of problems in attempting to verify these firms.

MR. D'AGOSTINO: I wonder if someone could answer for me the following question: how does the State in an instance such as this, where commencement has to begin by a certain date or federal funds can be lost, protect itself if the bidder is not required to be qualified either at the time of bid or at the time of award of bid? Can someone explain that?

MR. LINDFELDT: The way we attempted to protect ourselves was to see that at the time of the bid the person had the necessary Class A license, licensed by the Contractors' State License Board, that would indicate that the firm was capable of doing the work required. That was the way we took the steps to protect the state.

ACTING CHAIRMAN McCausland: This is a Title 2 --

MR. SANDERS: Title 1.

ACTING CHAIRMAN McCausland: This is a Title 1 project. How are other state agencies dealing with the issue of the 90-day commencement of on-site activity? Are you working with other state agencies in complying with that?

MR. FLORES: Our office is working strictly with the verification and the monitoring process of the ten-percent minority requirement.

ACTING CHAIRMAN McCausland: So you have not been
working historically on the contractor qualification or the bonding aspect of the problem; is that correct?

MR. FLORES: That's correct.

MR. SANDERS: Mr. Chairman, in discussions with the State Historic Preservation office, which is another condition of the grant, to get his verification of our work, it was stated to me that the State Lands Commission to their knowledge was the only state agency having received a Title 1 grant. There are other agencies which have received monies from EDA, but these are under Title 2, and these are revenue-sharing funds and, I believe, governed by a completely different set of ground rules than the Title 1 funds, which do have the 90-day requirement.

ACTING CHAIRMAN McCAUSLAND: Robert Gonzalez, Sr., owner of the American Leadburning Company. Would you like to shed some light on this for us at this time?

If you want to bring Mr. Bartee and Mr. Carey forward with you, you may.

MR. STEVENS: Mr. Chairman, I wonder if in the meantime it could be made clear whether verification was made of the ten-percent employment requirements with respect to the other bidders. Perhaps Mr. Sanders --

ACTING CHAIRMAN McCAUSLAND: Mr. Stevens has asked whether or not there has been verification made of the ten-percent minority participation by the other bidders.
Can you address that question, Mr. Sanders?

MR. SANDERS: Mr. Chairman, to this point in time each bidder was required to sign a statement to the effect that "I hereby certify that to the best of my knowledge the firms listed here have represented themselves as a minority-owned/controlled business and that I have accepted as same."

ACTING CHAIRMAN McCASLAND: These are subcontractors?

MR. SANDERS: In this instance Mex-Cal Trucking is listed as a subcontractor in the Jensen and Reynolds proposal to the amount of ten percent of the awarded contract. Mr. Jensen has signed this as of 11/22/77. The Dutra Company also signed a similar statement in their bid proposal.

MR. FLORES: I'd like to respond to that, Mr. Chairman. I think the certification by notarization by a given firm claiming the minority status is a condition within the bid procedures handled by the Office of the State Architect as well. In my communication with other grantees in their handling of the bid process, they are requiring the same type of certification, a notarized statement.

MR. SANDERS: Mr. Chairman --

MR. FLORES: My point is that the Department of General Services through its staff has been working on this project. That includes the State Architect's office,
legal division, the Office of Procurement, and our office as well. We have found that that hasn't been sufficient in terms of weeding out those firms who are stating that claim as a result of a misunderstanding of the guidelines that are required to be adhered to or just as a result of some other intent.

ACTING CHAIRMAN McCausland: Following this meeting, it is clear that our staff will discuss this matter with you.

MR. SANDERS: I've been informed by a member of my staff that Mex-Cal Trucking is listed in your document, Mr. Flores, as a verified minority enterprise.

MR. FLORES: We have several internal listings that we've put together.

ACTING CHAIRMAN McCausland: After this meeting our staff, you and our staff will make sure which list is which, because we do want to do this in an appropriate fashion. It is difficult. The federal government has asked us to do something within 90 days. We do want to make a serious effort to make certain that this Commission fully complies with the intent and spirit of that law in terms of full opportunity for all sectors of the economy to participate in that grant program, and I think the minority aspect of business enterprise is very important to that. So we will make certain that we are playing by the right set
of rules.

Mr. Gonzalez?

MR. GONZALEZ: Mr. Chairman, first I would like to introduce myself. I am Bob Gonzalez, and I will let my other colleagues introduce themselves as they speak.

Number one, I personally got involved in this with Mr. Bartee here about a week prior to the bid opening. I myself, the same as the State of California, am new at this field, but Mr. Bartee has been in it for a long time, and he and I have worked together for many years. So we decided to go after this job on a joint venture type of deal. Just as the State of California has never had experience in this thing, I feel I can jump in the same as they can and go after a job I know I can perform.

As far as the time is concerned, I don't think there is any problem, because we are capable of starting it at any given moment.

In regards to the things that they are claiming we did not comply with, number one is the price. They are failing to give the price on a per-hour basis, as it was read at the bid opening. At the time of bid opening, the figures that were read out -- and I don't have them written down in front of me, but they were close enough that with the five-percent set-aside for minority, we were well under the second bidder.
Now I would like to turn this over to Mr. Bartee, who has a lot of things written down that he will explain to you. Before I do turn it over to him, I would like to mention the fact that I am the sole owner of American Leadburning, and I performed a lot of jobs for the state and government-funded jobs, such as sewage treatment plants and so forth. I've done most of the sewage treatment plants. I do corrosive protection and so forth, which is really related to the type of work that we are talking about now. We have done the Roseville Sewage Treatment Plant and so forth, and part of the Sacramento Sewage Treatment Plant. We are presently doing part of the pipeline and so forth.

So we are involved in this type of work, and I hold several classifications of contractor's licenses, and I have been notified by the State License Board that I would have no problem in acquiring this classification that would be required for this job.

ACTING CHAIRMAN McCausland: Thank you. Mr. Bartee?

MR. BARTEE: Thank you, Mr. Chairman. My name is Richard Bartee, and I have been working with Bob Gonzalez several times, particularly on this project.

As to Mr. Gonzalez' stating of the amounts of the bids read at the bid opening, I have to admit it was a failure on our part to fill in one line in the bid package itself. It was an average of hourly rates for the equipment.
supplied. I do have the rates that were read of the other contractors. The low one was $617.13 an hour. We have averaged our figures out, and they are $644.19 an hour.

Taking the five percent off for small business, which I have been informed is not really available to be used in this bid package, puts us well below the low bidder.

How other contractors have arrived at the rates that they have read, I don't know. I use the book in here for wage rates that was provided, and the number of men necessary to operate the piece of equipment. Their wages already exceeded their hourly rates. That's their problem as far as their bonding companies are concerned.

Our rates are 40 percent labor. Ten percent of that, we feel, will be expended towards the education of minority employees to teach them the trade of marine-type construction. It is a very highly skilled trade, not something you learn every day. You have to go out and work at it and get people who know to teach you these things.

As far as the bid bond is concerned, the amendment was made to the bid specs three days before bid opening. In their own specifications it states that amendments can be made "if time permits". They do not state whether that means time permitting for the state or for the contractor. I interpret it myself as meaning for either party.

Our bonding is done through the Small Business
Administration in San Francisco, and they require at least ten days just to process a bond. There is no way you can get around it.

Going by the specifications, it says a ten-percent amount of the bid. The bid that was requested was an hourly-rate bid, so we submitted ten percent of that hourly rate.

On the contractor's license itself, in the very front of the book, the very first page, it says that pre-qualification is not necessary. You go into the specs themselves and in another section it tells you that a contractor's license is not required to bid or accept an award of this contract.

ACTING CHAIRMAN McCUSAFLAND: What page is that? Do you have that one?

MR. BARTEE: In Instructions to Bidders, paragraph 18, page six, the beginning of the paragraph. Continues on to the next page. It gives the Government Code. Those two paragraphs tell you that a contractor's license is not necessary. On the very first page of the specifications, where it announces the bid opening, approximately at the bottom of the page, it says that pre-qualification of the bidders under the State Contract Act is not required.

MR. FLORES: I'd like to add, Mr. Chairman, I think that point is agreed upon by the staff of the State Lands Commission as well. It's just a question of whether
or not the State Lands Commission finds it necessary to apply more stringent specs for the purpose of the contract.

ACTING CHAIRMAN McCausland: Mr. Sanders was advising me that this entire contract was based on the Office of the State Architect model contract. Actually, the two sections that you are referring to are complementary, though they don't appear to be. The first one says that pre-qualification of bidders under the State Contract Act is not required, and the second one says -- I'm trying to read just the pertinent parts, and it's kind of hard. "In a state project in which the bidder is required to be and has been pre-qualified" -- that's the precondition of paragraph 18 that you referred to, so paragraph 18 in reality is awfully difficult to apply.

MR. Flores: With the exception of the fact that the State Architect's office is applying that section without the requirement of pre-qualifications for the purpose of these EDA grants.

ACTING CHAIRMAN McCausland: Then why did they write it this way?

MR. Flores: What the staff of the State Lands Commission has done, as I understand it, it to take those bid conditions as written up by the State Architect's office -- and our office, as well as our legal office, was involved in putting together those bid conditions -- and used those
as a model in putting together their own set of bid conditions, and adding an additional specification requirement. The State Architect's office —

ACTING CHAIRMAN McCausland: It takes a lawyer for Mr. Gonzalez and Mr. Bartee to find out what it is that they are bidding on.

MR. GONZALEZ: I agree. Can I say something, please?

Not only do we need a lawyer to interpret this to us, but after the bid opening was made, the Board made a decision to really kick us off of the bidding, and they failed to send me a letter stating that they were going to hold this meeting. I never received a letter telling me anything about this meeting.

ACTING CHAIRMAN McCausland: About today's meeting?

MR. GONZALEZ: That's right.

ACTING CHAIRMAN McCausland: Mr. Bartee, I'm sorry. I interrupted you. That was an interesting statement. I wanted to find out what the provisions in the contract were.

MR. BARTEE: This entire set of specs compared to the other specs in the marine work that I have bid, is very poorly put together. For example, they call for one crane barge with a capacity of 400 to 600 tons. There is only crane barge on the entire west coast that has that capacity. It is owned by Merchant Pacific. I understand
it is now in San Diego. It couldn't even begin to get into
the waterways which we're talking about working on.

They call for three drum deck engines. What they
mean is three drum winches.

They call for 3,000-pound anchors on spuds. Spuds
and anchors are basically the same thing. What they're
saying is to hang the anchors on top of the spuds.

This whole thing, the way it is written, leaves
a lot of things -- if a person is going to bid and follow
what they had written down, their bids would be much, much
higher than what they even can conceive, because a marine
rig like that would run $2500 an hour. That's to give you
an idea of how badly the specs are written.

They call for two front-end loaders, each capable
of moving wooden piling. What they want is front-end loaders
capable of loading pilings, so they want the thing with a
four-in-one bucket or a log fork.

They call for underwater gear, all kinds of under-
water gear: air compressors, underwater cutting torch, under-
water chain saw, welding machines. They don't call for a
diver to operate them. Just one thing after another.

I called and had an amendment sent out. They said:
"Mobilization and Demobilization". I called them up and
asked them, "Where are you mobilizing to?" They said, "The
delta." That's a big place. It takes time to pull equipment
around. So I filed an amendment to that as to a certain place to mobilize.

But there are things all through this contract or the specs where they have contradicted their own statements using federal statutes and state statutes to bid this project.

ACTING CHAIRMAN McCausland: Was there a bidders' conference prior to --

MR. BarTee: Mr. Chairman, the bids were advertised on the 31st day of October, and bids were originally called for on the 8th day of November. There was not even the beginning of enough time there to obtain bonding.

ACTING CHAIRMAN McCausland: Is that basically accurate?

MR. Sanders: Yes and no, Mr. Chairman. The time frame is correct. The call for bids was extended, and each bidder was notified to this effect by the most expeditious means possible.

As I stated in the opening statement and as provided by the calendar item, the bids were requested on October 24th and due on November 22nd.

ACTING CHAIRMAN McCausland: This happens to be one of the worst aspects of the Title I projects, the idea that Congress could pass something two years ago and 90 days later actually have people working on a site. It produced
a piece of federal legislation that is totally unrealistic from your standpoint and from ours. I don't think anybody associated with the Commission staff or the Commission likes the idea of giving people such a short time to try to work through such a complex set of specs to make a bid.

On that point I think it would be very helpful to make certain that the state model contract says what it means to say, so that when other opportunities come up, we are not going to be faced with the same situation, where different sections of the contract don't seem to be relevant to the issue that is at hand. We are trying to find a way to qualify people to get in and bid on projects, but we're writing contracts that don't make that very reasonable.

Let me ask one other question, if I might. Do you want to go on, Mr. Bartee?

MR. BARTEE: No.

ACTING CHAIRMAN McCausland: Let me ask one other question. What formula did we utilize for determining what the average cost per hour is that's reflected in the calendar item? I understand that the bid required that that be submitted. Was that a weighted average cost of the various elements, or was that just simply adding it up and dividing by the number of hours? How did we come up with the average cost per hour?

MR. SANDERS: As I stated, Mr. Chairman, that was
listed within the bid package.

ACTING CHAIRMAN McCausland: It was listed in the bid, but I assume the bid specified how that number would be derived.

MR. SANDERS: No, it did not.

MR. D'AGOSTINO: How did you contemplate ever being able to compare bids?

MR. GONZALEZ: Mr. Chairman?

ACTING CHAIRMAN McCausland: Yes, Mr. Gonzalez.

MR. GONZALEZ: I'd like to see if I can clarify that a little bit. The way that we went about it was utilizing the information that was offered to us in the bid package according to the hourly rates and so forth and the knowledge that he has in this type of field in estimating as to how many men it was going to take to run the barges and so forth and to do the job that was supposed to have been done. That's how we determined the hourly rate. On top of that went the operating expenses of the pieces of equipment that were called for and so forth.

ACTING CHAIRMAN McCausland: That's probably the same technique that any contractor would utilize coming up with a number if they didn't have a formula specified.

MR. BARTEE: The way that we figured our average bid was to take the three bids they requested -- the first item had from 1 to 240 hours, then 240 to 720 hours, then
720 hours or more. In order to get an average bid we took the three figures that we had, added them together and divided by three and came up with an average figure per hour for each piece of equipment. On some pieces of equipment they only requested two time breakdowns: from 1 to 240 hours and from 240 to 720 hours. We took those and divided them by two. Then to get our average total bid, we took and added those averages together to give us our average total bid. To us, that's the only way we could figure an average.

ACTING CHAIRMAN McCUSAULD: That's not quite a technique for weighting it towards on-site usage.

MR. BARTEE: No. I don't know really how we would --

ACTING CHAIRMAN McCUSAULD: Let me ask you another question. I've had a little experience with bonding. I don't understand how you could go out on a venture as essentially -- well, it's got all the marine hazards associated with it -- go out on a venture like this and get a bond for $100,000 as your first shot out of the bag. How do you go about doing that? Mr. Carey?

MR. CAREY: These people are small businesses and can qualify under the Small Business Administration for federal guarantees. So they will guarantee the bond, but it is about a ten-day process of submitting all the figures that are needed and so on. They can come up with this bond guaranteed by the Small Business Administration.
ACTING CHAIRMAN McCausland: For $100,000?

Mr. Carey: A million dollars.

Mr. Gonzalez: A million dollars.

ACTING CHAIRMAN McCausland: What kind of capitalization -- well, I guess that's something we'll have to discuss.

Mr. Carey: I think I know what you're asking. They simply want a financial statement.

Mr. Gonzalez: American Leadburning as a company has been bonded to $175,000 before. So in that respect, I don't think I would have any problems at all.

ACTING CHAIRMAN McCausland: So you have experience with a performance bond?

Mr. Gonzalez: We live under those rules. We are in construction work, so we have to have bonding.

The one thing that really puzzles me is the fact that number one, American Leadburning was the hot topic of conversation at the bid opening, and American Leadburning was the only one that was not notified of this meeting. That's something that really has me puzzled.

ACTING CHAIRMAN McCausland: Can the staff enlighten us on that?

Mr. Mills: Mr. Chairman, I talked to Mr. Bartee on the telephone last week, and I personally informed him that the meeting would be held today, where it would be held,
and that he was perfectly welcome to come and present any
information he had at that time. A letter was sent from
the State Lands Commission to all bidders --

    MR. MOORY: -- indicating what would be on the
agenda and when.

    MR. BARTEE: Mr. Chairman, in regards to that,
I talked to Mr. Lindfeldt.

    MR. MILLS: Mills. You talked to several of us.

    MR. BARTEE: Yes, I was personally invited, but
it's still not the same thing legally as a written letter.

    Also there was a situation of a request for an
amendment or agenda to this meeting. I talked to a secretary
on Monday morning and requested a copy. She told me she
would put one in the mail immediately. It was. I received
it the following day. We were also told that the letters
regarding this were mailed on last Wednesday, and they have
never arrived as of yet. I don't understand why this has
happened.

    ACTING CHAIRMAN McCAUSLAND: I deal with the
U.S. Post Office every day --

    MR. BARTEE: I know what you mean.

    ACTING CHAIRMAN McCAUSLAND: It's nice to have
somebody to blame once in a while.

    Mr. Carey, you really haven't had a chance to
get your licks in.
MR. CAREY: There are a few things. I am very late on this thing with Bob. But I have worked with Richard Bartee off and on over seven years and know their qualifications and experience and the equipment they have, that sort of thing. In fact, I have an agreement now to help him reorganize and recapitalize his business. Although I feel I should have been here earlier, I wasn't too much -- this came up very suddenly. Everybody was bidding on it.

For background, I have 18 or 20 years of dealing with the federal contracting and all of this kind of thing, and I sympathize with everybody here over this type of thing. I could make two or three suggestions that might clear things up. In order for him to organize as a 100-percent minority business and be able to provide the equipment and the license, he does have some equipment coming from Charles Hastings. Charles Hastings has an engineering A license and has written a letter and would provide the license and would be the project manager. So where licensing has been of some concern here, I think there are ways to get around that.

MR. D'AGOSTINO: By going that route, don't they then lose their five-percent minority advantage?

MR. CAREY: No. He is simply renting the equipment, and Mr. Hastings would be an R.M.E. But that would only be temporary, because he can qualify any time for a
license.

The second thing I would like to suggest is that I have seen this kind of thing come up before where everybody is trying seriously to find a way to take that federal money and spend it. When everybody is seriously working on it, it's possible to call the federal government and say that we need a little more time, and they put it off. So the December 15th date may not be as tough as everybody is saying here. We're not really going to lose the funding if things don't happen by the 15th.

Other than that, what we're really doing here -- and I've only read this through since yesterday -- we're dealing with federal funds and in many cases we will have to follow federal regulations. We are all in a position of complying with the federal government regulations in order to use those funds. Even though that's not compliance, it's sometimes like being a slave. You do what people say if you want the money.

That is where a lot of the conflicts in thinking come about here. These people do qualify as small businessmen. They can qualify as minority. Their intent is to train minorities, which I think is part -- the big issue here is really that: why is this federal money being made available? It's being made available to, if possible, work things out to train minorities or hire minorities.
I don't know. I could be helpful maybe in making suggestions as to how some of these conflicts could be worked out, but that would depend on whether somebody wants me to make those kinds of suggestions.

MR. BARTEE: Mr. Chairman?

ACTING CHAIRMAN McCausland: Mr. Bartee.

MR. BARTEE: I have talked with a gentleman at the EDA office in Seattle, Washington. The name is Darrel Johnson. He is an attorney up there for the EDA. I have asked several questions about EDA-funded projects. I asked him very point-blank if there was a problem arose in this thing, was it actually a matter of the state not fulfilling their obligations in trying to locate a contractor or secure a contractor, or a problem in the actual thing of minority and the wording of the specifications for bid, would it be possible to receive additional time on this EDA grant? He didn't say: no, it wasn't impossible, and he didn't say it was. He said it would be considered.

MR. SANDERS: Mr. Chairman, if I could shed some light on the extension problem. We have been in contact with EDA specifically Mr. Charles Rains, who is the project manager for this grant, as late as four o'clock yesterday afternoon, asking the parameters of extension problems relating to another part of the contract. We were told at that time that an extension would have obviously to be
requested by the State Lands Commission. It would be evaluated by Mr. Rains and another individual, with the recommendation being made to a third party. The extension would be based on extenuating circumstances. There is no definition given of extenuating circumstances.

If an extension were to be given, it would be given for that time which EDA feels necessary to eliminate whatever extenuating circumstances upon which they granted the extension.

Again, it's rather a bird-in-the-hand versus two-in-the-bush kind of situation.

ACTING CHAIRMAN McCausland: I don't understand why the Office of Minority Business or the deputy secretary of the Consumer and Services Agency or someone vitally concerned with this matter hasn't found some way to structure the selection process so that we don't wind up being the scapegoats. As far as I can tell, we did everything by the book, pursuant to what the federal law required, pursuant to using everybody else's best thinking on how to put together the appropriate contract provisions, using the staff that we had available to figure out specs for a job that we obviously have never done before.

MR. FLORES: Excuse me, Mr. Chairman. Our point is that everything did go by the book and then some. That's the initial issue. The "and then some" is the additional
specs that were written into the State Lands Commission bid conditions for this particular project. As a result of those additional specs, which are contradictory to EDA guidelines, and I'm sure contradictory to the regional project director out of Seattle, Washington civil rights office or legal office, as well as state law, in terms of those additional specs. It's as a result of that that Mr. Gonzalez' bid was rejected and made the bonding issue and the extension price issue moot issues. That was the response that I got from staff within the State Lands Commission, that the principle consideration, the foremost consideration, was the question of the license.

Before they even went further in determining whether or not their bid was competitive and determining whether or not their bonding response was acceptable, they rejected them on the basis of the license. That was in addition to what is required by state and federal law.

ACTING CHAIRMAN McCausland: I understand your statement perfectly. Once upon a time in my life I submitted bids; at another time in my life I opened bids; and now, God help me, I have to award contracts.

(Laughter.)

ACTING CHAIRMAN McCausland: Jensen and Reynolds and Dutra and American Leadburning all spent a lot of time trying to figure out: how do you respond to something like
this? I don't imagine any of these firms do a whole lot of business with EDA or the State of California, so they had to familiarize themselves with this package. They had to spend the time working out what they considered would give them a reasonable return on the job. They did it in an unreasonable time frame. I wouldn't have bid on this. There just wasn't enough time. But these guys are probably hungry, so they went through the hassle.

Now I'm supposed to tell Jensen and Reynolds and Dutra that we're going to go back and do it over again because we asked for the guy to have a contractor's license before he did it and unfortunately Mr. Gonzalez didn't have the right class, and we asked for a bond and unfortunately we did it without adequate notice for Mr. Gonzalez to get a bond, and we asked for an average-price bid, and unfortunately that line wasn't filled out on Mr. Gonzalez' submittal.

I can't go back to the other two companies and say that we are going to do this all over again when everybody played by the same set of God-awful rules in the first place.

MR. FLORES: I don't think you have to go back and reject everything and rebid everything to come up with another conclusion strictly insofar as the licensing consideration is concerned. I don't think sufficient work
has been done by staff to really determine who is in fact
the apparent low bidder and determine whether in fact the
ten-percent requirement is being legitimately met, as best
as can be determined, by the other two bidders in this
instance.

I think additional work has to be done as the
bid responses exist now. I think a different conclusion
and a different recommendation than what has been made by
the Commission staff insofar as licensing is concerned can
be made without rejecting anything.

ACTING CHAIRMAN McCASLAND: How many people
received this?

MR. SANDERS: Approximately ten companies,
Mr. Chairman.

ACTING CHAIRMAN McCASLAND: Ten companies received
this. Seven of them decided not to respond. How many of
those seven didn't have the license at that time and decided
not to respond because they didn't have the license?

MR. FLORES: That isn't the point.

ACTING CHAIRMAN McCASLAND: That is the point,
because if we decide that we can make a different finding
on the basis of this bid that was submitted, we have changed
the ground rules upon which we accepted bids, opened them,
and prepared to award them. We can't foreclose any of
those seven who didn't file bids from going to suit to enjoin
us from changing the conditions of the contract prior to the award of the bid.

MR. FLORES: I think what you'll find is that there are conflicting conditions within that bid package, and the conflicting conditions came as a result of the Land Commission's staff finding it necessary to add additional specs in terms of the licensing requirement.

ACTING CHAIRMAN McCUSLAND: I would like very much for you to have a good shot at this. I think it's a damn good thing that you went out and did this, and I feel like a real heel trying to figure out procedurally where we come down on this thing. But I think that the key thing that I read -- and it's pretty early on in here --

MR. SANDEPS: Paragraph two.

ACTING CHAIRMAN McCUSLAND: Instructions to Bidders, paragraph two, Competence of Bidders, A, License:

"No bidder may bid on work of a kind for which he is not properly licensed by the Contractors' State License Board."

There may be other provisions in here that are not fully compatible with that, but I bet you that seven of the ten firms looked at that and at least a couple of them, in all likelihood, said, "I don't meet that. There's no sense in reading further."

MR. GONZALEZ: May I say something?

ACTING CHAIRMAN McCUSLAND: Mr. Gonzalez?
MR. GONZALEZ: Aside of the fact of licensing
and all this, my personal way of looking at this now is
that I've been down this road before many times with
general contractors. I lost a great big job here in
Sacramento, the sewage treatment plant, to a general. After
I spent seven and a half weeks of probably 16 hours a day
bidding the job, they used my figures, my prices and every-
thing, and they decided to do it themselves. After a few
shots like that, you kind of learn to stand up and fight
for your rights.

About the only thing I can say about this job:
if you were to take it and analyze it the way it should be
done, right down to the nitty-gritty -- number one, price
factor, as far as I'm concerned, that is it. If you have
a total price on a per-hour basis from each one of the
companies and reviewed it and allowed me the five percent
as a minority contractor, then the price should stand, and
I think there wouldn't be any questions asked from anybody,
especially me.

(Laughter.)

MR. D'AGOSTINO: There are a couple of problems.
In terms of the price factor, aside from the rejection of
American Leadburning, I don't see anything that really allows
a comparison of prices to be made. Secondly, there are
other considerations, I think, besides price. There is
bonding, and at least in the bid specs there was some requirement as to a qualification to be met. So I think there are other factors besides cost, and I think that cost as far as I'm concerned, we're looking at apples and oranges in terms of making a comparison on that one item.

MR. GONZALEZ: Mr. Chairman?

ACTING CHAIRMAN McCausland: Mr. Gonzalez.

MR. GONZALEZ: This reminds me of a little thing. To me it seems like a small business, especially a minority business, there's a lot of governmental offices that are there to help them. To me, what you people are doing is you're helping a kid across the freeway and you leave him in the middle of the freeway and you say, "That's as far as I can help you." Do you see what I mean? He's got to go either way. I can't understand why it's so hard to make a decision on this type of deal, because number one, the license is not a factor. Number two, the bonding is not a factor, because the opportunities are available to me to get bonding and licensing. There is no problem at all there.

The only problem I can see is the dollars and cents, and that's what everybody is fighting for.

ACTING CHAIRMAN McCausland: What is the total value of the bid that you signed here?

MR. GONZALEZ: Just go on an hourly basis. That's
all you can do.

   ACTING CHAIRMAN McCausland: There really is no
   bottom-line number.

   Mr. Sanders: You mean a total bid?

   ACTING CHAIRMAN McCausland: Yes.

   Mr. Sanders: Yes, there was. Bid for complete
   work for the lump sum of $1,072,035. It was put out in
   that manner so that each bidder would in effect come back
   with a response of how many hours they could give us for
   that amount of money.

   Mr. Gonzalez: That's right. It's right there:
   how many hours you can get for that amount of money.

   Mr. Carey: You never asked it that way.

   Mr. Sanders: Yes, we did.

   Mr. Gonzalez: The thing that I see wrong here
   is: how are you supposed to bond a job where everybody
   knows what the total figures are? You're supposed to bond
   a job as to what you're giving the price for. We got our
   bond according to the amount of money on the hourly basis.
   What we're trying to tell you people is: we're willing to
   give you more hours labor for the amount of money that
   you have to spend than anybody else.

   Mr. Bartee: Mr. Chairman?

   ACTING CHAIRMAN McCausland: It took a long time
   for us to get to that issue.
MR. BARTEE: Mr. Chairman?

ACTING CHAIRMAN McCASLAND: Yes, Mr. Bartee.

MR. BARTEE: I was talking to several bond people, trying to obtain the bonds quickly for this. After reading the specifications to several people, SBA offices, they told me that really you don't have a bondable job. Number one, it's a service contract. Service contracts are not bondable because there's no real way of saying when you're going to shut it off and when you're going to start it.

ACTING CHAIRMAN McCASLAND: No performance to perform.

MR. BARTEE: That's it basically. Their recommendation to me was actually: bid your hourly rate and provide a bond of 100 percent of your hourly rate for performance and 100 percent of your hourly rate for payment. This is the only strategy I had to bid. I brought forth the lump sum of $1,072,000. No bonding company honestly works like that.

ACTING CHAIRMAN McCASLAND: That's part of what my question was. I didn't know what it was the SBA was bonding either.

All right. Your proposal is not then that we go back and start the bidding process over again. Your proposal is that we select your bid over the other two.

(Laughter.)
MR. BARTEE: Naturally.

MR. GONZALEZ: On a dollars and cents basis.

ACTING CHAIRMAN McCUSAULAND: I don't know how to do it on a dollars and cents basis. I don't have anything that tells me what the dollars and cents basis is. A minute ago you said dollars and cents basis, and then you said I should do it on the number of hours you will have people out in the field working.

MR. GONZALEZ: Mr. Chairman, at the bid opening they read the figures. This is just rough figures: $664 an hour, $644 an hour, and $617 an hour. Our bid was at $644 an hour. If you take away the five percent off of that, we've got $611.

ACTING CHAIRMAN McCUSAULAND: But if I'm going to go on dollars and cents, I've just been handed your bid submittal and on the page where it says "Bid for Complete Work", it says: "For the lump sum of $1,072,035, tell us the hourly rate for equipment and operators, the item cost per pile, snag and structure removed," and that has an "X" through it. If I go through the submittal from Jensen and Reynolds, I've got $619. If I go through the bid for Dutra, on the page which is apparently the closest you can come to a bottom-line figure, I've got $676.

MR. BARTEE: Mr. Chairman, Mr. Charles Hastings
received a copy of these bid specs. He is unable to be here today. He met personally in the State Lands office and was personally handed a set of bid specs. On his specs they had that page totally marked out and said, "Don't use." Also in his bid specs they marked out "small business preference" with a felt-tip marking pen on the main page.

ACTING CHAIRMAN McCAUSLAND: Would somebody like to testify to that?

MR. CAREY: I picked up his thing yesterday and went and made a copy of it. I've never heard this before, but I could check whether or not something has been crossed out.

ACTING CHAIRMAN McCAUSLAND: Who is Charles Hastings?

MR. BARTEE: A general engineering contractor who is prepared to work as an R.M.E. for Mr. Gonzalez and also supply most of the heavy equipment.

ACTING CHAIRMAN McCAUSLAND: Is he one of the ten parties who received this thing initially?

MR. BARTEE: He met with me in San Francisco and told me what had been told him and showed me his bid specs.

ACTING CHAIRMAN McCAUSLAND: I'll have to consider that hearsay. I don't know how to utilize that in a hearing such as this. I find it to be fairly unusual procedure. If you want to pursue that, it's probably your remedy, but
I don't know how to accept that as anything but hearsay.

Mr. Flores, I really don't know how I can make the finding you think I should be making. I really think that the procedure is not adequate to accomplish what it is your office has set out to do, and I think you really need to work on that procedure. There is something really wrong with Title 1 and Title 2 if we can't get the procedure lined up so that we don't have this happen to us.

MR. FLORES: Keep in mind that our office is not EDA. EDA came down with the guidelines. To that extent, we are as aware as anybody of the large amount of grey matter involved in the language of these guidelines.

ACTING CHAIRMAN McCausland: You said that nicely.

MR. FLORES: My point is strictly in regard to the licensing consideration, that the Lands Commission staff chose to extend itself beyond the language of the laws that applied to the federal EDA guidelines and to the State Contract Act and the California Government Code. My point is that an adjustment should be made in terms of the licensing consideration.

I would even choose to recommend that if that type of adjustment can't be made that an extension be asked by the Lands Commission staff to EDA, and then reject the bids and rebid the thing. That sounds like the safest and cleanest way to approach this, given the intent and purpose.
and objectives of the Congressional legislation, and in terms of cleaning up a sloppy matter. It seems to me that maybe that is the best alternative.

ACTING CHAIRMAN McCausland: But isn't it basically also true that all other participants in this matter approached it by the same set of ground rules and proceeded in a deliberative fashion with the assumption that there was going to be some consistency to the process?

MR. Flores: Consistent with that, your initial point was that a large number of prime contractors who would normally bid state jobs of this type chose not to bid, period. So in terms of trying to present that as a consensus, I think that it doesn't represent the --

ACTING CHAIRMAN McCausland: I don't think we really went after large state contractors. I think we were deliberately attempting to aim this at the kind of contractors that would benefit most from a job like this. We didn't go after the freeway builders of the world. We went after Will Ross, Jensen and Reynolds, Dutra Dredging, Smith's-Rice Dredging, Western Delta Marine Construction, Pat Malone, Haviside-Hastings, Dutra Construction, James Fristoe (American Demolition), and DeBeers Contracting.

I don't think I've ever seen them in the list of majors.

MR. BarTEE: Mr. Chairman, originally, when they
first sent the specs out, there was a set of specs given
to Dutra Construction, Jensen and Reynolds, Dutra Dredging
Company, and Smith-Rice. Smith-Rice is one of the largest
in the Bay Area. Haviside-Hastings is not really that large.
Dutra Construction is the only side draft dredging company
in the delta, basically classified as being fairly large.
Dutra Construction is not what I would consider a small
company at all. It's a very fast-growing company, very
efficient. Jensen and Reynolds the same thing: they're a
very fast-growing company. I would not consider them small
any more.

ACTING CHAIRMAN McCausland: Thank you. I will
consider that clarification.

MR. Flores: Maybe as a final point, a question
that the Commission should be asking itself is: to what
extent is it leaving itself in the open in terms of
liabilities if they leave the results as they appear to be
now? I really question the position of the Commission if
they proceed to leave these things as they are now.

ACTING CHAIRMAN McCausland: We have the unfortunate
position of being at our peril on virtually every decision
we make. That's why the attorney general is here, so that
when he represents us in court, he's aware of what kind of
foolhardy avenue we had to tread.

I take your statement most seriously, because I
said a similar thing to Mr. D'Agostino a little bit earlier. I don't think we can shy away from that prospect.

Mr. Carey?

MR. CAREY: One other point: with discrepancies or conflicts like this in all of the figures, it's obvious that there would be lots of amendments or extra work or change orders or whatever they might be, down the line to correct. Just looking at the figures on the ones that they read out, the difference between $90 and $223. I'm experienced in all kinds of contracting. I know what the labor figures are. I know what fuel might cost. It seems to me that nobody can run that first piece of equipment for $90 an hour. Somebody has to come back and say, "It can't be done." Maybe I'm wrong, but I'm not so sure that people aren't just depending on the fact that they can come back and say, "Well, we interpreted the contract differently, and we're looking for an amendment or a change order."

ACTING CHAIRMAN McCausland: What are the provisions in this contract for change orders?

MR. CAREY: I don't know.

MR. SANDERS: A member of my staff, Randy Moory, says that they are provided for.

MR. BARTEE: They are very heavily provided for.

ACTING CHAIRMAN McCausland: What is the pleasure of the Commission?
MR. BARTEE: Mr. Chairman, that is covered on page 27 of the general conditions of the contract.

ACTING CHAIRMAN McCausland: Thank you.

MR. MOORY: Item 32 and item 33 under the general conditions of the contract provide for change orders ordinary and change orders general.

ACTING CHAIRMAN McCausland: Will you identify yourself for the record, please?

MR. MOORY: Randy Moory, a member of the Division staff.

ACTING CHAIRMAN McCausland: For the record, we are in the process of looking at the bid schedules and the equipment schedules on all three of the bids before us. (Thereupon a short recess was taken and a short discussion was held off the record.)

ACTING CHAIRMAN McCausland: The Commission has discussed the matter with counsel to review our legal options. We have also reviewed the bids as submitted through an item-by-item visual comparison of the rates before us. Without objection, the State Lands Commission adopts the staff recommendation as submitted.

The next meeting of the State Lands Commission will be on December 19, 1977 in Sacramento at 10:00 a.m. Thank you for coming. The meeting is adjourned.

MR. GONZALEZ: Mr. Chairman, may I make one last
statement? I'd like to be notified by mail as to this finding, please.

ACTING CHAIRMAN McCausland: You will receive a copy of the minutes as soon as they are available.

(Thereupon the meeting of the State Lands Commission was adjourned at 12:00 m.)

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State of California )
County of Sacramento ) ss.

I, PAUL D. RAMSHAW, 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, Paul D. Ramshaw, 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 12th day of December, 1977.

PAUL D. RAMSHAW, C.S.R.
Notary Public in and for the
County of Sacramento, State of
California
C.S.R. License No. 3434