MEETING
STATE LANDS COMMISSION

BOARD OF HARBOR COMMISSIONERS
925 HARBOR PLAZA
SIXTH FLOOR, BOARD ROOM
LONG BEACH, CALIFORNIA

ORIGIINAL

THURSDAY, APRIL 26, 1979
10:00 A.M.

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PETERS SHORTHAND REPORTING CORPORATION
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TELEPHONE (916) 383-5691
MEMBERS PRESENT

Mr. Roy Bell, Chairperson, for Richard T. Silberman
Mr. David Ackerman, for Mike Curb, Lieutenant Governor
Mr. John Jervis, for Ken Cory, State Controller

STAFF PRESENT

R. B. Golden, Assistant Executive Officer
James Trout
Robert Hight
W. M. Thompson
Dianne Jones

ALSO PRESENT

Greg Taylor, Assistant Attorney General
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PETERS SHORTHAND REPORTING CORPORATION

7700 COLLEGE TOWN DRIVE, SUITE 213
SACRAMENTO, CALIFORNIA 95825
TELEPHONE (916) 383-3805
CHAIRPERSON BELL: Ladies and gentlemen, the hour of ten o'clock having arrived -- my microphone seems to be growling. Can you all hear me? -- the meeting of the State Lands Commission will be called to order. Present are David Ackerman, representing Mike Curb, Lieutenant Governor, on my left, appropriately. John Jervis representing Ken Cory, State Controller, on my right. And I'm Roy Bell, representing Richard Silberman. And I'll chair this meeting.

Mr. Right, since we have two alternates present rather than the principals, can you advise me as to the rights of voting?

MR. HIGHT: Yes, Mr. Chairman. Mr. Jervis will represent the Controller in voice only and will not vote on any matters. And Mr. Ackerman will vote on matters. And we will have a legally constituted commission.

CHAIRPERSON BELL: Thank you.

MR. TAYLOR: The Commission today will consist of you --

CHAIRPERSON BELL: I'm sorry. This is Mr. Taylor, Deputy Attorney General -- Assistant Attorney General.

MR. TAYLOR: Mr. Bell, just so the record is straight, the Commission today will consist of you and Mr.
Ackerman. And Mr. Jervis will not be voting, although he
will be here as Mr. Cory's representative to, in effect,
observe this meeting.

CHAIRPERSON BELL: Thank you, Mr. Taylor.

The minutes of the meeting of March 29th were
distributed to members. If there are no corrections or
alterations or improvements, they will be deemed approved.

The first item on the agenda is a report of the
Executive Officer.

MR. TROUT: Mr. Chairman, I think we'll spare you
that today. And I just want to point out that on the
calendar, Consent Item C7 will be off calendar. The rest
of the consent items are okay. Mr. Golden will have a
report, however, on the State Coastal Commission.

CHAIRPERSON BELL: All right. For the court
reporter, that was Mr. Trout speaking.

Staff report on the State Coastal Commission from
Mr. Golden.

MR. GOLDEN: Thank you, Mr. Chairman and members.
The status of the Coastal Commission's local coastal program
certification process is what I'm going to be addressing
this morning.

As you are aware, the California Coastal Act of
1976 requires the California Coastal Commission to certify
Local Coastal Programs -- which I'll refer to as LCP's --
along the coast, statewide, for being capable of carrying out the Coastal Act. These LCP's, when certified, will consist of local plans, zoning ordinances, and other implementing actions. They must be certified by June 30, 1981.

This certification process will impact the operations of the State Lands Commission in at least two ways. First, the Coastal Commission will retain permit authority over development on the State tide and submerged lands and may look to this Commission for the exercise of the public trust over such lands. Consequently, we will be asked to make more definitive determinations of State lands boundaries and clarify the extent of State interest in such lands. Second, the LCP's will include land usage designations for our lands and for lands adjacent to them. Our interest is to ensure that such land use plans are consistent with our objectives and with the public trust.

Our staff has been working with the Coastal Commission on both of the above. Our involvement in working with local governments and the Coastal Commission is expected to increase substantially over the next couple of years. To date, our most concrete participation has been on the Tomales Bay area plan, which is expected to be completed in draft form within the next couple of months and submitted to this Commission for review and approval shortly thereafter.
Additional principal areas in which we expect to become involved include Humboldt Bay, Monterey Bay, and the remaining wetland areas of Southern California, several eroding shoreline areas of the State, and port plans for Long Beach, Los Angeles and San Diego.

There are 68 local governments -- 15 counties and 53 cities -- for which LCP's must be certified. To date, while work on many LCP's has commenced, only a handful are nearing completion, and only one land use plan, that of the City of Trinidad, has been certified by the State Coastal Commission. It has been estimated that for the Coastal Commission to complete the LCP process by the statutory deadline of mid-1981, it would have to consider three LCP's per meeting from here on. As you can see, the job at hand is immense.

Our staff will continue to work with the Coastal Commission to assist in the LCP process and, most importantly, ensure that our interests in this process are properly considered and protected.

That concludes my report, Mr. Chairman.

CH: PERSON BELL: Thank you, Mr. Golden. Any questions by Commission members?

If not, we'll now go to the Consent Calendar. The Consent Calendar consists of the first 16 items, with Item 7 off calendar, as Mr. Trout indicated.
Is there anyone in the audience who wishes to withdraw from the Consent Calendar any of the first 16 items?

Hearing no objection, the first 16 items are subject to a single act.

MR. ACKERMAN: Also move they are.

CHAIRPERSON BELL: All right. I have a motion.

All in favor, say Aye.

(Ayes.)

CHAIRPERSON BELL: Opposed?

(No response.)

CHAIRPERSON BELL: They are approved.

We will now go to Item 17, which is the first item on the Regular Calendar. And it's the Yuba River item.

MR. TROUT: Mr. Chairman, each of the Commissioners has received from Mr. Dacey, representative of Yuba Gold Fields, a rather significant package of information relating to this item. In addition we have received today a letter from St. Joseph Church, signed by Reverend Hugh J. Bannon, which I won't read entirely but we will submit in the record. He asks that the Commission take the following four points into account in making the determination on this item:

one, water which Yuba Gold Fields want to sell to Southern California; two, the recreational potential of the property; three, the fact Yuba Gold Fields is in the process of trying
to trade this land to the Federal Government, which already has extensive holdings in Yuba County, i.e. Beale Air Force Base, and thereby effectively taking it off the tax rolls. And the fourth item is the value of gravel of which there is almost an inexhaustible supply, plus the minerals, specifically gold, contained in the gravel deposits.

We received a telegram -- actually two grams, from Harold J. Sperbeck, Chairman of the Yuba County Board of Supervisors. Unfortunately, it's a little like the telegram that says, "Please ignore my previous telegram." He says,

"Regarding my letter of April 23rd, referring to File 503906, Yuba River, etcetera, the letter was my own personal view and position on the matter."

It goes on to just say that the Yuba County Board of Supervisors has not taken a stand on the issue and asks that we report this to you. The problem is that as of last night, we had not received the April 23rd letter. But the telegrams and the letter when it arrives will also be made part of the record.

Mr. Jack Rump, Staff Counsel, will make the staff presentation on the Yuba River item.

CHAIRPERSON BELL: Mr. Jack Rump.
By the way, that again was, for the court reporter, Mr. Trout speaking.

MR. RUMP: This calendar item concerns a partial claim by Yuba Gold Fields, Inc., consisting of a —

CHAIRPERSON BELL: The audience cannot hear you.

MR. RUMP: Okay.

Now?

CHAIRPERSON BELL: Yes.

MR. RUMP: This calendar item concerns a partial claim by Yuba Gold Fields, Inc., consisting of about 8,000 acres approximately eight to nine miles upstream the Yuba River from Marysville. We have various maps and photographs available. The one in the center of the photograph shows the area generally just north of Beale Air Force Base and subject to many of the dredging, gold dredging debris. The U.S. townships are illustrated in orange on that map. Next to it on the right is a quad base map showing the perimeter of the claims of Yuba Gold Fields. We may not necessarily agree with the perimeter, but this has been supplied to us by Yuba.

Approximately 2100 acres of land is located between the meanders, as it is shown on the official township plat. The area is also the site for the proposed Marysville Lake project by the U.S. Army Corps of Engineers.

As is described in the calendar item, the dispute
centers on three main points: first, whether the Yuba River was a navigable river and therefore sovereign lands belonging to the State. This would include questions of navigation in fact versus statutorily declared heads of navigation of the river, first eight miles upstream and finally at F Street in downtown Marysville. Secondly, the last natural location of the historic river boundary, whether it be the meanders or some other water line. And third, finally as this is non-titled waterway, whether the legal boundary would be high or low water.

This item was originally scheduled for Commission consideration in October of 1978, but was removed at the request of Yuba Gold Fields. Discussions have continued between the parties concerning the possibility of settlement. However, the dispute still continues. And staff feels that there is no possibility of settlement at the moment.

As you have received in the mail, Yuba Gold Fields has prepared a statement in opposition. However, the staff still disagrees with the conclusions reached in their statement. For example, on the issue of navigability, Yuba Gold Fields discusses the voyage of the steam dredge Phoenix in 1850-'51 to Ousley's Bar, apparently an area within the proposed litigation. And they also state that the dredge was moved during the wet season in January. Rather than belabor points back and forth -- because, as you know,
historical research is time consuming and we have to go through historic newspaper counts and the like -- our further research indicates that the voyage indeed was under the vessel's own power. For instance, the Sacramento transcript of February 7, 1851, stated, and I quote,

"We learned from a gentleman who has returned from upriver that the Yuba River Dredging Company has made another trial machinery on board the Phoenix for dredging of gold. For some time past, the Phoenix has been unable to proceed to the point intended on account of the low stage of water in the river. But the owners now intend to put on steam and force it through to the rich bar, which the Company intends working. Unless it rains, therefore, within the next ten days and the river rises, the steamer will force her way to commence active operations."

There are similar accounts; and we anticipate, as we proceed, to find other instances of navigability. We also have found a panograph depiction of the Phoenix on the Yuba River. I won't go into that at this time.

As you are aware also from the statement in opposition, Yuba Gold Fields has a letter from the U.S. Army
Corps of Engineers. They state in their letter that there is no significant or substantial evidence to the contrary that has been brought to their attention. Apparently on this basis they have entered into an exchange agreement with the Yuba Gold Fields in which they would receive dates to the proposed site of the Marysville Lake project.

Unfortunately, we disagree as to whether or not there exists significant or substantial evidence. For example, the township plat for the area in question was meandered both banks pursuant to instructions from the U.S. Surveyor General. Also the field notes indicate that the river was navigable. This is also true of the township plat for the area immediately to the west and further upstream of the property.

Also one of our staff has uncovered a report which was prepared by a noted engineer of the Corps, Owen Stanley, who apparently had joined the California Debris Commission about 1906. His work -- only to make it short, just read the significant portions -- says,

"In San Francisco scores of would-be goldminers left their usual jobs and made their way mostly by river steamers towards various areas reported to be gold bearing to join out-of-state would-be goldminers in Sacramento, Stockton, and Marysville."
In these towns the expectant goldminers transferred their belongings to rowboats, small rafts and anything else that would float their goods. They then proceeded by such water transportation to where the Mokelumne, American, Yuba, and Feather Rivers, respectively, debouch from the foothills onto the valley floor. These sites are near the present-day communities of Comanche, Folsom, Sicard Flats, and Oroville. Sicard Flats apparently is further upstream from this property in roughly the vicinity of Timbuktu."

We have requested the Board to certify -- to get a certified copy of this document from them. But after two requests, they have not done so.

Additionally, since we're talking about the Corps and specifically the Marysville project, in 1970 the Commission received a letter with regard to any claims of ownership or whether or not the Commission felt that the river at this location could be navigable. We answered in September of 1970 and did assert the ownership of the river.

Rather than going into any further details at this time, I'd like to summarize that the staff feels that there is good cause to believe that the area in question was
traversed by a navigable waterway, which is sovereign land of the State, and that further research and evidence will show its historic location and use as a highway of commerce.

We ask that we be given authorization to proceed with a resolution of this matter. I think since there will be statements from Yuba Gold Fields and possibly the Corps of Engineers and others, that summarizes most of the points at this time.

CHAIRPERSON BELL: Thank you. If there are no other comments, I have five requests for appearance on this item. And the first person I will call on is Mr. Marvin Kratter.

Mr. Kratter.

MR. KRATTER: May I use this microphone?

CHAIRPERSON BELL: Yes, I believe it's on.

I think you have to talk close to it.

MR. KRATTER: My name is Marvin Kratter. I'm President and Chairman of the Board of a public company called Yuba Gold Fields, Inc., which is the owner of various interests in property in Yuba County, California, in the area of Marysville. The company is a publicly owned company with approximately 15,000 shareholders, many of whom are California residents. The property under question has been in the hands of Yuba Gold Fields, Inc., and/or its predecessors since the early twentieth century, beginning
approximately 1904.

I would like the Commission to understand that the question of title to lands within our recorded boundaries is not a question that was originated by the State Lands Commission staff, but arose out of a civil controversy with a tenant or an alleged tenant of the property who was using several of the ponds on the property for the development of -- for the production of trout. We got into a controversy with this gentleman and brought a civil action to terminate his alleged tenancy. And as a result of that action, his engineer came down to the State Lands Commission and indicated that the State had ought to look into this because they thought he was sitting on State owned land.

A representative of the State Lands Commission, acting as a representative of the Attorney General's Office, actually appeared in court at State expense during the -- some of the hearings in this particular issue, the initial phases of which have been ruled on and held in favor of ourselves. That particular property, for your information, is in an area which is the subject of an exchange with the United States Army Corps of Engineers and settlement of a longstanding title dispute between them and the Gold Fields.

The actual area owned by the Gold Fields to which it will have title or has title now after the consummation of the Corps of Engineers agreement is less than 700 acres.
An attempt has been made here to describe this as 8,000 acres being owned by the Gold Fields. No such thing.

The property seeking to be claimed as State property in this action cannot be clearly differentiated or separated from properties now owned by the Corps of Engineers, who are represented here today by their counsel and chief real estate officer, Mr. Denney and Mr. Wheeler, whom you'll be hearing from after I conclude and must unfortunately leave for another legislative session over in Nevada. Therefore, it is impossible in my opinion and in our engineer's opinion to distinguish between the Government and ourselves in the areas sought to be claimed by the State. There's an intermingling of fee ownerships by us and fee ownerships by the Corps of Engineers and fee ownerships by the Bureau of Land Management.

In the original presentation to you for the calendar item in October -- and the reason for this extensive delay in terms of getting this hearing on was the fact that the original calendar item, in our opinion, was substantially misleading and seemed to represent that neither the Corps nor the Bureau of Land Management had any interest and didn't care to assert any. And if you will look at the file, you will find that both of those organizations have written rather lengthy letters indicating that they have a definitive fee ownership interest in these properties and that the
initial presentation to the Commission was not correct.

We have a great emotional problem with this entire action, it seems. And that is the fact that the public, and we believe there has been a -- has been led to believe that this action is an attempt to salvage or get State control of the existing Yuba River. And in the presentations to this august body, the same attempt was made. It was made in talking about claim ownership of the Yuba River. Now, any layman or person not completely versed in the highly technical details of this matter would assume that the State was now trying to gain control of the existing Yuba River.

And if you'd like, I can take you over to the pictures, both ours and the State's pictures on the wall and show you that practically throughout the entire property seeking to be attacked, the Yuba River is a half to two miles away as the river currently exists.

To get the facts in perspective, the State can only succeed legally in maintaining any claim to any of our land if it can prove two things: (a) If it can prove that the river was navigable in 1850, I believe September 9th is the day, when our sovereign State became a state; and secondly, if they can prove without any question of doubt where the Yuba River was on that date. Now, the only evidence available that we have found or that has been submitted by the State to us -- and incidentally, they have
submitted practically nothing despite a promise that before this meeting we would be supplied with the data upon which this claim was being based. In other words, we came into this meeting this morning despite repeated promises from staff counsel that we would be shown the facts on which this claim was being based so that we would have an opportunity to contest them and despite the fact that we made every document in our files, and the Government has made every document in its files, available to the staff. I have the feeling of Shakespeare when he said, "Methinks we have nurtured us a viper unto our bosoms." We gave them everything we had. In the language of the gutter, we spilled our guts. We haven't had a transmittal of one piece of information that we could have relied on in coming to this meeting today to determine what the State based its position on.

Now, the first thing that has to be made crystal clear is that we are not talking about the existing river. I have said that before. The second point we have to make is that the only piece of documentation that would purport to show where the Yuba River was on the date of statehood is dated 17 years after statehood. Now, if you look at the presentation that was made to you today, the authorization, you will see that Item Number 3 states, "Intensive mining activities in the
and I presume that means in the time of 1850 and thereafter—
"have irreparably altered the course and
nature of the Yuba River at this location."

Well, if hydraulic mining and dredging was going on in the mid-nineteenth century, namely 1850, how could anybody state that the only survey, dated in 1867, presented to you as the meander lines of the Yuba River on that orange-colored map, on the orange-colored lines on that aerial picture— which we incidentally supplied, are the lines as they existed in 1850? There are plentiful indications that the river engaged in a sort of a flood plane with many rivulets of all kinds running over it. There really wasn't a Yuba River consistently at any period during this time, because every time hydraulic mining took place—and incidentally not by us, because our properties only came into being, our ownership in the early 1900's. But every time they mined and did hydraulic mining, they diked and dammed and changed the course of the river. How the State of California can now come in and say, "We're going to take your property because we have a map that shows where it was in 1867 and, therefore, we're maintaining that's where it was in 1950." So far there has not been one shred of evidence introduced, shown to us or, as far as I can tell, shown to your august Commission here, that would indicate
where that river was in 1850. So I don't think you can indiscriminately go out and take people's property based on an 1867 survey.

I am going to leave for others the question of high and low water lines and the litigation before the courts now. There is nothing, for example, in connection with the 1867 survey even, the purported meander lines of the Yuba River at that time, that shows whether they were low or high water lines. And, as you know, the court cases are now insisting that the State's ownership would be limited in any event to the low water lines. We have -- the Corps of Engineers will show you profiles of the river indicating that because of the rivulet and the flood planing effect, it would be almost impossible to locate a low water line by any surveyor during that particular period of time.

The other issue, of course, which must be met by the State if it's to prove ownership of these lands is that not only are these the lines as they existed in 1850 on September 9th, but that the river was navigable. The major case on the question of navigability, which is called the Daniel Ball, stated consistently and has been followed consistently by all the Federal Courts. Those rivers must be regarded as publicly navigable rivers in law which aren't navigable in fact. And they are navigable in fact when they are used or are susceptible of being used in their ordinary
condition -- that means without dredging, changing, or alteration -- as highways for commerce, meaning that there had to be commercial use. You couldn't have a youngster sailing a sailboat across the river and claim this as a commercial use. Coming back to the citation,

"over which trade and travel are or may be conducted in the customary mode of trade and travel on water."

Now, the predecessors of the Gold Fields were never able to get their supplies and equipment up the Yuba River to the present gold field site. They had to be mule packed in from Marysville.

I think also the initial presentation that was made to you was aggravating and misleading because it didn't bother to indicate that the State of California, acting through its Legislature, over a period of eight years have twice indicated that the river was only navigable up to Marysville.

I think another thing that is extremely aggravating and misleading, for the public anyway, is the fact that our property has been singled out. Now, I don't know why we're being singled out. I don't know whether this is a personal vendetta situation by staff counsel, whom we have attacked, as you will have seen in the initial response to the initial litigating request that you had for failure to convey to you
adequate information on which you could reasonably base a decision. But the mode of conduct has been to really try to obscure and obfuscate issue in helping you reach a decision. For example, I speak today not only for Yuba Gold Fields, but I have with me in writing -- and will be glad to supply those to you if you'd like -- authorizations from 25 other property owners and two we got by telephone this morning -- which we can supply later if you want them -- to represent them at this hearing. If the State elects to take property within the meander lines of the Yuba River, I do not believe that they have the privilege of just attacking ours. I think they must attack and seek to gain title for the State to all meander lines, all properties within the meander lines. And if they don't do it, I believe that any citizen has a right to say to the State of California, "If you believe you own the property within the meander lines because that's where the river was in 1850, based on this survey; and if you believe it was navigable, then I think there is a duty on the State to go after all these owners." There are some 121 such owners involved within these meander lines. They include shopping centers, apartment houses, private homes, farms, and even property owned by Yuba County. We will not stand by and permit ourselves to be singled out on a divide and conquer basis. If the State has a burden of proving title, it's got to come
in and face up to the music and say to the 121 other owners,
"Get out of your house or get out of your farm or pay us
for the land", or whatever. We will not hold still for
that, nor will the Federal Government hold still. We're
not being named — in my opinion, we're not being named
in this action.

Now, this is, in our opinion, an outrageous
situation for any person in a free society to be faced with.
The State has dealt with this property for 130 years as if
it was private property. We have paid real estate taxes
on this property. The State, acting as part of the
California Debris Commission, has entered into various
conveyances, various title instruments, relating to the fact
that the State did not have title or convey title or
quitclaim title in connection with the Debris Commission
to these particular areas. How can they now come in and
say after 130 years on a hindsight basis that they have
done this? It's very difficult to understand, with as big
an area involved and as many people involved, why this
Lands Commission, acting through its counsel, had to wait
until this got into civil litigation.

Now, I must tell you that the consequences,
independently of how you act here today, the consequences
of what has been done here have created horrendous,
irreparable harm and injury to 128 property owners. If you
were a bank officer and read in the newspaper that the State was claiming title to a piece of land and a customer came in and said, "I need a new mortgage on my land to put my crops in" or "I want to improve my shopping center or my apartment house", would you lend him money on the strength of the fact that the State was not going to be able to maintain its claim? They have clout, and I think this amounts really to inverse condemnation by virtue of the kind of language that has been used and the kind of publicity that has been given to this thing. They sent a woman up to the library to try to find records of navigability who used it as a platform for a press conference. A newspaper there recently carried an article about this action. And instead of saying, "Yes, the State will have an obligation to attack all the owners in that area", said, "All we're doing is attacking Yuba", and they begged the question by saying, "for now."

Well, we will not stand by and be the only one attacked, and I don't think the Federal Government will stand by and be the only one attacked. I think that the admission that the State has made pertaining to the intensive mining activities in the mid-nineteenth century, in the 1850 area, are absolutely damning to the position that they can come and identify a piece of land on which they are asking you to lay claim. And if you concede to
their wishes and give them litigating monies which are sorely needed in better parts of the State, they are going to tie up title to those properties and affect the lives of 121 property owners for maybe five to ten years until the issue can finally be litigated and resolved. And after all that's done, I don't know what the liability of the State is going to be for having done this. I for one am going to take the position that this is inverse condemnation, absent the supplying of a great deal more material than that one little item of navigability that has been read to you and without any presentation by staff counsel to you today that they can define the land in which the low water line of the Yuba River ran on September 9th, 1850.

Now, this is really a civil action situation between the tenants you are seeking to dispossess and the State that's being brought in as a tax boy. As a taxpayer in this State -- and incidentally a taxpayer with a sense of public conscience who last year took his savings from Proposition 13, some $26,000, and gave it to various local agencies in Marysville who were deprived of budget by virtue of Proposition 13, I resent the amount of State time and money that has been spent thus far. And I will fight to the bitter end the expenditure of any more State monies until there is a much more definitive indication of what those lines were and a much more court wise provable statement of
navigability.

Now, there is one other point I'd like to make before I close. And I hope you will forgive me if I have sounded overaggressive or overintent on this thing. But the lives of many people, not just the property owners, but of some 10,000 California shareholders are here at stake. I don't think it's unfashionable to be an owner of security in a public company. I don't think we should become a fat cat subject to State attack by virtue of that particular characterization of our ownership.

Now, there is one other item that I would like to cover in this matter. And that is the statement that the staff has tried to negotiate with us. I want to make clear to you exactly what happened. And, of course, this may be part of bureaucracy everywhere. But the reason we have not negotiated with the State after offering to do so was the same reason that I'm complaining about coming here unable to make a valid argument because the State has withheld the facts supporting its claims. When the question of settlement came up, we said, "Look, we realize that you can harass us and cloud our title for years. And if we have to be blackmailed or" -- again in the words of the gutter, when rape is inevitable, the thing to do is to lie back and enjoy it. As far as I'm concerned, we felt that we were going to be raped of our land. So we said, "Okay, let's
We offered, for example, to quitclaim to the State, in exchange for a quitclaim on our lands, the bed of the existing Yuba River to the extent that that bed was now owned by us, because we have no desire in preventing the use of the Yuba River so long as our property isn't invaded in the process. But we said to the State, "If we're going to give up as a trustee for shareholders a valuable piece of land, the ownership in fact of the bed of the river, then tell us on what you base your claim and supply us with a quid pro quo. Why are we doing this? Why are we giving up ownership to land we hold to you in exchange for an ethereal claim on your part?" They have never given us one piece of paper to support their claim. And they have worked hard on this. They have had people up at the Marysville Library, which I think is the third or fourth oldest library in the nation, trying to find some evidence of commercial navigability. And they have come up with zilch.

Now, in closing, there are people here who can much more articulately present our point of view and who can answer technical questions as they relate to ownership, the course of the river, the navigability, and the legalities that will be faced if litigation is attempted in this matter. Obviously since the U.S. Government is involved, the State will not have the benefit of a paternal state court system.
helping it. It will have to go into federal court like any other citizen. And so far those types of things are not being sustained. Land grabs are not being sanctioned by the Federal Courts. And you could wind up wasting a fortune of money and years of staff time and wind up with nothing.

I would like to step over to the map and just show you some of the indications that I have been talking about, that is, where the river is and where it goes through our property and again reiterate to you we have less than 600 acres at stake, not 8,000 as has been represented to you. The rest is Federal land.

This is the land sought to be being attacked. The Yuba River is the blue line that you see up here. In one corner, I would guess in less than ten percent of our property and in fact in an area where we do not own the property, but it's owned by the Federal Government. And we merely have either use or possession rights or mineral rights. Does the river flow through the area sought to be being attacked? This entire area of meander lines, land which is currently owned by the Federal Government has not been mentioned to you. The meander lines have not even been extended on the State's presentation -- and again I'm sure it's for emotional and maybe political reasons -- to show that they go clear down into the City of Marysville where some of these 121 properties, including the apartment
houses, the homes, the farms, the ranches and the businesses
are located. It would just seem to me that if this body
would consider taking lands within the meander lines, it's
fine to start it ten miles or so upstream of our property.
But if good faith is being shown here, why didn't they show
you the rest of the meander lines clear down into Marysville?
Why did they stop conveniently at the end of our property?

I'm going to try to stay here as long as I can to
answer any questions that you may have. If you have any,
I'd like to respond to them now. If not, I would like to
see the next people representing us in this matter and the
Federal Government have its say.

Is there any way I can clarify or elaborate on
what I have said?

CHAIRPERSON BELL: Are there any questions by
Commission members?

MR. KRATTER: I'm sorry. I don't hear you, sir.

CHAIRPERSON BELL: I was asking if they have any
questions.

MR. KRATTER: Oh, I'm sorry.

MR. ACKERMAN: Not at this time.

CHAIRPERSON BELL: I would only dispute that the
other people will be much more articulate than you.

MR. KRATTER: Thank you.

CHAIRPERSON BELL: Any comments from our Attorney
General? Or shall we hear the rest of the witnesses?

MR. TAYLOR: I think we should reserve our comments to try to expedite it until all of them have made their presentation.

CHAIRPERSON BELL: I have four other witnesses, two of whom represent the company, two of whom represent the Corps. I do not know in which order you wish to appear. Would it be appropriate to have the company appear next, the Corps after that? If so, I have before me a request from John Denney -- I'm sorry. I got the wrong one. John Dacey, attorney at law for Yuba Gold Fields.

MR. DACEY: That is I. sir.

CHAIRPERSON BELL: Pardon?

MR. DACEY: That is I.

CHAIRPERSON BELL: That is you. Please proceed, Mr. Dacey.

MR. DACEY: I just have a very few preliminary comments, and then I would be open to any questions concerning the presentation that we made in our written opposition.

I believe that the written opposition that we prepared and supplied to the Commission adequately responds to whatever points the staff counsel has presented to us. The points that they made this morning, I'm not familiar with. It may be necessary to further respond to those points if we might have additional time. I'm not familiar with the
points they raised. However, I would entertain any questions that the Commission might have with respect to the written opposition that we have supplied.

However, I would like to make a preliminary statement at this time. The Gold Fields personnel, myself and Mr. Kratter and others, along with the United States Corps of Engineers' representatives who are here today, are appearing with the understanding that for this hearing to have any meaning, it must direct itself to the merits of whatever claims the State may have and that the request for authorization, we believe, must be supported by some showing, some preliminary showing that the claim has merits. We do not believe that showing has been made. We believe that with respect to the issues as to navigability, we see that there is a very serious doubt whether or not, based on the authorities that we have cited and analyzed in our opposition, whether or not the Yuba River was navigable in 1850. Quite clearly, had it been navigable or could it be susceptible of commercial navigation, we believe that it would have been so used. It was not.

With respect to the bed of the Yuba River in 1850, again I have consistently requested staff counsel supply to me what information it may have or in what manner it would hope to establish where either the high or the low water mark existed as of 1850. It is quite clear that between 1850
and 1867, the date of the initial survey indicating meander lines, there are substantial changes in the course of the Yuba River. We believe that unless there is material or relevant competent evidence which will establish where the bed of the Yuba River was in 1850, a court of law simply will not speculate as to where it was. Certainly in view of the fact that 130 years have passed or approximately 130 years have passed, that what evidence there may have been with respect to where the Yuba River lie in 1850, this evidence is no longer in existence, so far as we are aware of.

We believe the State's delay in serving its claim, whether or not it's meritorious or not, simply is not justified by virtue of the delays in which have taken place in their asserting this claim.

Now, again getting back to the purpose of this hearing, I believe that again if the hearing is to have any meaning, there should be some preliminary showing as to the merits of a State claim. We believe that no showing has been made. We believe in fact that what the staff counsel would like is an authorization to use as leverage to unfairly put us in a position where we have no choice but to make unfair concessions. We believe that for this Commission to authorize litigation at this time, it would do so, and authorize expenditure of funds for a nonmeritorious cause.
At this time I would entertain any questions that the Commission might have with respect to the written opposition that has been supplied.

CHAIRPERSON BELL: Mr. Dacey, I have none. Do you have any?

MR. ACKERMAN: I think I'll wait to hear the Corps' presentation. And then maybe we can ask questions of you collectively.

MR. DACEY: Fine.

CHAIRPERSON BELL: All right. In addition I believe Mr. Frank Andres also indicated that he wishes to make comments. Mr. Andres, as my note indicates, is Vice-president.

MR. ANDRES: Yes. My name is Frank Andres. I'm Executive Vice-president of the Yuba Gold Fields. And I just wanted to say that no matter which way the State acts today, the lives and titles to the property which have already been adversely affected, an effect on their validity, there is going to be a cloud that's been cast upon these titles by the staff and that it will be -- the way it stands today, it could possibly never be curable.

And that's my statement.

CHAIRPERSON BELL: Mr. Andres, would a court determination clear the title?

MR. ANDRES: That's a possibility. It could be.
CHAIRPERSON BELL: Thank you, Mr. Andres.

Any questions?

If not, there are two representatives of the Corps of Engineers here, Mr. Don Denney, District Counsel, and Mr. Morgan Wheeler, Chief of the Real Estate Division.

Gentlemen, I'll leave it up to you as to who goes first. Just identify yourselves for the reporter.

MR. DENNEY: My name is Don Denney. I'm the District Counsel for the U.S. Army Corps of Engineers, Sacramento District.

We're happy to come before the Board today to present the position of the Corps of Engineers in this matter. As we go along, perhaps you will see that we have a very difficult problem to resolve, not only as far as the U.S. Government is concerned, but perhaps with the State and perhaps with other private individuals. We want to set out as near as we can the problems that we have encountered the last two or three years. And we have spent a substantial amount of our time looking into this matter as to the titles, as to legal theories, as to the possibility of the State ownership based on navigation, and as far as the respective ownerships between Yuba Gold Fields and the U.S. Government.

Perhaps just on a minor matter to start with, counsel for the State Lands Commission mentioned a
certification that they desired to get from the Corps of Engineers. I happen to have it here in my hand, which I'd be happy to hand to him. It appears to be, for your benefit, an excerpt from a report made by a person by the name of Stanley, who used to be employed by the U.S. Army Corps of Engineers. And he made an interesting historical account of the area. I'm not certifying that that historical account is correct. I'm certifying that the copy that they handed us purports to be a copy of a couple of pages from that report. So if we don't agree on anything else, we agree on that certification.

CHAIRPERSON BELL: Thank you, Mr. Denney.

MR. DENNEY: I might say I have volumes of other papers that we have offered to give to the State, and they have accepted some of it. We have 17 more boxes which we're going to paw through one of these days. So far they have only asked me to certify to the two pages. I'd be happy to certify to most anything else that we have in our files, for what it's worth. However, it did not appear to me that this was a court session, and I really -- I don't know where we stand. But anyway, so much for the certification.

CHAIRPERSON BELL: It's not designed to be, Mr. Denney.

MR. DENNEY: Okay. The Corps of Engineers made an official -- what we call an official position paper on this
matter or at least as it relates to this matter by letter dated 25th of October, 1978. Perhaps you have seen it. It was addressed to Mr. Frank, Attorney General's Office, representing the State Lands Commission. In that we go into a little bit of history. And if you don't mind, I'll kind of start with that letter. We say that since the State came into the Union in 1850, that the Yuba River is nonnavigable beyond Marysville. That's our position. And, of course, the significance of that is that if it's non-navigable above that point, then, of course, the State does not own the bed of the river.

There are other questions, of course. Even if the river was navigable -- well, of course, that has already been pointed out to you -- the difficulties in the location of that river and, perhaps a far more important question, once you determine whether it's navigable or not, the singular question of the high or low water mark. And we'll say a little bit more about that later. But anyway, it's our position, and I think adequately stated by the State Legislature in 1850 and 1851, that the Yuba River is not navigable above Marysville. And, of course, if this Commission chooses to adopt that position, the question as far as the State is concerned goes away. It goes away.

Now, the question is who is going to speak to the State of California? Is it the Legislature? Is it the
State Lands Commission? Or are you going to dump this into the courts one more time. And it has been in the courts before, and we'll get to that in a minute.

Now, the problem has been there for 130 years. The players have changed, as we shall see. Names come and go. Some names have been great; some not so great. I have to borrow from something I read a long time ago. I don't know whether or not we will be long remembered or not after today's session. But I'm sure the problem will probably go on forever. We're not the first ones to attack this problem. It has been attacked before. And I don't know that whatever we resolve will be the final resolution of the matter. All I'm saying is that it has been laid to rest before, and there is a good place to leave it, where it has been laid before.

Now, what's the Corps of Engineers' interest in this area? Well, beginning around 1890 or so when the hydraulic mining up above the Yuba River was flooding and, you might say, burying the river, it filled up the channel, as you can see by looking at the center map, the photograph. It filled up the channel. And when the river dumped into the flood plane, it filled up the flood plane. So the river lost its identity, you might say, as far as the hydraulic debris coming down. Sometime later or about the time the debris began to come down, as near as I can tell, we went into the
U.S. Government, not the Corps of Engineers, but the Department of Interior, put some meander lines somewhere where the river was once upon a time. The purpose of those meander lines -- and, by the way, some people are looking at those meander lines as though that's the river lines. The purpose of the meander lines was the purpose of patenting lands on both sides of the river and as it turned out, in my opinion, the river itself. It is the position of the Bureau of Land Management that those meander lines, assuming the river is nonnavigable, when they patented the land up to the meander lines, by operation of law it patented the lands to the bed of the river. So that's the purpose of the meander lines, merely to outline high land or upland from low land for patent purposes. It does not identify either the high or low water mark or, for that matter, not the real questions that we're dealing with here today. It's a nice line to look at for those who would like to claim a wide area of land between the meanders. But that's all it represents in the patent lines.

Now, we have had occasion to deal into the history of this thing a little bit. In 1882 Lieutenant Colonel Mendell of the U.S. Army Corps of Engineers was commissioned to make a report about this area of the Yuba River. And among other things, what did he say? He is one of those players, by the way, of almost hundred years ago. And here
we are playing the same game again. What did he say?
This is 100 years ago. He had an opportunity to go out
there and dig, looked at the river, made a survey based on
instruments, he said. And he says it was a nonnavigable
stream. 1882, Lieutenant Colonel Mendel. Now, where is
that report now? Well, I don't know. It may be lost
somewhere, except it does happen to appear in the celebrated
case of Woodruff vs. Bloomfield Gravel Mining Company,
which we mentioned in our 25 October letter. That's the
celebrated case of a Judge Sawyer that went into the whole
business of hydraulic mining. And the question was is
whether or not the people operating the hydraulic mines
would be allowed to continue to dump the debris into the
Yuba River. The Court held that they could not. Why?
Because the debris would wash down and obstruct navigable
water. But where was that navigable water? That was the
Feather and the Sacramento Rivers, not the Yuba River.
The document, the Mendell report recited, I think, a
significant clue as to where we are today. It recited that
the Yuba was -- and I want to say it again because that's
what we're talking about today -- it was a nonnavigable
stream. There were other cases after that. By the way,
that case was decided in 1884.

There were additional cases concerning the
authority of the California Debris Commission. Now, what
is the California Debris Commission? Is that the State or
is that the Federal Government? Well, as it so happens,
it's a little bit of both. The actual title, California
Debris Commission, is a United States Government agency.
It is embodied now in the U.S. Army Corps of Engineers.
We in Sacramento, we administer what is now left of the
California Debris Commission. As it so happens, the
California Debris Commission, a good part of its present
activity is now confined to the Yuba River. It happens to
be overlapping with another U.S. Army Corps of Engineers
project called the Yuba River Project, which happens to be
in this same area. As it happens, the State of California,
through the State Water Department, we are kind of a
partner up there. Since the turn of the century, the
State of California and the U.S. Army Corps of Engineers
and/or the California Debris Commission, we have been a
partner. That is to say, the State has furnished half the
money, we have furnished half the money to build certain
barriers, dikes, retards, levies, and whatnot in this
particular area in an effort to keep the river confined to
a particular channel, keeping in mind, of course, that the
original river bed had been filled up with debris, and
the river tries to spread all over the place. As a matter
of fact, an area of about two miles wide from about where
you're looking at on the narrows there down to Marysville,
the river spreads out over an area of about two miles. So our endeavor has been to keep that river in a particular channel to protect the people on both sides, the "people" being people with homes, farms, and what have you. But anyway, it wasn't attacked on the authority of the California Debris Commission.

And there was a case decided in 1898, North Bloomfield Gravel Mining Company vs. United States, in which there was a recitation -- and I think this is very important as far as your action today is concerned — the recitation being that since 2nd February, 1848 — this is two years before statehood — since 2nd February, 1848, and there is a quote,

"The Yuba River during the same time was and still is" —

Now this is 1898, remember, first case 1897. Let me go over the quote one more time.

"The Yuba River during the same time was and still is navigable from its mouth" — okay? — "navigable from its mouth to a point about one mile above its mouth", which puts it right at Marysville. So now we've got two pieces of evidence. We've got the State Legislature having spoke. It said Marysville is the head of navigation. Now we have a Federal Court. It has spoken; it has said twice.
It said that the Yuba River was a nonnavigable stream. It has also said that the Yuba River was navigable from its mouth to Marysville. Now, we as new players can play the game one more time. I forecast that the end result is going to come out precisely as it did in 1898, the last case that I cited.

Now, we have heard a little bit about steamboats, dredges, whatnot going up the river. Well, one robin, of course, doesn't make a spring. It seems as though I have heard that somewhere. Maybe a boat did go up during flood water. When it floods, an awful lot of water does come down that river. In the summertime -- well, except for the present dams upstream -- I would say it would be a dry bed. Nobody knows really at the moment. I personally feel like that there was long periods of the year where there was no water or very little in the Yuba River historically. Now, as I say, because of upstream dams, there is water coming down the river most of the year. And during the spring floods a great deal of water comes down, a lot of water. Of course, the Corps of Engineers is thinking about even maybe some day building another dam upstream to catch some of that water. That's another story, perhaps even a longer one than this one. I don't know. We'll see how that one comes out.

Well, so, what about some of the facts? So we do
want to play again. Well, we're ready to play again if you people are. But why not look at some of the facts. As I say, we have been looking at this problem the last two or three years and spending a good deal of time. Originally our problem we thought was with Yuba Gold Fields. We had a lot of discussion with the Yuba Gold Fields people. We had ten or twelve sessions. I don't know what happened. Finally we saw the light or they saw the light, and we decided that the best thing as far as between Yuba Gold Fields and ourselves was concerned was, well, let's try to resolve our problems. The concept was you guys get what you need and we get what we think we need. And then we'll try to define the area in between. And with that concept we set out to make an exchange agreement. And, by the way, the Corps of Engineers feel like it's taken care of the public trust up there. Now, we're always glad to get any help that we can get, but we can do without help that doesn't help us.

But anyway, getting to some of the facts again. Yuba Gold Fields, as I understood it, wanted to go in and do some dredging. We took the position that we had certain rights in there that we must protect. We had the Daguerre Point Dam. We had the levies; we had the retaining barriers. We had the retards; we had the wiers. We had all sorts of things in there that we felt must be protected. And keep in
mind the State of California was our partner in all of this. We took the lead. They were furnishing half the money; we were taking care of the business. We were taking care of the store, so to speak. Now we have another arm of the State Government, apparently for perhaps different reasons, don't like the way that we were keeping the store. Well, I don't know whether they are or not. They really haven't taken a firm position. They have just made some noises, as I understand it. \( \ldots \), perhaps today there will be a direction that the State may take. But up to now, as far as we are concerned, the State has been very cooperative. We have worked well with them. We feel like that we have enjoyed a good relationship with the State. But when it comes to ownership, that's something else. We feel very strong that the U.S. Government has an interest in there that we must protect against all comers, individuals or anyone else. And I will tell you why.

First, I have a mosaic here which is something like the aerial photographs that you have. And I will just lay it aside here. But I want to point out where in general the U.S. Government believes that it owns the land or at least interest in the land. And I doubt that you will be able to see it from there. But generally you can see it is the same area. This apparently takes Yuba Gold Fields into consideration. And I might say this -- let me try to
explain what has happened down since the turn of the century. The Corps of Engineers went into this area. We were going to try to control the river. And so what happened, somebody -- I don't know who, but another player -- decided who owns the land in this area. And as with all of our projects, that determination was made by somebody. So we go in and we contact several dozen owners in this area. We buy their interest. What interest did we buy? Generally we bought the right to use the surface. And what was reserved, it was various kinds of estates reserved: Federal interests, mining interests, precious metals interests, use and possession of the surface, various kinds of, as I say, estates were reserved. As it so happened, Yuba Gold Fields became in possession of those reserved estates in most cases, or at least in several cases. That is the interest that Yuba Gold Fields primarily owns in this general area from our determination. And as it so happened, down through the years the U.S. Government sold off some of the land it had bought, the so-called settling basin area, which is the large area down here. Yuba Gold Fields bought that from the Government. There is also some land up in here that Yuba Gold Fields bought from the Government that at the time the Government thought was in excess to its needs. However there were several hundred -- several thousand acres actually still involved where the U.S. Government owned an interest
and Yuba Gold Fields owned an interest.

Now, what you can't see there from there, I'm sure, we have outlined in a dark line this entire area in which the U.S. Government owns an interest. Now, this is probably the same area that the State now seems to want to participate in our endeavor as far as land ownership is concerned. So that's how Yuba Gold Fields and the Corps of Engineers have got into our discussion which has been going on the last two or three years. We ultimately have arrived at what we call an exchange agreement which essentially would give Yuba Gold Fields the land to operate on exclusively when they think they want to operate on. We retain land in which we think we need for two purposes: one, the Daguerre Point, the barriers and whatnot, the existing facilities, and plus the possibility of a Marysville Lake project which was thrown in for good measure as far as we're concerned. It was very important to us to define the interests of Yuba Gold Fields and the U.S. Government.

So what I'm saying here is -- by the way, super-imposed on this are the so-called meander lines that you keep hearing about. It goes down through the heart of the property. The river is up here. Now, whether or not the river in 1850 came down through the meander lines, I don't know. Whether it was up here, I don't know. All we can show you is on some older maps it does depict the location of the
river. You can draw from it whatever conclusions you desire. In my opinion it's certainly not or not necessarily at least the meander lines now.

One other thing I want to say before I leave this, you can see that this entire area has been dredged, actually been dredged several times. There are mountains of sand and gravel out there. And some areas the river still flows, some areas it does not.

Now -- I'll just hold it just for a minute. Here is a map made in 1904. There are two sections of map here. One is the lower half of what I would call the lower half of the river from Marysville up almost to Daguerre Point Dam. What I'm showing you, you have heard the figure of 121 owners here this morning. Well, as you can see, this is a very busy map, all sorts of colors, all sorts of lines all over the place. But what this means to me, you have heard the figure of 121 owners. Well, that's as good a figure as any. What this shows is that the U.S. Government bought down to the area that we're generally talking about today, in the area of the Daguerre Point Dam. We bought on both sides of the river and the river bed itself. That was at the turn of the century. We had deeds saying that -- and, of course, just the nature of those rights, of course, there was an argument, separate argument between Yuba and us.

But anyway, we got documents which courts later determined
to be deeds by court decision in 1920, said that the
Government owns in fee both sides of the river, in my
opinion, also includes the lands within the bed of the
river, because it's the same document. And we have acted
as though we own this since 1901 or 1902, the bed of the
river as well as on both sides. Downstream we've got a
little different kind of a document. We've got what we
call easements only downstream. However they, too, are on
both sides of the river. It's the right to built barriers
and all of our construction and whatnot as necessary down-
stream.

Now, you can see where we bought is about a strip
two miles wide immediately above Marysville. Now, where was
the original river in 1850? Was it as we contend a stream
200 feet wide, or was it a navigable stream two miles wide
as perhaps some would like to assume? Big question. It's
our position that even if the Yuca River is a legally
navigable stream, that it would be limited to a stream 200
feet wide through this area and not between the so-called
initial meander of the river and certainly not the area
two miles wide in which we have purchased. So again we say
all this time the State of California has been our partner
in this area, never once, not one time has the State even
indicated that they own one acre of that land. We think
it's a little late in the day for the State to come in or
anyone else and say that anyone other than the adjoining owners own this land in the bed of the river.

Now, this I don't think I'll really show you.

But I want to talk about it.

Am I taking too much of your time?

CHAIRPERSON BELL: No, that's all right.

MR. DENNEY: These are copies of maps kind of similar to theirs. These are official records of the California Debris Commission. And this particular copy I want to give to the State before I leave today. But it happens to be the only copy I had. So anyway, as you can see, it's kind of a bulky set of maps. But I want to show you what we're kind of looking at and what we're faced with. I want you to know the problem that you're getting into other than the legal aspects of the case. Now, it might be easy to turn it over to the Attorney General's Office and say, "You figure it out." Here is that two-mile wide stretch or thereabouts that I was talking about. You see the many channels of the river down through there? Which one of those does the State want, or do you want them all? If you want them all, it's our position that none of them could even possibly be navigable because there is not that much water. It changes with the seasons. However, we do have fairly good control of it. Now, we do have a main channel down about through the middle of it that we're trying
to maintain.

CHAIRPERSON BELL: Mr. Denney, may I just ask you
to pause for a moment?

Are you pretty close to the end of your paper?

THE REPORTER: Yes.

CHAIRPERSON BELL: Would you like to take a
couple-minute break?

THE REPORTER: Yes.

CHAIRPERSON BELL: Mr. Denney, I'm going to ask
for a couple-minute break.

(Thereupon a brief recess was taken.)

CHAIRPERSON BELL: Ladies and gentlemen, I'd like
to get the meeting started again. Five minutes have
expired.

Mr. Denney, have you concluded, or do you wish to
say something more?

MR. DENNEY: Just one more point.

CHAIRPERSON BELL: Thank you. We have another
distinguished member of the Corps to testify.

MR. DENNEY: Since I was going to turn this over
to the State Lands Commission, I wanted to explain what it
was. This is a cross section taken about the year 1906
and updated through, I think, about 1912. It shows sections
across the area all the way from Marysville all the way up
to Park's Bar. That's in the package. I have just selected
one here to show where it is. Take the one right at Daguerre Point Dam is all these wiggly lines here. This goes across an area, a section of about two miles from the high land on one side to Daguerre Point and the high land on the other. This shows the bed of the stream, you might say. Of course, where is the bed of the stream is kind of a problem that we've got. This shows two miles.

Now, where is the river? The river is this little point right here and maybe -- well, actually right here. On that whole two-mile section the river is right here.

Even assuming that the State owns -- assuming that the river is a navigable stream and the State thereby owns, what do they own? It's our position they own this little piece about 200 feet wide right here, not the big wide area that you see on the maps, not the meander lines that you see.

What is the other significance of the 200-foot strip? To me that says that's why the river and other people before us decided that it was a nonnavigable stream. It just doesn't make sense for a stream that wide to be navigable. So I'll leave these with the State Lands Commission. This old map they have a copy of. I'll leave this with the State Lands Commission also. I'd like to have this old map back for historical purposes, because this may come up again in a couple hundred years.

CHAIRPERSON BELL: It could very well.
Well, Mr. Denney, thank you very much.

I believe Mr. Morgan Wheeler also of the Corps of Engineers, who is the Chief of the Real Estate Division, wanted to address the Commission.

MR. WHEELER: Thank you, Mr. Chairman. My name is Morgan Wheeler. I'm Chief of the Real Estate Division for the U.S. Army Corps of Engineers in Sacramento.

Mr. Denney has basically stated the Corps' position. So I will take, I hope, less than 60 seconds to make a couple of brief comments.

I would like to make very clear to the Commission, in view of a statement made during opening remarks by staff counsel, that the question of title to the bed of the Yuba River had no effect whatsoever on the Corps working on an exchange agreement with Yuba Consolidated. We recognize the potential that the State might come in and make a claim under its sovereignty. However, we are not concerned with that, so it was in no way connected with the desirability to make the exchange.

Secondly, the exchange, as Mr. Denny pointed out, was made after having analyzed the title claim by the United States and various lands which the title derived from written contracts and documents, not from something hypothetical. These were surveyed lands easily identified. The question was as to what rights were owned by each party.
MEETING
STATE LANDS COMMISSION

EXCERPT
CALENDAR ITEM 18

BOARD OF HARBOR COMMISSIONERS
925 HARBOR PLAZA
SIXTH FLOOR, BOARD ROOM
LONG BEACH, CALIFORNIA

THURSDAY, APRIL 26, 1979

FRANCES ANN PETERSON
C.S.R. License No. 4379
MEMBERS PRESENT

Mr. Roy Bell, Chairman
Mr. David Ackerman
Mr. John Jervis

STAFF PRESENT

Robert Hight
Richard Golden
James Trout
Dianne Jones

ALSO PRESENT

Greg Taylor, Attorney General's Office
CHAIRPERSON BELL: Calendar Item 18.

MR. TROUT: Mr. Chairman, Calendar Item 18 involves the renewal of a lease that was signed in November of 1974 for the Malibu Pier Corporation. The proposal before you is a 30-year lease, actually a 10-year lease with two 10-year renewals at $6,000 minimum or one percent of the gross, whichever is greater.

We have some photographs taken of the pier recently which I'd like to pass to the Commission.

CHAIRPERSON BELL: Since the lease expired on November 15th, 1974, why are we in on this thing?

MR. TROUT: The lessee has been very difficult to deal with. One of the problems is that the rental prior to expiration was around $1300 a year. The rental on the area that had originally been leased would have been significant, in fact, several times the $6,000 now being proposed.

Over a period of years we have attempted to work with the lessee. The area of the lease has been reduced. The lease requires that the pier be in an acceptable state of repair which, from the photographs which we have now obtained, there may be some question. But the Staff, in an attempt to resolve the situation, sometime ago made an
offer which was accepted on behalf -- by the applicant, the
offer being that the Staff felt it could represent the
item before you.

CHAIRPERSON BELL: What's an acceptable state of
repair? It just happens that I have been on this pier,
but I was on this pier many years ago. My reaction is from
those pictures, we better spell out pretty carefully what
"state of repair" means. I'm a little hesitant to go into
a 30-year lease, even though the Staff has recommended it,
without some actual spelling out and guarantee of making
sure that that pier is put back into an acceptable position
to the State. I would be hesitant to go to that long-term
lease.

On the other hand, on the other side, from the
property owner's standpoint, it seems a little unreasonable
to jack the rent up on him to this degree until we have
made sure that the pier has been corrected.

MR. TROUT: Mr. Chairman, perhaps it would be best
if we put this item over to another Commission meeting.
We'll get back with the lessee. Perhaps we can define what
an acceptable or good state of repair is and set a date for
restoration of the pier to that condition. And we'll also
discuss the possibility regarding the rent.

CHAIRPERSON BELL: Yes. I would suggest that you
find some reasonable length of time to expect the person
that owns it to put it into the degree of repair which is proper for the State; and until then, you don't raise his rent.

MR. TROUT: I think we'd be happy to look into that, Mr. Chairman. We had some indication that someone from Malibu Pier Corporation might be here, although we haven't been handed an attendance slip. There may be someone that wants to speak.

CHAIRPERSON BELL: May I ask if anyone in the audience wishes to address the Board on this item?

Apparently no one from the Malibu Pier Corporation has made it.

MR. ACKERMAN: I don't know. This is just a personal opinion of mine --

CHAIRPERSON BELL: Any objection?

MR. ACKERMAN: No objection. I just wanted to question -- given the photographs that indicate the condition of the pier, I just wonder if the insurance question should be looked at, too, as to the liability coverage and protecting the State's interest, depending on what's negotiated about the condition of the pier. This may not be an adequate level if something is worked out on the status of the pier.

MR. TROUT: The Staff will take the Commission's comments to heart, and we'll see what we can do. We'll
talk to the applicant and bring the matter back to you at
another time.

CHAIRPERSON BELL: All right. Item 18 will be
put over with the admonitions the Commission has given to
the Staff. I don't think the Staff has done a very
adequate job on this item, to be very honest with you.
And I hope you do a better job on the next one.

MR. TROUT: We'll take that to heart, sir.

(Thereupon the proceedings regarding
Calendar Item 18 were concluded.)
CERTIFICATE OF SHORTHAND REPORTER

I, FRANCES ANN PETERSON, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing State Lands Commission Meeting excerpt was reported in shorthand by me, Frances Ann Peterson, 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 this 1st day of May, 1979.

FRANCES ANN PETERSON
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