MEMBERS PRESENT:

Kenneth Cory, State Controller, Chairman
Leo T. McCarthy, Lieutenant Governor, Commissioner
Nancy G. Davis, representing Michael Franchetti, Director of Finance, Commissioner

STAFF PRESENT:

Claire Dedrick, Executive Officer
Robert Hight
W. M. Thompson
Don Everitts
Alan Scott
Judy Markell

ALSO PRESENT:

Gregory Taylor, Assistant Attorney General
Rick Frank, Deputy Attorney General
Dennis Eagan, Deputy Attorney General
Alan Hager, Deputy Attorney General
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Public Comments

John Zaines, Attorney representing Western Oil and Gas Association (WOGA)

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CHAIRMAN CORY: We will call the meeting to order.

The first item is the confirmation of the minutes of September 28th. Are there any corrections or additions?

Without objection, the minutes will be confirmed as presented.

The report of the Executive Officer.

EXECUTIVE OFFICER DEDRICK: Mr. Chairman, the report is before you. If you would like me to read it, I will.

CHAIRMAN CORY: Any questions on the Executive Officer's report?

It not, we will accept it.

COMMISSIONER MCCARTHY: I remember it as a very stimulating meeting.

(Laughter.)

CHAIRMAN CORY: The record will note that the Attorney General -- the Lieutenant Governor -- I haven't known you very long, Leo -- remembers that as a memorable meeting.

We have accepted the Executive Officer's report.

The next item is the Consent Calendar. These are items that will be taken up in a single motion. They
are printed in the calendar with the prefix C. Certain
items have already been removed, needing more work. The
first one is Item C2(E); C13, C17, and C18.

For those items remaining on the calendar, if
there is anyone --

COMMISSIONER ORDWAY: Excuse me. It is my
understanding that C18 has just been moved to the regular --

EXECUTIVE OFFICER DEDRICK: Since then, we have
taken it off the calendar.

There is one other item, C15, which should come
off. I'm sorry I forgot to tell you about that.

CHAIRMAN CORY: Okay. Let's make sure we've
got a clean shot at this.

The items that are off calendar and will not be
taken up today are Items C2(E), C13, C15, C17, and C18.

EXECUTIVE OFFICER DEDRICK: Correct.

CHAIRMAN CORY: If there is anyone in the audience
who has any disagreement with the proposed solution of
any of the other ones prefixed by the C, would they please
let us know.

Yes, sir.

MR. MANDELL: I would like to know why
C15 was removed from the Consent Calendar?

CHAIRMAN CORY: Would the staff respond as to why
C15 was removed.
EXECUTIVE OFFICER DEDRICK: Yes. A request for
time was received just before the meeting today, and
we normally honor those things unless there is time value
to some specific legal reason why we need to act. So just
out of courtesy to --

CHAIRMAN CORY: Who raised it?

EXECUTIVE OFFICER DEDRICK: Assemblyman Izenberg
requested that we hold off on this, through the Lieutenant
Governor's Office.

CHAIRMAN CORY: And the person who asked the
question. Are you the applicant?

MR. MANDELL: Yes, I am the applicant.

EXECUTIVE OFFICER DEDRICK: You should identify
yourself for the record, sir.

MR. MANDELL: This is Lighthouse Marina.

CHAIRMAN CORY: And you are?

MR. MANDELL: Dave Mandell, the office manager.

We expected a routine approval, and it is a
surprise to us that there is any problem.

CHAIRMAN CORY: I expected one too.

EXECUTIVE OFFICER DEDRICK: Well, we all did.

COMMISSIONER McCARTHY: If I may, Mr. Chairman --

Mr. Mandell, we will try to identify what the problems
are on this, and then get a reset for you so you are
not prejudiced as to any undue time limit.
MR. MANDELL: That's fine.

CHAIRMAN CORY: Okay. Is there anybody else that has questions about the Consent Calendar?

Without objection, those items on the Consent Calendar are approved as presented?

The next item is Item 20. The staff proposed some amendments to the lease terms. These are dealing with the problem of the Air Force, and this is a negotiated settlement with the Air Force?

EXECUTIVE OFFICER DEDRICK: That is correct, Mr. Chairman. They have no effect on the substance of the lease or on the environmental conditions or anything else in the lease. It is merely a question of adopting the wording, which the Air Force is more comfortable with than the original wording.

In addition to that, they were transferred from the special operating conditions into the body of the lease where they more appropriately belong, but those are the only changes that have taken place.

CHAIRMAN CORY: Is there anybody that has any comments about these specific amendments from the audience?

Questions from Commissioners?

Without objection, we will make those amendments and they are adopted.

Now, the next question before us is that we have
a problem with a written court opinion, from Superior Court in Santa Barbara --

EXECUTIVE OFFICER DEDRICK: Mr. Chairman, I think Mr. Hight perhaps should --

CHAIRMAN CORY: -- last evening.

EXECUTIVE OFFICER DEDRICK: -- last evening, after 6:30.

CHAIRMAN CORY: Greg, do you want to comment? Not comment? Should I comment? How should we get us to where we are probably going to be?

MR. TAYLOR: I think the court has raised a question with regard to whether or not the Coastal Commission has jurisdiction. This Commission has not agreed with the Coastal Commission's assertion of jurisdiction in this issue. In light of that I think the Commission wants to -- the Lands Commission wants to study it and has directed to us to seek a clarification from the court, I believe. In light of that, I think you are going to consider whether or not the lease sale would be rescheduled or not.

EXECUTIVE OFFICER DEDRICK: I would recommend that the lease sale be rescheduled. I think we cannot at this point determine what is the best course of action, and the potential lessees have been -- really, I think, should have the opportunity to sit back for awhile while we figure
CHAIRMAN CORY: So our option from the staff is to go ahead and not proceed, put over the pending lease sale and authorize the attorneys to proceed with --

EXECUTIVE OFFICER DEDRICK: The proper legal remedy, if that's all right with you.

MR. TAYLOR: Which, initially, would be to seek reconsideration of the order.

CHAIRMAN CORY: Any problems with any of that?

COMMISSIONER MCCARTHY: I would just like it recorded, Mr. Chairman, that -- I, of course, have stated my position in the past -- that I had no personal problem with applying to the Coastal Commission for a permit in every sense, so I would dissent from proceeding in the courts on the action, but I understand there are two other votes on this Commission that feel otherwise.

EXECUTIVE OFFICER DEDRICK: But, Governor, you would approve putting the lease sale over?

COMMISSIONER MCCARTHY: Yes, I have no problem with that.

CHAIRMAN CORY: Okay, by unanimous consent, we will put the lease sale over.

We probably should have a motion --

COMMISSIONER ORDWAY: I will move the continuance with appropriate legal remedies.
CHAIRMAN CORY: I will second that.
All in favor say aye.
(Ayes.)
CHAIRMAN CORY: Opposed, nay.
That motion passes.
EXECUTIVE OFFICER DEDRICK: Do we have a motion on the lease sale?
CHAIRMAN CORY: Yes, that was by unanimous consent.
Item 20 is taken care of.
Next item, Item 21, Recommendation for revocation of offer to lease on Commercial Lease at "O" Street Pier.
Staff?
EXECUTIVE OFFICER DEDRICK: Yes.
This has a long history, and to make it short, in 1978, the Commission authorized staff to issue a lease, given certain conditions of paying.
The conditions were never met by the applicant, and it has been very close to five years. We would like you to -- what is the present of rescission? -- revoke that authority, since the lease has never been taken up by the applicant and the conditions set by the Commission have never been met in that five-year period.
Bob, did you have --
MR. HIGHT: No, that's fine.
EXECUTIVE OFFICER DEDRICK: We have staff here, if you want more detail.

CHAIRMAN CORY: We have some people that want to talk.

Mr. Harvey.

Is Mr. Harvey here?

Would you like to address the Commission on this issue or not?

MR. HARVEY: I would.

CHAIRMAN CORY: Okay. Take your shot.

I would like the record -- this is Mr. Walter Harvey, who is not the Walter Harvey who works for me.

(Laughter.)

MR. HARVEY: Everytime I come before this Commission, you precede with saying that.

(Laughter.)

CHAIRMAN CORY: If somebody picks up the record, I want them to understand, or not jump to the conclusion that we are dealing with staff.

MR. HARVEY: Okay.

With regard to the lease that is under consideration or option lease that is under consideration, I would note that our documents will show that our option runs through January 1st of 1984. Now, I don't really wish to get into a full discussion of the entire ramifications,
but over the past years, under the direction of this Commission, we have made very earnest attempt to deal with the city and to deal both with the State Lands staff in coming to a final agreement as to the terms of the lease and also the terms of locating the restaurant at the "O" Street Pier. During that time, we have met with many obstacles, the last of which seems to be, or at least one of the last which seems to be, the termination or the request to rescind the lease agreement.

The only thing that I might say is that there is a meeting scheduled with the Redevelopment Commission of the City of Sacramento on November 14, at which time they will take up this thing. This has been at the request of Mr. Joe Serna on the Council and also at the request of Mr. Sam Walton who is the chairman of that Commission. They have made the request that it be on that Commission agenda for the hearing on the one condition that we really have not been able to meet, which was parking consideration. We have a tentative agreement with the City of Sacramento. We have the documents that support that.

We would wish that this Commission would not take the final action to rescind what agreement we have with you until such time as this has been heard by the Commission, the Redevelopment Commission, and by the City Council.

And that is the only thing that I can request at this time.
CHAIRMAN CORY: Any questions from Commissioners?

We have a Mr. Leo Goto and Laura Salloway. Do you wish to speak to the Commissioners?

MR. GOTO: For the record, I am Leo Goto, Director of Community Development, and to my right is Laura Salloway, agency counsel.

We would just like to say that the news regarding the forthcoming meeting was news to us. That apparently was from the top down, so so be it. We will be at that time presenting what we believe to be the staff's position in terms of going ahead with the RFP proceeding. So that will all be brought out, apparently, at this November meeting.

CHAIRPERSON CORY: Okay.

Yes, we will get to you.

MS. SALLOWAY: Yes, I would just like to respond to the statement regarding the agreement on parking with the city.

I have examined our records extensively, and I see absolutely no evidence of any agreement with the City of Sacramento or the Redevelopment Agency regarding parking. At this time, there are considerable planning problems regarding the use of parking for Mr. Harvey's latest proposed project in such a way that he could accommodate parking for his project without having an
adverse impact on the parking needs for the entire
development. No planning solution has ever been resolved.

I understand from our staff that some of the
area that he had originally proposed to use for parking
is now being used for another purpose, for historical
railroad purposes. So there hasn't ever been a resolution
of the parking issue, which, of course, was a condition
precedent to the lease.

In addition, the land use which is permitted
under this offer to lease is not the land use which
Mr. Harvey proposes to make at this time. Therefore, this
lease offer as it was drafted is really not appropro to the
project he is proposing now.

CHAIRMAN CORY: Could staff -- all of this, I
feel like I came in in the middle of a very bad movie.

(Laughter.)

EXECUTIVE OFFICER DEDRICK: Yes.

CHAIRMAN CORY: Could our staff please tell us
-- we have an offer to lease the property outstanding
to Mr. Harvey?

EXECUTIVE OFFICER DEDRICK: Yes.

It does not have a time limit on it, Mr. Chairman.

CHAIRMAN CORY: So that was our error to begin
with.

EXECUTIVE OFFICER DEDRICK: No, I don't believe it
was an error.

CHAIRMAN CORY: My instincts tell me you shouldn't leave a lot of offers—

EXECUTIVE OFFICER DEDRICK: Oh, I get your point.

Good idea.

Actually, you set conditions which at that time staff apparently thought Mr. Harvey could meet, or at least intended to try to meet. Those conditions were never met. We have apprised Mr. Harvey several times in the years that have gone by that he was not in compliance with those conditions.

CHAIRMAN CORY: So there is not an option?

EXECUTIVE OFFICER DEDRICK: That is correct.

There is no option.

MR. HIGHT: Correct, Mr. Chairman. He is a lease which he has not executed, the terms of which he has not complied with.

EXECUTIVE OFFICER DEDRICK: In addition to which, the project for which he was granted the opportunity to have a lease is not the project he is currently proposing. And I should have told you earlier that staff is currently reviewing an application from the Redevelopment Agency to do a city plan covering the entire waterfront, including this property, which is one of the reasons for the concern of Mr. Goto.
CHAIRMAN CORY: Okay. It seems like we should go back to square one, since Mr. Harvey doesn't have anything.

EXECUTIVE OFFICER DEDRICK: Certainly.

Mr. Harvey --

CHAIRMAN CORY: Mr. Harvey, am I misunderstanding the facts, from your side of the table?

MR. HARVEY: I believe that you are.

CHAIRMAN CORY: What do you think you have?

MR. HARVEY: I think we would have to go back to the original application. The only thing I can do at this point -- and this is out of a final attempt to deal with the city -- there has been a request that a full hearing be granted to this by the Redevelopment Agency, the chairman of that commission. Now, if the two people who are seated here wish to deny that, there's nothing I can do about them denying it, except, immediately, I will make some contacts with Mr. Walton since he is the one who assured me that this has been scheduled.

Now, I think the whole issue of whether or not there is parking --

CHAIRMAN CORY: Mr. Harvey, what I think I want to know is what do you think you have in the way of rights and obligations from us, because as the staff has explained it to us, we put an offer to enter into a lease if you met
certain conditions for a specific plan. The staff is informing us that you are no longer interested in that specific plan. You are pursuing a different specific plan --

MR. HARVEY: That is not correct!

CHAIRMAN CORY: Okay. What is your side of the argument?

MR. HARVEY: The staff is suggesting that one portion of the plan --

CHAIRMAN CORY: Why don't you come on up.

MR. BROWN: Mr. Chairman, my name is Curtis Brown. I am Mr. Harvey's attorney, and I think maybe I can add some light on this as well.

CHAIRMAN CORY: Okay. It is our understanding from our staff that you do not have an option.

MR. BROWN: We feel that we have a commitment to lease, based on Mr. Harvey's ability to satisfy certain conditions which require cooperation from the Redevelopment Agency. Ms. Salloway went through her exhaustive analysis of this matter in response to a long letter that I wrote to her documenting the fact that Mr. Harvey feels he has met all of the conditions. I had to give them this long letter because the Redevelopment Agency couldn't find any of their documents.

We feel we have met the conditions. That is what
the purpose of the hearing is for before the Redevelopment Agency. I don't think this Commission should be burdened with hearing an argument and a whole series of arguments which should be before the Redevelopment Agency, and all we are asking that this matter, the status quo which exists be preserved until after the Redevelopment Agency hearing where Mr. Harvey can present his argument that he has met the conditions that are needed prior to executing the lease.

CHAIRMAN CORY: I'm looking to the Lands --

EXECUTIVE OFFICER DEDRICK: Our records really indicate that Mr. Harvey has no prefential rights here, Mr. Chairman, and that we have waited five years for something to happen, have had repeated communications. We are now sitting there with a piece of land that is reaching the point where there is going to be an organized development. The Redevelopment Agency will decide on a plan, which we would have to agree with it for that to happen. At that time, Mr. Harvey could reapply for a lease without prejudice.

COMMISSIONER MCCARTHY: Mr. Chairman, what I think I hear Ms. Dedrick saying is that, as in any other number of cases where we have entered into a lease arrangement with someone, that if they didn't exercise their rights under that lease arrangement, after a certain
period of time, that we simply terminated the potential advantages of that lease arrangement. I think that operating principle is being suggested regardless of what the Redevelopment Agency of Sacramento does one way or the other.

EXECUTIVE OFFICER DEDRICK: That's correct.

COMMISSIONER MCCARTHY: I think that is what you are hearing. So we're really not trying to be in the middle of the merits or the demerits of whatever plan the Redevelopment Agency may want to shape. I quite agree with you that that's something that we could be into up and down the coast and throughout California and don't really want to be. This is really a matter of whether or not the lessee, in effect, has acted with some reasonable dispatch to fulfill the opportunities and rights given under the lease arrangement.

Staff has decided that Mr. Harvey has not and is recommending to this Commission, as in dozens of other cases, that we ought to terminate the lease arrangement.

EXECUTIVE OFFICER DEDRICK: Let me correct one point.

You are correct on all points, but there is no existing lease. He is a lease applicant.

COMMISSIONER MCCARTHY: Okay.

CHAIRMAN CORY: So what we are simply saying is
when the local people decide what's there, you get together with them, come on in, and without prejudice, reapply, and we will take a look at it.

MR. HARVEY: The only thing I might suggest is that there has been a lease approved.

Now, what State Lands is saying that, because they haven't signed it yet, because there was a condition that we have been attempting to meet with the city, and they would sign the lease after the approval, that is probably a technicality that we will have to discuss perhaps at a different time. What I am suggesting is, if nothing else, that the cover letter that came, addressing this issue, I believe, to the Commission -- at least the copy that I got, received -- when the item came before the Commission, stated that we would have until January 1984 to activate this lease agreement. Now, I have that document, if no one else has that document. I guess maybe I have got the only copy.

COMMISSIONER MCCARTHY: Is that correct?

CHAIRMAN CORY: Bob?

EXECUTIVE OFFICER DEDRICK: Our records do not indicate that at any time during the discussions or during the lease that a time limit was set. I also think it would be very unlikely that a five-year time limit would have been set on such a lease application. The fact is that the
authorization contains specific conditions. Staff could not have executed a lease, legally, until those conditions were met. Those conditions have never been met; Mr. Harvey has not signed a lease. The state has not signed a lease. There is not a lease in existence.

COMMISSIONER McCarthy: Is Mr. Harvey implying that he somehow was given until January 1984 to fulfill whatever conditions were required for this --

MR. Harvey: Would the Commission like to see the document?

CHAIRMAN Cory: Do you have it?

MR. Harvey: Yes, I have it.

CHAIRMAN Cory: Let's look at it. I am puzzled. What I have --

EXECUTIVE OFFICER Dedrick: This one is news.

CHAIRMAN Cory: Has Mr. Harvey made his rental payment that was due on June 1 '79?

EXECUTIVE OFFICER Dedrick: No, he has not.

CHAIRMAN Cory: Has he made his payment that was due on January 1, 1980?

EXECUTIVE OFFICER Dedrick: No, he has not.

CHAIRMAN Cory: Has he made his third, fourth and fifth rental payments that were due January 1, '81, '82 and '83?

EXECUTIVE OFFICER Dedrick: No, sir.
MR. HARVEY: No rental payment becomes due until the effective date of the lease.

CHAIRMAN CORY: No? The authorized lease has specific dates in it. It seems to me if you go by the time you're supposed to pay for something, it sort of speaks to the fact that you should have signed it before.

EXECUTIVE OFFICER DEDRICK: Mr. Chairman, Mr. Scott has just pointed out that there were two documents. One is the lease that was authorized with the conditions you have described, which had to be signed -- the conditions had to be met and the lease had to be signed. There was a proposed lease, given that the first lease went, for the future, which may have a 1984 termination date on it.

MR. SCOTT: Beginning date. There was a proposed beginning date of 1984. Neither of the lease has ever been executed by either party. The only one that was ever approved by the Commission or authorized for us to enter into was the one with a beginning date of January 1, 1979.

EXECUTIVE OFFICER DEDRICK: And it is that approval we would like you to revoke.

CHAIRMAN CORY: Mr. Harvey.

MR. HARVEY: If there are two leases before this Commission --

CHAIRMAN CORY: No, there is only one.

EXECUTIVE OFFICER DEDRICK: There is not.
CHAIRMAN CORY: There is only one that I have any record of.

MR. HARVEY: There is only one that I have a record of, and it only has one number on it. Now if there's another number of another lease that has come up before this Commission, I would like to know about that.

EXECUTIVE OFFICER DEDRICK: It has not come before the Commission, Mr. Harvey.

COMMISSIONER MCCARTHY: Mr. Harvey, do you have a document that in any way commits to you a January 1984 date to give you an opportunity to execute on the conditions of the lease?

Do you have a document signed by this Commission or the staff representing the Commission?

MR. HARVEY: Not signed. It comes out as a part of the -- or came as a part of the lease document.

COMMISSIONER MCCARTHY: So it was what was being negotiated as a potential lease agreement?

MR. HARVEY: What was being recommended to the Commission, I believe, for approval of time.

COMMISSIONER MCCARTHY: This is a form of a recommendation?

EXECUTIVE OFFICER DEDRICK: It was never brought to the Commission because the precondition, meaning the first -- the authorized lease was never met.
CHAIRMAN CORY: Any questions of commissioners?

COMMISSIONER ORDWAY: No.

COMMISSIONER MCCARTHY: No.

CHAIRMAN CORY: I'm prepared to --

COMMISSIONER ORDWAY: I will move the staff recommendation.

CHAIRMAN CORY: Motion to move the staff recommendation.

COMMISSIONER MCCARTHY: Second.

CHAIRMAN CORY: Second.

All those in favor, signify by saying aye.

(Ayes.)

CHAIRMAN CORY: Opposed.

We have revoked the offer.

Item 22, approval of modification of regulations of our code on general leasing.

Staff?

EXECUTIVE OFFICER DEDRICK: Sir.

What's the name of that statute? The Governor's statute AB 1111 requires that when you change regulations or your statutes change, that you go through the process with the new regulations, with hearings and so forth and submit it to the office of Administrative Law. There were some changes in the authority of the Commission last year, notably giving you discretion to decide -- rather than
making penalties mandatory on late payments, you now have
the discretion to decide whether or not it was the guy's
fault he was late. You recall we had problems with that
last year.

CHAIRMAN CORY: Okay.

EXECUTIVE OFFICER DEDRICK: And there are a
few other items. These new regulations are up for your
approval so we can proceed with the Office of Administrative
Law process.

CHAIRMAN CORY: We have a request to speak from
a John Zaines.

MR. ZAINES: Yes, Mr. Chairman.

CHAIRMAN CORY: Would you come up and identify
yourself for the record and tell us what you want to tell
us.

EXECUTIVE OFFICER DEDRICK: I should say -- excuse
me for just a moment, Mr. Zaines.

Mr. Chairman, hearings have already been held,
and you will see in your notes what the substantive effect
of that was.

MR. ZAINES: Good morning, Mr. Chairman. My
name is John Zaines. I'm an attorney with the law firm of
McCutchén, Black, Verleger & Shea. I'm here today on
behalf of the Western Oil and Gas Association.

Western Oil and Gas Association, or WOGA, as it
is called, is a trade association whose members conduct much of the producing, refining, transportation and marketing of petroleum and petroleum products in the Western United States. WOGA's statement today concerns the proposed conditions of the State Lands Commission's regulations which deal particularly with what has come to be known as throughput, that is assessing a charge for the use of state lands based on the amount of commodity that passes over those lands.

CHAIRMAN CORY: What is it that you don't like about the change?

MR. ZAINES: If I may, Mr. Chairman, I would like to outline briefly my statement today, and then go into a little bit more detail on it.

Basically, the problem is that there is a lawsuit pending. The lawsuit was filed --

CHAIRMAN CORY: Does the lawsuit relate to the changes in the code or the existing code?

MR. ZAINES: It does, in effect, Mr. Chairman. What the changes propose to do are to modify the regulations that have been declared to be invalid as unconstitutional. It defies reason to have changes in a set of regulations, which have been invalidated, come before this Commission at all.

In addition --
EXECUTIVE OFFICER DEDRICK: Excuse me. Could you be a little bit more clear. I don't know what has been declared to be unconstitutional.

MR. ZAINES: Certainly, I will.

The Chairman has asked me a question. I'm just responding.

CHAIRMAN CORY: Go ahead with your thing and let's get it done.

MR. ZAINES: Fine.

As the Commission is aware, WOGA is and has been deeply concerned about the Commission's attempts over the past seven years to amend those provisions of the Administrative Code that deal with what I refer to as throughput.

Back in 1976, when these regulations were proposed, WOGA and several other interested parties actively participated in the Commission's hearings and urged that changing the regulations at that time was not only unreasonable, but unconstitutional. The Commission went ahead and approved the regulations. WOGA filed suit here in federal court here in Sacramento on both federal constitutional grounds and on state law grounds as well.

The state was successful in having the trial more or less split so the state law issues would be decided first by a state court. We went through that
process for many years, and the result was that the
state courts determined that there was no violation of
state law.

The lawsuit then came back to federal court
in Sacramento, as has been provided when it was split, and
the federal constitutional issues were specifically
addressed.

Federal court in Sacramento, a year or two ago,
rulled that the regulations were violative of the Federal
Constitution commerce clause, the import/export clause
and the duty and tonnage clause, and it invalidated them
based on that violation of the Constitution.

The state appealed that decision in the Ninth
Circuit Court of Appeals. That decision is pending
before the Ninth Circuit. No decision whatsoever has
been rendered by the Court of Appeals.

So what you have is a situation where these
regulations and the amendments today are proposed to
amend these basic regulations that were enacted in 1976.
Those regulations have been declared unconstitutional.
So why the Commission is going through this exercise I
guess is the threshold question, when you have regulations
whose validity is in serious doubt based on the existence
of only one decision concerning their validity and that
decision -- their constitutional validity -- that decision
saying they are invalid.

Now, second, Mr. Chairman, the Executive Officer referred to AB 1111, codified in the Government Code in Section 11340, et seq. AB 1111, among the criteria it sets forth for enacting regulations in the state, are that there be a necessity for regulations and/or amendments to regulations and that those regulations be consistent with the laws of the state as embodied in statutes and decisions of courts relevant to those statutes.

We have here absolutely no necessity for any amendments to these regulations when their fate -- at the very least, their fate hasn't been decided. They may be wiped out completely tomorrow by a decision of the Ninth Circuit Court of Appeals. And you've got a district court in Sacramento saying that they are indeed constitutionally invalid. Clearly, you have an inconsistency with a decision of the United States Federal Court.

Mr. Chairman, I have a more substantial statement that goes into these issues that I have raised briefly now, and I would be happy to delve into them in a little more detail if the Commission so desires, or I would be happy to just submit that statement to the Commission.

COMMISSIONER McCARTHY: May I ask -- has the Commission staff seen the full analysis of counsel for WOGA?

MR. HIGHT: Dennis Eagan, Deputy Attorney General,
COMMISSIONER McCARTHY: May we hear the response from the Deputy Attorney General?

MR. EAGAN: From what I've heard of Mr. Zaines' remarks this morning, they track substantially the oral presentation made on behalf of WOGA by Betty Jane Kirwan, also an attorney with McCutchen, at the July 7th hearing, and they also track the written submission which was made by WOGA at that time. I haven't personally seen the written presentation that Mr. Zaines referred to here this morning. It sounds like something later prepared.

Mr. Zaines, is that substantially in line with what the remarks and presentation were earlier?

MR. ZAINES: It is, Mr. Eagan, and I think probably the only significant addition is the discussion of the significance of AB 1111 to the proposed amendments today.

COMMISSIONER McCARTHY: What is the status of the case before the federal court? Mr. Zaines has indicated that WOGA has prevailed and that the federal district court here in Sacramento has declared these regulations constitutionally flawed. Is that your perception of it?

MR. EAGAN: I would like to cover two points by way of response. One, to give the Commission an overview
of the litigation and the status report, and, secondly, to make the point that that is essentially irrelevant to what is before the Commission today, which is my primary point. But in response to your first question, approximately a year and a half ago, Judge Wilkins, the federal district court judge here in Sacramento, did rule in accordance with the contentions of WOGA in a lawsuit, finding that those portions of Article 2 that pertain to the volumetric leasing alternative are invalid under certain cited provisions of the Federal Constitution. The Commission appealed and maintained a stay of the injunction that Judge Wilkins issued. What that means is, pending our result out of the Ninth Circuit Court of Appeals, the Commission can continue to collect and negotiate new volumetric rentals. So whatever the result of that is, Judge Wilkins' decision has no immediate effect, and we are hopeful that the Ninth Circuit will overrule his determination.

The case was argued last January, and we don't yet have a decision.

The second point -- and really the more important one for purposes of what is before the Commission today is this. Even Judge Wilkins made no blanket ruling that quote the regulations of the State Lands Commission are unconstitutional. The lawsuit filed by WOGA is a very
focused one. It focuses on certain aspects of the regulations, that is the volumetric leasing alternative. That is merely one aspect of Article 2 which covers many other things, and those other things, some of them, are really the only subject of what is before the Commission today in the way of proposed changes. There is nothing whatsoever being proposed or changed regarding the volumetric rentals, which is the source of this litigation.

COMMISSIONER McCARTHY: Mr. Chairman, if I may -- Mr. Eagan, is it your statement that the proposed amendments to this general area of regulations pending now before this Commission do not touch on the focused point -- the issues that were before the federal district court?

MR. EAGAN: Yes.

COMMISSIONER McCARTHY: Thank you.

MR. ZAINES: Mr. McCarthy, might I respond to Mr. Eagan's remarks?

COMMISSIONER McCARTHY: Yes.

MR. ZAINES: Just so the record is absolutely clear on what Judge Wilkins did when he stayed his injunction. All he did was and I have a copy of his order appended to my written statement that I will submit today. What he did was he set up an escrow account so that while this matter was being appealed, monies could be
put into that escrow account, and if WOGA prevails on the
appeal, the monies will be refunded. If they don't, the
monies will then go to the state. There is a distinction:
to be made between staying the injunctive effect, staying
the ability of the state to collect these, and staying the
precedential effect of what the judge has decided. I
don't know if Mr. Eagan has led you to believe anything
else, but I want to be sure that that is clear for the
record.

COMMISSIONER McCARTHY: Thank you.

MR. ZAINES, of course, any statute or any
set of regulations promulgated and based upon a statute
which are found constitutionally flawed may be amended to
remove those flaws. So even if that were the issue
before us, I'm sure you're not suggesting to this
Commission that we could not try to address the flaws
now in the regulations. Are you suggesting that, as
the regulations would be amended, if this Commission
adopted the proposed amendments before us today, that they
still do not meet the requirements of AB 1111?

MR. ZAINES: Yes, and I believe I can provide
you with an example, Mr. McCarthy. Looking at Section 2003,
sub (2), sub (B), which is on page 4 of the strike-out
underlying format of the regulations -- actually, I thank
you need to look at sub (A) and sub (B).
EXECUTIVE OFFICER DEDRICK: Excuse me, is that page --

CHAIRMAN CORY: 104?

MR. ZAINES: I'm sorry. I'm looking at the notice that appended to it, the underlying format. It is Exhibit A in the notice of today's meeting.

EXECUTIVE OFFICER DEDRICK: Found it. Page 104?

MR. ZAINES: Yes.

You see that the change, going from (A) to (B), is to strike out the "two cents per diameter inch per lineal foot" and change that to an open-ended, "a rate for diameter inch per lineal foot."

I believe, as I understand Section 2005 -- proposed 2005 -- which is later on on page 8, it will give then the Commission the discretion to propose variable rates per diameter inch per lineal foot. So what this does is it goes right to the section of the regulations that was declared invalid and it attempts to change them.

All I'm saying, Mr. McCarthy, is this is at best premature, and it may be a total wasted effort to go through this exercise. It is premature because there hasn't been a final resolution as to whether you can have this basic concept of charging on the basis of diameter inch per lineal foot, and, if indeed the Ninth Circuit affirms the district court and if the Supreme Court takes
it up and affirms as well, then you will have no regulations.

MR. EAGAN: May I be heard, just on the response to that one?

I think it underlines the point I was trying to make. There are a number of types of leasing formats that the Commission uses. One, which is probably the most time honored, is merely appraising the fee value of the property to be leased, and then applying against that to get a yearly rent a rate of return. Let's say it is determined it is one percent. So if you had a hundred thousand dollar piece of property, your yearly rental on that would be $9,000, under that approach.

That has been around a long time. That form of leasing is not the subject of the litigation. In fact, it is a form that is hardly endorsed in its challenge to the volumetric rental regulations.

Let's go down to the next one. The diameter inch per lineal foot means charging rent for pipelines. Again, that is something that is not being challenged in the lawsuit and has been around in terms of the Commission practice for many, many years, prior to the onset in 1976 of the volumetric rental alternative. That says that you can look at the size and length of the pipeline and charge rental based on that, regardless of any consideration of what volume goes through it.
CHAIRMAN CORY: That's the only change that is made. The volume remains constant, if you look at the strikeout. The language of the volumetric is not altered.

EXECUTIVE OFFICER DEDRICK: That is correct.

CHAIRMAN CORY: That's why I'm really at a loss, Mr. Zaines, as to what it is you're speaking of.

MR. ZAINES: Maybe I'm misunderstanding the change that is proposed here, Mr. Chairman. Looking at subsection 2 and subsections (A) and (B), it looks like there is -- that is, as I understand it, the basis of the volume being charged.

CHAIRMAN CORY: Wrong. (C) is the volumetric charge.

MR. ZAINES: You are correct. You are correct, Mr. Chairman.

CHAIRMAN CORY: And since you made that error, I presume you will refund the money that you charged WOGA for all of this.

(Laughter.)

MR. ZAINES: Mr. Chairman, I think though, trying to recall the litigation as it has been proposed to the Ninth Circuit and to the district court, I don't believe that Mr. Eagan is correct in limiting it to just strictly that one issue. I think what we have said in our papers and what is being appealed now is the question of
whether you can set up the sort of charge that is not 
reasonably related to the value of the services being 
provided by the state. That is the test that the three 
commerce clause sections that I referred to earlier 
proposed.

And we said, as Mr. Eagan notes, "Sure. If 
you want to assess the percentage basis based on the value 
of the land, that's fine, but to look at other things such 
as the volume going through the diameter inch of a 
particular pipeline going through, those are not related 
to the value of services directly provided by the state." 
That is what the Constitution says has to be provided, 
and that I think is still in controversy here.

MR. EAGAN: I can only say that I disagree with 
the characterization of the scope of the lawsuit. It has 
from the inception been focused on the volumetric 
rental alternative.

CHAIRMAN Cory: I have yet to have anybody 
from the industry talk to me about anything other than 
volumetric.

MR. ZAINES: I think, Mr. Chairman, this comes 
back to the questions Mr. McCarthy posed to me a little 
while ago, and I apologize for not answering it directly.

You asked if what is being proposed today -- 
if I still believe it is in contravention of AB 1111.
AB 1111 says that there has to be a demonstration of necessity and there has to be a demonstration that there is no conflict, i.e., that there is a consistency with pending law. I think we have got an issue as to whether what is proposed is, and I'm saying that this is premature and that it may be, if the Ninth Circuit affirms and if the decision of the court stands all the way up the line, it may be absolutely unnecessary.

CHAIRMAN CORY: The changes that are being made, as I understand it, do not relate to volumetric, and the issue before the court at the Ninth Circuit is volumetric?

MR. ZAINES: Mr. Chairman, as I understand it, the changes that are being made are part of the challenge in that what is being challenged is a levy on companies crossing state lands based upon other than the reasonable value of the services provided to the state.

CHAIRMAN CORY: I think you are misstating the issue before the court, even from your viewpoint. I don't think it is services provided to the state. I think it is services provided by the state.

MR. ZAINES: "Excuse me. I misspoke, Mr. Chairman. It is services provided by the state to the lessee. That is what --"

CHAIRMAN CORY: To my knowledge -- and I have had various people from WOGA, various members of WOGA come
into my office. I have yet to hear any of them, in my recollection, argue that the diameter inch per lineal foot was not appropriate.

MR. ZAINES: Well, it may be, Mr. Chairman, that in these discussions that you have had, it is just an economical way of referring to really what the court issue is, but I can tell you what the basis of the challenge is, that the commerce clause cases say there must be a reasonable relation between the value of the services provided by the state and the --

CHAIRMAN CORY: Question, the bigger diameter the pipe and the longer it is, the greater amount of land is consumed by it? Would you question that just in terms of basic logic?

MR. ZAINES: I wouldn't question that, no, Mr. Chairman.

CHAIRMAN CORY: Isn't that in conformity with your standards?

MR. ZAINES: No, not necessarily, Mr. Chairman.

CHAIRMAN CORY: How is it not? We are providing land.

MR. ZAINES: Right. If there is an empty piece of land that just happens to be lying there and it has a certain value --

CHAIRMAN CORY: All land has to be someplace,
but go ahead.

(Laughter.)

MR. ZAINES: Mr. Chairman, the nine percent formula that is also contained in these regulations as an optional method is a formula that relates to the value of land, the value of services that are being provided by the state. Because a pipeline takes up two feet or because another one takes up four feet, the lease may cover a larger chunk, maybe a quarter of a mile wide, what difference does the diameter of that particular pipeline that happens to be going across that land make?

CHAIRMAN CORY: It takes up more room.

MR. ZAINES: If the lease is for the whole quarter, the whole quarter mile, then the value --

CHAIRMAN CORY: There are two alternate ways of ascertaining how much land is consumed:

MR. ZAINES: Mr. Chairman, I submit that the issue before the court, having been involved in the briefing of these, is whether there is a reasonable relation between the services provided by the state -- while your impression may be that it is strictly the throughput issue, I believe that that is not what is being taken up on this appeal and that was not what was --

CHAIRMAN CORY: My position is that WOGA's
member clients and the representatives of WOGA, to my knowledge, have never questioned—and, in fact, I believe they have paid, not into protest and not into escrow, but paid directly to the State of California, diameter inch per lineal foot fees. We have collected them; we have spent them. They are not in escrow. They are not pending before the court. I think you are factually wrong in your assertion that that is what is before the court, or the court, as WOGA and everybody else, is not pursuing their economic interests. And the contemporaneous construction of the lessees in paying the fees would indicate that they think that these are valid.

MR. ZAINES: Well, apparently, Mr. Chairman, we just have a disagreement as to the factual posture of the appeal that is pending before--

CHAIRMAN CORY: No. No. It is a question of the facts that exist in the world, not the appeal. It is a question of whether or not your members are paying the fees. I believe they are. Is there any dispute on the matter in the view of the staff?

EXECUTIVE OFFICER DEDRICK: No. You are correct, Mr. Chairman.

CHAIRMAN CORY: Your members are currently paying, not into the escrow, but into the State General Fund,
rental payments based upon diameter inch per lineal foot.

MR. ZAINES: I'm at a loss, Mr. Chairman. I can't contradict that. The simple point I'm making is that there is a piece of litigation pending, and my presentation here --

CHAIRMAN CORY: The point I'm trying to make from that is that I think the staff, as I look at it, tried to only effect those changes in the regulations on those items which are not in dispute.

EXECUTIVE OFFICER DEDRICK: Mr. Chairman, in addition to that, the point (C) has already been approved by the Office of Administrative Law. These are changes that are brought about by recent conditions. They are amendments to the earlier OAL approval. We will go in and go through the process with OAL on these changes. But anything that isn't changed has already been approved by OAL.

CHAIRMAN CORY: What is the wish of the Commissioners?

COMMISSIONER MCCARTHY: Move adoption.

COMMISSIONER ORDWAY: Yes.

CHAIRMAN CORY: We have a motion and a second that the regulation be adopted. Any questions?

Without objection, that will be the order.

Thank you, sir.
MR. ZAINES: Thank you, Mr. Chairman.

CHAIRMAN CORY: Item 23, approval of the sale of an easement over 1.5 acres as Siskiyou. This is a road which we have been leasing to the --

EXECUTIVE OFFICER DEDRICK: Forestry.

CHAIRMAN CORY: Anybody in the audience on this? Questions from Commissioners?

Without objection, Item 23 will be approved as presented.

Item 24, approval of the sale of 12.2 acres in San Bernardino County to CalTrans, which we have been leasing to them.

Anybody in the audience on this?

Questions from Commissioners?

Without objection, approves as presented.

Item 25 -- this authorizes the staff to negotiate the acquisition of lands. This is consolidation of lands in San Diego County; school lands under management; is that correct?

EXECUTIVE OFFICER DEDRICK: Right. Yes.

What we are asking for is an authorization to negotiate between private parties for the benefit of consolidation of school lands and access to other school lands. The San Diego one is one that is immediately before us, but the authorization is broader than that.
CHAIRMAN CORY: Anybody in the audience on this item?

Questions of Commissioners?

Without objection, Item 25 is approved as presented.

Item 26 -- the approval of the sale of 12.57 acres in Imperial County to CalTrans.

Anybody in the audience on this item?

Questions from Commissioners?

Without objection, Item 26 is approved as presented.

Item 27, issuance of a patent to Mr. Joseph Alexander, who had originally filed for this in 1911, and with our crack staff --

(Laughter.)

CHAIRMAN CORY: -- doing their normal efficient job, we are now getting around to this expeditious issuance of this patent.

(Laughter.)

CHAIRMAN CORY: Is there anybody in the audience who has been here standing in line waiting for this one?

(Laughter.)

CHAIRMAN CORY: Questions of Commissioners?

Without objection, Item 27 is approved as presented.
Item 28 -- this is approval of termination of leases PRC 4685.1 and 4686.1, and the issuance of new leases. This is sometimes known as the Anza Liquidating Trust, and, hopefully, will be the last --

MR. HIGHT: Liquidation.

CHAIRMAN CORY: -- liquidation of the Anza Liquidating Trust. Is there anybody in the audience on this item?

Questions of Commissioner?

Without objection, Item 28 is approved as presented.

Item 29 -- this is an amendment to PRC 4977.1 of EXXON. Is Mr. Taylor here or has his --

EXECUTIVE OFFICER DEDRICK: He has vanished.

MR. HIGHT: Why don't we --

EXECUTIVE OFFICER DEDRICK: Could we put this over to the end?

CHAIRMAN CORY: We will put this to the end of the agenda so we can check it.

Mr. Taylor from the AG's office wanted to check something to make sure it was okay before we proceeded. So we will hold in abeyance Item 29.

Item 30 -- City of Eureka and the Oregon Coast Towing Company, approval of lease under Granted Lands in Eureka. Is there anybody in the audience on this?
Questions of Commissioners?
Without objection, Item 30 is approved as presented.

Item 31 -- approval of the assignment of 75 percent interest, Mr. Durkan to Exploration Engineering, Inc.

Is there anybody in the audience on this item?
Any questions of Commissioners?
Without objection --

COMMISSIONER MCCARTHY: Could we make Mr. Durkan an honorary member of the Commission?

(Laughter.)

COMMISSIONER MCCARTHY: He is before us so often, we ought to have some sort of an arrangement.

CHAIRMAN CORY: If we ever conclude our business deals, we are going to have a going away party.

(Laughter.)

CHAIRMAN CORY: Without objection, Item 31 is approved as presented.

Item 32 is a request from Union Oil to defer drilling operations on PRC 2879. Do we have anybody in the audience on this item?

Any questions of Commissioners?
Without objection, Item 32 is approved as
presented.

Item 33 is the extension of the drilling term for the geothermal lease of Aminoil in The Geysers, Sonoma County.

Anybody in the audience on this item?
Questions of Commissioners?
Without objection, Item 33 is approved as presented.

Item 34 is approval of three prospecting permit applications on property in Imperial County. This is for silver and gold for Mr. Arthur Baker, R. S. Davis, and Stephen R. Bruff. Anybody in the audience on these items?
Any questions of Commissioners?
Without objection, Item 34 is approved as presented.

Item 35 -- Exemption of proposed oil and gas leases from public competitive bid. This is under the San Luis Obispo City -- County property, and they don't have a drilling site; so they almost have to go along with who has the drilling site.
Any questions from Commissioners?
Anybody in the audience on this item?
Without objection, Item 35 is approved as presented.

Item 36 -- somebody is going to inform us of
something. We have a letter I think in our folder.

EXECUTIVE OFFICER DEDRICK: We do, which I have just received.

This is a status report on Esther, which was virtually demolished -- was demolished -- during the storms last March. Maybe you could read it real quick while I read it real quick, and I will tell you what is in it. Okay?

(Brief pause in the proceedings.)

EXECUTIVE OFFICER DEDRICK: I'm sorry. I've made a mistake. I thought this was new information.

It is not new information.

MR. EVERITTS: This just came in.

EXECUTIVE OFFICER DEDRICK: It is new information.

All right.

Do the Commissioners have a copy?

(Discussion off the record.)

MR. HIGHT: Chevron estimates basically it is going to cost $46 million to rebuild the island, and haven't gotten any further.

EXECUTIVE OFFICER DEDRICK: Chevron is currently doing the repair work under an emergency permit from the State Coastal Commission while the Coastal Commission is processing a general permit for this emergency action.

This letter is an addendum to what is in your calendar.
which indicates what they are planning to do, at this juncture, with the island.

CHAIRMAN CORY: Says here: "The economics for rebuilding and restoration of Island Esther are marginal. A reduction in royalties from the present 16.8839 percent to 12.5 percent might have a significant impact on the economics of returning the island to production. Chevron is currently evaluating the economic impact of such a reduction."

I'm glad to be informed of this, but I'm not prepared to vote on the reduction of a royalty.

COMMISSIONER ORDWAY: It's an informational item.

EXECUTIVE OFFICER DEDRICK: This is an informational item, Mr. Chairman.

CHAIRMAN CORY: Giving some time to grind through numbers, I would think.

EXECUTIVE OFFICER DEDRICK: I think we should require that Chevron report to us again within three months. In the meantime, of course, the staff will look into this recent information.

CHAIRMAN CORY: Any questions?

Okay. We have been informed.

Item 36.

Item 37. -- Approval of proposed sale of crude
oil on PRC 3033 in Huntington Beach, 631 barrels of 20-degree gravity oil. Anyone in the audience? This is authorization to proceed with the sale.

Anyone in the audience?

Questions from Commissioners?

Without objection, Item 37 is approved as presented.

Item 38 is again a proposed selloff on PRC 3120, South Elwood, Santa Barbara County, of 1724 barrels a day of 20.1.

Anybody in the audience on this?

EXECUTIVE OFFICER DEDRICK: There is one thing I would like to call to your attention on both of these Santa Barbara County sales, Mr. Chairman.

We have made it clear, both in the sale notice and in the calendar item, that the successful bidder must comply with the Santa Barbara County transportation ordinances. That is clear in all our lease sales, in all our royalty oil sales that transportation shall not change, but Santa Barbara County has been concerned in the past that there would be changes. We are making that change --

CHAIRMAN CORY: Explicit.

EXECUTIVE OFFICER DEDRICK: -- explicit, so there will be no concern on their part.

CHAIRMAN CORY: Any questions from anybody in
Questions from Commissioners?
Without objection, Item 38 is approved as presented.

Item 39 is a proposed selloff in Ventura County, Rincon, of 131 barrels a day of from 26 to 28 API gravity oil.

Anybody in the audience on this?
Questions from Commissioners?
Without objection, Item 39 is approved as presented.

Item 40 -- This is a proposed selloff of Elwood, Santa Barbara County, of 2870 barrels a day of 20.1 API gravity oil.

Anybody in the audience on this?
Questions from the Commissioners?
Without objection, Item 40 is approved.

Item 41 -- approval of the Geological/Geophysical Survey permit for offshore tide and submerged lands in Region I, II, III and IV to Tetra Tech. Anybody in the audience on this?
Questions from Commissioners?
Without objection, Item 41 is approved as presented.

Item 42 -- approval of Geological/Geophysical
Survey permits to EG&G International. Anybody in the
audience on this?

Questions of Commissioners?
Without objection, Item 42 is approved as
presented.

Item 43 -- Approval of Geological/Geophysical
Survey permits in the same regions for Dames and Moore.
Anybody in the audience on this?

Questions from Commissioners?
Without objection, Item 43 is approved as
presented.

Item 44 -- we have the subventions to cities and
 counties. This is the subvention list for Fiscal '83/84.
Anybody in the audience on this item?

Questions of Commissioners?
Without objection, Item 44 is approved as
presented.

Item 45 -- approval of proposed boundaries and
annexation, 330 acres to Redwood City. The boundaries
are in order?

MR. HIGHT: Correct, Mr. Chairman.

CHAIRMAN CORY: Anybody in the audience on this
item?

EXECUTIVE OFFICER DEDRICK: Mr. Chairman, this
item also approves the annexation.
CHAIRMAN CORY: Yes, for boundary and annexation.

EXECUTIVE OFFICER DEDRICK: And annexation.

CHAIRMAN CORY: Any questions of any of the Commissioners or anyone in the audience?

Without objection, Item 45 is approved as presented.

Item 46 -- Approval of assignment of rights and obligations under a compromise settlement and exchange agreement on 828 acres in Fremont, between Fremont International Partners and King and Lyons. Anybody in the audience on this?

Questions from Commissioners?

Without objection, Item 46 is approved as presented.

Item 47 -- Approval of a litigation and title settlement agreement covering portions of Long Island and the Sacramento River between --

MR. HIGHT: No, the next one.

CHAIRMAN CORY: Malinowski and State Lands Commission.

MR. HIGHT: No, Mr. Chairman. This was discussed in Executive Session and also, for the record, you are acting as Land Bank Commissioners.

EXECUTIVE OFFICER DEDRICK: As well as State Lands Commissioners.
MR. HIGHT: Yes.

CHAIRMAN CORY: Is there anyone in the audience on this item?

Questions of Commissioners?

Without objection, Item 47 is approved as presented, both as Land Commissioners and Land Bank Commissioners.

Item 48 -- Request for authorization to execute and record exchange agreements, 24 acres in South Vallejo, with a contribution going to the Kapiloff Land Bank Fund. This is as Land Bank Commissioners --

EXECUTIVE OFFICER DEDRICK: That is correct.

CHAIRMAN CORY: -- as well as Lands Commissioners.

We have a Ted McDonnell. Do you wish to speak to us on this item or do you want us to approve it?

MR. MCDONNELL: Is that the option, sir?

(Laughter.)

CHAIRMAN CORY: I was told in this building a long time ago by George Miller, "Well, son, do you want the votes or do you want to talk?"

(Laughter.)

MR. MCDONNELL: For the record, my name is Ted McDonnell. I'm the City Manager of the City of Vallejo. I would like to talk on behalf of the staff.

I have been critical of staff on some previous
activities we have had with them, and I want to come to the Commission now and commend the staff to you for the expeditious handling of this matter. It was especially appreciated because when we are dealing with private developers and when development schedules are on the line, quite often state, local and public officials tend not to be concerned about the clock. In this case, I would like to commend specifically Mr. Stevenson who handled it very expeditiously, and we do appreciate the effort on the part of the staff.

CHAIRMAN CORY: You're just lucky you just didn't get your application over with Joe Alexander's.

(Laughter.)

CHAIRMAN CORY: I've been critical of the staff on occasion. Some of those barbs were along the same lines. We are glad to have you here this morning.

MR. MCDONNELL: I received some of those barbs from my own council on occasion.

COMMISSIONER McCARTHY: Staff always appreciates being rehabilitated.

EXECUTIVE OFFICER DEDRICK: Especially today.

MR. MCDONNELL: It is easy to complain. It is not always easy to pass on the compliment. I want to do that today.

CHAIRMAN CORY: Is there anybody from the...
Questions from Commissioners?
Without objection, Item 48 will be approved as presented.

Item 49 -- this is a proposed settlement between the State of California and Yuba Goldfields.

Greg, before we take up this item, shall we deal with out --

EXECUTIVE OFFICER DEDRICK: Oh, I'm sorry.

MR. HIGHT: Yes.

CHAIRMAN CORY: In terms of 49, in terms of procedurally, we wish to take this up, but how would you suggest we deal with dealing with the record?

MR. TAYLOR: Mr. Chairman, it is my understanding that Yuba Goldfields, in May of this year, was acquired by a group of individuals headed by Mr. Silberman, who was formerly the Director of Finance for the State of California.

Prior to that time it is my understanding, that he -- prior to his acquisition of the company, it is my understanding that --

CHAIRMAN CORY: Let me just clarify. It is my understanding that the management, and I guess the controlling interest, but not the entire ownership, because I think it is publicly held.
MR. TAYLOR: Right. Yes.

Anyway, at some time prior to that acquisition, and I believe in 1982, Mr. Silberman apparently made a contribution to your campaign, and there was a loan made to Mr. McCarthy's campaign, which I understand has not been paid off. We don't believe that that causes you any problem in proceeding, but I think that in order that this matter be set to rest that it should be disclosed on the record, and that, with that notation, that our office concurs there is no reason for either of you not to vote on this matter.

CHAIRMAN CORY: That is basically correct in terms of the facts. I think it was probably in December of '82 I received a contribution from him and may have received some prior to that.

Leo.

COMMISSIONER McCARTHY: Let me state for the record, in my campaign for Lieutenant Governor, Richard Silberman did make a $5,000 loan to me. The first half of it was repaid some months ago. The second half was just repaid. He may even have made a direct contribution to my campaign, either in late 1981 or at the beginning of 1982. Even though that apparently does not present any legal conflict of interest, I think it is important to state those facts for the public record.
Let me further add that neither Richard Silberman nor anyone on his behalf or anyone representing the applicants before this Commission have ever spoken to me on this issue directly or indirectly. The decision I now make, having been advised by the Attorney General that there is no conflict of interest, will rest wholly upon the staff's case that the people of California benefit by any proposal before the Commission at this time.

CHAIRMAN CORY: With that, the two of us are prepared to participate, if the one clean member is.

(Laughter.)

COMMISSIONER ORWAY: I received no contributions from anyone.

COMMISSIONER McCARTHY: I exempt myself from that last —

(Laughter.)

CHAIRMAN CORY: They always come back to haunt me.

Would somebody please explain what is there, and let's lay it out on the record what we are doing and why.

EXECUTIVE OFFICER DEDRICK: Yes.

Would you put that map up.

CHAIRMAN CORY: I would like the record to reflect that if I could figure out how to vote against
Mr. Silberman, I have a lot of reason to do so.

(Laughter.)

EXECUTIVE OFFICER DEDRICK: Commission, can you see that chart okay?

(Discussion off the record.)

EXECUTIVE OFFICER DEDRICK: The reason for the negotiated settlement at this point should be probably explained in detail by the attorneys, but to make it short, we were in litigation with both the Federal Government and Yuba Goldfields over the state's claim to the former bed of the Yuba River, which would be the bed as it existed on September 9th, 1850. The orange stripe on the chart is the negotiated former bed.

In May of this year, early May, the Supreme Court came down with a decision which prohibited the state or precluded the state from suing the Federal Government on matters of quiet title. In the process of that suit, the state was therefore unable to use evidence that had been used in the federal case in the case of Yuba.

This was followed by an offer for negotiation, which occurred very recently, from Mr. Silberman's company. The settlement that we are proposing to you would clear state title as far as Yuba is concerned to all of the bed of the existing Yuba River, which is an exceedingly valuable biological resource.
It is an excellent salmon, steelhead, and shad stream and a very important spawning area for the anadromous fish for the length down to where it shows the fee title area. And it would quit-claim to us all of their mineral rights, which is the interest they own in the present bed of the river, for the rest of the distance.

The areas involved are, in terms of the stipulated bed of the river, are -- that riverbed, the stipulated bed, is 350 feet wide and about eight miles long. The current, existing bed of the stream is 800 feet wide and about ten miles long.

Have I got my numbers right?

In terms of land value that is of substantial value to the state. In terms of mineral value, our staff has determined that the potential mineral value of the two beds is virtually identical and equally unknown.

(Laughter.)

EXECUTIVE OFFICER DEDRICK: Yuba Goldfields has offered us, in addition to the fee title to the bed of the existing stream in this area and the relinquishment of their mineral rights in the bed of the stream in this area -- they have offered us three new public access points to the Yuba River which are not now available to the public. Two of them are -- one on each side of the
Parks Bar Bridge and a new parcel which will connect a county park with the river in a nine-acre parcel which will be useful, not only for access, but also for camping and onshore.

In my judgment and the judgment of the staff and the Attorney General's Office and our legal counsel, this is a very good deal for the State of California. It gives the public rights in the stream which it has never had, which will protect that stream and its salmon beds, unless the state decides they want to mine and can get a permit -- which they probably can't -- and also provides new public access which has never been available to the public before.

MR. EAGAN: If I can add very briefly, the Attorney General's Office does concur in the recommendation.

We would further ask that the map from which Dr. Dedrick has been speaking be admitted as part of the record because it does reflect the prospective parcels.

Finally, we would recommend that the Commission confirm that this settlement, if agreeable to the Commission, is not intended to affect in any way the existing appeal that the state has brought against -- is pursuing against the Federal Government, arising from the Federal Government's dismissal from the trial court action.

COMMISSIONER McCARTHY: Would you expand on that
last comment? What is the advantage to the State of California in relationship to the federal court action?

MR. EAGAN: Well, originally, when this case was brought in October of 1979, the case was brought by the State Lands Commission, acting for the state, against both Yuba Goldfields, Inc., and the Federal Government, because there are property interest claimed by both of those parties to the stipulated bed, the historic bed of the river.

As a result of the Supreme Court's decision in May of this year, Block v. North Dakota, the district court dismissed the Federal Government as a party to the suit, finding that the state's cause of action accrued under the statute at such a time as to preclude the existing prosecution of the quiet title action. And the judge made that issue immediately available for appeal.

Based on the direction of this Commission, we have appealed the district court's ruling dismissing the Federal Government from the case with respect to their independent property interests. That raises some substantial issues regarding legal questions that bear on the state's claims to lakes and rivers throughout the state that need clarification by the appellate court.

We have worked with the staff on this proposed
COMMISSIONER McCARTHY: Mr. Chairman, if I may ask Ms. Dedrick -- Ms. Dedrick, as I heard your statement supporting Commission approval of this agreement, you suggested that the state would acquire scenic and recreational value.

EXECUTIVE OFFICER DEDRICK: And biological value, sir.

COMMISSIONER McCARTHY: And biological value.

Would you characterize the pecuniary benefits to the state from this transaction? What advantage do the people of California derive in a pecuniary sense?

EXECUTIVE OFFICER DEDRICK: We can usually make a finding of equal value on, both on the real estate and the mineral rights, on the basis of this negotiation.

I think you can also make a finding that the state is doing a little better, but that is not a good thing to say in negotiations. So I didn't say it.

COMMISSIONER McCARTHY: Thank you.

CHAIRMAN CORY: Anybody in the audience on this item?
MS. MILLER: Yes, my name is Andrea Miller, and I represent Yuba Goldfields in this litigation. I looked at the Commission's settlement document and find it all in order with two exceptions. We would just like to put on the record the fact that on page 3 of the proposed settlement, the first unnumbered paragraph, assumes ownership of this property as a sovereign right. That was an issue in the lawsuit, and one of the reasons that we defended it, it causes title problems. In the final settlement, we would propose that the language read "claims of sovereign ownership."

EXECUTIVE OFFICER DEDRICK: The Attorney General is concurring in that, and so is the applicant.

So, on the advice of the attorneys, I advise you to accept that.

CHAIRMAN CORY: Okay. Any other --

MS. MILLER: I understood there was going to be an oral amendment to Item No. 7 of the recommendations.

MR. HIGHT: Yes. No. 7, Mr. Chairman, is relating to the survey costs, and we propose to make the following change:

"The manner and method of surveying the property to be conveyed to the state shall be that mutually agreeable to the
parties, and the discharge of the cost necessary to effect the survey shall be subject to the approval of the Executive Officer." in lieu of the existing language.

COMMISSIONER McCARTHY: What is the purpose of that amendment?

EXECUTIVE OFFICER DEDRICK: The purpose of that amendment—this whole business on survey costs only came up last night. What I would like to be free to do is take a good look at what those costs are going to be, which we do not yet have a clear shot on, and to negotiate with Yuba Goldfields the price of—you know, who is going to pay what on this survey cost. Fifty-fifty is what we originally thought of. People at Yuba have asked for an opportunity to discuss it and negotiate it. I will assure you that if I'm not satisfied with the negotiation, I will bring it back to this Commission.

COMMISSIONER McCARTHY: Thank you.

CHAIRMAN CORY: Anybody else in the audience on this item?

Do you have any other items?

MS. MILLER: No, sir.

CHAIRMAN CORY: So we have the amended version before us. I just want to ask the question on the
record. Since the Lieutenant Governor and I are basically
in the same position, we would find ourselves -- the
conclusion is that because of the fact circumstance,
there is no conflict, given the fact circumstance that
if there was a conflict and both of us were similarly
situated, we would be required to vote out of necessity
anyway.

MR. TAYLOR: That is correct.
CHAIRMAN CORY: So we really don't have an
option of not voting.

MR. TAYLOR: That is correct.
CHAIRMAN CORY: I just wanted to put some
symmetry on the things we are dealing with here.

COMMISSIONER ORDWAY: I will move the recommenda-
tion with the amendments suggested by the Attorney General.

COMMISSIONER MCCARTHY: Second.
CHAIRMAN CORY: Moved and seconded.

All those in favor, signify by saying aye.

(Ayes.)
CHAIRMAN CORY: Opposed.
The motion is carried.
The next and last item is Item 50, Petro Lewis,
approval of settlement agreement with Petro Lewis on
windfall profit taxes.

Alan, do you want to explain what we're doing
here quickly?

MR. HAGER: This is an attempt to settle matters of windfall profit tax refunds that came about by the passage of the Technical Corrections Act, which is legislation that the Commission worked very hard to get passed, amending the original Windfall Profit Tax Act.

The problem essentially was that some refunds were obtained by Petro Lewis as partners -- there are some 57,000 of them. They are the ones who pay taxes and can obtain the refunds under the law. They obtained the refunds. Petro Lewis, the corporation, could not get the refunds back from the partners.

We discussed this with them, and in order to avoid some rather lengthy and complicated litigation, we have come to a settlement which has really three parts. The parts of the refund that were obtained by the corporation itself will be paid to the City of Long Beach and the state in full. The part of the refunds that were paid directly to the partners, which Petro Lewis cannot get, will be paid by Petro Lewis, the corporation, to the city and the state to the tune of 60 percent.

There are still some monies in the United States Treasury that have not been obtained as refunds. They are refundable to the partners, not to the corporation.

The state and Petro Lewis will work together...
to get enactment of a technical amendment by Congress, allowing the corporation, which is the general partner, to obtain this refund. If it obtains that refund, it will be paid in its entirety to the state and city. If that legislation does not pass, the amount refundable will be paid by the corporation to the city and state to the tune of 60 percent.

Payment of the 60 percent portion, the amount that Petro Lewis is coming up with, attributable to the partners, will be paid over a period of time with interest; the interest to be the pooled money investment rate as of now.

CHAIRMAN CORY: Questions from the Commissioners? Anybody in the audience on this? Without objection, the settlement will be approved as presented by the staff and recommended by the staff.

We have item 29.

MR. HIGHT: If we can give Mr. Taylor about one minute, I think he is trying to cut a deal.

CHAIRMAN CORY: We will be in momentary recess. (Thereupon a brief recess was taken.)

CHAIRMAN CORY: We are ready to reconvene.

The last item is 29, if I can find the agenda again. This is approval of an amendment to lease ERC 4977.1.
and where are we on this one? There was some clarification
that the staff was seeking before we took it up.

MR. TAYLOR: The clarification, Mr. Chairman,
is the fact that there is a letter of agreement between
this Commission and EXXON that stays the right of the
Lands Commission to contest certain portions -- whether
certain portions of the lease are still valid.

All we want to make sure is that the State
Lands Commission's ability to make that assertion, if
it becomes appropriate, is preserved.

There is, in the document to implement
this proposed action, a reference in the recitals to that
agreement. It is my understanding from talking to the
gentleman from EXXON that the reason for the reference
in the recitals to the agreement is to affirm that that
agreement stands, and therefore the State Lands Commission
is not prejudiced. As long as that is the case, there
is no legal objection to proceeding today.

CHAIRMAN CORY: There is an existing letter of
agreement between EXXON and Lands, and we are, in essence,
saying that by approving this we are not altering that
agreement?

MR. TAYLOR: That's correct.

CHAIRMAN CORY: And you are --

MR. COOK: My name is Wade B. Cook, an employee
MR. TAYLOR: It is intended not to prejudice the state's position by taking this action. Without this agreement, it might be -- our understanding is it might be argued that we had waived.

MR. COOK: It is my intent that what is in this instrument -- that that letter was incorporated and is a part of the instrument.

EXECUTIVE OFFICER DEDRICK: Okay.

CHAIRMAN CORY: Anybody in the audience on this item?

Any questions from Commissioners?

Without objection, Item 29, with that understanding, will be approved.

Any other item to come before the Commission?

EXECUTIVE OFFICER DEDRICK: No, sir.

CHAIRMAN CORY: Without objection, we stand adjourned.

(Thereupon this meeting of the State Lands Commission was adjourned at 11:55 a.m.)

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CERTIFICATE OF SHORTHAND REPORTER

I, DELORES I. DALTON, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person hereinafter, that the foregoing meeting of the State Lands Commission, State of California, was reported in shorthand by me, Delores I. Dalton, a Certified Shorthand Reporter, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of November, 1983.

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