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MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

ORIGINAL

STATE CAPITOL
ROOM 447
SACRAMENTO, CALIFORNIA

THURSDAY, MARCH 26, 1987
2:30 P. M.

DOREE O'CONNELL, CSR 4068

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COMMISSIONERS PRESENT

Leo T. McCarthy, Lieutenant Governor, Chairman
Jim Tucker, Deputy State Controller, Commission Alternate
for Gray Davis, State Controller
Nancy Ordway, Commission Alternate
for Jesse R. Huff, Director of Finance

STAFF PRESENT

Claire T. Dedrick, Executive Officer
James Trout, Assistant Executive Officer
Robert Hight, Chief Counsel
W. M. Thompson, Chief, Extractive Development
Lance Kiley, Chief, Land Management Division
Jane Smith, Commission Secretary

ALSO PRESENT

Jan Stevens, Supervising Deputy Attorney General
Dennis Eagan, Deputy Attorney General

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P R O C E E D I N G S

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3 CHAIRMAN McCARTHY: Good afternoon, ladies and
4 gentlemen. This is a meeting of the State Lands Commission.
5 On my left is Commissioner Nancy Ordway. We're expecting
6 Commissioner Jim Tucker representing the Controller to join
7 us in just a moment.

8 I'd like to mention that these items on the Consent
9 Calendar are being removed: 5, 6, 7, 20 and 25. We have had
10 requests to remove those items from the Consent Calendar.

11 We also want to mention that we've had a request to
12 remove these other items not on the Consent Calendar. They
13 will be not heard today and put over to a future meeting.
14 The following items: 31, 34, 36, 41 and 48.

15 Now, is there anyone in the audience that came on
16 one of those items that would be gravely inconvenienced
17 because one of them was removed today?

18 Thank you very much.

19 All right. First we'll take up the minutes of the
20 last meeting. Any questions?

21 We have a motion from Commissioner Ordway. The
22 minutes of the last meeting, without objection they are
23 approved.

24 Staff report.

25 EXECUTIVE OFFICER DEDRICK: No staff report,

1 Commissioner McCarthy.

2 CHAIRMAN McCARTHY: Thank you very much.

3 COMMISSIONER ORDWAY: I will move the Consent
4 Calendar.

5 CHAIRMAN McCARTHY: Move the Consent Calendar.

6 COMMISSIONER ORDWAY: Minus Items 5, 6, 7, 20 and
7 25.

8 CHAIRMAN McCARTHY: All right. That motion is
9 adopted.

10 COMMISSIONER ORDWAY: 26.

11 CHAIRMAN McCARTHY: Item 26. Staff report.

12 EXECUTIVE OFFICER DEDRICK: Excuse me, I'm sorry.
13 This is Item 29, Mr. Chairman. It's the first --

14 COMMISSIONER ORDWAY: Oh.

15 EXECUTIVE OFFICER DEDRICK: 26 is on the Consent
16 Calendar.

17 COMMISSIONER ORDWAY: I'm sorry.

18 EXECUTIVE OFFICER DEDRICK: Item 29 is the first
19 regular item.

20 COMMISSIONER ORDWAY: I'm sorry.

21 EXECUTIVE OFFICER DEDRICK: This is the approval --
22 request for approval of the 25-year General Lease
23 Right-of-Way -- excuse me, I'm getting tangled up with my
24 mike here -- for an outfall, a water outfall from the
25 Pittsburg Plant -- Richmond Plant of Chevron for deep water

1 outfall -- I'm sorry -- in Contra Costa County. I got a
2 little snarled up there.

3 CHAIRMAN McCARTHY: Commissioner Ordway has a
4 question.

5 COMMISSIONER ORDWAY: It's my understanding that
6 this action was needed in order to have them conform to the
7 Water Board permit.

8 EXECUTIVE OFFICER DEDRICK: That is correct. They
9 are required by the Water Board to put in an outfall that
10 goes out into deeper water and they need a lease from us in
11 order to do it.

12 COMMISSIONER ORDWAY: I'd move the item.

13 EXECUTIVE OFFICER DEDRICK: Okay, item --

14 CHAIRMAN McCARTHY: Excuse me, we have Mr. Michael
15 Drennan, Senior Engineer with the Water Quality Control
16 Board. The regional board has committed to implementing the
17 mitigations from the EIR regarding the water quality impact
18 here.

19 MR. DRENNAN: I'm just here to answer questions if
20 need be.

21 CHAIRMAN McCARTHY: Fine. Thank you very much, Mr.
22 Drennan. Am I reading your name correctly?

23 MR. DRENNAN: Yes.

24 CHAIRMAN McCARTHY: Drennan? Thank you very much.
25 Does any member of the public wish to be heard on this item?

1 The issue is before the Commission.

2 COMMISSIONER TUCKER: Motion.

3 CHAIRMAN McCARTHY: There's a motion. All right.

4 Unanimous that the recommendations are approved.

5 Item 30.

6 EXECUTIVE OFFICER DEDRICK: Item 30 is approval of a
7 20-year General Lease for the Public Agency Use for the City
8 of Pittsburgh in Contra Costa County for construction and
9 maintenance of the breakwater and fishing pier in Marin
10 expansion.

11 COMMISSIONER ORDWAY: Motion.

12 CHAIRMAN McCARTHY: Any questions -- any questions
13 from the audience on this?

14 Hearing none, there's a motion from Commissioner
15 Ordway.

16 Seconded by Commissioner Tucker. Unanimously
17 adopted.

18 Item 31.

19 EXECUTIVE OFFICER DEDRICK: Item 31 has been pulled,
20 Commissioner, but since your request for -- to see if anyone
21 were inconvenienced, we've received a request from Tom Wesley
22 who is..

23 CHAIRMAN McCARTHY: All right.

24 EXECUTIVE OFFICER DEDRICK: -- involved with
25 Riverbank to be able to speak.

1 CHAIRMAN McCARTHY: I have the note here.

2 Mr. Wesley, would you like to step forward and make
3 some remarks to the Commission?

4 MR. WESLEY: Good afternoon, everyone. Good
5 afternoon, Commissioners. My name is Tom Wesley. I'm with
6 Riverbank Holding Company, and we -- we've built the
7 Riverbank Marina in Sacramento near the confluence of the
8 American-Sacramento Rivers.

9 And we have been asking for some time now for first,
10 a -- to get -- to be excepted from the moratorium itself to
11 expand our marina facilities, and that was defeated on a
12 split vote last year after the study -- just about the time
13 the study was coming out.

14 And we were told at the time that the study came out
15 and it was adopted by the Commission that it would be about
16 60 days' time to implement the plan with the local agencies.
17 And that was, as my recollection serves me right, sometime in
18 August, perhaps September of last year.

19 We've -- the moratorium -- lifting the moratorium
20 has come on the agenda several times since then only to be
21 removed with -- at least there's been no explanation to me.
22 We presently have an application pending that -- for this
23 very same extension, once the moratorium is lifted. We
24 have -- because we feel that we're squarely within the
25 criteria of -- of the River Study Criteria or the report that

1 was commissioned, and we feel that we will eventually get
2 approval.

3 We have moved forward with various agencies and in
4 getting our funding and whatnot -- attempting to get our
5 funding we have spent literally hundreds of hours and
6 thousands of dollars in an attempt to be at the right place
7 at the right time in order to get the right approvals and to
8 do it right.

9 And the long and short of it is that this 60-day
10 period for, quote, "implementation of the plan," is long
11 since come and gone. It's now been perhaps three years since
12 the moratorium's been in place. It's been -- it's been
13 approaching maybe eight months, nine months since the final
14 plan has been approved.

15 And this is sort of a long-winded way of just
16 asking --

17 CHAIRMAN McCARTHY: I think we get the point.

18 MR. WESLEY: -- when is it going to come down? When
19 is it going to be -- when is there going to be an action?

20 CHAIRMAN McCARTHY: All right. We get your point.
21 Thank you, Mr. Wesley. We'll try to come to a decision on it
22 as soon as possible.

23 MR. WESLEY: Thank you very much.

24 CHAIRMAN McCARTHY: Thank you very much.

25 All right. Let's move on to Item 32.

EXECUTIVE OFFICER DEDRICK: Item 32 is an approval
2 of a Memorandum of Agreement to extend the term of -- a
3 long-standing agreement with Signal Bolsa Corporation, based
4 in part -- based on a 1973 Land Settlement. This is the
5 agreement that ultimately would result in the State receiving
6 additional land from Signal if certain conditions are met.

7 The extension is to -- is about two years, which
8 will take us past the end of the next budget session.

9 CHAIRMAN McCARTHY: Any questions from the public on
10 this item?

11 Do I hear a motion?

12 COMMISSIONER ORDWAY: Motion.

13 CHAIRMAN McCARTHY: Motion by Commissioner Ordway.
14 Seconded by Commissioner Tucker. All right.
15 Recommendation's unanimously approved.

16 Thirty-three.

17 EXECUTIVE OFFICER DEDRICK: Item 33, San Francisco
18 International Homtel in Burlingame. This is the approval of
19 a Secured Party-Lender Encumbrance of the leases occupied by
20 the hotel.

21 COMMISSIONER ORDWAY: Motion.

22 CHAIRMAN McCARTHY: Any questions from the audience?

23 All right. The motion by Commissioner Ordway,
24 seconded by Commissioner Tucker. It's approved.

25 Item 35.

1 EXECUTIVE OFFICER DEDRICK: Item 35 is the tenth
2 modification of the existing '86-'87 Long Beach Plan and
3 Budget which updates the production projections.

4 CHAIRMAN McCARTHY: Any questions from the audience?
5 Motion by Commissioner Ordway; seconded by
6 Commissioner Tucker. Approved.

7 Thirty-six.

8 EXECUTIVE OFFICER DEDRICK: Item 36 is off calendar.
9 Item 37.

10 CHAIRMAN McCARTHY: Oh, no, 37. Pardon me.

11 EXECUTIVE OFFICER DEDRICK: That's all right. Item
12 37 is the approval of an Amendment to an Oil and Gas Lease
13 held by Shell Corporation in Santa Barbara County.

14 CHAIRMAN McCARTHY: Questions from the audience?

15 COMMISSIONER ORDWAY: Motion.

16 CHAIRMAN McCARTHY: Motion by Commissioner Ordway,
17 seconded by Commissioner Tucker. That's approved.

18 Thirty-eight.

19 EXECUTIVE OFFICER DEDRICK: On Item 38, Mr. Trout,
20 would you like to briefly make this report?

21 ASSISTANT EXECUTIVE OFFICER TROUT: Well, basically,
22 the report is that on the equity adjustment we will be
23 meeting with the Royalty -- Analog Royalty Orders in Long
24 Beach on Tuesday along with the oil companies to again
25 determine if we can work on some kind of a way of slowing

1 down their payments, although it's -- the rate of pay back to
2 the State. And as Commissioner Ordway pointed out some
3 months ago, it's very difficult in view of the fact that the
4 State is not authorized to recover any money in this area.

5 CHAIRMAN McCARTHY: Questions from the audience?

6 EXECUTIVE OFFICER DEDRICK: That's really just for
7 your information, Commissioner.

8 CHAIRMAN McCARTHY: Fine.

9 EXECUTIVE OFFICER DEDRICK: It doesn't require
10 action.

11 CHAIRMAN McCARTHY: Any questions from the members?

12 All right. Thank you for the information.

13 Next item is 39.

14 EXECUTIVE OFFICER DEDRICK: Item 39 and 40 are
15 related items. They are approval of the Amended Gas Sales
16 Agreements from our lessees with Pacific Gas & Electric
17 Company. The first one is Casex; the second one is Chevron.

18 CHAIRMAN McCARTHY: Questions from the audience?

19 COMMISSIONER ORDWAY: Motion on both.

20 CHAIRMAN McCARTHY: Motion from Commissioner Ordway
21 on both for approval.

22 Seconded by Commissioner Tucker. Unanimous.

23 Next item, 40. 42. 42.

24 EXECUTIVE OFFICER DEDRICK: Item 42 is an award of
25 the Royalty Oil Sales Contract at Huntington Beach to Texaco

1 as the high bidder, which was I think 29 cents, wasn't it?
2 28.9 cents.

3 CHAIRMAN McCARTHY: Any questions from the audience?
4 Motion from Commissioner Ordway. Seconded by
5 Commissioner Tucker.

6 EXECUTIVE OFFICER DEDRICK: Okay, Item 43.

7 CHAIRMAN McCARTHY: 43.

8 EXECUTIVE OFFICER DEDRICK: Approval of Award of
9 Crude Oil Sales Contract in -- for oil produced within the
10 Wilmington Field in Los Angeles. Texaco was again the high
11 bidder.

12 CHAIRMAN McCARTHY: Questions from the audience?
13 Motion by Commissioner Ordway. Seconded by
14 Commissioner Tucker. That's approved.

15 Forty-four.

16 EXECUTIVE OFFICER DEDRICK: Item 44, Erse
17 Corporation. This is a denial of a Request for Extension of
18 a permit to prospect for minerals other than oil and gas,
19 geothermal resources at Sunset Beach in the City and County
20 of San Francisco. Mr. O'Grady and his attorney Mr. Mark
21 Robinson are present to present their --

22 CHAIRMAN McCARTHY: Welcome. Welcome. Why don't
23 you please have a seat. Be happy to receive your testimony.
24 Why don't you give your name?

25 MR. ROBINSON: Mr. Chairman, my name is Mark

1 Robinson. I'm the attorney for Erse Corporation for the
2 purposes of this hearing and I wish to make a few statements.
3 I did not come here to testify and I've so advised the
4 Attorney General.

5 MR. EAGAN: Excuse me. Just before Mr. Robinson
6 starts I had a few preliminary remarks, Mr. Chairman. I'm
7 Dennis Eagan, Deputy Attorney General.

8 CHAIRMAN McCARTHY: Excuse me, Mr. Robinson.

9 All right.

10 MR. EAGAN: I'd just like to set the context and
11 give some background to the Members of the Commission. This
12 does pertain to requests for extension of a prospecting
13 permit. The staff recommendation is for denial.

14 The Commissioners should have before them certain
15 materials that were excerpted from the file and had been
16 provided also to counsel for Erse Corporation.

17 This matter had been set for the Commission's
18 February hearing, and shortly prior to that scheduled hearing
19 there was a document entitled Demand received from Erse
20 Corporation.

21 It asked for a number of things. The first was a
22 continuance of the matter from the February calendar. The
23 second was a temporary extension of the permit which was due
24 to expire at the end of February, 1987. And finally the
25 demand asked for what was referred to as a due process

1 hearing.

2 Regarding the continuance requests and the request
3 for a temporary extension on the request of staff, the
4 Commission granted the continuance until this month, and did
5 not extend the permits. So the permit itself is expired, but
6 the request for an extension is still a valid one. We have
7 so advised counsel from Erse Corporation.

8 Finally, with regard to the nature of the hearing,
9 our office, the Attorney General's office, has been in
10 contact with Mr. Robinson, attorney for Erse Corporation.
11 We've advised him that the hearings of the State Lands
12 Commission are conducted in a manner which is considerably
13 more informal than a court proceeding. We have also
14 explained, however, that there was a full opportunity to be
15 heard by people wishing to speak on a given item before the
16 Commission.

17 Just for the edification of the Commission, it's not
18 at all clear to the Attorney General's office the concept of
19 due process applies in the context of a state body that's
20 allocating state-owned property rights. But conceding that
21 it is, it is our opinion that the manner in which this
22 Commission conducts its proceedings does it forth-- with due
23 process.

24 One final matter, and I don't know that I had
25 discussed this earlier with Erse Corporation's counsel, but I

1 have advised him here today that the Commission does not have
2 in these proceedings subpoena power.

3 And the occasion for that remark was that they
4 either have been served or attempts to be made to serve in
5 the last several days documents which purport to be subpoenas
6 requiring attendance of certain individuals at this
7 particular hearing. These documents, at least the ones I
8 have seen, appear over the signature of the Clerk of the
9 Superior Court of Los Angeles County, of course an individual
10 and an entity that has no power to order people -- or compel
11 people to appear before this Commission.

12 Finally, the basis for the staff's recommendation of
13 denial of the request for extension is set forth at some
14 length in the calendar item. I won't burden the Commission
15 with extensive reiteration of that, just to say that there
16 were basically two grounds for the recommendation: The first
17 is it was staff's conclusion on the advice of the Attorney
18 General that an initial study under California Environmental
19 Quality Act had to be performed before the Commission could
20 approve any such extension request.

21 In connection with that conclusion, Erse Corporation
22 was requested to provide certain information. Erse
23 Corporation failed to provide that, the information, and as I
24 understand it their position is to seek what doesn't require
25 an initial study in this circumstance.

1 The second ground is that in staff's view there had
2 been a number of violations of the permit which expired in
3 February consisting of really a failure to get three required
4 permits, one from the Coastal Commission, one from the Corps
5 of Engineers, one from the Golden Gate National Recreation
6 Area, which is immediately adjacent to the prospecting area.

7 And finally, the permit initially issued did provide
8 that access to the permit area had to be by existing roads
9 only. And there was at least one occasion when park rangers
10 of the GGNRA discovered employees of Erse Corporation on the
11 beach in a four-wheel drive vehicle, having used pedestrian
12 access to get there.

13 So that is in summary the basis for the staff
14 recommendation. Thank you.

15 CHAIRMAN McCARTHY: Thank you.

16 Mr. Robinson?

17 MR. ROBINSON: Yes, Mr. Chairman. I would like to
18 start by talking a little bit about some things that the
19 Attorney General has just mentioned.

20 First of all, let me say that approximately February
21 the 12th I made a demand on this Commission for a due process
22 hearing, and I did that in writing. I filed affidavits in
23 support of it. I filed Points and Authorities in support of
24 it.

25 And as a part of that demand, I stated that I felt

1 that it would be necessary to cross-examine certain persons
2 connected with the Commission -- I shouldn't say the
3 Commission, but with the Agency for the reason that charges
4 were being made without any affidavits supporting them, just
5 blanket charges -- in fact, without even a signature of a
6 person -- and that I felt that it was necessary for me to
7 have a hearing because this particular Commission was being
8 asked not just to either grant or deny a request for an
9 extension, but to make a finding of fact as a basis for
10 denial, and there's a big difference. And so that was the
11 reason that I asked for the hearing.

12 I was told nothing. I was about to get on the
13 airplane, February the 17th -- in fact, I was in line to get
14 on the plane, and we were suddenly stopped at the door of the
15 plane to say that the Attorney General had called to say that
16 the meeting here had been cancelled. That's the only
17 information I ever had.

18 At that time I had with me a supplemental
19 declaration of John F. O'Grady which I think is pertinent,
20 and because of the fact that I never arrived in Sacramento
21 apparently it was never filed because I do not see that you
22 have any copies of it.

23 So I have brought with me that -- those documents
24 that I was bringing with me on February the 17th. I'll file
25 the original and I have copies for the Commission.

1 CHAIRMAN McCARTHY: All right. Thank you.
2 Commissioner Tucker would like to ask you a question, Mr.
3 Robinson.

4 MR. ROBINSON: Yes.

5 COMMISSIONER TUCKER: The finding of fact that
6 you're talking about is the -- that the activity subject to
7 your requirements of CEQA.

8 MR. ROBINSON: No, your Honor, the findings that
9 you're being asked to find is that we -- first of all,
10 violated the terms of the permit; that we did things that we
11 were not supposed to do; that we failed to do things that we
12 were supposed to do. Those are the findings upon which they
13 are now trying to deny an extension, which we would
14 ordinarily in the ordinary course of business be entitled to.

15 This is not a situation where we are applying for
16 the first time for a permit. We already have a permit, and
17 in the ordinary course of business of the agency that permit
18 is usually extended for any reason we've been caused.

19 If you note even in the correspondence that is
20 attached to the file that you have with you today, you will
21 see very benign letters going from the agency to Mr. O'Grady
22 as late as early December of 1986 saying, "Just do this --"

23 COMMISSIONER TUCKER: Well, my question is --

24 MR. ROBINSON: Yes.

25 COMMISSIONER TUCKER: -- just that if those are the

1 factual issues that you're concerned about, you are being
2 given an opportunity to present your evidence or your
3 information on those issues; is that correct?

4 MR. ROBINSON: Well, see, I -- I see it differently.
5 In other words, I feel that I have a right to cross-examine
6 those people who are making these charges before I do
7 anything. I think that's due process. And that's what I
8 asked for back in February.

9 Now if the Attorney General knew that we would not
10 be permitted to have such a hearing, and if he knew that we
11 were not going to be able to subpoena any witnesses here,
12 then I think part of the due process -- at least courtesy --
13 required them to write me a letter, do something telling me,
14 "You can't do this."

15 First time I heard about no subpoenas was about four
16 or five days ago. When he told me no subpoenas, I called up
17 the person that's -- the name on the Commission staff and it
18 says, "Jane Smith," I believe, asked her what I could do
19 about getting witnesses of the Agency to the hearing so they
20 could be cross-examined.

21 COMMISSIONER TUCKER: Well, is it your contention
22 that the factual claims that were indicated are not correct?

23 MR. ROBINSON: They're absolutely not correct. But
24 over and above that, they're not supported by anything.

25 COMMISSIONER TUCKER: Well, okay. So your

1 contention is that there is no evidence to support the
2 conclusion that the -- there was a vehicle on the beach, that
3 excessive sand was taken out, et cetera.

4 MR. ROBINSON: Well, I'm saying, your Honor, that
5 where they claimed that we did not use a road to go there,
6 I'm saying that that is truly not the truth. That's --
7 that's definitely untrue.

8 COMMISSIONER TUCKER: Okay. But you're indicating
9 there was a vehicle there.

10 MR. ROBINSON: There was a vehicle apparently found
11 on one occasion at the foot of a road on the beach, and the
12 only evidence that you have before you are the declarations
13 which I filed under oath. There is nothing before you that
14 the Commission has filed under oath. Not one word.

15 I keep saying the Commission. I mean the Agency.
16 Have not filed one single piece of paper in which they have
17 sworn to anything.

18 And we have -- we have an affidavit in there from a
19 former member of the Agency who states, and it's never been
20 rebutted, that we would in the ordinary course of business be
21 entitled to this extension, and that where they claim that we
22 should have had this type of approval, that type of approval,
23 that he states right in his affidavit there would be no way
24 that we as the Applicant would know that, that it would be up
25 to the Agency to tell us when they issued the permit, "This

1 is not going to be as good; it's conditioned on you getting
2 in this or that." It is unrebutted before you. There is no
3 other evidence on that here today.

4 COMMISSIONER TUCKER: Okay. Could we just go
5 through this real quickly.

6 MR. ROBINSON: Yes, sir.

7 COMMISSIONER TUCKER: The specific findings that I
8 think you're referring to or allegations indicate that you
9 failed to obtain an access permit regarding the off-road
10 vehicle. Is that correct?

11 MR. ROBINSON: That is one of the charges that are
12 made.

13 COMMISSIONER TUCKER: I understand. Did you obtain
14 a permit?

15 MR. ROBINSON: Well, let me say this, that if you
16 want me to tell you something of that nature I would have to
17 be a witness who could testify competently, and I could not
18 do that. And I don't think it's my job --

19 COMMISSIONER TUCKER: Mr. Robinson --

20 MR. ROBINSON: -- to come up here and have you
21 cross-examine --

22 COMMISSIONER TUCKER: I'm just --

23 MR. ROBINSON: -- me. I'm here to cross-examine
24 your agents.

25 COMMISSIONER TUCKER: I'm not trying to

1 cross-examine you; I'm just trying to understand what it is
2 that you're contending --

3 MR. ROBINSON: Well, fine. Then you tell me --

4 COMMISSIONER TUCKER: -- facts in contention.

5 CHAIRMAN McCARTHY: Let me -- may I just interrupt
6 for a moment?

7 MR. ROBINSON: Yes.

8 CHAIRMAN McCARTHY: Mr. Robinson, this Commission
9 operates in a very fair way. If witnesses for an Applicant
10 or an attorney for an Applicant or the Applicant himself
11 makes some valid points, we question our own staff to require
12 them to prove allegations that they give us as the foundation
13 for taking a course of action at their suggestion.

14 Now Commissioner Tucker is simply trying to get at
15 the truth in this matter. And -- and we're not
16 cross-examining you; we're trying to say this to you in a
17 friendly, constructive way.

18 If -- if you would help us by telling us that what
19 the staff of the State Lands Commission has alleged here is
20 either incorrect, inaccurate, or irrelevant, we'd have
21 something to go on.

22 So we're not trying to -- to elicit from you some
23 answer that we want to hear; we're trying to elicit what your
24 view of the truth is.

25 MR. ROBINSON: Chairman, I'm happy to hear that, but

1 you see, one of the things that's right before your eyes is
2 the declaration that I just filed with Mr. John F. O'Grady in
3 which he denies almost every one of those charges under oath.
4 And yet you people have not presented one single bit of
5 evidence to the contrary.

6 CHAIRMAN McCARTHY: Let's see if we can just try to
7 get at the heart of it. Now Commissioner Tucker was asking
8 you whether you had obtained an access permit in the GGNRA to
9 drive vehicles onto the beach. I suppose that presupposes
10 that you did drive a vehicle onto the beach.

11 MR. ROBINSON: Well, I think it presupposes that we
12 had to have an access permit to drive on the beach.

13 CHAIRMAN McCARTHY: Fine.

14 MR. ROBINSON: That's first thing it presupposes --

15 CHAIRMAN McCARTHY: Fine.

16 MR. ROBINSON: -- and we deny that.

17 CHAIRMAN McCARTHY: So you deny that you had to have
18 an access permit?

19 MR. ROBINSON: Absolutely. We were told we could
20 use whatever existing roads, right in the permit.

21 CHAIRMAN McCARTHY: By -- told by --

22 MR. ROBINSON: By the Agency. When we were granted
23 the permit.

24 CHAIRMAN McCARTHY: Which Agency?

25 MR. ROBINSON: The State Lands Commission.

1 CHAIRMAN McCARTHY: Well, the GGNRA has
2 supervisory authority over this land, and they can't
3 determine whether you may drive this kind of a vehicle --

4 MR. ROBINSON: Commissioners --

5 CHAIRMAN McCARTHY: -- onto the beach.

6 MR. ROBINSON: -- this is the way it all came about.
7 In other words, all of a sudden in late December when we were
8 about ready to process this extension, suddenly out of the
9 blue came the contention that part of this roadway was on the
10 GGRNA reservation. Nobody knew that; nobody told anybody
11 that.

12 And as Peter Marsh says in his declaration, the
13 person who worked for the -- your Agency, he says there would
14 be no way that -- that the citizen would know any more than
15 the Agency would. You people would know whether we had to
16 drive over somebody's --

17 CHAIRMAN McCARTHY: Were there any signs --

18 MR. ROBINSON: -- property.

19 CHAIRMAN McCARTHY: Were there any signs posted?

20 MR. ROBINSON: There's no signs. There's an
21 affidavit to that extent, no signs.

22 CHAIRMAN McCARTHY: So your point is if you did
23 drive a vehicle on to the beach area it was an innocent
24 mistake?

25 MR. ROBINSON: Absolutely. It would be like

1 spitting on the sidewalk when you have a cold.

2 CHAIRMAN McCARTHY: And there's no reason for you to
3 know it was a violation of the law?

4 MR. ROBINSON: Absolutely. And I'll tell you, to
5 show the good faith of it, Commissioner, the minute that we
6 were told that there was a problem, we voluntarily, without
7 any other act taken, stopped all of our activity on that
8 beach. We have not been back on that beach since early
9 December, not taken one single grain of sand out of there,
10 even though we had a right to do so.

11 CHAIRMAN McCARTHY: Commissioner Tucker, did you
12 want to pursue this line? Do you want to go to --

13 COMMISSIONER TUCKER: Yes.

14 CHAIRMAN McCARTHY: -- the allegations in B?
15 Commissioner Tucker.

16 COMMISSIONER TUCKER: Okay. The second contention
17 is that --

18 MR. ROBINSON: Commissioner Tucker, before you drop that
19 one, my client has shown me a little picture you might want
20 to see from air map showing the roadways going right down
21 onto the beach.

22 COMMISSIONER TUCKER: Well, I take it from your --

23 MR. O'GRADY: This is the south end of our property,
24 that is a roadway. There is a road going in the middle of
25 our property and there's a road at the -- at the north end.

1 You can see the tracks right there, sir.

2 MR. ROBINSON: All right. Come on back.

3 MR. O'GRADY: We just follow this.

4 COMMISSIONER TUCKER: May I assume from your answer
5 to the first one that you obviously didn't obtain a permit
6 because your contention is that you didn't know that you
7 needed a permit.

8 MR. ROBINSON: No.

9 COMMISSIONER TUCKER: So you didn't have one.

10 MR. ROBINSON: We did not know that the CGRMA had
11 anything to do with that property.

12 COMMISSIONER TUCKER: But the contention was that
13 you didn't have the permit, and I take it your answer is
14 that's correct, you didn't have the permit.

15 MR. ROBINSON: We had no permit, but we didn't know
16 that we were required to have it.

17 COMMISSIONER TUCKER: Okay. The second contention
18 is that you failed to obtain a coastal permit for the
19 prospecting activities.

20 MR. ROBINSON: All right. Now again I'd like to answer
21 that. This, I think, is really sort of the Catch 22, in a
22 sense. I've said it in the papers but maybe it escaped you.

23 First of all, again, as Peter Marsh says in his
24 affidavit, there is what they call a clearing house that all
25 of these agencies adhere to, and so when something like a

1 permit like this is going to be granted, first thing is it
2 goes to the clearing house and every agency who has any
3 interests in it, whether it be federal, state or anything,
4 city, county, they all are given automatic copies of what's
5 going to go on before it happens.

6 So as he points out, the Coastal Commission would
7 have known. As far as he was concerned, when he processed
8 this on behalf of the State Lands Commission, he did not
9 believe that a prospecting permit per se for this type of
10 activity would require a Coastal Commission permit, so he
11 didn't tell us to do it. So we did not do it.

12 COMMISSIONER TUCKER: Okay.

13 CHAIRMAN McCARTHY: Sir, give us the name again of
14 the person who --

15 MR. ROBINSON: Peter Marsh. He's got an affidavit
16 right in front of you.

17 CHAIRMAN McCARTHY: And his title?

18 MR. ROBINSON: He was one of the -- he was one of
19 the supervisors at the State Lands Commission who processed
20 this file on behalf of the State.

21 And secondly, what happened was that when we were
22 told that we had to -- had to get a Coastal Commission
23 permit, Commissioner Tucker, when we were told that we had to
24 get a Coastal Commission permit, we immediately started that.
25 We got a hearing granted on an expedited basis so that we

1 would have a hearing in January of this year to get that
2 Coastal -- Coastal Commission permit before we appeared here
3 in February.

4 And on the last day I happened to be talking to Mr.
5 Eagan of the Attorney General's office, and by chance
6 happened to mention that we were going before the Coastal
7 Commission the next day or the day after. I can't remember
8 if it was one or two days.

9 He -- he got all upset, said, "I didn't know there
10 was even such a hearing; we're going to get that cancelled,"
11 which he did, within two days. It was cancelled. Our
12 hearing.

13 So then they tell us, "One of the reasons that you
14 can't have your permit is because you didn't get a Coastal
15 Commission permit." We were not allowed to have the hearing.

16 COMMISSIONER TUCKER: Well -- okay. I take it then
17 the answer to the second point is that you've not obtained
18 the permit, is that correct?

19 MR. ROBINSON: We made every effort to obtain the
20 permit. We made our applications.

21 And I'll tell you this. I'll tell you this, that if
22 you let that hearing go through it would have been granted.
23 That's the information we had from the -- from the
24 technicians there.

25 COMMISSIONER TUCKER: Your contention is we stopped

1 the hearing?

2 MR. ROBINSON: You stopped the hearing.

3 CHAIRMAN McCARTHY: It might be helpful if we asked
4 Mr. Eagan to comment at this point.

5 Is this an accurate portrayal of the events, Mr.
6 Eagan?

7 MR. EAGAN: No, it is not, Mr. Chairman. I believe
8 in mid December at the request of Coastal Commission staff
9 Erse Corporation did apply for a coastal permit. The staff
10 began to process that permit at the Coastal Commission. I
11 was aware of that. In fact, I had had conversations with the
12 staff person who was preparing the recommendation.

13 The recommendation had not yet gone on to the higher
14 levels of review in Coastal Commission staff these
15 recommendations have to go through when I talked to the
16 person handling it.

17 About this same time I was talking to Mr. Robinson
18 and I advised him that as far as I know the recommendation
19 was going to be heard at the January Commission meeting.

20 Subsequently, with absolutely no input or advice
21 from our office or from myself, higher-ups in coastal staff
22 decided that they could not proceed to a decision and the
23 Coastal Commission couldn't without the type of -- the very
24 type of environmental information State Lands Commission
25 staff was telling Erse Corporation it needed before it could

1 act on the extension request. And there was subsequently a
2 letter directed to Erse Corporation from coastal staff to
3 that effect.

4 But I want to stress that at no point did I get
5 upset. When I was told that the Coastal Commission staff was
6 going to consider this matter, I was already aware of that.
7 And at no point did I say I was going to have this Commission
8 hearing of the Coastal Commission cancelled, and at no point
9 did I seek to have it cancelled. It was cancelled at the
10 behest of higher-ups on the staff of the Coastal Commission.

11 CHAIRMAN McCARTHY: Why did the Coastal Commission
12 put this on their agenda in the first place?

13 MR. EAGAN: They put it on the agenda, I assume --
14 I'm not sure of this -- on the assumption that they had all
15 the information that they needed to act upon it. Apparently
16 this early decision was made by someone who wasn't later --
17 in fairly low echelon -- who wasn't involved in the review by
18 coastal staff of the ultimate recommendation on application.

19 Apparently at this later date someone decided that
20 really they didn't have sufficient information to make a
21 recommendation to their Commission, and at that juncture, in
22 their terminology, unfiled the Coastal Commission application
23 and directed to -- a letter to Mr. O'Grady explaining why
24 that was being done.

25 CHAIRMAN McCARTHY: How far in advance of the

1 scheduled Coastal Commission meeting do they do that?

2 MR. EAGAN: I could get a precise date for you. I
3 think it was on the order of a week to 10 days, but I'm not
4 positive about that. If it's important I can try to find the
5 letter, my copy of the letter from coastal staff to Erse.

6 CHAIRMAN McCARTHY: It's a little bit unusual for
7 the Coastal Commission to be scheduling an item and then
8 discover that they -- they didn't have the data they needed
9 to make a judgment.

10 MR. EAGAN: I think that's true.

11 CHAIRMAN McCARTHY: The application and the report.

12 MR. EAGAN: It's not the usual procedure, but it
13 does happen on occasion, however.

14 CHAIRMAN McCARTHY: All right. Has the Coastal
15 Commission reduced to writing its own reasons for moving that
16 item off the file?

17 MR. ROBINSON: Your Honor, may I say --

18 CHAIRMAN McCARTHY: Mr. Robinson, I'll call on you
19 in just a second. Let me get an answer for this from Mr.
20 Eagan.

21 MR. EAGAN: Yes, they have.

22 CHAIRMAN McCARTHY: Do we have a copy of it?

23 MR. EAGAN: Somewhere in the file I'm sure we do,
24 Mr. Chairman. I'll try to --

25 CHAIRMAN McCARTHY: Do you want to pluck it out,

1 please?

2 Mr. Robinson, let's let you get your two cents in.

3 MR. ROBINSON: Mr. Chairman, I was hesitant to be a
4 witness in this action since I'm operating as a lawyer, but
5 since I'm the only one who could testify, I'm willing to go
6 under oath and tell this Commission exactly what really
7 happened, and it's not anything close to what Mr. Eagan has
8 told you here today.

9 MR. EAGAN: Well, I have the letter, Mr. Chairman.
10 It's my only copy. I can either read it or provide a copy.

11 MR. ROBINSON: Read the letter, if you will, but I'd
12 like to testify as to what happened between you and me.

13 CHAIRMAN McCARTHY: We're not going to put you under
14 oath, Mr. Robinson, and if you wish to make any statements
15 further characterizing the sequence of events, you can do
16 that to the members of the Commission and we'll try to make
17 the best intelligent judgment that we can.

18 MR. ROBINSON: All right.

19 CHAIRMAN McCARTHY: Why don't you read the letter?

20 MR. ROBINSON: It's a fairly brief letter. It's a
21 letter on the letterhead of the California Coastal
22 Commission. It's dated January 6th, 1987. It's directed to
23 Erse Corporation in Torrance.

24 COMMISSIONER ORDWAY: Excuse me, what -- the
25 letter's dated January 6th?

1 MR. EAGAN: Yes.

2 COMMISSIONER ORDWAY: What was the scheduled date of
3 the Commission meeting for January?

4 MR. EAGAN: I believe it was January 14th.

5 COMMISSIONER ORDWAY: Thank you.

6 MR. EAGAN: "Subject application number 1-85-210 for
7 coastal development for sampling sand for mineral
8 content at Ocean Beach, City of San Francisco.

9 "Dear Mr. O'Grady, in reviewing your application for
10 a California Coastal Development Permit, it has become
11 apparent that we do not have sufficient information to
12 evaluate its environmental impacts on the beach and
13 ocean area under consideration.

14 "Pursuant to the Permit Streamline Act which allows
15 30 days to review the filing status of applications, it
16 seems appropriate at this time to unfile your
17 application pending the completion of your request for a
18 one-year extension on your permit from the State Lands
19 Commission.

20 "Normally the Coastal Commission does not act upon a
21 permit request until the State Lands Commission has
22 taken action. It is my understanding in conversation
23 with representatives of the State Lands Commission that
24 they will function as the lead agency and require an
25 initial study of your sampling proposal based on

1 requirements of the California Environmental Quality
2 Act.

3 "Our Agency will be one of the reviewers on this
4 initial environmental study which must be acted upon by
5 the State Lands Commission at the time they consider
6 your extension requests.

7 "Following this action, you can then proceed with
8 your permit application with this Agency. Thank you for
9 your cooperation in this matter.

10 "Sincerely, Gary L. Holloway, North Coast Planner."

11 CHAIRMAN McCARTHY: All right. Let me just pause
12 for a moment here, Mr. Robinson, please. Let me ask the
13 staff, what was the original date of the permit granted to
14 Erse Corporation?

15 MR. EAGAN: It commenced, Mr. Chairman, March 1st,
16 1985.

17 CHAIRMAN McCARTHY: March 1st, 1985. All right.

18 Mr. Robinson, if you could sum up in a few words,
19 what is it you have done, your client has done in reliance
20 upon this permit in terms of expenditure of money or any
21 other kind of action that you think has created inequity for
22 you.

23 I wouldn't want you to proceed on the assumption
24 that permits are automatically extended when they expire.
25 I've sat on this Commission only four years and three months,

1 but there have been other occasions when we did not extend
2 the permit or if -- any number things happen. If the
3 permittees did not move expeditiously to exercise their
4 rights under the permit. It could be for a variety of
5 reasons.

6 So I say this in connection with an earlier comment
7 I believe I heard you make, that extensions of permits are
8 routinely done for the Commission.

9 MR. ROBINSON: I'm only quoting what's in that
10 affidavit from Mr. Peter Marsh.

11 CHAIRMAN McCARTHY: Well, I appreciate that, and Mr.
12 Marsh has a right to say that. But as Chairman of this
13 Commission I would indicate to you my own experience as a
14 voting member that I've seen a number of occasions when
15 permits are not extended unless there is a case made.

16 MR. ROBINSON: I think --

17 CHAIRMAN McCARTHY: A permit is a very valuable
18 economic asset extended. There can be any number reasons why
19 it wouldn't be extended.

20 So I think what we need to hear here is whether --
21 whether the coastal permit was granted or not granted or
22 delayed, what we really need to hear is what's the equity
23 case that you have to present for extending this permit, and
24 also want to hear from you what is invalid or improper or
25 inappropriate about our staff's request to gain from your

1 client some environmental information so that we can make a
2 judgment.

3 You know, it may be that this Commission in the
4 first place should have asked for certain kinds of
5 environment -- and its staff should have advised it to ask
6 for certain kinds of environmental information, and we may
7 simply have failed to do that. We may not have performed our
8 responsibilities fully and correctly the first time on this
9 permit. That's frankly what's beginning to occur to me in
10 this issue.

11 This -- this whole proposal is not without some
12 controversy in the San Francisco area, I think we'll agree.

13 Now, could you address those couple points?

14 MR. ROBINSON: Yes, your Honor, and I -- I would
15 like to perhaps start with something very simple, first, so
16 that we all know what we're all talking about. I don't know
17 whether you've had occasion to be down to that beach area
18 recently or not.

19 CHAIRMAN McCARTHY: I live in San Francisco and I
20 spend a fair number of hours on that beach.

21 MR. ROBINSON: Now basically what -- what we had in
22 mind was this: We thought that from a half a mile out in the
23 water up to the mean high tide that there existed a unique
24 source of minerals which we felt -- maybe perhaps
25 erroneously, but we still believe is in some part due to the

1 San Andreas fault which happens to come in there, and that
2 the San Andreas fault is regurgitating in there all the time
3 and causing these minerals to flow into the water and settle
4 on the bottom of the ocean there.

5 And so the concept was that we would like to go in
6 and prospect and take out samples from every part of the
7 area, and then subject those to some type of recognized
8 analysis and process and so forth, and then make a
9 determination whether or not there was in fact valuable
10 minerals there which would be worthwhile for somebody to
11 mine, and secondly for the state and/or the other entities
12 that might be involved to share in it. That was the concept.
13 And so we were given what's known as a prospector's permit.

14 Now one of the problems that developed was this,
15 that we began to find that one of the richest sources that we
16 had there was titanium, and titanium is a very, very valuable
17 mineral today. We import most of -- the United States
18 imports most of its titanium from other sources, so we felt
19 that titanium was a very important item.

20 But one of the problems with titanium is that in the
21 normal, usual processing of it, as is done in the usual
22 market, is that it permits environmental -- you know, what do
23 you call it, environmental poisons to be sent out into the
24 atmosphere and so forth.

25 Also, it requires a place to dump all these

1 byproducts and so forth. So it's a very unhealthy and not a
2 very good way to -- to run a train, if I may use that
3 expression. That's probably one of the reasons why we import
4 so much of it, because it's hard to find ways to do it
5 environmentally safely.

6 So what Mr. O'Grady did, along with people who put a
7 lot of money into trying to do this -- and I -- I'm not going
8 to overstate the case; I'm going to tell you that it's
9 somewhere between a half a million and a million dollars has
10 been expended trying to develop a process which would not
11 require the type of environmental impact that we were
12 ordinarily confronted with.

13 And to that end, he employed a person who apparently
14 is one of the top mineralogists in the world, and I say that
15 without too much hesitation because apparently -- I didn't
16 know this -- the United States doesn't even have a university
17 that specializes in that, believe it or not. Most of the
18 good universities that know about mineralogy are in Russia.

19 And this person happened to be from Afghanistan and
20 he trained in Moscow, got out of Afghanistan before the --
21 all the hostilities and was available and is apparently a
22 brilliant guy. And he's come up with some real ideas about
23 how to process this so it can be done as a powder mineralogy.

24 So that's what we did. We spent most of the time
25 and money trying to develop the process because we knew

1 without a process that would meet the environmental
2 requirements that we would now at the end, even though we
3 might get the extension, at the end we want to go into
4 business, you're not going to let us do it. So there was
5 where most of the time and money was spent.

6 Meantime, the sands were taken, the nonmagnetic
7 sands were taken off of the surface of the ocean from various
8 parts. They were stacked in barrels, marked exactly where
9 they had come from, and various samples were being taken of
10 that.

11 And we were in the last process of trying to get all
12 this stuff together so that we could come up and ask for the
13 extension on the permit when this sort of hit the fan with
14 the San Francisco Chronicle. And everything stopped from
15 that time on.

16 Now what I guess I wanted to say to you is this,
17 that everybody talks about this environmental impact, and
18 really what we've been doing is would be like if you took a
19 little shovel, and got out there in the water where the --
20 where you can still stand up, and when the waves are coming
21 in and out you grab a scoop of sand. And there's a temporary
22 hole there for five seconds, but as the water sweeps back and
23 forth you never even knew that it happened. And that's the
24 type of grading we've been taking off the surface of that
25 ocean.

1 There is no holes there at all. We've not left one
2 scar there. And so there's been no environmental impact
3 today.

4 What I think is the concern is, at least of the City
5 of San Francisco, as I read their papers, is that we were
6 going to come out there with some great big plant, if you
7 permitted this, and sit out there in the water and dredge all
8 this stuff up and make big holes and ruin their beach and so
9 forth. If that's what we were going to do, I wouldn't blame
10 them for being upset, but that is not what we had in mind at
11 all.

12 Now we can go in there. We don't even -- if you
13 would give us the extension on the permit we don't even have
14 to go on the roads or anything else. We can take a little
15 boat, we can go there off hours, like early in the mornings,
16 you know, 5:00 o'clock in the morning, eight, go there late
17 hours in the late evening, and get all of this stuff out of
18 there.

19 And then we can come back after we've analyzed it,
20 and at the end of the year we can then come back and say,
21 "Here's what we've got, and here's what we think we can do
22 with it." Then you can decide whether or not it's worth
23 going forward with it.

24 And we can do that without any impact whatsoever.
25 That's the point. I don't understand why everybody is making

1 such a big deal at this point. If we were going to go out
2 there with a great big dredge, I can understand it.

3 CHAIRMAN McCARTHY: Just a moment, Mr. Robinson.

4 Does our staff wish to comment on the environmental
5 impact that might ensue from digging up the sea level or
6 does -- has the Coastal Commission staff made any comment on
7 this that suggests that the additional environmental
8 information that's being proposed now is appropriate?

9 MR. EAGAN: The -- there are two concerns that staff
10 has and that we have -- Attorney General's office has
11 concurred in as a legal matter. Obviously the prospecting
12 permit is not an end in and of itself --

13 CHAIRMAN McCARTHY: Correct.

14 MR. EAGAN: -- regarding Erse Corporation, and
15 presumably they're hoping to find commercial quantities of
16 mineral out there -- titanium, whatever -- and if they're
17 fortunate in that regard to seek the lease from this
18 Commission and commence mining.

19 It is the staff's position that if it can be seen at
20 the outset that there may be environmental problems with the
21 mineral lease in terms of the actual extraction, the
22 processing, the transportation off the site of whatever
23 mineral is out there, that problem or problems ought to be
24 addressed at the earliest possible juncture, both as a favor
25 to the Commissioners and to the Applicant, in order to

1 forestall the situation where another year of investment is
2 put into the situation, and then it's only later in
3 connection with the lease application, if that's what
4 develops, that it turns out that there's significant, severe
5 environmental problems that might prohibit or substantially
6 affect whether or in what manner it might even be conducted
7 out there.

8 Now there's also a conceivable problem -- and we
9 don't know this, and the staff doesn't know this until it
10 conducts an initial study -- a conceivable problem even with
11 just one more year of prospecting. Really the level of
12 prospecting that was conducted in the first two years, at
13 least until the very last few months in the fall, was very
14 light in terms of the total number of samples that were
15 authorized to be taken out of there. I think the total, for
16 instance, of samples taken at about 50 pounds each up through
17 September of 1986 was only 341 out of an authorized total of
18 over 17,000.

19 At some juncture we have been advised that -- by Mr.
20 O'Grady that it was his intent in this new phase of the
21 permit to take 80 to 100 samples per day out of the
22 prospecting area.

23 In addition to possible problems that that might
24 create, being conducted -- that kind of operation hired by
25 the Golden Gate National Recreation Area, there is a problem

1 with sand erosion along certain portions of Ocean Beach and
2 this has been a cause for concern and continuing discussions
3 with the staff of the Coastal Commission and the city.

4 Now it may be that given the extent of what Erse
5 Corporation intends to do and where it intends to do it, that
6 that won't be a problem with regard to sand erosion. The
7 problem is at this point that judgment or that conclusion
8 can't be made based upon the information or the lack of
9 information in the hands of the Commission.

10 That was another reason why the Commission with the
11 concurrence of our office thought an initial study was
12 appropriate.

13 Now initial study does not necessarily require
14 preparation of an Environmental Impact Report. The question
15 is you do the study to find out is there a possibility that
16 the -- that the activity may have a significant effect on the
17 environment. If you do your study and find out there's no
18 possibility, then your negative declaration evolves.

19 So we're really at the very threshold stage in this
20 where Commission staff feels it really can't reach the
21 conclusions it has to reach to go forward unless it has an
22 initial study, for those two reasons: The further operations
23 under the permit and the eventuality that there may be at
24 some point a mineral lease functioning off the beach.

25 CHAIRMAN McCARTHY: In our response to the Applicant

1 before us, have we described clearly the nature of the
2 information that we seek from them?

3 MR. EAGAN: I'll direct Commission's attention in
4 the materials provided that there are a number of letters
5 that -- perhaps individually, certainly in aggregation -- let
6 the Applicant know what it is that the Commission wants.

7 The first I guess would be the letter D in the
8 materials, the letter from Mr. Willard to Erse Corporation
9 dated November 26th, 1986. Then there is a further letter
10 to -- to Mr. -- from Mr. Willard to Mr. O'Grady dated
11 December 30th, 1986. Then a fairly lengthy letter from
12 Executive Officer Ms. Dedrick to Mr. O'Grady dated January
13 6th, 1987.

14 And I think certainly to the best of staff's ability
15 those letters laid out what it was that staff wanted to see
16 in the way of information and why it thought it needed to see
17 it.

18 CHAIRMAN McCARTHY: Okay.

19 Mr. Robinson?

20 MR. ROBINSON: Your Honor, with respect to the last
21 mention of request for information, that did not come about
22 until after all of this began.

23 In other words, we had -- if you'll notice right in
24 your own file, we had letters from the Long Beach office
25 telling us simply what they -- what we needed to do to extend

1 the permit, and we were doing all the things that we are
2 asked to do. That was a very simple thing.

3 Then when all of this began, when they suddenly
4 found out that there's supposed to be all this environmental
5 and so forth, and they had the problem with Golden Gate upset
6 about it and the Coastal Commission upset about it, then came
7 this letter saying, "You've got to do this and this and this
8 and this and this," all of which was brand new and most of
9 which Mr. O'Grady's answered by saying, "The scope and
10 quantity of the information that you requested cannot be
11 furnished to you by anything less than a complete
12 Environmental Impact Report," which is obviously not a
13 requirement for an extension of the --

14 CHAIRMAN McCARTHY: When was that letter?

15 MR. ROBINSON: That was from Mr. O'Grady back to
16 them when they wrote that letter of December 30.

17 Now what I -- what I'm trying to point out to the
18 Commission is this, and I -- and I don't want to quarrel with
19 Mr. Eagan. Actually, he's got a good name and I'm sort of an
20 adopted son of San Francisco, myself, and I have no quarrel
21 with Mr. Eagan. And I'm sure that he's a busy man just like
22 everybody else, perhaps does not have total recall.

23 CHAIRMAN McCARTHY: I'm confident Mr. Eagan
24 appreciates all those remarks.

25 MR. ROBINSON: But I'd just like to say that what we

1 have here, your Honor, is this: The truth of the matter is I
2 did get a call from Mr. Eagan, or I called him -- I can't
3 remember which -- couple of days before this January 6th
4 letter, and I mentioned to him that there was going to be a
5 hearing of the Coastal Commission.

6 And he -- without any question -- said, "I didn't
7 know that." And he said, "I don't think that there should be
8 any action taken on your Coastal Commission permit until we
9 have the Land Commission hearing in February."

10 And two days later we got this letter cancelling
11 the -- we didn't get this letter, but we got a letter
12 cancelling the hearing.

13 Now --

14 CHAIRMAN McCARTHY: Mr. Robinson, I think we
15 understand your point on that. Let's --

16 MR. ROBINSON: All right.

17 CHAIRMAN McCARTHY: -- let's just stipulate there's
18 a difference of opinion --

19 MR. ROBINSON: All right.

20 CHAIRMAN McCARTHY: -- in the sequence. Can we get
21 back to my --

22 MR. ROBINSON: Yes.

23 CHAIRMAN McCARTHY: -- major question?

24 MR. ROBINSON: Yes.

25 CHAIRMAN McCARTHY: The major question was what

1 equity do you have into this whole enterprise acting in
2 reliance upon the permit that you had? You indicated that
3 the Erse Corporation, led by Mr. O'Grady, has spent one-half
4 million to one million dollars to develop the process to mine
5 titanium.

6 MR. ROBINSON: Plus the activities that we did at
7 the beach. All inclusive I'd say about a million dollars.

8 MR. O'GRADY: Million dollars -- over a million
9 dollars.

10 CHAIRMAN McCARTHY: Does --

11 MR. O'GRADY: Over a million dollars.

12 CHAIRMAN McCARTHY: Does the Erse Corporation do
13 mining in other places?

14 MR. ROBINSON: No.

15 CHAIRMAN McCARTHY: Is this the only single
16 instance --

17 MR. ROBINSON: Right.

18 CHAIRMAN McCARTHY: -- in which mining has been
19 attempted by the Erse Corporation?

20 MR. O'GRADY: Sir, I am acting under a present
21 mandate from People's Republic of China to set up the
22 titanium industry. When I did that, I made a world survey --

23 MR. ROBINSON: That's all in your paper.

24 MR. O'GRADY: -- I made a world survey and found
25 that the United States was 25 years behind Russia, 15 years

1 behind the United States, and 10 years behind the rest of the
2 world.

3 Mr. Chairman, please be patient with me because
4 this -- the whole basis of the thing --

5 CHAIRMAN McCARTHY: Would you answer the question I
6 asked, Mr. O'Grady?

7 MR. O'GRADY: Yes, sir. Yes, sir. Yes, sir.

8 MR. ROBINSON: He wants to know how much you spent.

9 MR. O'GRADY: Oh. Over a million dollars, sir.

10 By the way, part of my money and part of patriots,
11 where -- I could only go to patriots to assist me because of
12 the situation that the United States is in at the present
13 time.

14 I've served my country two times, sir, and I feel
15 that this -- this third time, I'm serving it a third time
16 with this titanium program.

17 And by the way, one more point, Mr. Chairman:
18 Beside the titanium, we have 12 other elements in that mass
19 of material that has no part of the land. It's a gigantic
20 floating mass of raw -- raw strategic elements that's
21 floating back and forth in tens of millions of tons. None of
22 these peoples understand that.

23 I have made a study of this for four-and-a-half
24 years. I'm almost 72 years old. I've devoted
25 four-and-a-half years to this program, and I could have been

1 a millionaire, had I been like everybody else, working for
2 the monetary bit. But that's not so. My code is for God,
3 for country, for self. I'm serving my country with this
4 program.

5 CHAIRMAN McCARTHY: Thank you, Mr. O'Grady.

6 Do you have some information you provided to the
7 Commissioner and staff to demonstrate that one million
8 dollars has been spent on developing a process?

9 MR. ROBINSON: We could do that very quickly, in a
10 day or so.

11 CHAIRMAN McCARTHY: I would -- given the number of
12 samples that were taken out, as indicated by Mr. Eagan's
13 testimony, which was a small fraction of the samples that
14 were authorized to be extracted from the soil, I'm just
15 wondering how the million dollars invested in the process is
16 applicable to the -- to the issue before us.

17 MR. ROBINSON: It's the development of the plant to
18 do it. That's the problem. And --

19 CHAIRMAN McCARTHY: Development of a plant?

20 MR. ROBINSON: Yes, to do this.

21 CHAIRMAN McCARTHY: All right.

22 MR. ROBINSON: And we have pictures of it.

23 MR. O'GRADY: Could I show you?

24 CHAIRMAN McCARTHY: Commissioner Tucker?

25 COMMISSIONER TUCKER: The -- Mr. Robinson, I wanted

1 to return to these points because --

2 MR. ROBINSON: Surely.

3 COMMISSIONER TUCKER: -- I think you made a serious
4 accusation that -- and I think the Commissioners are all
5 sensitive to the claim that you or your client's opportunity
6 to be fully heard is somehow being abridged by this hearing.

7 Essentially what I gather from your presentation so
8 far is that all of the staff statements regarding factual
9 issues, that is the failure to obtain a permit from the
10 GGNRA, the failure to obtain a coastal permit and failure to
11 obtain a permit from the U. S. Army Corps of Engineers are
12 essentially correct, and I think it's important for you to
13 focus on the fact that really what your dispute is is a
14 question of law. You are contending essentially that in each
15 of these instances you are not required to obtain permits.

16 MR. ROBINSON: No, I've never said that, because
17 I've never made a study of the law sufficiently to tell you
18 that.

19 COMMISSIONER TUCKER: Well --

20 MR. ROBINSON: All I'm saying --

21 COMMISSIONER TUCKER: -- but you're contending that
22 these facts are somehow in contention, yet you've indicated
23 that you didn't have the permit from GGNRA, you don't have
24 the coastal permit, and you don't have the permit for the
25 U. S. Army Corps of Engineers.

1 MR. ROBINSON: Well, Commissioner, may I answer it
2 this way, if I may. As of November 26th and again in
3 December 30th, I believe it is, they've quoted to you a
4 letter which is in your file in which they tell us there,
5 "You should get this and get this and get this and get this,"
6 right?

7 But if you look at the -- at the permit that was
8 granted or any of the papers that were issued up to and
9 including the issuance of the permit, there is no such
10 statements.

11 In other words, there is at no --

12 COMMISSIONER TUCKER: Mr. Robinson, look, you're not
13 focusing on what the issue is here. You've contended that
14 you're somehow being denied the opportunity to make a full
15 presentation here.

16 MR. ROBINSON: I am.

17 COMMISSIONER TUCKER: Okay. The issues raised are
18 issues regarding whether or not you've obtained permits.
19 Okay. You've indicated you haven't obtained those permits.
20 If you have some reason why you did not obtain them, you are
21 certainly being provided through this hearing the opportunity
22 to explain --

23 MR. ROBINSON: No, I'm not --

24 COMMISSIONER TUCKER: -- why you did not.

25 MR. ROBINSON: That's exactly what I'm not being --

1 I'll -- look, I really had decided not to say this, but I'm
2 going to say it in view of your remarks, Commissioner Tucker.
3 This happens to be the 44th anniversary of the date that I
4 was shot down over Nazi Germany. And I spent some time
5 there. And I was advised that the reason that I was there
6 was to preserve democracy.

7 And I will tell you, sir, that my concept of
8 democracy goes further than freedom of speech. It goes to --
9 to the concept of the sensitivity of the individual and his
10 person and his property.

11 Now this is not a situation where we're coming in
12 here for the first time and saying, "Please, Commissioner
13 Tucker, let us go down to your beach and see what we can find
14 out." That's what we did two years ago, as Commissioner --

15 COMMISSIONER TUCKER: Well, at -- at --

16 MR. ROBINSON: Just a minute; I'd like to finish my
17 remarks.

18 COMMISSIONER TUCKER: Well, at that time --

19 MR. ROBINSON: Commissioner McCarthy has pointed out
20 that since that time, in reliance upon a permit that's very
21 broad, approved by the Attorney General's office who now
22 comes in and tells us, "Oh, you didn't do this and you didn't
23 do that," but approved by the Attorney General's office, we
24 went out and we relied upon in good faith and did everything
25 that we thought we were doing legally.

1 As soon as we were told that we were not doing what
2 you people wanted us to do, we stopped, because we are in
3 good faith. We thought that by stopping and doing and
4 showing that we were in good faith, by immediately applying
5 for the coastal permit, which you then for the first time
6 said we had to have that, then we would then be able to come
7 in here and get this thing accomplished.

8 What happened? As soon as we get the thing on the
9 calendar, it's taken off the calendar. If you read -- if you
10 heard what he said in the letter it was taken off the
11 calendar because they thought that this hearing should go
12 first. And yet when we come down here you say, "Well, you
13 didn't get the permit from the Land Commission."

14 COMMISSIONER TUCKER: No, that's not --

15 MR. ROBINSON: Now that's Catch 22.

16 COMMISSIONER TUCKER: No, I -- you are distorting
17 what is going on here. What is going on here -- and on the
18 issue of good faith I think it's important for the record to
19 be clear, that if you look at the application that was filed
20 for this permit originally, you did not disclose or your
21 client did not disclose the fact that you had attempted to
22 obtain a permit from the National Park Service and had been
23 turned down on that. I think it's --

24 MR. ROBINSON: See, now if --

25 COMMISSIONER TUCKER: -- if the staff --

1 MR. ROBINSON: See, now just a minute.

2 COMMISSIONER TUCKER: -- wasn't aware of that --

3 MR. ROBINSON: I'm going to interrupt you right
4 there. When I talk about Nazi Germany, I really begin to
5 wonder what's going on here. You don't have a shred of
6 evidence that that ever happened. Not a shred of evidence.

7 COMMISSIONER TUCKER: Is that --

8 MR. ROBINSON: No, all you've got is an accusation.
9 You've got a -- you've got a statement under oath that it
10 didn't happen.

11 COMMISSIONER TUCKER: I have the permit right here
12 that fails to disclose any of that information.

13 MR. ROBINSON: What permit?

14 COMMISSIONER TUCKER: The application for the permit
15 that was filed.

16 MR. ROBINSON: Well, what does it fail to disclose?
17 Tell me.

18 COMMISSIONER TUCKER: Right here where it asks on
19 the second page, "Identify any public agencies having
20 approval authority over the --"

21 MR. ROBINSON: How would we know who has approval
22 over it? That's a legal conclusion. If your staff doesn't
23 know --

24 COMMISSIONER TUCKER: You did not apply to the
25 National Park Service?

1 MR. ROBINSON: Pardon me?

2 COMMISSIONER TUCKER: You did not apply to the
3 National Park Service?

4 MR. ROBINSON: If you read Mr. O'Grady's
5 affidavit -- it's under oath and it's uncontradicted -- he
6 said it didn't happen, and if it did happen, it had nothing
7 to do with the permit.

8 COMMISSIONER TUCKER: Wait, wait, wait. It did or
9 it didn't happen?

10 MR. ROBINSON: He says it didn't happen, to his
11 recollection, and nobody says -- nobody's ever showed me any
12 copy of it, nobody's ever given me a piece of paper to show
13 it's true. I -- I have no record to indicate that ever
14 happened.

15 CHAIRMAN McCARTHY: May I -- may I just assert
16 myself for a moment?

17 Of course, Mr. Robinson, in all fairness, now, the
18 Golden Gate National Recreation Area has had extensive media
19 coverage in the Bay Area media, and it's relatively easy to
20 ascertain its existence and its geographical jurisdiction.

21 I think I seem to hear you saying that your client
22 had no reasonable way to learn of that jurisdiction or to
23 know of it, to either -- on his own volition or through the
24 use of his staff or his attorney.

25 MR. ROBINSON: Well, I'm saying certainly not --

1 CHAIRMAN McCARTHY: Is that a fair -- is that a fair
2 characterization?

3 MR. ROBINSON: Not quite. Not quite, Commissioner.
4 I'd say to make it fair would be to say that his ability to
5 do it was less than your Agency's, or your Commission's.

6 CHAIRMAN McCARTHY: Do what, sir?

7 MR. ROBINSON: To know which agencies had
8 jurisdiction in that area, because you have maps that show
9 all that. If you read again Peter Marsh's declaration he
10 says that all those things are known to you, not to the
11 person that comes in, the citizen.

12 CHAIRMAN McCARTHY: Well, I appreciate that, but
13 there is a burden on an Applicant before the State Lands
14 Commission for a permit of this kind to ascertain what
15 authorities have jurisdiction over the the site that's
16 involved and what permits might be required for any action
17 that you would take in connection with your exercise of the
18 permit.

19 I think the only point being made here -- and I'm
20 not sure I want to dwell too much longer on this specific
21 issue -- that the point being made here is that it's
22 reasonable for us to assume that successful business people,
23 corporate leaders with available staff, are in a position to
24 readily ascertain what governmental authorities have
25 jurisdiction over this area. That's --

1 MR. ROBINSON: But see, you're not describing that
2 was what the facts were. I mean, he's not a corporation;
3 he's a one-man shop at that time.

4 And secondly, if I recall correctly, the records
5 will show that he had -- he made an application for two
6 areas. One where you say the Golden Gate Park Service is,
7 and the other was some place in San Mateo. And at the
8 request of the Agency, they came and said, "Would you
9 withdraw the one against -- for San Mateo and we'll give you
10 the one on the coastal thing."

11 CHAIRMAN McCARTHY: I think it's only -- it's a
12 reasonable conclusion for us to draw that if permits required
13 for several different purposes by the GGNRA or the Army Corps
14 of Engineer, the burden was on the Applicant to try to
15 ascertain what those permits were. It was certainly
16 reasonable for you to ask this Commission or its staff to
17 assist you in identifying any such --

18 MR. ROBINSON: Which we did.

19 CHAIRMAN McCARTHY: -- authorities.

20 MR. ROBINSON: Which we did.

21 CHAIRMAN McCARTHY: Is that in the record?

22 MR. ROBINSON: Yes. If Peter Marsh says that he was
23 the one that approved it because he did not think that there
24 was any -- and I think he's told me this; I don't know if
25 this is in his affidavit -- that the action --

1 CHAIRMAN McCARTHY: Does Peter Marsh still work for
2 us?

3 EXECUTIVE OFFICER DEDRICK: No, he does not.

4 MR. ROBINSON: No, he's left the Agency.

5 COMMISSIONER TUCKER: It's not i. here.

6 MR. ROBINSON: What he does say is, I believe,
7 Commissioner McCarthy, that this particular property that the
8 Golden Gate -- whatever it is, Golden Gate --

9 MR. O'GRADY: Recreation.

10 MR. ROBINSON: -- Recreation is now -- has domain
11 over --

12 CHAIRMAN McCARTHY: Golden Gate National Recreation.

13 MR. ROBINSON: I believe -- I believe was purchased
14 from the City of San Francisco. I may be mistaken, but I
15 believe it was purchased from the City of San Francisco, and
16 that this purchase was apparently going on about the time of
17 the application and that's why it didn't surface. I don't
18 know exactly how it happened.

19 CHAIRMAN McCARTHY: I'm looking at Mr. Marsh's
20 declaration. I don't see any reference in the declaration --
21 unless it's more than one declaration -- to the point we're
22 addressing now as to who carried the burden to inquire what
23 permits under the different governmental jurisdictions were
24 required.

25 MR. ROBINSON: May I address --

1 CHAIRMAN McCARTHY: There's nothing in Mr. Marsh's
2 declaration.

3 MR. ROBINSON: If I may be so bold as to read a
4 portion of it.

5 CHAIRMAN McCARTHY: We have no reason to conceal any
6 of that from your client -- Mr. Robinson.

7 MR. ROBINSON: Okay.

8 CHAIRMAN McCARTHY: -- if we could.

9 MR. ROBINSON: Mr. -- Mr. McCarthy, it's in the --
10 it's in the declaration of Mr. O'Grady.

11 CHAIRMAN McCARTHY: Well, that doesn't help my
12 earlier point, which was that Mr. O'Grady had two choices:
13 Either he could -- he could use his own staff or do it
14 himself to inquire which governmental jurisdictions required
15 permits for activities reasonably related to the exercise of
16 the permit granted by this Commission; or Mr. O'Grady could
17 have asked the State Lands Commission for assistance in
18 identifying any governmental jurisdiction.

19 MR. ROBINSON: And that's what the thrust of his
20 affidavit is that he did. Peter Marsh has told me --

21 CHAIRMAN McCARTHY: I mean when the original
22 permit --

23 MR. ROBINSON: I'm talking about the original
24 permit.

25 CHAIRMAN McCARTHY: -- was -- fine.

1 MR. ROBINSON: When the original permit was applied
2 for, he was dealing directly with Mr. Marsh, and Mr. Marsh
3 has advised me -- and I believe it's in Mr. O'Grady's
4 affidavit -- that the -- there are maps that you people have
5 that tell you where all these things are, and that also each
6 of the agencies gets a copy of this thing and that for some
7 reason it fell through the cracks or whatever and nobody knew
8 about it.

9 But you see, the point I'm trying to make is why are
10 we making such a point of this? Because what has really
11 happened -- I mean in what way has the Golden Gate Commission
12 been harmed?

13 CHAIRMAN McCARTHY: Well, Commissioner Tucker wanted
14 to pursue this line of questioning, and I was attempting to
15 find out whether there could be a meeting of the minds.

16 MR. ROBINSON: All right.

17 CHAIRMAN McCARTHY: Apparently there is not.

18 MR. ROBINSON: I'm willing to accept your statement,
19 Commissioner, that ordinarily we would -- if we were a normal
20 corporation we should probably have a staff that would be
21 able to figure this out, but unfortunately we did not.

22 CHAIRMAN McCARTHY: All right. On any of the points
23 raised, do either of the Commissioners have questions that
24 they wish to ask of Mr. Robinson or Mr. O'Grady?

25 COMMISSIONER ORDWAY: No.

1 CHAIRMAN McCARTHY: Mr. Robinson, would you like to
2 bring any other points or arguments on behalf of your client
3 to the Commission's attention?

4 MR. ROBINSON: Yes, I would like to say this, that
5 apparently what's now being suggested by the Attorney General
6 is this: He is saying that one of the reasons why they would
7 like to bring this to a halt is because it may turn out that
8 ultimately we would not be able to engage in a process there,
9 and so therefore why burden everybody including Erse
10 Corporation with more expense and so forth.

11 And my position is since we have taken the time and
12 in good faith relied upon the permit, spent the money, are
13 prepared to go forward, why not let us go forward with
14 getting the permit from the -- from the -- what do you call
15 it, the -- help me.

16 COMMISSIONER ORDWAY: Coastal Commission.

17 MR. ROBINSON: -- Coastal Commission as we
18 attempt -- started to to do. That seems to be one of the
19 conditions that you want cleared up.

20 In the meantime, we can -- we would be able to
21 demonstrate also, if we are able to get that approval, then
22 we can also demonstrate to you there will be no need for us
23 to in any way trespass upon the Golden Gate property. We can
24 do this by boat. There's no problem. And if we had known
25 there was any problem we would have done it by boat.

1 So all we're talking about is getting the samples.
2 If we get the samples and then we can demonstrate what we can
3 do down there, then you will still have an opportunity to
4 decide whether or not, with the Coastal Commission's
5 information, whether we can accomplish what is probably a
6 good objective for everyone without impacting the -- you
7 know, the environment. Seems to me that's the fair,
8 appropriate way to do it.

9 In the meantime, we're not going to hurt anything.
10 We're not going to trespass on anybody's property. And if we
11 have something there, maybe we'll all benefit; if we have
12 nothing, then we lose.

13 CHAIRMAN McCARTHY: Commissioner Tucker has a
14 question.

15 MR. ROBINSON: Yeah.

16 COMMISSIONER TUCKER: On the investment in this
17 process, is this a process that is unique to that particular
18 area?

19 MR. O'GRADY: The only one in the world.

20 COMMISSIONER TUCKER: No, no, no I'm not asking you
21 if the process is unique; I'm asking if it could only be
22 applied at that particular beach.

23 MR. ROBINSON: At that particular beach? I would
24 say -- I would say if you could find another beach that had
25 the kind of quality of materials, it would probably work at

1 any other beach. And this is not tailored to a beach, it's
2 tailored to a mineral.

3 COMMISSIONER TUCKER: Okay. Well, I think that's
4 important to understand, because the -- in other words, the
5 investment made is not like a structure that's built at that
6 point and if you walk away from it you can't take anything
7 with you. If you walk away from this I assume that you take
8 with you this process, is that correct?

9 MR. ROBINSON: Well, but the problem that I see with
10 it, Commissioner Tucker, is that, as I've told you, we
11 believe that there may not be another beach, at least on the
12 west coast of California.

13 Now if we're going to have to go all around the
14 world prospecting, we don't have that money; we're out of
15 money. So what we're saying is this is a unique beach
16 because of the San Andreas fault, because of the materials
17 we're getting out of there, and that it ought to be explored,
18 at least.

19 And it's costing the State nothing. You get 20
20 percent if we sell any of it. So why not permit us to at
21 least do the prospecting sufficiently enough to come back and
22 show you, and with the Environmental Commission's authority.

23 MR. O'GRADY: Allow me, please.

24 CHAIRMAN McCARTHY: Mr. O'Grady.

25 MR. O'GRADY: There's 13 elements, Mr. Chairman. 13

1 elements which our country needs very badly. At the present
2 time, we are importing into our country to exist and function
3 all of these elements which are -- are strategic elements.
4 They're importing them.

5 I have blocked out for you what the system that
6 myself and my peoples have put together here. I've done
7 that.

8 Secondly, the 13 elements that we have broken down
9 with your material, it begins with 2,000 pounds of sand.

10 By the way, it's not sand from the land; there is a
11 floating mass of tens of millions of tons floating back and
12 forth out there, and nobody will contest me on that. Nobody.
13 I'll stand up before God.

14 Secondly, sir, when I break that material down I get
15 1400 pounds of magnetics. From that 1400 pounds of magnetics
16 I get 400 pounds of chemically pure titanium powder.
17 Chemically pure titanium powder is selling today for \$35
18 dollars a pound.

19 Now we take this and we finish -- I'm sorry, I -- we
20 have not done anything with the magnetite that's there, but
21 we know there's elements locked into the magnetite.

22 Let's go over here, sir. This is the startling
23 thing that we've just run into which you need the extra time
24 to confirm. At the present time in 600 pounds of the
25 nonmagnetics in that ordinary sand that's off the beach in

1 that mass of metals --

2 MR. ROBINSON: Under the water.

3 MR. O'GRADY: -- under the water we get 355 pounds,
4 which, when we break it down, we get platinum, palladium,
5 uranium and gold. These four. Enormous.

6 Now when we break it down again, we get 45 pounds --
7 I'm sorry, 45 pounds of rare earth elements. These are two
8 elements which are -- monazite, xenotime. When we break the
9 monazite and xenotime, sir, we get six rare elements.

10 We just shut -- Union Oil just shut their plant down
11 there. We had \$40 million invested in, and let 750 people go
12 and closed the town down because they were manufacturing
13 these.

14 God, I'll give this to them. This is a byproduct.
15 Six rare elements. That's all this United States needs. To
16 function.

17 Well, i could go on and on and on with you.

18 MR. ROBINSON: You've said enough. You've said
19 enough.

20 MR. O'GRADY: This is important, sir. This one here
21 makes me cry. That one. That's what we need and the system
22 that we now control here in California -- God Almighty, sir,
23 California -- and I make this statement unequivocally -- at
24 the present time is the richest state in the world with
25 what's off the beaches here. The richest state in the world.

1 MR. ROBINSON: Okay.

2 MR. O'GRADY: And all you have to do is let me prove
3 it. I'm not asking for any monies from anybody. I pay for
4 it, myself and my peoples.

5 MR. ROBINSON: Sit down.

6 MR. O'GRADY: Sorry. I apologize. I get so wrapped
7 up.

8 MR. ROBINSON: I don't think -- I think you have the
9 picture.

10 CHAIRMAN McCARTHY: I think you appreciate it's
11 impossible for the members of this Commission to make a
12 judgment on major points that Mr. O'Grady's been making. It
13 may be that the United States Government, if it agrees with
14 basic thrust of Mr. O'Grady's points, would want to move in
15 some way and work with state and local government agencies to
16 try to suggest that this is in the national security or very
17 basic economic interest to American industry. This
18 Commission is really not in the place to make that
19 evaluation.

20 MR. ROBINSON: I know.

21 CHAIRMAN McCARTHY: So I don't think any of us would
22 even try to contend with the points that Mr. O'Grady is
23 making.

24 The issue before this Commission is -- with its
25 responsibility over this title of area -- is to determine

1 whether or not with our public trust responsibilities we
2 should renew or deny the permit before us.

3 Staff has recommended a denial of the extension of
4 the permit because they think that some -- based on what
5 experience has been derived by the permittee and what samples
6 have been taken so far, that there ought to be some
7 additional environmental information.

8 Frankly, it strikes me that ~~maybe~~ these questions
9 should have been asked in the first place, when the permit
10 was being considered in the first place. And there is an
11 element in this lateness that is unfair.

12 Nevertheless, in the public's interest I think it's
13 sound, even if it's a couple years late, that this kind of
14 environmental information should have been sought, and should
15 now be sought.

16 Is there a motion from the members of this
17 Commission?

18 MR. EAGAN: Excuse me, Mr. Chairman. One further
19 item of information in the interests of an accurate record on
20 something Commissioner Tucker said earlier. I want this to
21 be clear both in the interests of an accurate record and in
22 fairness to Mr. O'Grady.

23 The staff does not take the position that at some
24 prior point in time several years ago Mr. O'Grady or his
25 corporation applied to GGNRA for an access permit across the

1 beach. I think the most recent -- the only instance of that
2 we're aware of is the quite recent discussions that the two
3 have had.

4 There was, however, in the fall of 1983 at the same
5 time that Mr. O'Grady was applying to the Commission for a
6 prospecting permit off the beach, a similar set of
7 discussions that he had with representatives of the National
8 Park Service concerning actual prospecting on Ocean Beach,
9 and I guess it is that circumstance that led the staff to
10 conclude that at least if there was fault -- and there was
11 fault I think on the part of the staff in not concluding
12 earlier that there should have been an EIR -- excuse me, CEQA
13 compliance, Mr. O'Grady was aware that GGNRA was in the
14 picture and probably should have himself inquired much
15 earlier for the required permit.

16 CHAIRMAN MCCARTHY: One final point: On a number of
17 issues that come before this Commission, I and the other
18 Commissioners have asked what the nature of the contact has
19 been with community leaders, with local government
20 authorities, because although we ultimately have the
21 responsibility to act on this permit, we try to do so with
22 some sensitivity to what local feelings are at issue.

23 Perfect example of that is we have an interest in
24 ARCO application before this Commission which is estimated to
25 range up to \$800 million, and we have dealt at length with

1 Santa Barbara county and city authorities and special
2 district authorities, trying to give them the opportunity for
3 input.

4 I don't know how much connection there has been with
5 city and county of San Francisco authorities on this issue,
6 whether about any concerns they may have had has been
7 discussed. I appreciate that this whole thing gets
8 enormously complex and very lengthy often in nature, but I
9 would suggest that probably is an appropriate part of the
10 dialogue that should be underway in all of this.

11 The matter's before the Commission. Do I hear a
12 motion?

13 MR. O'GRADY: Mr. Chairman --

14 COMMISSIONER ORDWAY: Motion.

15 CHAIRMAN McCARTHY: Commissioner Ordway moves.

16 COMMISSIONER TUCKER: Second.

17 CHAIRMAN McCARTHY: Commissioner Tucker seconds that
18 the staff recommendation for denial of the request for
19 extension of a permit to prospect be approved --

20 COMMISSIONER TUCKER: Mr. Chairman --

21 CHAIRMAN McCARTHY: -- that --

22 COMMISSIONER TUCKER: -- I just wanted to have a
23 discussion on the motion.

24 CHAIRMAN McCARTHY: All right. Commissioner Tucker.

25 COMMISSIONER TUCKER: All right. I just wanted to

1 indicate that it seems to me that the Commission does not
2 need to make findings of fact, that the issues that have been
3 raised are really issues of law, and that ultimately, as far
4 as I'm concerned, what the Commission is concluding is that
5 reasonable questions have been put to the permit holder --
6 the person who was the permit holder regarding potential
7 environmental impact, and I think the Commission would be
8 derelict in not obtain that information.

9 And I think that is what is the issue here today. I
10 think all of the discussion about the -- you know, whether
11 certain claims are claims of fact and whether they're true or
12 not true is really irrelevant to that very central issue, and
13 that is that we have a responsibility to obtain information
14 to assure that there's not an uneven impact on the
15 environment. And I think until such time as the permit
16 holder is willing to provide that information that the
17 Commission should not grant the -- or extend the permit. And
18 I would vote for the motion.

19 MR. ROBINSON: Well, may I be heard, please?

20 CHAIRMAN McCARTHY: Yes.

21 MR. ROBINSON: I think this is what I was
22 suggesting, that you grant the permit on condition that we
23 obtain an environmental study approved by the Coastal
24 Commission. That's all I'm asking, is that -- at least I
25 would think that would have the element of fairness. I mean,

1 you admitted that there's some unfairness in the way this has
2 come down at the last minute.

3 So rather than to say that you are out, why don't
4 you say you -- the extension is permitted on -- on condition
5 that you obtain --

6 CHAIRMAN McCARTHY: Mr. Robinson, you are not
7 prohibited from reapplying for this permit.

8 MR. ROBINSON: But there's a big difference; there's
9 a big difference. If we come in here on the extension of a
10 permit and we meet the specific conditions that you as the
11 Commission set out for us, then we will have our extension;
12 whereas if we have to come in from all over again, then we
13 can be put down at the bottom of the ladder in terms of all
14 the other things that they may want to try to place upon us.

15 CHAIRMAN McCARTHY: I think -- I don't think that's
16 an accurate reading of the situation.

17 MR. O'GRADY: Mr. Chairman, sir.

18 CHAIRMAN McCARTHY: Mr. O'Grady.

19 MR. O'GRADY: In talking with the peoples at the
20 Commission -- at the staff level there, that was one of the
21 requirements. I was to devote six to seven months on -- on
22 running it through the equipment which I just showed you
23 which would cost us about three-quarters of a million
24 dollars. You were talking about dollars. And then we were
25 to bring in an arm's length research and development people

1 to make the environmental study.

2 When we're finished with that, sir, we'll have a
3 book something like this which is a study of the titanium in
4 the world which we will give to Mrs. Dedrick and to everybody
5 concerned throughout the world to evaluate it.

6 CHAIRMAN McCARTHY: Mr. O'Grady.

7 MR. O'GRADY: Yes, sir.

8 CHAIRMAN McCARTHY: I want you to be healthy for the
9 next appearance you may make before the State Lands
10 Commission.

11 MR. O'GRADY: Thank you very much.

12 By the way, I apologize, but as you understand, this
13 is my whole life.

14 CHAIRMAN McCARTHY: I understand.

15 MR. ROBINSON: I'm 72 years old and I devoted
16 four-and-a-half years of my time at my age when I could be
17 making monies. But this is so important.

18 Let me read something for you, sir, please. "In our
19 hands lies the decision which will determine the future of
20 immediate and coming generations. Titanium resources and
21 technology is only one strategic area where we have fallen
22 far behind. It constitutes a threat not to be ignored today
23 so as to become a grim reality tomorrow.

24 "We need not bequest that legacy to our children.
25 We have presently in our hands the means not only to catch up

1 to these foreign peoples, but to pull ahead of competitors
2 and potential in the vital pursuit of the freedom of the
3 United States of America."

4 MR. ROBINSON: I --

5 MR. O'GRADY: That's all I have to say to you,
6 gentlemen. I'm sorry: Ladies and gentlemen.

7 MR. ROBINSON: Commissioner McCarthy, may I ask once
8 more if I could --

9 CHAIRMAN McCARTHY: Yes, Mr. Robinson.

10 MR. ROBINSON: It seems to me that in view of the
11 fact that we've had a lot of people who have invested a lot
12 of money in this thing, and they've done it in good faith and
13 as Mr. O'Grady has pointed out whatever things have not been
14 done here they've been -- as a result of perhaps mistakes on
15 both sides, now what would be unfair to extend the permit on
16 condition -- and you don't have to have the conditions here
17 today; if you want to think about them for a day or so and
18 spell them out and set forth an official report of your
19 decision, setting forth, "We will extend your permit for X
20 number of months," or whatever it is, "provided that you do
21 A, B, C, D and E and report back and do this," then at least
22 we can go back to the people who have been supporting us all
23 the way and show them that at least there's some hope that
24 maybe we can get this thing accomplished.

25 CHAIRMAN McCARTHY: I think you can report back --

1 we haven't taken the vote yet, but on the assumption that the
2 Commission follows the staff advice on this, I think you can
3 report back to your people that our recommendation to you is
4 that you develop this environmental information and that you
5 make contact with city and county of San Francisco government
6 to involve them in a serious way in this discussion, and --
7 and then we can proceed from there. We're saying in a very
8 open and plain way that you can do that.

9 MR. ROBINSON: But is that binding on the
10 Commission?

11 CHAIRMAN McCARTHY: Is it binding on -- on the
12 members of the Commission?

13 MR. ROBINSON: See, in other words if the next --

14 CHAIRMAN McCARTHY: It's a matter of public record
15 that we're making this -- well, those of us that are here
16 hopefully will be here for a couple of years more. We assume
17 that you'll pursue this.

18 MR. ROBINSON: But what I'm getting is sometimes the
19 Commission has different personalities on the Commission.

20 CHAIRMAN McCARTHY: Finance is here on a permanent
21 basis. People come and go, but Finance will always be here.

22 COMMISSIONER ORDWAY: Not necessarily me but the
23 Department of Finance on an ongoing basis.

24 MR. ROBINSON: So whatever you're saying now is
25 binding on them?

1 CHAIRMAN McCARTHY: That's right. Actually,
2 Commissioner Ordway has the most to say on this Commission.
3 Her opinion -- her opinion is very persuasive.

4 MR. ROBINSON: No, I mean is it binding on Finance?
5 That's all I --

6 CHAIRMAN McCARTHY: Oh, no.

7 COMMISSIONER ORDWAY: When I speak for the
8 Department of Finance I speak for the Department of Finance
9 under this Administration. I would say that would be the
10 position of the Department of Finance as long as this
11 Administration is in office. Given the information we know
12 right now, yes.

13 CHAIRMAN McCARTHY: Mr. Robinson, you've presented
14 your case ably for your client. I think the Commission is
15 ready for a vote.

16 And I think the vote is unanimous to accept the
17 staff recommendation on this and to advise you to proceed
18 diligently to make contact with city and county of San
19 Francisco authorities, involve them.

20 And we'll instruct our staff to be in contact with
21 them as well, so that this can be a three-cornered
22 discussion. And that you please develop the environmental
23 information that's being requested by our staff. And we'll
24 proceed down the road and see what happens from that point.

25 MR. O'GRADY: If Mr. O'Neill approves --

1 CHAIRMAN McCARTHY: That will be the action of the
2 Commission.

3 Yes, Mr. O'Grady?

4 MR. ROBINSON: If Mr. O'Neill, who I've talked to
5 about this, and I've talked to Jack Fairless and I've talked
6 to Pembroke who is the Planning Commissioner in San
7 Francisco -- by the way, they buy what I say, but they
8 cannot -- until I -- until I am satisfied -- until I satisfy
9 the Land Commission, they will not do anything for me. But
10 they're very cooperative and they understand.

11 And by the way, they're real patriots. Real
12 patriots, gentlemen.

13 CHAIRMAN McCARTHY: Well, nothing will impede them
14 from being involved in the discussions.

15 MR. ROBINSON: Right, and we'll be able to get a
16 transcript of your remarks?

17 CHAIRMAN McCARTHY: Oh, yes. Thank you very much.

18 MR. O'GRADY: By the way, thank you for your
19 patience with me.

20 CHAIRMAN McCARTHY: Thank you, Mr. O'Grady.

21 Item 45.

22 EXECUTIVE OFFICER DEDRICK: Item 45, exemption of
23 oil and gas lease from competitive public bidding
24 requirements requested by the City of Maricopa.

25 COMMISSIONER ORDWAY: Motion.

1 **CHAIRMAN McCARTHY:** Motion by Commissioner Ordway.
2 **Seconded by Commissioner Tucker.**

3 Any questions from the audience?

4 If not, approved as recommended.

5 Forty-six.

6 **EXECUTIVE OFFICER DEDRICK:** Item 46 is an approval
7 of the deferment of the drilling obligation on Phillips lease
8 in Santa Barbara County.

9 **CHAIRMAN McCARTHY:** Questions from the audience?

10 **Motion by Commissioner Ordway. Seconded by**
11 **Commissioner Tucker. Unanimous.**

12 Forty-seven.

13 **EXECUTIVE OFFICER DEDRICK:** Item 47 is an
14 authorization to purchase with Kapiloff Land Bank Trust Funds
15 a parcel of land in Tiburon.

16 Commissioners, in this instance you'll be acting as
17 Kapiloff Land Bank Trustees, as well as State Lands
18 Commission Trustees.

19 The proposal is for the State to commit \$100,000 of
20 the Land Bank funds toward the purchase of a parcel of land
21 in Tiburon which, when purchased, would be become entirely
22 sovereign land of the state.

23 **CHAIRMAN McCARTHY:** All right. Any questions from
24 the audience?

25 **Motion by Trustee Ordway, seconded by Trustee Tucker**

1 that the action be approved. It's unanimous.

2 Forty-nine.

3 EXECUTIVE OFFICER DEDRICK: Item 49 is approval of
4 Memorandum of Agreement between the State and the Army Corps
5 of Engineers Waterways Experiment Station to conduct
6 technical study of feasibility of an ocean entrance at Bolsa
7 Chica.

8 COMMISSIONER ORDWAY: Motion.

9 CHAIRMAN McCARTHY: Motion by Commissioner Ordway,
10 seconded by Commissioner Tucker.

11 Any questions from the audience?

12 That's unanimously approved.

13 COMMISSIONER ORDWAY: In the absence of further
14 business I move to adjourn.

15 CHAIRMAN McCARTHY: Motion to adjourn is unanimously
16 approved.

17 Thank you, ladies and gentlemen.

18 EXECUTIVE OFFICER DEDRICK: Thank you.

19 (Thereupon the State Lands Commission meeting was
20 concluded at 4:10 p.m.)

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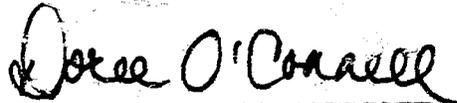
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I, DOREE O'CONNELL, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing meeting was reported in shorthand by me, Doree O'Connell, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of April, 1987.



DOREE O'CONNELL
Certified Shorthand Reporter
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