MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

STATE CAPITOL
ROOM 447
SACRAMENTO, CALIFORNIA

WEDNESDAY, OCTOBER 21, 1987
10:00 A.M.

Eileen Jennings, C.S.R.
License No. 5122

ORIGINAL
COMMISSIONERS PRESENT

Leo T. McCarthy, Lieutenant Governor, Chairman
Jim Tucker, Commission Alternate
for Gray Davis, State Controller
LaFenus Stancell, 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
Lisa Beutler, Chief, Enforcement Division
Lance Kiley, Chief, Land Management and Conservation Division
Dwight Sanders, Chief, Research and Planning Division
W. M. Thompson, Chief, Extractive Development Division
Sue Breece, Commission Secretary

ALSO PRESENT

Jan Stevens, Deputy Attorney General
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
CHAIRMAN McCARTHY: The minutes of the last Commission meeting are approved without objection.

Consent calendar. Any objections to the Consent Calendar from anyone in the audience? It's Items 1 through 20, minus 15 that was taken off.

Consent Calendar is approved by the Commission.

Item 21, taken off.

Item 22.

EXECUTIVE OFFICER DEDRICK: Item 22, Mr. Chairman.

This is approval of a partial sublease to Riverbank for Riverbank Holding Company's master lease for a moorage of a charter boat at their lease site on the Sacramento River.

CHAIRMAN McCARTHY: Any questions from members of the Commission?

In the audience?

All r'ght, approved.

EXECUTIVE OFFICER DEDRICK: 23 is, again, Riverbank Holding Company is the sublessee. The master lease for a passenger assemblage area for a cruise business.

CHAIRMAN McCARTHY: Any questions from the members of the Commission?

All right, approved.
EXECUTIVE OFFICER DEDRICK: Item 24 is approval of a finding that Leases PRC 4689, 4690 and 4691 in San Mateo County are in breach of their lease.

CHAIRMAN MCCARTHY: Any question from members of the Commission?

Anybody in the audience on this?

All right, approved as recommended.

EXECUTIVE OFFICER DEDRICK: Item 26, Mr. Chairman --

CHAIRMAN MCCARTHY: 26.

EXECUTIVE OFFICER DEDRICK: -- is approval to commence lease termination proceedings against Lease PRC 5110 on the Sacramento River; Hugh and Carol Turner, lessees.

CHAIRMAN MCCARTHY: Any questions by members of the Commission?

Audience?

Recommendation is approved.

EXECUTIVE OFFICER DEDRICK: Item 27, Mr. Chairman, is the item that you -- I think everybody's out of the room at the moment.

CHAIRMAN MCCARTHY: Let's pass over and when they return, we'll get back to it.

28.

EXECUTIVE OFFICER DEDRICK: Item 28 is approval of a lease for the Catfish Cafe, Inc. on the San Joaquin River in San Joaquin County -- or Stockton Slough in San Joaquin
CHAIRMAN McCARTHY: Any questions from members of the Commission?

From the audience?

All right, approved as recommended.

EXECUTIVE OFFICER DEDRICK: Item 29 is an assignment of 50 percent of the Rincon Oil Field leases on Leases 410, 429 and 1466 from Bush Oil to Tenneco Oil.

CHAIRMAN McCARTHY: Questions from members of the Commission?

From the audience?

All right, that's approved as recommended.

Item 30 is Proposed Crude Oil Sell-Offs, Long Beach Harbor Department, Parcel A in Wilmington Field in Los Angeles County.

CHAIRMAN McCARTHY: Questions from the Commission?

From the audience?

Approved as recommended.

EXECUTIVE OFFICER DEDRICK: 31 is an award of a Royalty Oil Sales Contract to Texaco Refining and Marketing. The winning price was 71 cents.

CHAIRMAN McCARTHY: Questions from members of the
Commission or the audience?

Approved as recommended.

EXECUTIVE OFFICER DEDRICK: Item -- excuse me, sir.

Item 32, another award of a Royalty Oil Sales Contract to Golden West Refining Company. The winning price was 74.9 cents.

CHAIRMAN MCCARTHY: Questions from members of the Commission or the audience?

EXECUTIVE OFFICER DEDRICK: Item 33, Mr. Chairman, I've just been informed that the applicant is withdrawing that application and the letter is being prepared now. Does that mean no action needs to be taken?

MR. LUDLOW: That's correct.

EXECUTIVE OFFICER DEDRICK: So, that is then off calendar.

CHAIRMAN MCCARTHY: That item is withdrawn.

EXECUTIVE OFFICER DEDRICK: 35 is a legal item, an authorization to file a disclaimer in the Crown Central Petroleum Corporation versus Durkee, et al. in Orange County.

CHAIRMAN MCCARTHY: Any questions from the audience? Yes, sir.

EXECUTIVE OFFICER DEDRICK: Staff counsel is requesting that we hold this item until Mr. Eight returns.

CHAIRMAN MCCARTHY: All right.
EXECUTIVE OFFICER DEDRICK: Item 36 is a request for a six-month extension by the Honorable Albert Aramburu, Supervisor in Marin County on the $100,000 Kapiloff Land Bank grant for purchase of a parcel on Richardson Bay. Staff recommends the six-month extension.

CHAIRMAN MCCARTHY: All right, any questions? All right, that is granted.

EXECUTIVE OFFICER DEDRICK: This is a legal item. Bob, would you like to pick up the legal items?

MR. HIGHT: 37, Mr. Chairman, is the authorization to enter into a Title and Boundary Agreement with Southern Pacific Corporation whereby the state would acquire title to Montezuma Slough and 20 acres in exchange for clear title to Santa Fe.

CHAIRMAN MCCARTHY: How much land did we give them?

EXECUTIVE OFFICER DEDRICK: It was a very small piece of land.

MR. HIGHT: No, on 37 it's around 3,900 acres.

CHAIRMAN MCCARTHY: And we received?

MR. HIGHT: 25 acres in fee and 250 acres approximately of public trust.

CHAIRMAN MCCARTHY: Where's the land that we gave them again? I'm looking for the descriptive information.
MR. HIGHT: The land that we give them is the area excluding -- well, let me correct my statement. The land that we cleared title to Santa Fe -- did not give them -- is that area excluding Montezuma Slough on the map and there's a five-acre and a 20-acre parcel at the top and the bottom and the remainder would be clear title to --

CHAIRMAN McCARTHY: Have we discussed this item before?

EXECUTIVE OFFICER DEDRICK: No.

CHAIRMAN McCARTHY: Why is it a good deal?

MR. HIGHT: We believe that given the state of the record in this item that it's the best interest the state has and this is the only interest the state has in the parcel.

EXECUTIVE OFFICER DEDRICK: Mr. Chairman, there's no urgency to deal with this matter today if you'd like more thorough information.

CHAIRMAN McCARTHY: There might be an understandable answer.

EXECUTIVE OFFICER DEDRICK: Rick is here if you'd like him to discuss the issue.

CHAIRMAN McCARTHY: From the state's side why is this a sensible deal?

EXECUTIVE OFFICER DEDRICK: Well, it gives us ownership, fee ownership, of a disputed area on the shore of Montezuma Slough and the bottom of the slough. So, we will
have substantial areas of public access to the slough clearly in state title. That is not now the case. I mean, there is very little public access to the slough on that side. It's across Montezuma Slough from the main Suisun Marsh wildlife area.

CHAIRMAN McCARTHY: The Attorney General's Office is a part of this recommendation?

EXECUTIVE OFFICER DEDRICK: Yes, I'm sure they are. I can't remember who in the AG's Office was on that issue. I know who it is, it's Dennis Eagan.

MR. STEVENS: It's my understanding -- I haven't worked on it personally. But I generally believe there was sufficient doubt to warrant clarification of title there in exchange for the state.

I believe attorney for the applicants was in the audience.

EXECUTIVE OFFICER DEDRICK: That's correct. John Briscoe is here if you'd like to hear from Mr. Briscoe.

CHAIRMAN McCARTHY: Fine.

MR. BRISCOE: Mr. Chairman, members of the Commission, I'm John Briscoe. Does this record well if I stand?

EXECUTIVE OFFICER DEDRICK: No, you really have to sit, John. You can't be heard otherwise.

MR. BRISCOE: Essentially, the claim of the state.
Mr. Chairman, and members of the Commission is that --

CHAIRMAN MCCARTHY: Would you tell us who you work for, please?

MR. BRISCOE: I'm sorry. I'm John Briscoe with the law firm of Washburn & Kemp and I represent the applicant here, Santa Fe Pacific Realty Corporation.

There is essentially, as I understand it, very little by way of a state claim to what was referred to as the 3,000 acres. So, that creates some sort of disproportionate sense if you compare that with the 25 acres that the state will receive.

The principal interest of the state concerns property on the southerly end of the portion, Mr. Chairman and members of the Commission, which was patented into private ownership as tidelands. It is our contention, the applicant's contention, that whatever may have been the original character of that property, it became upland by reason of accretion. The state's contention is that the property remains of the legal character tidelands subject to a public trust easement.

I think it's fair to say that in this settlement we are capitulating totally with the contentions made by your staff and we're not really getting anything. I think that's a fair sense. There is really no basis for a state claim elsewhere.
The other thing that the settlement will do is permanently fix the boundary line along the slough and the Sacramento River and confirm the state's interest, fee ownership interest in the slough.

So, we're clearing up a great deal of potential boundary problems and confirming the claim made by the state.

CHAIRMAN McCarthy: Capitulation, huh?

MR. BRISCOE: I'm afraid so. I can't say that we won a single point.

CHAIRMAN McCarthy: Santa Fe doesn't do that very often.

MR. BRISCOE: Well, we're talking about property of approximately $400 an acre. So, there wasn't much point in spending a lot of money on my time to quarrel about this.

EXECUTIVE OFFICER DEDRICK: The majority of the parcel is clearly upland, as Mr. Briscoe pointed out. You know the parcel, don't you? There was at one time a proposal -- there was going to be a steel plant there. Once there was a proposal for other industrialization in the area.

CHAIRMAN McCarthy: Did we get any comment during this procedure from either BCDC or from the local government officials involved?

EXECUTIVE OFFICER DEDRICK: Let me ask Dave Plummer to come forward, who negotiated this settlement.

Mr. Chairman. I don't believe that the Commission has met
Dave before. Dave works for the Legal Division.

MR. PLUMMER: During this process we sent out notification to BCDC, the county. We have an extensive mailing list and everybody -- their main comment was that it's covered under the Suisun Marsh Preservation Act and that what can be done with that land is pretty well already spelled out under that act and our settlement won't hurt that at all and in fact will enhance that by the recognition of the public trust easement over that southerly portion of the parcel.

CHAIRMAN McCARTHY: All right, approved as authorized. Thank you.

Next item.

MR. HIGHT: Item 38, Mr. Chairman, is the authorization to enter into a compromise title agreement covering approximately an acre and a half of land in Marin County and in return for the state's interest we would get $21,500 dollars in the Kapiloff Land Bank.

CHAIRMAN McCARTHY: Questions?

From the audience?

Approved as recommended.

MR. HIGHT: In addition, you'll be acting as Land Bank Commissioners in accepting the money.

CHAIRMAN McCARTHY: All right. We vote as the Land Bank accepting.
Next item.

ASSISTANT EXECUTIVE OFFICER TROUT: Mr. Chairman, on Signal Landmark, this is an authorization for your staff to enter into a reimbursement agreement with Signal to allow for the selection of an independent appraiser to appraise some property in the '73 agreement for potential exchange which would be brought back to you. This would be fully reimbursable by Signal. But the idea is to hire an appraiser neither of their choosing or ours, but an independent appraiser.

CHAIRMAN MCCARTHY: Any questions?

All right, approved.

EXECUTIVE OFFICER DEDRICK: Mr. Chairman, perhaps you should return to Item 39 that we passed over when Mr. Hight was absent.

MR. HIGHT: 29.

EXECUTIVE OFFICER DEDRICK: 29, I'm sorry. No, I don't even mean that. I mean 35.

MR. HIGHT: 35, Mr. Chairman, is the authorization to file a disclaimer against some potential oil interest that the state might have in Orange County. The state has no interest in this item and the addition that we would like to add is to authorize the Executive Officer to in addition file a disclaimer. The requested authorization now is to authorize the Attorney General and the title company now for
reasons only known to title companies wants an additional
disclaimer from the Executive Officer.

CHAIRMAN McCARTHY: Any problems?

All right, approved.

Now let's go back to 27. We have 27 and 33 left on
this calendar.

EXECUTIVE OFFICER DEDRICK: And 40. We have one
more item, administrative item.

CHAIRMAN McCARTHY: I didn't turn that last page.

EXECUTIVE OFFICER DEDRICK: Mr. Trout.

ASSISTANT EXECUTIVE OFFICER TROUT: Mr. Chairman, on
Item 40 the situation is that Shell Petroleum delivered
inadvertently the royalty information without the royalty
payment to the state. They recognized that situation and
hand-delivered a check to the state before the mailed notice
of the production formula, production calculations arrived.

We are recommending that you authorize the approval
of waiver of penalty and interest, which would be subject to
review by the Board of Control and appropriation of the
refund by the Legislature. The amount is $27,000 penalty and
interest.

CHAIRMAN McCARTHY: Questions from the audience?
The recommendation is approved.

EXECUTIVE OFFICER DEDRICK: Thank you,
Commissioners.

CHAIRMAN MCCARTHY: Back to 27.

On 27 Mr. Denny Valentine is going to give testimony after the staff gives their report. Let's hear from the CEO first.

EXECUTIVE OFFICER DEDRICK: Mr. Chairman, I'll ask Mr. Dwight Sanders to present this issue, because it's primarily related to his area.

MR. SANDERS: Mr. Chairman, this project involves the construction and installation of approximately 54.8 miles of transmission line from four cogeneration facilities to the PG&E Tesla Substation in Alameda County.

The State Lands Commission has been serving as the lead agency under CEQA for this project even though its jurisdiction and permit or lease that you are being asked to consider covers only waterways that will be crossed by the transmission line.

The Commission has been serving as lead agency because of the fact that three counties are involved and there was no umbrella agency to step in and also due to the fact that the Public Utilities Commission, which is a primary agency of these types of facilities, exempts transmission lines from their requirement of a Certificate for Public Convenience and Necessity which are below 200 KV and this is 115 KV line.
One of the primary concerns that have been raised with regard to this project surround the placement of poles along a 1.42 mile length of Harlan Road in San Joaquin County. There have been questions raised as to the safety issues with regard to the placement of those poles.

The poles are in place now. They were in place before the Commission began its environmental process and they were approved by San Joaquin County before the CEQA process was completed.

We have tried our best with in our view our limited authorities to mitigate the circumstances involved in this controversy. We have negotiated with PG&E a lease condition which guarantees that they will abide by the decision of the Public Utilities Commission, which has been petitioned by a couple of individuals to consider this particular section of the line.

PUC cannot on its own volition or as a result of an appeal step into a process even though, as I indicated, they have exempted from their certificate process lines of this size.

The PUC will be hearing this appeal this Friday. The mitigation that has been agreed to by PG&E will be a part of its lease indicates or guarantees that whatever decision is reached by PUC or by the County Board of Supervisors with regard to (a) the relocation of the poles or (b) some other
treatment of the lines in this particular area will be implemented.

I am sure that some will feel that this may not be giving people much since the PUC has its own enforcement authorities. However, the lease document is in our opinion a stronger hold or a stronger handle on an applicant to guarantee compliance with provisions. It is something the Commission can act on immediately. Whereas the PUC process could involve the administrative law decision plus subsequent court action if the parties do not agree with the administrative law judge.

CHAIRMAN MCCARTHY: Questions from the Commission?

COMMISSIONER STANCELL: So, basically, we have know authority in terms of the pole issue? Is that what you're saying.

MR. SANDERS: That is correct, Commissioner. We have no -- the Commission does not have a direct legal authority to mandate outright removal or treatment of poles. We are in effect serving in two functions here. One is as the CEQA lead agency which covers the broad range of compliance with CEQA, which is a service to not only the applicant, but also to subsequent responsible agencies; and we have a more definitive and limited role as a decisionmaking agency in this regard as to the lease involved for the rights of way across the waterways under the
Commission's jurisdiction.

COMMISSIONER STANCELL: So, any condition that we apply to the lease that's within our germane, you're saying that the utility has agreed to those conditions?

MR. SANDERS: That is correct, Commissioner.

CHAIRMAN McCARTHY: Mr. Tucker.

COMMISSIONER TUCKER: The full area is 54 miles?

That is the length?

MR. SANDERS: That is correct.

COMMISSIONER TUCKER: What's the area that's covered by our jurisdiction?

MR. SANDERS: It is a matter of feet rather than --

COMMISSIONER TUCKER: So, it's less than a mile?

Just approximately.

EXECUTIVE OFFICER DEDRICK: The acreage is .6.

MR. HIGHT: Less than half a mile.

EXECUTIVE OFFICER DEDRICK: Eight-tenths of an acre total area.

COMMISSIONER TUCKER: So, essentially, what the staff is indicating is that when we grant a lease across this area that's less than a mile in length out of this 54-mile total, that we cannot say, okay, when you cross our property 20 miles from here, you have to do something with this line.

MR. HIGHT: As a mitigation, Mr. Tucker, that's a correct statement. We do not have that authority to do that.
MR. SANDERS: Under CEQA an agency is not granted any greater authority under CEQA or as a result of CEQA than it already possesses. So, in effect what that says is that we can only mandate something for that area for which we have permit jurisdiction.

CHAIRMAN McCARTHY: How long have we had this in our possession? When did the State Lands Commission first become involved in this?

MR. SANDERS: I can't answer that question.

MR. KILEY: I don't see my staff member who would know.

CHAIRMAN McCARTHY: Can you give me an approximate idea?

EXECUTIVE OFFICER DEDRICK: June or July is the answer.

CHAIRMAN McCARTHY: June or July.

MR. SANDERS: Of this year.

CHAIRMAN McCARTHY: I ask, of course, because if we knew this answer, we should have told the parties to the issue that so that they could pursue any other remedies that they wanted to pursue without being delayed unduly.

EXECUTIVE OFFICER DEDRICK: Yes, Mr. Chairman, this as a legal issue came to my attention last week and I asked Mr. Hight to review it and we got the answer.

CHAIRMAN McCARTHY: So, we got it in July and we've
had it in effect --

EXECUTIVE OFFICER DEDRICK: Four months.

CHAIRMAN MccARTHY: Four months.

CHAIRMAN MccARTHY: Any other questions from Commissioners?

All right, let's hear first from -- Mr. Valentine, do you want to give us the benefit of your thoughts?

I misspoke before. There are some witnesses maybe on the same side. Mr. Valentine is representing Mr. Donald Foley, who is present; Mr. Charles Northbelt, is it? Mr. Carl Cramer, Ms. Jennifer Machlin, Mr. Bob Fehlman, Mr. Robert Frees and Mr. Tim Holt.

MR. VALENTINE: Mr. Chairman, members of the Commission, Denny Valentine, representing the Stockton Area Transmission Line Group, which is a coalition of four potential generators of cogeneration power.

Specifically, this project directly involves those people; but soon to come on line is the 49 megawatt facility which is owned by Air Products and Chemicals. I wouldn't be so bold as to say that I represent those people whose names you just listed; but they certainly are here, each representing a different category and knowledge of this project and available to answer any questions that might come up.

CHAIRMAN MccARTHY: Your testimony will reflect...
Mr. Valentine: Yes, which is that, number one, we're in concurrence with the staff's analysis and conclusions. We are in agreement with the addendum which they propose to attach to the negative declaration, which we hope you will be able to issue today and in fact following that then allow for the amendment of the permit by PG&E to allow for a crossing of the San Joaquin River so that we can transmit the power that we're about ready to generate.

I don't know -- in fact, I don't believe that I can add anything to your staff's recommendations. We have concurred with all of the jurisdictions thus far having been involved in this project. We believe that the negative declaration is in order. We are prepared to follow the ultimate decisions yet to be made by the Public Utilities Commission regarding the location of this line and the county regarding the mitigation that they believe necessary along Harlan Road, the 1.4 miles wherein there seems to be some concern over safety as to the location of the poles being in proximity to the roadway.

That's all I have at this point, but we remain available should additional questions arise after further testimony.

Chairman McCarthy: Questions from members of the Commission?
All right, thank you, Mr. Valentine.

May I ask Mr. Brian Nessler, who is the legislative assistant to Supervisor Bill Sousa of San Joaquin County.

Mr. Nessler.

MR. NESSLER: Thank you very much. Supervisor Sousa has asked me to read a statement on his behalf. He was unavailable to be here today:

"Gentlemen:

"Thank you very much for taking the time to hear this issue before your Commission. We have been concerned about the placement of the 115,000 volt electrical transmission line along Harlan Road since we were first made aware of the situation. Those concerns were expressed by the letter of August 27, 1987 in response to your proposal to adopt a negative declaration for this project.

"Rather than reiterate all the points made in the letter, I would just like to communicate to you my main concerns: Harlan Road is a heavily traveled frontage road that
parallels Interstate 5. The speed limit is set at 55 miles an hour. This route is utilized by all types of vehicles. This area experiences very heavy fog conditions in the winter months and almost all of the poles in question are within a car’s width of the fog line.

"The San Joaquin County Public Works Department has recommended that the power poles from Roth Road to Lathrop Road be relocated to the east side of Harlan Road. Numerous agencies in San Joaquin County have gone on record with concerns about the location of the power poles in this project.

"We ask that the negative declaration in this project be denied and that you require the cogeneration plants and Pacific Gas and Electric to complete a focused environmental impact report that addresses the transportation, circulation, public services and
human health and esthetic sections of this negative declaration. We believe this will give the people of the community of Lathrop the opportunity to express their concerns and provide useful information to the agencies involved in this issue.

"Thank you very much for your time and consideration of this matter."

CHAIRMAN MCCARTHY: Would you like to comment specifically on what you heard our staff say a moment ago? Mr. Sanders and Commissioner Tucker commented upon that our jurisdiction -- we don't want to snarl this in some bureaucratic labyrinth, but there are laws that we have to be reasonably responsive to.

Our jurisdiction covers .8 acres, eight-tenths of an acre where the river is involved. We do not have any authority to dictate anything that would frame environmental impact issues on the side of that eight-tenths of an acre. How would you propose we handle that?

MR. NESSLER: I guess I would start it out with a couple of questions. When we received the negative declaration with all the boxes checked no; we were concerned.
In examining the negative declaration that addresses the different routes of the line, assuming that that negative declaration addressed those different routes of the line, we assumed -- and if we're mistaken -- we assumed that the Lands Commission could address a focused EIR to those sections.

CHAIRMAN MCCARTHY: I think if it is our position that the negative declaration is appropriate, then the negative declaration must apply only to that area where we have jurisdiction.

MR. SANDERS: Mr. Chairman, under CEQA the lead agency will provide the environmental workup for its own decision plus those of any responsible agency, which would mean in this instance the counties involved. County of San Joaquin, however, has already approved the location of those poles in place.

CHAIRMAN MCCARTHY: You really must use a microphone.

MR. SANDERS: The environmental documentation that we have prepared is meant to serve as to meet the legal requirements of CEQA for our own decisionmaking process and to assist any subsequent agency which must make a decision on the project.

In this particular portion of the line the responsible agency -- i.e. the County of San Joaquin -- has already granted approval for the placement of the poles and
they are already in place. So, unfortunately --

CHAIRMAN MCCARTHY: How many counties are involved?

MR. SANDERS: There are three counties involved.

CHAIRMAN MCCARTHY: Have the other two counties acted?

MR. SANDERS: I can't answer that.

CHAIRMAN MCCARTHY: You have to help me out now, because I'm a little bit confused. There seems to be something somewhat contradictory in what we're doing here.

Under CEQA, as you've just explained, the lead agency, regardless of what their jurisdiction is under state law in this issue, is required to make the basic decision on whether an environmental impact is required or a negative declaration should be issued.

MR. SANDERS: That is correct.

CHAIRMAN MCCARTHY: Now, we have made a judgment here that a negative declaration should be issued and implicitly what we're saying is that there are no serious environmental impacts.

MR. SANDERS: By the preparation of the negative declaration.

CHAIRMAN MCCARTHY: Right.

MR. SANDERS: Yes, that is correct.

CHAIRMAN MCCARTHY: So, for us to take the position that this is really a PUC matter -- because we only have
jurisdiction over eight-tenths of an acre of the river section -- and at the same time make a judgment on the fundamental issue of the EIR or of the negative declaration seems contradictory to me.

MR. SANDERS: The information that we have received both from the PUC and from the County have indicated to us that they do not believe this to be a significant impact.

Those pieces of information were considered in the environmental process and in our determination as to the appropriate document to prepare, whether it be an environmental impact report or a negative declaration. So, based on that information, if you will, it supported our determination.

CHAIRMAN MCCARTHY: Coming from San Joaquin County.

MR. SANDERS: And from the Public Utilities Commission staff. They have indicated that --

CHAIRMAN MCCARTHY: They did a review of the environmental consequences.

MR. SANDERS: Yes, they did. And they did a review of the placement of the poles in terms of both engineering and traffic safety matters.

CHAIRMAN MCCARTHY: Commissioner Tucker.

COMMISSIONER TUCKER: The issue before us today, as I understand it, is the approval of the lease; is that correct?
MR. SANDERS: There are two actions that the Commission is being asked to take. First of all, to adopt the negative declaration in compliance with its meeting with the Commission's responsibilities.

COMMISSIONER TUCKER: For the whole report.

MR. SANDERS: That is correct. And then secondly to make a lease decision on that portion of the line that crosses state property.

COMMISSIONER TUCKER: Do we have to do both of those things?

MR. SANDERS: Yes. We are the CEQA -- if one wishes to reach the decision mode, one must first satisfy CEQA responsibilities. In order to satisfy CEQA responsibilities we must either -- the Commission is being asked to adopt a proposed negative declaration. If the Commission does not wish to do that --

COMMISSIONER TUCKER: But I think what's confusing and what I got from the Governor's question is that what we're really looking at is we're finding we can issue a negative declaration as to the impact on that eight-tenths of an acre in order to lease this property or allow them to cross that property over which we have jurisdiction, is that correct?

MR. SANDERS: We are indicating by the preparation of the negative declaration that in our view under CEQA the
entire project does not have a significant impact and on the basis of that determination the Commission can then make a specific --

COMMISSIONER TUCKER: Why would we have to find that in order to make a decision as to this eight-tenths of an acre? We would have to review the whole -- let's say we went back to the beginning and we didn't volunteer, which we should never have done, to be the lead agency. Let's say we weren't the lead agency and we weren't involved and these people come to us and they ask for this lease and we say fine.

As I understand it, we would look at what's the impact on the piece of property that's going to be crossed. We wouldn't say what's the impact of this project someplace else, is that correct?

MR. SANDERS: Essentially. If we were not the lead agency, we would rely on the environmental documentation prepared by the CEQA lead agency in making the determination on our portion of the property.

COMMISSIONER TUCKER: On our portion of the project.

MR. SANDERS: That is correct.

COMMISSIONER TUCKER: But whatever they found as to some other part of the project would not affect our decision as to this eight-tenths of an acre, whether it's something that's desirable or undesirable environmentally somewhere
else. We'd make a decision about our eight-tenths of an acre, is that correct?

MR. SANDERS: That's correct.

COMMISSIONER TUCKER: And we'd impose whatever conditions that you've already imposed, et cetera to make sure that in our area this is a safe project; is that correct?

MR. SANDERS: Yes, sir.

COMMISSIONER TUCKER: Now, why can't we go ahead and do that?

MR. HIGHT: As lead agency for the preparation of the environmental document, the Commission has to either certify or choose not to certify the environmental -- the negative declaration as a whole. Since we are lead agency, we don't have the option of just looking -- we only have the ability to control our section, but we don't have the option of not looking at the entirety.

MR. SANDERS: That's correct.

EXECUTIVE OFFICER DEDRICK: Mr. Chairman, the real problem here --

CHAIRMAN McCARTHY: Let me tell you what my reaction to this is. I've sat in this Commission for a lot of hearings, a lot of issues bubble up from local government and I for one and others usually on the Commission have studiously avoided turning the State Lands Commission into a
local government planning commission.

This is the kind of judgment that should have been made in some proper form by those people immediately involved. I frankly have no compelling opinion on one side or the other of this issue yet. I'm still very much open. The application before us may be entirely appropriate for solid public policy reasons or it may not be. So, I have no defined judgment on that.

What bothers me a good deal is that we didn't think this one through too well and figure out how to involve the three local governments that should be making this decision. This is their decision. If we want to have a planning commission function in this kind of situation, then we ought to redefine ourselves.

Let me ask the representative of the Supervisor a question. We've been told that authorities down in San Joaquin County looked at this, examined its environmental impact and as I understand you, Mr. Sanders, you said --

MR. SANDERS: The County made --

CHAIRMAN MCCARTHY: First of all, which authorities in San Joaquin County did this?

MR. SANDERS: The Public Works Department,

Mr. Chairman.

CHAIRMAN MCCARTHY: Does the San Joaquin Board of Supervisors have authority over the Public Works Department?
MR. NESSLER: I'm here today representing Supervisor Bill Sousa, not the entire board. Specifically, Supervisor Bill Sousa.

CHAIRMAN MCCARTHY: Has the Board of Supervisors taken a position?

MR. NESSLER: Yes, they have.

CHAIRMAN MCCARTHY: What's their recommendation?

MR. NESSLER: Their recommendation in the letter to the PUC was that -- the initial recommendation by the Public Works Department, by the Board of Supervisors is that the poles be relocated. I've got that located in my notes here. In a letter to the PUC they addressed that concern.

CHAIRMAN MCCARTHY: The initial recommendation?

MR. NESSLER: No, the recommendation. Excuse me. The recommendation of the Board of Supervisors.

CHAIRMAN MCCARTHY: Board of Supervisors has voted inconsistent with Supervisor Sousa's position that the poles be relocated? Is that your testimony?

MR. NESSLER: Let me address the situation. I'm here representing Supervisor Bill Sousa at the State Lands Commission. The Board of Supervisors approved a letter as a unit to the Public Utilities Commission that addresses that area and asks that the poles be relocated. They voted against coming before the State Lands Commission as a group, but Supervisor Sousa asked me to represent him here today.
CHAIRMAN McCARTHY: Why did they vote against coming before the State Lands Commission?

MR. NESSLER: You will have to ask them that question, sir. I'm not aware --

CHAIRMAN McCARTHY: Commissioner Stancell.

COMMISSIONER STANCELL: I just want to make sure I understand. Has the Board of Supervisors of San Joaquin County taken a position on the State Lands Commission's negative declaration, an official position?

MR. NESSLER: No, they have not.

COMMISSIONER STANCELL: They have not. But the Public Works Board or the Public Works Department of San Joaquin County has provided input and their recommendation?

MR. NESSLER: Their recommendation is that the poles along Harlan Road be relocated. If that is not feasible, they've suggested some other mitigation measures.

COMMISSIONER STANCELL: So, is that something that the Board of Supervisors will have to deal with at a future time? Or what's the status of that recommendation in terms of the Board of Supervisors?

MR. NESSLER: I'm sorry, I don't understand your question.

COMMISSIONER STANCELL: Has the Board of Supervisors accepted the recommendation of the Public Works Department?

MR. NESSLER: Yes, they have.
COMMISSIONER STANCELL: That's part of the negative declaration.

MR. SANDERS: There's a bit of confusion that perhaps I hope I can clear up here.

The Public Works Department evaluated the project, approved the location and the installation of the poles, which has subsequently occurred, with a couple of mitigation measures. The poles should be reflecterized and there would be a curb on the outside of the roadway to discourage cars from going off the roadway into the poles.

Subsequent to that approval and subsequent to the circulation of the negative declaration and so forth what has just been related to you has transpired. In other words, the County Department of Public Works has in addition to the reflecterization and the curb indicated that guardrails should be established at the poles, which is a measure we worked out with the County and with the people involved prior to a couple of meetings. That's one of the reasons the thing has been put off, because of these negotiations.

From an overall perspective the County has evidently through this testimony indicated to the PUC, which will be hearing the matter on Friday, that their first choice now is to have the poles relocated. If, however, that is not feasible, then mitigation measures that were previously approved would go into place.
CHAIRMAN McCARTHY: Let me see if we can get a little bit of clarification.

Was there a public hearing process in San Joaquin County before these poles were installed which gave citizens in San Joaquin County an opportunity to address this issue?

MR. NESSLER: No, sir.

CHAIRMAN McCARTHY: Did the San Joaquin County Board of Supervisors approve formally in a document the action of the Public Works Department?

MR. NESSLER: Can I address the issue?

CHAIRMAN McCARTHY: Could I just have a yes or no to that.

MR. NESSLER: They did not.

CHAIRMAN McCARTHY: You authorized your Public Works Department to permit telephone poles or utility poles to be installed without any formal --

MR. NESSLER: If I can address the issue just briefly. I'll do it as quickly as possible.

The process that has been used in San Joaquin County that was previously used up until the issue of these poles came up was PG&E had franchise rights in San Joaquin County and basically anywhere within the right-of-way of San Joaquin County they had the right to place a pole.

When the issue -- when these poles were actually -- and our Planning Department was notified of the proposed
location of these poles previously. A development plan was requested. That plan was not received by the Planning Department. What occurred was basically the poles were laying alongside the road and our office was made aware of them by some residents in the area. We asked at that time before the poles were in place if it would be possible to relocate the poles to the other side of the road.

At that point in time it's my understanding that basically PG&E or the parties involved just indicated that it was not financially feasible. Since that time we have always taken the position that -- requested the poles be relocated.

CHAIRMAN McCARTHY: How many of these miles of the poles are in San Joaquin County of the 54.8 miles of the transmission line?

EXECUTIVE OFFICER DEDRICK: We could determine that, but I don't believe anyone would know off the top of their head.

CHAIRMAN McCARTHY: Mr. Nessler, would you like to answer that?

MR. NESSLER: No, I don't. I would give a guess that the majority of it is probably located in San Joaquin County.

CHAIRMAN McCARTHY: I tell you, I'm really bothered by this whole process. From what I understand so far there's been no public hearing at the local level.
EXECUTIVE OFFICER DEDRICK: Until after the fact.

CHAIRMAN McCARTHY: Until after the fact to act upon this.

MR. NESSLER: That's correct.

CHAIRMAN McCARTHY: Now we're being called upon to ratify a process which didn't occur.

EXECUTIVE OFFICER DEDRICK: Mr. Chairman, that's correct. The problem is that power lines can be constructed if they're less than 200 KV without any environmental work under the general authorization of the Public Utilities Commission.

By the time it gets to us where you have to make some kind of CEQA determination before you can grant a lease to cross the river, it's a fait accompli. There is nothing you can do to change that. Yet you must take on the responsibility which properly should have been borne for the state by the Public Utilities Commission before the power line was ever constructed.

COMMISSIONER TUCKER: We didn't have to take on this. Why did we ever take this on in the first place?

EXECUTIVE OFFICER DEDRICK: So that we could grant a lease. Because we are the only state agency that is available to deal with the problem. The PUC does not have to do that.

COMMISSIONER TUCKER: We're not available to deal
with the problem. This is apparent here.

EXECUTIVE OFFICER DEDRICK: The alternative is you
could not grant a lease. There was no other lead agency
available. It's either you cannot grant them a lease or we
have to be lead agency. That's the current status of the
situation.

I agree with you. I served on the Public Utilities
Commission for three and a half years and I protested that
all the years I was there.

CHAIRMAN McCARTHY: Who designated this Commission
as the lead agency?

MR. SANDERS: I don't know whether designation is
the correct word, Mr. Chairman. We undertook that task to
enable the Commission to consider this particular project.
As Ms. Dedrick has indicated, if no CEQA work were to be
done, this Commission could not consider the lease
application.

CHAIRMAN McCARTHY: It might be appropriate that no
CEQA work is to be done. What we don't have established in
front of us so far is that there has been a single public
meeting to make that determination at the local level.

EXECUTIVE OFFICER DEDRICK: Not before the power
lines were built.

CHAIRMAN McCARTHY: What?

EXECUTIVE OFFICER DEDRICK: After the power lines
were built and when we became lead agency, there have been public meetings. But prior to the construction of the lines that are contested, you are quite correct.

The problem is that we're the first state agency to have discretionary authority. Therefore, we're automatically the lead agency. It's not something you get to accept or reject. The law says you gotta do it.

CHAIRMAN McCARTHY: I wouldn't mind being the lead agency if appropriate steps had been taken in the first instance.

EXECUTIVE OFFICER DEDRICK: I agree.

CHAIRMAN McCARTHY: We haven't even heard from the other two counties and don't know if they have the foggiest notion of what's going on.

MR. SANDERS: They have been circulated the document. But from your perspective, that's correct.

CHAIRMAN McCARTHY: Okay. Thank you.

Let's hear from the next witness. Now, apparently these are citizens that have some question about this. I don't know if they have any particular order they want to go in or if they've talked to each other. I have five of them. Do we need to hear from all five of them or are there one or two spokespersons that we can hear from? We've got Karen Ojeda. Do you want to designate who? Let me tell you who we've got. We've got Claude Snead. We've got Jim -- and
forgive me -- Genasci. We've got Judith Balderston.

MS. BALDERSTON: Not on this issue.

CHAIRMAN McCARTHY: All right, we've got Karen Ojeda, Claude Snead and Lois and George Findley. Who wants to testify?

MR. NESSLER: I think Karen is going to come up and speak for herself.

EXECUTIVE OFFICER DEDRICK: Mr. Chairman, while they're coming up it's fair to point out that under most circumstances there is no state agency that issues a permit. Therefore, no hearings are ever held on power lines of less than 200 KV. That is to say there is no public input at all. The PUC process allows a protest to be filed and that protest --

CHAIRMAN McCARTHY: No matter how many poles or how long the transmission line.

EXECUTIVE OFFICER DEDRICK: If it is less than a 200 kilovolt line, that is correct. The protest process occurs after the construction of the line. I agree.

CHAIRMAN McCARTHY: All right, go ahead, please.

MS. OJEDA: My name is Karen Ojeda and I live in Lathrop. I'm a member of the Lathrop Municipal Advisory Council, but I'm here speaking as an individual.

This item has been heard a couple of times before the Board of Supervisors only in order to get it before the
PUC. The Board of Supervisors did agree to file a complaint with the PUC or send a letter of concern.

The original finding by the Board of Supervisors chose to come to the State Lands Commission and oppose the negative declaration. Two days later they reversed their decision after meetings with the cogenerators and PG&E.

In the draft staff report by Mr. Bill Adams, who's a PUC engineer, it was his recommendation that we come to the State Lands Commission and show our opposition to the negative declaration due to the inaccuracies. I have a copy of his report which recommends that we come to you people and he's an engineer of the PUC. So, he also recognizes you as the lead agency in this particular process.

The negative declaration before the mitigation measures were added was definitely inaccurate. With the mitigation measures that have been added in there, we still feel that there is a safety concern. We're trading off -- it may be a little bit safer, but we're still trading one issue of safety for another. You throw in a guardrail continuous -- considering the fog in San Joaquin County and especially in our area, it's a hazard. We have school buses traveling down that road. So, you create another hazard without any kind of a shoulder.

So, what we're asking is, because you're the lead agency, that a focused EIR be done based on the traffic...
study.

CHAIRMAN McCARTHY: Specifically, what do you hope will come out of all this? What increased safety measures do you or your neighbors have in mind?

MS. OJEDA: The ultimate is the relocation of the poles. From what I understand, your function is to approve a negative declaration that's accurate. We feel even with guardrailing and whatever other mitigation measures that Mr. Fukushima has recommended, that it's not and it's an erroneous negative declaration.

CHAIRMAN McCARTHY: When the Board of Supervisors in San Joaquin County, if what you've just told us is an accurate representation of what's happened -- and I'm not denying it -- changed its mind, was that a public hearing?

MS. OJEDA: The meetings with PG&E and the cogenerators was not. That was the County Administrator and the Chief Counsel meeting with them.

CHAIRMAN McCARTHY: Did all of the parties to this issue come before the San Joaquin Board of Supervisors and discuss this matter?

MS. OJEDA: Yes.

CHAIRMAN McCARTHY: Put the facts on the table.

MS. OJEDA: Yes.

CHAIRMAN McCARTHY: That's what I'm searching for, how much -- was there a public hearing on this where
different parties in San Joaquin County had a full opportunity to make their points.

MS. OJEDA: All after the fact.

CHAIRMAN MCCARTHY: The whole thing is after the fact. Apparently, that's a sin of existing state law and authority given to the utilities.

EXECUTIVE OFFICER DEDRICK: To the Public Utilities Commission.

CHAIRMAN MCCARTHY: Public Utilities under existing law. I'm saying that apparently what happened here is that the generators did what I guess has been the practice in this state for some time. They can install the poles if they're under this power level without any public hearing.

MS. OJEDA: They had unlimited franchise rights.

CHAIRMAN MCCARTHY: So, they haven't violated the law.

MS. OJEDA: They did not submit the development plan that was requested by the County. They never submitted that. They came back with a legal opinion of their counsel that it was not required. Unfortunately, the County didn't follow back after with that.

CHAIRMAN MCCARTHY: Okay. Well, let me mention that it's very difficult -- what I was probing in the first place was was there a public discussion of this issue, was there a fair hearing where parties had an opportunity to make their
voices heard and then the elected officials of that county
making a decision in public. I think I heard your answer to
be yes. Not satisfied with the answer, but at least that
process apparently occurred.

The issue then before us is do we re'interpret or
countermand that local judgment. Do we have some appropriate
planning role to remake that decision.

MS. OJEDA: The Board of Supervisors' determination
was that the poles were not safe, that they wanted the poles
moved. But they didn't want to hurt the cogenerators who
were trying to do business in their county.

CHAIRMAN MCCARTHY: It is nice to please everybody.
I'm just searching -- what was the decision? What in that
piece of paper that was voted by the Board of Supervisors was
said? What was their decision? They must have said we're
going to do this specifically.

MS. OJEDA: They are writing a letter to the PUC to
tell them --

CHAIRMAN MCCARTHY: I mean, what did they vote on?
What was the document they voted on on this issue besides the
letter? What did they vote on? What's in the formal minutes
of the public hearing conducted by the San Joaquin Board of
Supervisors?

Do you have a copy? Elucidate us. I want you to
know how much I enjoy what we're doing right now.
The Board of Supervisors' document says:

"It is hereby ordered that the Board of Supervisors accepts and authorizes the Chairman of the Board to sign a memorandum of understanding between the County of San Joaquin and Air Products and Chemicals, Inc. concerning mitigation of Harlan Road transmission line pole placement.

"It is further ordered the Board authorized the Chairman to sign the letter which will be sent to the Public Utilities Commission expressing the strong concerns and objections of the County of San Joaquin regarding the current placement of power poles along Harlan Road and urging the power poles be moved."

I don't know where that leaves us.

MR. VALENTINE: Mr. Chairman, if I may.

Denny Valentine.

The memorandum of understanding that was directed — that the Public Works Department was directed to enter into
to assure that the mitigation necessary in the event that the
power poles were not ultimately moved as a result of the
authority yet to be exercised by the Public Utilities
Commission was entered into and that has since been expanded
on in concept in response to the investigations of your
staff, of the staff of the State Lands Commission.

They in fact, as a process of issuing -- or
recommending the negative declaration be issued sent out
questionnaires and inquiries to all known interested parties,
who include all the public agencies involved, for comments
and response.

Subsequent to that and in fact as a result of that
they received both from the Public Utilities Commission
staff, who investigated the location of those poles and
identified the accident frequency that has occurred along
this stretch of roadway, and the Public Works Department
report as to mitigation, which includes curbs,
reflecterization and in certain instances guardrails as well,
that now is attached as a condition hopefully of the permit
you will issue.

I don't believe that it's fair to characterize an
absolute absence of public input. Also, the County had
issued the encroachment permits necessary to PG&E to
ultimately put those poles where they are.

The public agencies to the extent that they were
authorized have been involved. Hearings have occurred. Thus far everybody has done what they've been told to do and are in fact prepared to do additionally what is being recommended as a condition of the issuance of this permit to further provide whatever mitigation that anybody can imagine necessary along this stretch of road.

There is -- as it relates to the focused EIR that's been suggested, I really don't believe that there's any more information that can be generated other than what has already been attested to by traffic engineers, by Public Utilities Commission staff, by everybody who's looked at it. You can only do what's being recommended.

CHAIRMAN McCARTHY: Is the letter that was sent to the PUC from the San Joaquin County Board of Supervisors somewhat detailed in what it requested in terms of mitigating factors to try to address safety concerns on Harlan Road?

MS. OJEDA: I haven't read the letter. Wait a second.

Brian, have you read the letter?

MR. NESSLER: There is a more detailed report that the Commission has. You had a copy of that.

CHAIRMAN McCARTHY: We have read that letter that the San Joaquin County Board of -- our staff has read the letter that the San Joaquin County -- to the PUC from the Board?
EXECUTIVE OFFICER DEDRICK: I'm trying to ascertain that, Mr. Chairman.

Has staff reviewed that letter?

MR. SANDERS: We do not have that in our possession. The only thing that we do have in our possession is that which was attached to that, which has the following:

"It is the recommendation of the Public Works Department that PG&E's poles may be located according to the following minimum standards of horizontal clearance."

Then it gives three mitigations that have been mentioned here. The outside of the declared roadway recovery area the poles should be at least six feet and so forth and so on, six inch concrete curb and then the guardrail provision.

EXECUTIVE OFFICER DEDRICK: What's that?

MR. SANDERS: This is a document from the San Joaquin County Department of Public Works that I've been told was attached to the letter that has been just given to you. We have not seen that letter from the Board of Supervisors.

EXECUTIVE OFFICER DEDRICK: Our input, because of the structure of the process, is limited to begin with to commenting on the neg dec. Staff recognizing very early in the game that this is a whipsaw operation and that our
situation here is almost impossible attempted to negotiate a satisfactory physical solution to the existing physical problem.

That is the reason for the recommendations that are before you. Those were negotiated in an effort to resolve the problems that these people are discussing. They were negotiated with the proper local authorities and with the citizens, who did not accept them as sufficient to satisfy their concerns.

I really don't know what else we could have done, Mr. Chairman.

CHAIRMAN McCARTHY: Did they incorporate any changes that the Public Works Department had recommended to the San Joaquin Board of Supervisors?

EXECUTIVE OFFICER DEDRICK: They go beyond those recommendations as a matter of fact. Our recommendations include guardrails, which the Public Works Department did not feel was necessary.

MR. SANDERS: Until now.

EXECUTIVE OFFICER DEDRICK: Which they now feel are necessary. But during the negotiations they did not.

It's been an exceedingly difficult project for the staff to handle. There have been a lot of changes in position of the negotiators. As you know, we have very little authority here.
CHAIRMAN McCARTHY: Comments from the two Commissioners?

Commissioner Tucker.

COMMISSIONER TUCKER: The proposed mitigation which has been distributed to anyone who has this public document indicates the requirement of placement of guardrailing or other measures deemed appropriate by the PUC and the San Joaquin County Board of Supervisors, which may include relocation of power poles along Harlan Road, et cetera.

Is that -- are you telling -- are the people who are here who are opposed to this telling us that they don't have confidence in the San Joaquin County Board of Supervisors to impose this? Because as I read this, what we would be doing is saying, look, if the local official's public as represented by their Board of Supervisors feel that this ought to be moved, then it has to be moved.

I mean, we're trying to avoid making that decision that ought to be made at the local level and indicating that the Board of Supervisors ought to make that decision.

MS. OJEDA: The Board of Supervisors cannot force them to move the poles.

COMMISSIONER TUCKER: But this is a measure that if they don't comply with it, then, as I understand it, our approval is not effective. In other words, we're saying our approval is not effective unless this mitigation measure is
complied with, is that correct?

MR. SANDERS: Yes, sir, that's correct.

COMMISSIONER TUCKER: So, if the Board of Supervisors says to move it --

MR. SANDERS: Or the PUC.

COMMISSIONER TUCKER: Or the PUC and they don't move it, then the matter is not approved pursuant to what we're adopting here.

MR. NESSLER: That would be a different mitigation measure than we had understood previously.

COMMISSIONER TUCKER: Well, it's right here.

MR. NESSLER: Previously it had been indicated that that mitigation measure said -- indicated that the --

COMMISSIONER TUCKER: Why don't you read this. I don't care what it was previously. Let's talk about what it is now. This is what staff is proposing to us that we adopt.

MR. NESSLER: Okay, the end of that sentence, "The placement of guardrailing and/or any other measures deemed appropriate by the California Public Utilities Commission and/or the San Joaquin County Board of Supervisors which may include the relocation of the power poles along Harlan Road from the west side to the east side if so required by the CPUC". That doesn't indicate that the San Joaquin County Board of Supervisors would have that authority.

COMMISSIONER TUCKER: Can we take out that "if so
required by the PUC"?

EXECUTIVE OFFICER DEDRICK: What would be the
significance of doing that?

MR. SANDERS: The operative agency in this
particular instance is the CPUC. The San Joaquin County
Board of Supervisors as indicated here may take a position
and may encourage the CPUC to take a specific action. But
they in and of themselves as at least represented here do not
have the wherewithal to have them move poles.

COMMISSIONER TUCKER: I understand that. But if
we're making our approval contingent on the Board of
Supervisors agreeing that that's where they ought to be
located, the question is can we do that?

EXECUTIVE OFFICER DEDRICK: Mr. Chairman, I think
that what we're discussing here is a proposal that if the
State Lands Commission doesn't have the authority to require
the poles be moved, then the State Lands Commission requiring
the poles to be moved if San Joaquin County requires them,
which also doesn't have the authority, I don't think that
gets you anywhere.

CHAIRMAN MCCARTHY: The difference is that we're
looking at a Board of Supervisors' resolution which itself is
contradictory.

EXECUTIVE OFFICER DEDRICK: Well, that is certainly
true.
CHAIRMAN McCARTHY: The first paragraph "The Board is authorizing the Chairman of the Board to sign a memorandum of understanding between the County and Air Products ..." and the second paragraph we read a mea culpa expressing the strong concerns and objection of the County regarding the current placement of power poles.

How about just a clean position? Supervisor Carter, it says here, made the motion. How about simply a position of we're against the poles and we want them removed if that's what the Board of Supervisors are saying, or we want mitigation factors and we understand the poles are going to stay. Instead of this.

I think what Commissioner Tucker is trying to suggest is maybe it would be appropriate for the elected officials who were elected at the local level to make a decision.

Do you have any comment on that, Mr. Nessler?

Because this resolution is two decisions.

MR. NESSLER: I can speak for Supervisor Sousa and his position. You know his position. I just related to you his position. I don't think he did take two positions as you indicated.

CHAIRMAN McCARTHY: I didn't say Supervisor Sousa. I don't even know who voted on this thing, but Supervisor Carter and Supervisor Willhite were the movers of the motion.
I'm just looking at the document. I was on the board of supervisors, I have an idea how decisions are made.

All we're suggesting is this is a decision that should have been made. Now, whatever your decision is, we're not inclined to contradict.

MR. NESSLER: It's my understanding that -- I don't have that right in front of me. But the indication on there is that the Board of Supervisors requested that the poles be relocated.

CHAIRMAN MCCARTHY: No, no, I'm sorry. I would have to give the most generous liberal interpretation of this language to come to that conclusion. The second paragraph is that: "The Board authorizes the Chairman of the Board to sign a letter which will be sent to the Public Utilities Commission expressing the strong concerns and objections to the County regarding the current placement of power poles and urging that the power poles be removed." Well, okay.

See, the first paragraph is contradictory to that when you authorize going forward with the signing of the memorandum of understanding. The PUC is going to read this and they're going to say, wait a minute, you're taking two different positions here.

Would you concede that much?

MR. NESSLER: Yes. It's my understanding that -- and if I can try and enlighten it a little bit. It's
understanding --

CHAIRMAN MCCARTHY: If we received from the Board of Supervisors either paragraph, our task would be easy. We make decisions all the time, but your Board heard your citizens on this issue and the applicants. They should have passed one paragraph making a decision.

Where are we on this thing besides irritated?

MR. VALENTINE: Mr. Chairman, if I could.

CHAIRMAN MCCARTHY: Mr. Valentine.

MR. VALENTINE: With regard to the letter. While it does appear on its surface and in this context to be somewhat convoluted, I believe in fact it recognizes the Board of Supervisors' understanding of who had jurisdiction and authority as it relates to the issue of movement of the poles.

Therefore, as it relates to their jurisdiction, which is to establish mitigating features if those poles are to remain where they are, they directed that that occur and simultaneous to that they also recognize that the Public Utilities Commission was going to have a hearing on the location of those poles the 23rd of this month, this coming Friday. So, as it relates to that process and that hearing yet to occur, they also directed that that hearing be advised of their position as it relates to the jurisdiction of that Commission.
CHAIRMAN McCARTHY: Mr. Valentine, I admire that supple explanation. We understand the process. If this Board of Supervisors wanted these poles removed, they should have taken a clean, strong position to that effect. Then if they lost that at the PUC, they could have come in with the memorandum of understanding.

MR. VALENTINE: That's fine.

CHAIRMAN McCARTHY: Commissioner Tucker, do you have any suggestions to get us out of this?

COMMISSIONER TUCKER: It seems to me that we should adopt the staff recommendation, delete the words "if so required by the CPUC" and give the County Board of Supervisors the opportunity and the responsibility where I think it appropriately lies to express an unequivocal opinion as to where these poles ought to lie.

I don't see that we can make a decision like that regarding something that's obviously important to and impacts a group of people that we really don't have any contact with.

It seems to me that if that happens, the result would be the Board of Supervisors either says to impose mitigation, remove the poles or they say that everything's fine as it is; in which case the project goes forward.

Otherwise if this mitigation measure isn't met, then it seems to me the result is we don't end up adopting the negative declaration and we take it from there.
CHAIRMAN MCCARTHY: I hope everybody in the audience understands what we're painfully going through here. If we don't clarify the level of decisionmaking responsibility, this Commission would be flooded with similar matters coming before it up from local government without a hearing process and without a clear decision having been made.

Yes, sir.

MR. FEHLMAN: Mr. Chairman, I'm Bob Fehlman, project manager for Pacific Gas and Electric and on this particular project.

PG&E would not agree to deleting "if so required by the CPUC" for the reason that's already been stated here more than once that the County does not have the jurisdiction on the placement of the pole lines. We have a franchise agreement with them. We have stated we are more than willing to comply with the jurisdictional body's decision. That being the PUC. And we would request that that language be left in. Thank you.

COMMISSIONER TUCKER: Would you disagree that the Commission could refuse to adopt the negative declaration?

MR. FEHLMAN: I don't disagree with that. That's the Commission's decision.

COMMISSIONER TUCKER: That would be your preference for us to refuse to adopt the negative declaration?

MR. FEHLMAN: Our preference would be that the
negative declaration be adopted, but only if the language "if so required by the CPUC" is inserted. Because they are the jurisdictional body and this case will be presented before them on Friday of this week.

All of these issues will be heard by expert witnesses in some detail. We have already agreed, obviously, that we will comply with the CPUC ruling, whatever that might be, including relocating the poles if that's their decision as a jurisdictional body.

But to lay that decision by act of this Commission on San Joaquin County or any other county when that has not been the practice or the precedent in the State of California I think would not be acceptable to our company.

CHAIRMAN MCCARTHY: Mr. Stevens.

MR. STEVENS: Mr. Chairman, if I may suggest. The negative declaration must be an accurate description of the environmental effects and mitigation measures must be a description and nothing more of what has been undertaken by the applicant.

So, to that extent I think the gentleman from PG&E is right. The Commission cannot confer jurisdiction on the Supervisors that they don't have by amending the terms of the mitigation. I think that the CPUC must have the responsibility for location of those poles. We can't impose a condition by means of a negative dec. You can reject the
negative dec and order an environmental impact report. But we could not impose this additional --

CHAIRMAN MCCARTHY: I don't think Commissioner Tucker was suggesting that we were going to convey jurisdiction on the San Joaquin Board of Supervisors. I think what he was trying to achieve here was having that Board of Supervisors which had to act on this in a public hearing make a clear decision on what they wanted.

MR. STEVENS: Unfortunately, the mitigation measure is not a mitigation measure if it's not accepted by the applicant as being one of the terms of which it will comply. I think the applicant has said that it would not comply with the condition that the Supervisors must decide where those poles should be.

EXECUTIVE OFFICER DEDRICK: Mr. Chairman, your authority really lies in your lease document. It seems to me -- and Bob and I have been just talking about this -- that you could make that supervisorial discretion a condition of the lease and handle -- because I believe -- I'm sure Mr. Stevens is correct that you can't do things like that with the mitigation. But you can certainly do it in your lease document.

COMMISSIONER STANCELL: Is that the same as conveying the authority that rests with the PUC to the Board of Supervisors?
EXECUTIVE OFFICER DEDRICK: I think that issue remains open. I mean, the PUC has the authority that has withstood an awful lot of legal challenge. It might not withstand a legal challenge in this case.

COMMISSIONER STANCELL: But even if we --

EXECUTIVE OFFICER DEDRICK: San Joaquin does not have the authority. That is true.

COMMISSIONER STANCELL: So, if we adopted the recommendation to drop that sentence or phrase which the gentleman finds objectionable, given the jurisdiction that is clearly established it's a moot point. Because PUC will certainly step in any way.

EXECUTIVE OFFICER DEDRICK: But the lease would not be operational unless that condition were satisfied. If that is the desire of the Commission is for the San Joaquin Supervisors to take a firm position, you could -- the lease would not be operable if you added that condition until they did so.

COMMISSIONER STANCELL: Until they take a firm position.

EXECUTIVE OFFICER DEDRICK: And then if their firm position is undergrounding the lines, then the lease is not operable until the PUC requires --

COMMISSIONER STANCELL: Authorizes it.

EXECUTIVE OFFICER DEDRICK: You would then have a
stalemate on the issue, I assume.

COMMISSIONER STANCELL: So, we in effect would be placing the operation of our permit in the hands of PUC.

EXECUTIVE OFFICER DEDRICK: Yes, but you regularly do that with any lease. For example, any lease along the coast is, as all our leases are, subject to other jurisdictions.

COMMISSIONER STANCELL: Just want to make sure understood.

CHAIRMAN MCCARTHY: What is the language you're suggesting to achieve what you just suggested?

EXECUTIVE OFFICER DEDRICK: Well, leaving the language in the mitigation as the attorneys have said it should stay and putting in the lease a condition that sets your requirements in regard to the San Joaquin County Board of Supervisors. That would accomplish what you said you wanted to accomplish, I think.

Bob, I'm sure, can devise whatever needs to be done.

CHAIRMAN MCCARTHY: The Commission is prepared to act on this unless someone has some new testimony to add at this moment that is startlingly different.

Yes, sir.

MR. FINDLEY: I would like to speak, sir.

CHAIRMAN MCCARTHY: Go ahead.

MR. FINDLEY: I'm George and this is my statement...
Findley.

Now, we brought the PUC action and we were not notified by the County when they were going to have meetings. The PG&E --

CHAIRMAN McCARTHY: Notified by whom?

MR. FINDLEY: We were not notified by anybody in the County when they were going to have meetings. We ran down a lot of this stuff, went to the Public Works Department and a lot of places, got nowhere until we found out there were some papers and we forced them to give us a paper. A lot of it was incomplete.

Then we went to French Camp and LMAC meetings and Manteca and told them what was going down. They didn't know what was going down.

PG&E says in one of their testimonies by Don Folty that they informed all jurisdictions. They informed none. We weren't informed of any of these Supervisors' meetings. We just happened to hear about one, which they declared that the poles should be moved.

Then the other meeting we weren't informed of Willhite and the other supervisor with PG&E. I think that one of the people from the jurisdictions should have been there.

The only permit that I understand that PG&E had was an encroachment permit that they got. They applied for an
the 24th of June and they started stuffing the poles in the ground. But they didn't get the permit. They just applied for it. They didn't get the permit until July the 10th and the poles were already in the ground, most of them.

I don't like this. I don't like to be treated this way. I don't think citizens ought to be treated this way.

CHAIRMAN McCARTHY: Permit from the Public Works Department?

MR. FINDLEY: Yes, an encroachment permit and it was incomplete. I went in there the other day, I heard there were 52 pages. We got about four pages. I asked them for the other pages and they didn't know what they were or where they were at.

The whole thing has been on a clandestine operation with PG&E right from the start. We started this way back in February. We wrote a letter to the PUC, which they received on April the 3rd, a five-page letter, and then we -- there was nothing apparently done about it. So, we went down there in June to find out what was being done about it and then we filed a formal complaint. We made out 17 copies. That's a result of this PUC hearing.

They just started stuffing poles in the ground when they found out we were doing that. Then I had aerial photographs taken before the poles were in and after the poles were put in.
CHAIRMAN McCARTHY: Thank you, Mr. Findley.

MR. FINDLEY: My wife might want to speak on this matter.

MS. FINDLEY: I have prepared testimony. I will read just a certain part here.

Would you please turn to page 2 of Attachment A of your negative declaration?

EXECUTIVE OFFICER DEDRICK: Just a moment, Commissioners. We'll identify the page for you.

MR. HIGHT: 257, I believe.

EXECUTIVE OFFICER DEDRICK: Project description.

MS. FINDLEY: Page 2 under Stockton Segment where it states -- line six where it states:

"The line jogs east one block to Harlan Road at this point and continues south in a franchise position along Harlan Road until just south of Louise Avenue where the line turns east to connect the cogeneration plant at the Libby Owens Ford Plant."

There is certain information left out of this paragraph. I would hate to think deliberately, but our feeling is that it was in order to not show a significant impact.
The information omitted is the franchise position alluded to is county road franchise and it follows and lies between Harlan Road and Interstate 5 freeway. This could have been and should have been installed along the east side of Harlan Road where there is an already in-use utility franchise distribution line just for that maybe two miles of dangerous pole line.

This impacts traffic safety in that area on both Harlan Road and Interstate 5 as accident reports could show you and wasn't even considered because information was apparently not provided. The attached map doesn't provide enough detail to even suggest where Interstate 5 is.

Therefore, we suggest that -- my husband, my family and most of the members in the Lathrop and French Camp areas -- that the mitigation measure submitted to this negative declaration does not correct the significant impact of safety, but circumvents safety guidelines and regulations to have implemented for the public's protection.

We would ask this Commission to deny a Negative Declaration 419 and call for a full and complete environmental impact report. Thank you.

CHAIRMAN MCCARTHY: Thank you very much.

MR. FINDLEY: I might add again, sir, that the utility easement or franchise on the east side of Harlan Road is about 20 feet wide. The one on the west side of
Harlan Road is about on the average eight and a half feet from a fog line to the six foot chain link steel fence. This is a 115,000 volt line hanging above between these two highways above a chain link fence. A serious accident could bring those wires out inside of that fence and you would have an electrical grid that somebody could get into and it would either cause a bad fire or catastrophe. I don't think you want that.

If an environmental impact had been imposed on PG&E to start with, we wouldn't be discussing this here today.

Thank you, sir.

CHAIRMAN McCARTHY: Thank you both for your testimony.

I think the Commission is ready to make a decision. Let me reiterate that on the safety issues and the other matters, we're really not in a position this far from the scene to make a judgment on each of these things; but the San Joaquin County Board of Supervisors is and I think we have some hesitancy in the absence of some clear decisions moving forward with this.

So, we want the staff to repeat the recommendation about amending the lease terms.

EXECUTIVE OFFICER DEDEICK: If it is the Commission's -- Jan has devised some language.

MR. STEVENS: It's my understanding that the
Commission would approve the lease subject to the condition that should the CPUC or the Board of Supervisors of San Joaquin County require guardrailing and other measures deemed appropriate including relocation of the power poles along Harlan Road from the west side to the east side shall be a condition of that lease, is that correct?

COMMISSIONER TUCKER: Correct.

MR. STEVENS: If the supervisors then took no action or the CPUC took no action, then the lease would proceed and PG&E would be permitted to complete construction.

CHAIRMAN MCCARTHY: Have the supervisors in their action at any point made a judgment that with such guardrails that this area is going to be safe for public use?

EXECUTIVE OFFICER DEDRICK: Let me ask Dwight Sanders that. I believe that that has not occurred. It has occurred at a staff level, not at the Board of Supervisors level.

MR. SANDERS: That is correct, Mr. Chairman. The Department of Public Works has indicated that guardrailing is a feature that they would encourage if the poles are not moved and they have indicated that the recommendations are based on the criteria set by the American Association of State Highway Officials in Geometric Design Guide and so forth and so on and guidelines recommended in a highway design manual published by Caltrans.
So, they have made that determination; the
Department.

CHAIRMAN McCARTHY: By putting the phrase in there
"and other appropriate safety measures."

EXECUTIVE OFFICER DEDRICK: All right.

CHAIRMAN McCARTHY: Now, that's an amendment to the
lease.

EXECUTIVE OFFICER DEDRICK: That's the
understanding.

CHAIRMAN McCARTHY: Terms of the lease.

EXECUTIVE OFFICER DEDRICK: So, your action would be
then to adopt or to certify the neg dec as submitted and the
lease as amended. And adopt and approve the lease as
amended.

CHAIRMAN McCARTHY: That's correct.

Commissioner Tucker.

COMMISSIONER TUCKER: I just want to make clear
here. First of all, I don't think any of the Commissioners
have any animus towards PG&E or its project or whatever.
We're really not passing judgment on that at all. I think if
we were dealing with the issue of the lease itself, my guess
is all the Commissioners would say fine.

The issue here is that local people, if they have a
complaint about this, we are trying to make clear that the
burden is on them to go to their local representatives. If
those local representatives say this thing has to be moved, then that is a condition of the lease. If you don't get them to take that action, then the lease goes forward.

So, the responsibility it seems to me is where it ought to be on the local elected officials and the citizens of this area that are affected to come to some decision on this.

CHAIRMAN MCCARTHY: Commissioner Stancell.

COMMISSIONER STANCELL: Mr. Chairman, I'd just like to express that I'm a little dismayed that the process had to take on the course that it has. I wish there was some way or some assurance that could be provided that the State Lands Commission wouldn't find itself in the position that we found ourselves today where we almost have to verify or ratify an after-the-fact action of another agency's jurisdiction.

I was just wondering if there was something that we could instruct the staff to pursue in terms of having us to be placed in this kind of a situation again.

EXECUTIVE OFFICER DEDRICK: There are a lot of statutory restrictions on the Commission's actions and one of them is that the question of -- when an application is received, for example, in the instance --

CHAIRMAN MCCARTHY: Let's vote and then we will talk about this after.

EXECUTIVE OFFICER DEDRICK: Fine.
CHAIRMAN McCARTHY: This one has been beat to death. Any other staff comment?

EXECUTIVE OFFICER DEDRICK: No.

CHAIRMAN McCARTHY: Ready for a motion.

COMMISSIONER TUCKER: I move it.

CHAIRMAN McCARTHY: Commissioner Tucker moves.

COMMISSIONER STANCELL: Second.

CHAIRMAN McCARTHY: Commissioner Stancell seconds. The Commission votes unanimously for the amended lease.

Item 33.

EXECUTIVE OFFICER DEDRICK: Item 33 is off calendar, Mr. Chairman, and I believe that's the end of the meeting.

CHAIRMAN McCARTHY: We have taken a vote count?

EXECUTIVE OFFICER DEDRICK: Yes. The applicant has withdrawn.

CHAIRMAN McCARTHY: That's the end of the Commission meeting.

EXECUTIVE OFFICER DEDRICK: Thank you.

(Thereupon the meeting of the State Lands Commission was adjourned at 11:35 a.m.)

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CERTIFICATE OF SHORTHAND REPORTER

I, EILEEN JENNINGS, 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, Eileen Jennings, 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 2nd day of November, 1987.

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