MEETING
STATE LANDS COMMISSION
STATE OF CALIFORNIA

STATE CAPITOL
ROOM 447
SACRAMENTO, CALIFORNIA

ORIGINAL

MONDAY, MAY 9, 1988
10:20 A.M.

Nadine J. Parks
Shorthand Reporter
MEMBERS PRESENT

Jim Tucker for Gray Davis
State Controller, Chairman

Stephen Hopcraft for Leo T. McCarthy
Lieutenant Governor, Commissioner

La Fenus Stancell for Jesse R. Huff
Director of Finance, Commissioner

STAFF PRESENT

Claire T. Dedrick, Executive Officer
James Trout, Assistant Executive Officer
Jan Stevens, Deputy Attorney General
Jack Rump, Counsel
Lance Kiley
Curtis Fossum
Greg Taylor, Deputy Attorney General
"Moose" Thompson
Michael Valentine
Richard Ludlow
Alan Hager, Deputy Attorney General
Sue Breece
Lisa Lynn
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Item No. 34 (Off Calendar)

Doris Welty
Leucadia

Discussion

Inez Yoder
Carlsbad, SOS

Christopher Neils, Counsel
Hunt Brothers
CHAIRMAN TUCKER: Good morning. We're going to begin with the consent calendar.

And I've received a number of requests for permission to testify. And if there's anybody else who hasn't filled out one of these forms who would like to testify on any of the matters before us, you can obtain from the woman up there at the front. And if there are no objections to any matters on the consent calendar, seeing none, we will deem the calendar to be --

EXECUTIVE OFFICER DEDRICK: Mr. Chairman --

CHAIRMAN TUCKER: -- approved after confirming the minutes to the last meeting.

EXECUTIVE OFFICER DEDRICK: There's one item, sir, that has been pulled from the consent calendar.

CHAIRMAN TUCKER: Okay. What's that one?

EXECUTIVE OFFICER DEDRICK: It's on Consent Item 1, No. 1, the Chevron/Shell lease renewal. If you could state your action to exclude that one, that would be --

CHAIRMAN TUCKER: Okay. The approval of the consent items, without Shell and Chevron request -- for purposes of the record, Mr. Hopcraft is here voting for the Lieutenant Governor today. And he and Mr. Stancell
will be voting on the items.

I'm just refereeing. So, if they get out of hand, I'll rap their knuckles.

Okay. On the regular calendar, Item No. 17, we're going to leave that to the end.

Item No. 18, City of Sacramento.

EXECUTIVE OFFICER DEDRICK: Mr. Chairman, several items have been pulled from the calendar. Perhaps you'd like to have me present that first.

CHAIRMAN TUCKER: Okay. The items pulled, I'm sorry, are 18, 19, 21, 22, 27, 28, 31, 32, and 34.

EXECUTIVE OFFICER DEDRICK: That is correct, sir.

CHAIRMAN TUCKER: Okay. So that leaves us with No. 20, Union Oil Company.

EXECUTIVE OFFICER DEDRICK: Yes. This is a consideration of an 18-month extension from the time the lease for the pier in Contra Costa County terminated in -- on April 1st, 1987.

So, what we're asking for is an extension to September 30th of this year to continue negotiations on a new lease for that installation.

CHAIRMAN TUCKER: Okay. Mr. Hopcraft, do you have a question?

COMMISSIONER HOPCRAFT: I do. I would like to
know from staff what leverage, if any, we can exercise to bring Union Oil into compliance with water and air quality standards, and if we could exercise any leverage at this point during this lease extension?

CHAIRMAN TUCKER: Persuasion, you mean?

COMMISSIONER HOPCRAFT: Persuasion or any other form of --

EXECUTIVE OFFICER DEDRICK: I think the fact that the Commission is expressing sincere interest in those aspects of the thing, we'll certainly -- it's guidance to the staff to be sure that they're strongly considered in the development of a lease.

We'll certainly report back to you on the status of those situations, and whatever we can do to make sure that your concerns are recognized and met.

COMMISSIONER HOPCRAFT: That lease would come back to us when?

EXECUTIVE OFFICER DEDRICK: Not before the end of September, probably in the September meeting, Mr. Commissioner.

MR. KILEY: Unocal is under a stop order or cease or desist type of order from water quality people right now. And they're very nervous about that. So, we are exercising some control over them. And we would not probably not recommend to the Commission any action that
would get them out of that bind; we want them to stay in that bind from our perspective.

EXECUTIVE OFFICER DEDRICK: Commissioner, the lease is also, as you know, all our leases require compliance with all local, State, and Federal regulations. There is -- we certainly would not recommend any changes in that form. But we'll get more --

COMMISSIONER HOPCRAFT: I'd like us to go beyond that and take an affirmative position, and to include possibly some sanctions of our own if they do not comply with the terms of our lease.

What enforcement powers do we have, given that our lease requires them to be in compliance and they are not in compliance, what sanctions are available to us or could be added to this lease that we could enforce?

EXECUTIVE OFFICER DEDRICK: I understand what you're asking. Let me briefly tell you what the existing situation is.

The lease has terminated. The lease in its original form, the old lease, says at the end of the term they either return the land to its natural condition; that is, remove the pier, or if the Commission chooses, the pier becomes the property of the State. It's that area that we're discussing now, the lease for the new pier which will -- for the existing pier, which will be the property
of the State.

In a general way, violation of any terms of any lease is grounds for denial -- or for rescinding that lease. And I think that that's our basic authority. I probably should have Jack Rump, who is Assistant Chief Counsel, speak to this directly if that's to your pleasure.

CHAIRMAN TUCKER: One thing that I think might be helpful, because it's a question that's intended to be more than just a question about Union Oil.

EXECUTIVE OFFICER DEDRICK: That's correct. I'm sure it is.

CHAIRMAN TUCKER: It may be helpful if someone could prepare a report for the Commission --

EXECUTIVE OFFICER DEDRICK: All right.

CHAIRMAN TUCKER: -- indicating what our general requirements are, the methods by which we can enforce those. And the other question I would have is what authority do we have to determine, for example, that they have been cited by the EPA? Do we have some way of being notified about that, or do we just have to stumble across it? Will the EPA tell us if we ask them, you know, "Here are the leases. Please notify us anytime there's a problem," et cetera?

Because I think that's an important aspect of this. Even if we do have a condition, if we're never going
to find out that they have violated one of those terms and conditions, you know, until we read it in the newspaper, then it's probably not as meaningful as it could be.

EXECUTIVE OFFICER DEDRICK: Well, we really do keep track, but we'll be happy to get a report to you that clarifies the situation. Does that satisfy you, Commissioner?

COMMISSIONER HOPCRAFT: Yes. If we can have it understood that when the lease comes back, I'd like to have that be part of the presentation of the lease.

EXECUTIVE OFFICER DEDRICK: Yes.

CHAIRMAN TUCKER: Okay.

EXECUTIVE OFFICER DEDRICK: The next item, I think, Mr. Chairman is 23.

CHAIRMAN TUCKER: Phillips Petroleum.

EXECUTIVE OFFICER DEDRICK: Yes. This is the approval of a nonexclusive geologic survey permit on State lands. This is the kind that does not use anything, any air guns or anything like that. It's a question of taking small samples of the sea bottom.

CHAIRMAN TUCKER: Any questions? Okay. That item is approved.

If there's anyone in the audience, if we happen to go by an item that you did want to speak on, please don't hesitate to say something, stand up, indicate your
interest. We can always go back to an item.

So, the fact that we seem to be going quickly, does not mean that you should hesitate to speak up.

Item 24, Aggregate Transport.

EXECUTIVE OFFICER DEDRICK: Yes, Mr. Chairman, this item was considered by the Commission approximately three months ago. Let me give you just a brief history to make the record clear.

Aggregate Transport was the winner of a public bid for the removal of sand in the Sacramento River, which at that time constituted a navigational hazard where the lock, the Sacramento Lock entered the river opposite Miller Park.

The lease that went out to bid required -- put some fairly tight restrictions on where you could dispose of the -- or store, really, the sand from that operation.

Those restrictions were dictated by the fact that a previous negotiated lease had resulted in some environmental work for a specific site.

To make a long story short, the winner of the bid, Mr. Kay Bell, was unable to reach the same conclusion in regard to a site for storage, because the area in question, which had been in the County of Yolo at the time of the earlier -- at the time the bid was accepted, was now in the City of West Sacramento, and the
rules have charged.

We have established, I believe, very clearly through a lot of discussions and meetings that Mr. Bell really did endeavor to meet his requirements. Mr. Bell has requested an extension in order to find another buyer or storage place for the sand.

I do not recommend that you give that extension, because this bid was a very tightly and hotly contested one. I do not believe that it would be equitable to the other bidders if we did that.

So what I'm recommending to you today and -- is that you release -- terminate the lease, but without penalty to Mr. Bell. The original lease required a $30,000 minimum payment. I believe that he has not really had an opportunity to carry out the conditions of the lease, and therefore the rent would be an inequitable burden.

CHAIRMAN TUCKER: Any comments? What's the status of the work? Did any work occur?

EXECUTIVE OFFICER DEDRICK: No. No work has occurred at all. In the meantime, I forgot to say, in the meantime, of course, the Port of Sacramento has closed. So, the original driving impetus from the Commission to remove a navigational hazard, though it's still a navigational hazard for navigation on the river,
it's not of the critical nature that it was when it -- the
locks were open and it really interfered with navigation
in and out of the locks into the river.

CHAIRMAN TUCKER: Is this --
EXECUTIVE OFFICER DEDRICK: So the -- excuse me.
CHAIRMAN TUCKER: Is this item going to be put
out for bid again?
EXECUTIVE OFFICER DEDRICK: Yes, we would like
to redesign the bid package so that it more nearly fits
the true conditions that exist now and put it out for bid
again sometime later in the year.

The Fish & Game requirements limit the time
at which work can be done. And so, any operations would
probably not take place until -- I mean, the bid, even if
it went into effect prior to that time, could not take
place until next year. The work couldn't.

COMMISSIONER STANCELL: Why couldn't we just
accept the second highest bid or the second lowest bid?
EXECUTIVE OFFICER DEDRICK: I'll have to ask
Jack to speak to that. I believe once you've accepted a
bid, you can't do that. But I --

MR. RUMP: Well, I think there might be
several considerations to think of here.

EXECUTIVE OFFICER DEDRICK: Bring the mike over.
MR. RUMP: Can you hear me now? We're not sure
entirely of how many additional bidders would be interested in the project, nor the particular bids that they would have in mind. So, I believe the point is that another solicitation, particularly with a stronger provision of performance would be preferable to accepting the second bid.

I've forgotten whether or not we actually had rejected the other bids at the time of the first acceptance.

CHAIRMAN TUCKER: There's been a passage of quite a bit of time since.

MR. RUMP: Yes, there has.

EXECUTIVE OFFICER DEDRICK: It's been almost well, it will be a year by the end of this month. In fact, it's a year and one month probably.

CHAIRMAN TUCKER: So, the action of the Commission today would be to cancel the lease and excuse the penalty provisions; is that correct?

EXECUTIVE OFFICER DEDRICK: Yes. And I don't believe you have to take the action, but there's a $5,000 deposit that should be returned to be Mr. Bell as well.

I don't think it's necessary for you to say that, but for your information.

CHAIRMAN TUCKER: Okay. That is approved.

Item 25, City of Long Beach, Alamitos Bay.

EXECUTIVE OFFICER DEDRICK: Item 25, this is a
consideration of a proposed pooling agreement between --
by the City of Long Beach for the Alamitos-Bay marine
stadium area.

If you want more input, Mr. Thompson is here
if you'd like that further discussed. It's a noncontro-
versial item to our knowledge.

CHAIRMAN TUCKER: Any questions?
COMMISSIONER STANCELL: No questions.

CHAIRMAN TUCKER: Okay. That's approved.

Item 26, assignment of the Chevron-Phillips leases.

EXECUTIVE OFFICER DEDRICK: Yes, Mr. Chairman,
this item has been handled in its entirety pretty much
by one of our attorneys, who is right behind me, Rick
Ludlow. I would like to ask him to present the situation.

CHAIRMAN TUCKER: Start out by telling us what
your recommendation is and then give us the reasons why.

MR. LUDLOW: Well, basically, the recommendation
of staff is to authorize the City of Long Beach to execute
its discretion in authorizing the assignment of these
interests in the LBOD tidal ands contract. All the
information that the city and the State have requested
from the applicant has been received, with the exception of
some additional information that the city's auditors would
like to have in hand, which include, I believe, pro forma:
cash flow projection and that type of thing.
The representatives of the city are here to explain their position. I think you should probably hear from them directly.

CHAIRMAN TUCKER: Okay. Are there some representatives here from the City of Long Beach?

Want to come on forward? What's the period of time that the lease has remaining?


CHAIRMAN TUCKER: So, they're taking it over for the last 10 months.

MR. LUDLOW: Right. Last 10 months.

CHAIRMAN TUCKER: Okay. Could you both identify yourselves?

MR. EMEK: I'm Bill Emek with the Long Beach City Attorney's Office.

MR. COLAZUS: I'm Zen Colazus. I'm the Director of Oil Properties for the City of Long Beach.

CHAIRMAN TUCKER: Okay. As I understand the real issue here, the question is the financial ability of American Energy Operations to take over this responsibility. The reason that we might want to have Chevron and Phillips or Long Beach might want to have them continue on the hook, so to speak, is because they clearly have the financial wherewithal to -- to fulfill their obligations.

And so, the question would be: Does American
Energy Operations have a similar -- certainly not as big, but similar ability to fulfill the obligations undertaken by the lease?

MR. EMEK: In a sense, Mr. Tucker, there are two considerations. One is, under the LBOD contract, the parties are jointly and severally liable, and remaining on the contract after this takes place, will be the Exxon Corporation and Conaco. So, we still have two major companies as part of this operation.

But secondly, to determine the financial capability of this American Energy Operations, as Mr. Ludlow pointed out, we have asked for a pro forma projection of the cash flow, and we've also asked for evidence of their ability to obtain a $3.5 million line of credit, which we believe will be sufficient to meet the obligations of the contract for the remaining period.

American Energy has assured us they will provide this information, and we will then submit to our people for review and we will be in a position to make an informed decision on the matter.

CHAIRMAN TUCKER: Okay. As I understand it, the Commission's action today would be giving the City of Long Beach the authority to either accept or reject this assignment; is that correct?

MR. LUDLOW: That's correct.
CHAIRMAN TUCKER: And the city is indicating to us that they would like to have the authority to accept or reject after conducting the investigation that you've indicated.

MR. EMEK: That is correct, Mr. Tucker.

CHAIRMAN TUCKER: Any questions?

COMMISSIONER HOPCRAFT: Then the city would like to see the assignment take place if the information is reassuring when it is completely received by the city?

Mr. EMEK: It would be the recommendation of the staff to the City Council that it take place if the information provided is sufficient to assure us of the financial — of the ability of American Energy to perform, yes, financially.

CHAIRMAN TUCKER: And will we have another crack at it or is this our only chance?

MR. LUDLOW: This is your last — this is the last time it will be before the Commission.

CHAIRMAN TUCKER: Is there some reason why we couldn't wait until after you've received the information and act upon a recommendation for the city?

MR. COLAZUS: We are supposed to receive the information by tomorrow sometime, sir.

MR. LUDLOW: The way the contract is set up, it's an odd situation, where the Lands Commission is supposed...
COMMISSIONER HOPCRAFT: Is there any opposition to this assignment that we have heard about so far?

EXECUTIVE OFFICER DEDRICK: We have heard none at our staff level.

COMMISSIONER HOPCRAFT: I know that the Attorney General in previous assignment cases has raised questions. Those questions do not exist in this instance; is that correct?

EXECUTIVE OFFICER DEDRICK: The Attorney General on the case is -- I'm sorry, Jan, would you like --

MR. STEVENS: That's all right. Mr. Hager is here, and I think he can speak to it. I don't believe we have any problems with this one.

MR. HAGER: I'm not sure what issues you are referring to.

COMMISSIONER HOPCRAFT: Well, we were considering the LBOD last time, the Attorney General, I was told, had questions about whether the withdrawal by some of the parties, but not all of the parties, and then the reassignment of those parties' rights raise some legal questions that the Attorney General is not comfortable with.
MR. HAGER: The only concerns we had with this transaction have been resolved. Our concern was that we get a commitment to the city in writing under a separate document stating that Phillips and Chevron be responsible for all activities occurring prior to the close of this transaction.

And our concerns were environmental -- dumping of waste into toxic waste sites in L. A. County and with respect to liability under pending litigation on windfall profit taxes.

We have received agreements of indemnification from both Phillips and Chevron in that regard, and we find them to be in order. So we do not have a problem with it.

MR. LUDLOW: We have received an expression of support from the president of the local oil and gas workers union in Long Beach, about 200 of his constituents' jobs would be affected if this LOBD contract were to be terminated and shut down.

CHAIRMAN TUCKER: Okay. So, Alan, then the Attorney General doesn't have any problems with the Commission giving the city the authority to either approve or disapprove this assignment?

MR. HAGER: That's correct.

Let's see. Now we have 27.

EXECUTIVE OFFICER DEDRICK: 27 and 28 are off,
Mr. Chairman.

CHAIRMAN TUCKER: Okay.

EXECUTIVE OFFICER DEDRICK: 29, 30, and 33,
as well as the ones that are off, among them constitute a
single issue area. The problem is that the water level in
Lake Tahoe has dropped substantially because of the drought
in the central Sierra, and these people are all people who
have marina operations up there which are affected by this
drop in water.

They have asked for permission from the Corps of
Engineers and from us to go into what constitutes a
maintenance dredging operation.

I met with them a week ago Friday to see what we
could do in regard to, you know, our ability to act on the
grounds of whether or not people had the right
environmental documents prepared, or could they be
negative declarations and so forth.

The Corps has been conducting the basic
negotiations. And in those cases where the Corps
document, either a letter of permission, which would be the
equivalent in our case of a categorical exemption, or a
Fonzi, which is the equivalent of a mitigated negative
declaration, where those documents are available, staff
counsel advises me that you can act to grant those -- those
maintenance dredging contracts today.

That's true in the cases that are on the
calendar. In the cases that have been pulled from the
calendar, we noticed them, all of them so that we could
act on those which were ready. In those cases, the Corps
is still working on their environmental documents.

What I would -- we have had a request from one
of the applicants, and I would certainly endorse that
request, that if we could have a special meeting before the
end of the month if those Corps documents are available,
you could then authorize that action on those which cannot
be authorized today.

The staff recommendation is that you authorize
the ones which we can legally authorize and if you would
be willing to have a small special meeting toward the end
of the month, we could cover the others.

There are several people who are here. I don't
know if they actually want to speak or not.

CHAIRMAN TUCKER: Yes. We have a sheet from
one gentleman, who was obviously born to be a lawyer,
Greg Lien.

(Laughter.)

MR. LIEN: I'm just here to answer any questions
that you may have.
CHAIRMAN TUCKER: Okay. I had just one question of staff. And that is, I take it that staff believes that this dredging doesn't do any harm to the lake?

EXECUTIVE OFFICER DEDRICK: That is correct. And that is, of course, the reason for our concern that the environmental work be done.

Fish & Game has met with -- the Tahoe agency, Fish & Game, and the Corps, and various -- the other folks who were concerned at the lake have met and developed some guidelines on how to handle this dredging.

This is, in fact, maintenance dredging. The biggest problem is where do you dispose of the soils. And in those cases where we are recommending action today, all of those problems have been resolved.

The others will be, I'm sure, because we're not talking big dredging. We may have other problems occur later that have much more environmental significance. Such things as piers that are so high above the water that they can't get access to their vessels, and those proposals may take -- may be more complex to carry out. Those I propose to deal with entirely on a case-by-case basis.

CHAIRMAN TUCKER: Is Greg still here, Taylor?

Greg Taylor?

EXECUTIVE OFFICER DEDRICK: I don't think so.
CHAIRMAN TUCKER: Greg, can you come here for a second? I just want to ask one question.

As our resident Lake Tahoe lover here, is the Corps of Engineers any more sensitive in regards to the lake than it is in regards to other matters it deals with?

MR. TAYLOR: Let's say, with regard to the lake, I understand that they are doing their job. And the concern that is here is whether this is truly maintenance dredging or whether or not it's new dredging,

If it's new dredging, then they're going to have to go through an environmental review. That's been the position of the Corps; certainly the staff has supported that.

For the ones that are going through, they have been at this depth, and it's just a clean -- as I understand it, it's just to clean up the channels to get the boats in and out.

And as to those, there isn't any -- does not appear to be any problem. So, with the ones that aren't here, they are going through the process to make sure that this is maintenance dredging and not new dredging down to a depth, or that it is dredging -- it's maintenance dredging on something which didn't have a proper permit beforehand.
CHAIRMAN TUCKER: But we don't rely simply on the Corps, though --

MR. TAYLOR: No.

CHAIRMAN TUCKER: -- to do our job?

MR. TAYLOR: No.

EXECUTIVE OFFICER DEDRICK: No. The Corps is doing the fundamental documentation, and California law allows us to utilize that. But our people are -- and Fish & Game people -- are very much involved in the process and the Attorney General's Office. Rick Skinner, who works for Greg on the Tahoe thing, has been very close to us on this all the way through.

CHAIRMAN TUCKER: Good. Okay. 29, 30, and 33 are the ones we're talking about. Is that correct?

EXECUTIVE OFFICER DEDRICK: Yes, I believe so.

CHAIRMAN TUCKER: Okay. Anybody want to be heard on this matter?

Okay. Those items are approved. 29, 30, and 33.

31 and 32 and 34 are off. 35?

EXECUTIVE OFFICER DEDRICK: 35. Jack, would you like to speak to this? This is the Arcata agreement.

MR. RUMP: Certainly. This is the proposed agreement between the Commission, the City of Arcata, and the County of Humboldt regarding a solid waste assessment.
testing of the old Arcata landfill site.

Essentially, the site has been identified and suspected of containing toxic waste. The procedure, as you know, is to perform this testing. The agencies have met and have agreed to share equally a burden of a maximum of $10,000 each.

So, this is for your approval to enter into such agreement so such testing can proceed.

CHAIRMAN TUCKER: Okay. Any questions?

Okay. That's approved.

36, City of Stockton?

MR. RUMP: 36 is an item for the annexation of tide and submerged lands in the City of Stockton.

The general location of this is at French Camp Slough close to the San Joaquin River.

Your approval would include both an approval of the proposed boundaries and consent as a landowner.

CHAIRMAN TUCKER: Any questions?

That's approved. Item 37.

EXECUTIVE OFFICER DEDRICK: Item 37 has someone who wishes to speak on it. Excuse me, Jack, would you like to have one of your people present this? This case -- this is the situation of the Batiquitas Lagoon where the Hunt people are, among others -- we're asking you to authorize our authorization for working with this -- the settlement
and exchange agreement with Batiquitos with Fult and also
the -- I guess that's all that is on this one.

We've already approved -- you have already
approved the joint powers agreement at an earlier meeting.
I was thinking that was on here, too. But this is really
the execution of a -- of a compromise title settlement
and boundary agreement.

Jack, do you want to speak to this?

MR. RUMP: Certainly. Claire is correct on the
stage that we're at. Staff counsel, Curtis Fossum, has
been handling this matter as it proceeds. Perhaps we'll
have him make a short presentation to you.

CHAIRMAN TUCKER: I think everyone's familiar
with the background. Can you just tell us what the
Commission will be doing today?

MR. FOSSUM: This is a request for the
Commission to approve a settlement agreement, property
dispute, that involves both claims of sovereign ownership
to the bed of the lagoon as well as possible implied
dedication claims on the upland adjacent to the lagoon.

The Commission here is -- would be approving
the quitclaim of any interest it has in the uplands
adjacent to the lagoon in exchange for approximately
387 acres of land within the lagoon that the Hunts
presently own under a deed from the State of California.
The claim of ownership of the State to the lagoon is the fact that some historical documents show that there were tide and submerged lands in parts of the lagoon during the 19th century.

The implied dedication claim is that the State would be resolving, with the approval of the Attorney General's Office, relate to a road that has run adjacent to the lagoon for approximately a hundred years across private property.

The public has made access to that by foot and bicycle, motorcycle, offroad vehicle, as well as normal vehicles.

The resolution of this property interest is in furtherance of the proposal to enhance and restore this lagoon to its once tidal -- tidal prism so that the tides will keep the lagoon clean.

The Commission, in November of 1987, became a party to the enhancement project by executing a memorandum of agreement which will provide up to $20 million by the Port of Los Angeles. It's the largest scale type of restoration like this that we're aware of.

One of the keys to it is the fact that the Legislature required that the State of California become the owner of the lagoon prior to the expenditure of that money on the restoration project.
The approval that you're being asked to make today is really one just of title to the property. It will not in and of itself have the restoration project go forward.

Environmental documents, both under CEQA and NEPA, will be necessary before the parties will be able to in fact do any enhancement of the lagoon itself.

CHAIRMAN TUCKER: Okay. And the Attorney General supports the compromise title settlement?

MR. STEVENS: Yes, we do.

CHAIRMAN TUCKER: That was Mr. Stevens.

MR. STEVENS: Mr. Taylor concurs.

(Laughter.)

EXECUTIVE OFFICER DEDRICK: Whether he likes it or not.

(Laughter.)

CHAIRMAN TUCKER: You guys are in teams, huh? Okay. I think the Commission is inclined to improve this item. There are several people who indicated they would like to be heard either in rebuttal, if there was opposition, et cetera. I don't know if they still wish to be heard.

Dolores Welty?

MS. WELTY: Yes, I do. Do I sit here?

EXECUTIVE OFFICER DEDRICK: Yes, please.
identify yourself for the record, Ms. Welty.

MS. WELTY: Yes. I'm Dolores Welty. I live on the south shore of the lagoon in Leucadia. I represent myself and 800 petitioners who have concerns about the enhancement project and about the development surrounding the lagoon.

I brought pictures for the Commissioners. This is the lagoon in one of its good moments. This is the way the Hunt properties would prefer it look at all times, but it does not.

It quite often is merely dried up and is a salt pan there. Assessing the value of the lagoon is a complex issue and it's dependent upon the point of view from which the land is regarded. To the California wildlife who use it, and to those of us who honor the preservation of a wild California, this lagoon and its adjacent open space is priceless.

To the builder, though, this lagoon has been worse than worthless, since possession of the lagoon with no permission to alter it has kept the Hunt project from going forward.

Finally, the Hunts realized that they were never going to get approval for their project until they accepted the lagoon as a valuable public resource and agreed to allow the resource agencies to oversee any project proposed.
for it.

By giving up the lagoon, the Hunts have turned a liability into an asset in three ways. They have been able to gain approval for their extensive development plans on the adjacent lands. They have been able to pass the cost of enhancing the lagoon over to the public. And the proposed lagoon enhancement will give them the water feature that they desire as an amenity for their resort, and to which they refer in their master plan.

Thus, the transfer of this property to the people of California is of high value to the Hunts. What has the public gained?

First, the impact of the proposed lagoon enhancement plan upon the natural values of Batiquitos Lagoon is under close scrutiny and has caused extensive controversy.

Changing this fresh water wetland into a salt water wetland is accepted by marine fisheries experts. But the actual enhancement plan is required to maintain existing values and no marine fishery values exist at Batiquitos. Ornithologists and wetlands experts have strong reservations that this plan will be anything but a loss to the existing values of Batiquitos (sic).

Further complicating the issue is the California Department of Fish & Game's new wetland policy.
which has just been issued. This policy states that
wetland acreage, not value, but acreage, will be increased
by 50 percent over the next years.

Opening Batiquitos to the ocean and dredging
it will cause Batiquitos to lose wetland acreage; up to
one-third of its wetland acreage, depending upon which
alternative is chosen.

Will this then be acceptable to Fish & Game
under the new policy? So what is the value of the lagoon
to the public? If public funds are spent to dredge it
at the expense of its wetland values, but on an increased
in its value (sic) as an amenity for the Hunt properties
resort, the people of California have not only lost the
wetland, but would have paid for its destruction.

If the no-project alternative is chosen and the
Port of Los Angeles is required to look elsewhere for a
mitigation site, leaving Batiquitos unchanged, what have the
people of California gained by accepting title to
Batiquitos?

Again, its value is dependent upon its continued
use by wildlife and its visual relief as open space.
Here again, the fact that the Coastal Commission overruled
their staff's recommendation on April 14th of this year
and approved the Hunt project has compromised the lagoon's
value.
Approval of the Hunt project included approval of amendments to the local coastal plan that increased density from the allowed 2,200 houses to 2,836 houses, a multibuilding hotel resort with conference suites, a commercial sports complex, restaurants, a golf course, and a neighborhood shopping complex. By allowing such dense development around this site, the natural values of the lagoon have been compromised.

Furthermore, the Hunt development, combined with other approved developments surrounding the lagoon, may result in a catastrophic effect upon the lagoon. The Urban Canyon Study by UCSD documents the fact that wildlife abandons an area that has been surrounded by development.

Birds, strangely enough, are the first to go. And it is birds that predominate at Batiquitos. What compensation can the public receive for the loss of the upland to development and the resultant diminishing wildlife values of the lagoon?

So here's another question of the value of Batiquitos. When all developments have reached buildout -- this is the developments that surround the lagoon -- and the public owns all the wetland area, plus the trail around its edge, what will we see? Will there still be thousands of waterfowl or shore birds here, the species alternating season by season? They are here now.
Or will there only be tens, or hundreds, or perhaps none at all? And what will be considered the cause of their discontinued use?

The public access trail around the lagoon placed as it is within the wetland boundary -- the wetland buffer, pardon me, is not adequate compensation for the loss of the upland value. In deeding title of the lagoon to the State of California so that public money can be spent to dredge it, is also an unequal trade. Nothing extraordinary has been asked of the Hunts as compensation for the allowed increase of density.

Access to the hotel and commercial facilities does not compensate the public for the loss of this open space. The impact of this project upon the natural values of the property, both lagoon and uplands, would be massive.

We ask that the State Lands Commission provide for a more nearly equal exchange of values by requesting title to a portion of the environmentally sensitive upland acres adjacent to the lagoon, and by postponing action upon this issue until the environmental study for the enhancement plan has been completed.

At that time, a more accurate assessment of the value of Batiquitos Lagoon to all parties should be possible. Thank you.
CHAIRMAN TUCKER: Any questions?

COMMISSIONER HOPCRAFT: Yes. I have several questions.

First, I'd like to thank you for coming up here today to present your arguments, which I find give me pause. I'd like to hear the response from our own staff to some of the cogent points that I think were raised.

EXECUTIVE OFFICER DEDRICK: Mr. Chairman, Commissioners, on the legal questions and the negotiating questions, I think that Curtis is very, very well-informed. If you would like -- however, I think you also need some comment on the environmental factors. And Dwight Sanders, who, as you know, is very much involved and runs our environmental branch, could go into that.

CHAIRMAN TUCKER: Before we go into that, I'd like to see if we could get a copy of your statement, and also if you have copies of the petitions that you referred to, the 800 petitioners. I'd like to get a copy of those.

MR. FOSSUM: Commissioners, Mrs. Welty did submit a written statement as well to the Commission, so you have that.

EXECUTIVE OFFICER DEDRICK: Where is it? This isn't hers.

MR. FOSSUM: Not today. It was received in the mail last week.
CHAIRMAN TUCKER: Let me try and frame some of the issues here so that we know what we're talking about. We're not approving the program for the restoration itself of the lagoon; is that correct? That's something that's down the line.

MR. FOSSUM: That's correct.

CHAIRMAN TUCKER: And that will involve a lot of additional discussion, et cetera; nor are we involved in the improvement of the level of development, if any, around this lagoon; is that correct?

MR. FOSSUM: That's correct.

CHAIRMAN TUCKER: The question really is: Should we accept title to the property in settlement for our claims, and are we receiving enough for what the attorneys have valued the claim to be; that is, looking at its strengths and weaknesses, et cetera, have we gotten a good deal for the claim that we feel that we have?

MR. FOSSUM: Correct.

COMMISSIONER HOPCRAFT: Well, but the argument seemed to be made that by clearing the lagoon, that that is hinged to the upland development. What is your response to that argument?

MR. FOSSUM: In effect, that is the situation. The City of Carlsbad, in approving this plan, approving the local coastal plan and approving the development plan...
for the Hunts required that, as a condition of their approval of those -- their taking those actions, that within 30 days of the Coastal Commission also approving the local coastal plan for the area and the permit for the development, that the Hunts were required to convey this property to the State.

So, they made it a condition of those permits. So, if the State did not accept those things, then the entire local coastal plan would fall away.

The problem is that we have been negotiating this for several years. It's had several levels of analysis. When we approved the memorandum agreement last year, we, in effect, took the position that we would acquire the lagoon for the State of California.

When Mrs. Welty mentioned that the Coastal Commission, in a unanimous vote I might add, overruled their staff recommendation, that had to do with development on certain portions of the upland that the staff felt would be nice to have as open space. And it also had to do with a second area, the type of grading of certain hillsides, issues that have absolutely no impact before us today.

The Coastal Commission report, on the other hand, supports our position on this, on every other issue -- staff and the Coastal Commission action.
This is also in furtherance of the legislation that was passed which permitted the city -- the Port of Los Angeles to restore this lagoon. That was done with the support of many agencies, as was the memorandum of agreement.

The analysis that has gone into this so far was that this is a lagoon that needs restoration. That was the conclusion of all responsible State and Federal agencies. And they concluded in the memorandum of agreement that they would go forward with this program.

They did not guarantee that this lagoon would ever be restored. What they did is say they would seek out title to the lagoon and then do the environmental analysis, as I mentioned earlier, through CEQA and NEPA, to see whether or not the benefit to the environment was there in a restoration project.

If it is, then the plan is to go forward. Even if this lagoon is not restored, the State Lands Commission, its actions today, we feel is in the best interest of the State.

The lagoon will, in fact, be in State ownership. It will be protected for environmental purposes. The Hunts will not be able to dredge it themselves in any future times to create a marina or any other type of direct benefit to their property. It will be a beautiful restored...
lagoon someday we hope for the environment. The fact that
the Hunts own the adjoining property is certainly to their
benefit, but it's to the benefit of the people of the
State and the environment that the staff recommends this
settlement today.

COMMISSIONER HOPCRAFT: What about the salt
water versus fresh water argument?

MR. FOSSUM: The lagoon historically does dry
up every summer. The majority of the bed of the lagoon
becomes a salt pan. Some of the historical data that
our research has reflected shows that it's been used by
vehicles in the bed of the lagoon historically. Dune
buggies and what not would go into the lagoon.

CHAIRMAN TUCKER: Greg?

MR. TAYLOR: Let me -- the concerns that have
been raised by the lady today is certainly articulate
and are concerns that are going to have to be addressed
in the course of the project.

To some large extent, they have already been
addressed by the city and the Coastal Commission who have
jurisdiction over the uplands.

The important thing is to understand what this
Commission is trying to do today. And I'd just like to
emphasize what Curtis has been saying. And that is, that
for more than 15 years, we have been trying to get public
title to all of Batiquitos lagoon. And we've started down at the bottom area and as that area has been acquired, the Lands Commission has transferred the interest to the Department of Fish & Game for administration. And we've admitted their expertise in making sure that the right decisions are made with regard to the balance of use, which will still have to be weighed out after the title transfers under this document.

What's before you today is the opportunity to put in public ownership all of the lagoon. Before any development can take place, there would still have to be the other studies.

As I understand the lady's comment that was made to you, her objection is not so much to taking the title, but that we haven't taken enough title. And the areas that she is asking that additionally be included in this transaction are areas which have already gone through the planning process to date and also are outside any claim we possibly have to the property.

You'll recall, about two or three years ago on a Christmas Eve, we approved the -- a project for a smaller parcel of property next door. With great acrimony, we insisted upon a road which shows in the telephone directory. Although it's not dedicated, I opened it up in the telephone directory down there one day, and here was
the road on it.

What we have insisted is the recognition of that road within the area that is being set aside for public use. It may be that we're going to step down the amount of public use allowed; certain kinds of public use in that area won't be appropriate.

But at least there's recognition of this road which goes back to the first maps of the area. With regard to the State Lands' claim to the area below that, whether it is a natural water body, which you'd have a good claim of title to, or whether it is, as is shown on some of the township maps, a dry hayfield, because that's the two ways that it's been depicted.

It would seem to me that recognition of public title to all of that, together with this historic road, is more than fair compensation. I always wish that we could do more for people or that we could get a better -- better transaction. But in this location, I think that we've done very well in terms of perfecting title and getting it in public ownership so the planning process can continue, and also that the process of evaluating the other impacts of this project can be made by the necessary agencies.

It just isn't possible to take into consideration all of the things, given the scope of the jurisdiction of
this Commission. And those are being handled by the agencies. And this is a controversial project in the area. It has been debated and will continue to be debated in that process.

But as a landowner, we will have more say in that process than we will have at the current time with uncertain title.

And that's basically where we'd be left.

COMMISSIONER HOPCRAFT: Why could we not do, as was requested, which would be to postpone action until the environmental studies have been received?

MR. FOSSUM: The entire planning process that this project has gone through the last several years ended in the City of Carlsbad requiring that the Hunts, within 30 days of the Coastal Commission's action of the notice of intent to issue a permit, that they convey that interest to the State. They wanted to put Hunts' feet to the fire to ensure that this property came to the State on a very timely basis.

Those 30 days, I believe, are running now. And if the Commission fails to act today, they would have to go back through the entire planning process. And I think I can't emphasize enough that I think this is one of the better settlements that the State has ever made under its ability to clear title to property like this for the State.
The dollar values are -- our goal is to get equal or greater value. We're certainly getting greater value than our claims to any of the property that we're clearing title to.

Mrs. Welty did mention something -- the one thing that I think has caused the most controversy with this, and that happens to be the trail. The Department of Fish & Game and the Fish & Wildlife Service are concerned about the existence of people close to the lagoon. And they have, therefore, required that any public access trail along the edge of the lagoon be kept as far back as possible.

We, therefore, trying to put this trail on the north side of the lagoon as far from the lagoon as possible, which would be within approximately a hundred feet of the lagoon so that you're not quite a ways away, but at the same time keeping as much distance from the wildlife.

The problem is that, as Greg mentioned, there's a road and a trail that have been there for a hundred years or more. And the wildlife agencies as well as the Coastal Commission, once again, have said that they don't want any more grading in this area. In fact, the coastal plan forbids -- forbids it.

Therefore, the existing trail that is there is the one that would be used where possible. That would put
the trail in some instances closer to the lagoon than the
50 to a hundred feet away -- I think it's three instances.

But that has been agreed to by the wildlife
agencies and the Coastal Commission, and is therefore the
trail that we're looking to establish.

MR. TAYLOR: I think there's a short answer to
why it's important to go ahead with the transaction today,
and that is that that puts title in a public agency and
cuts off the ability of the Hunts to keep dangling the
title in our face and then pulling it back, or adding
conditions, and then taking away other conditions.

By doing this transaction, we are setting -- we
are giving status, not just a claim, but we are giving an
ownership interest in this area that, as the rest of the
planning process goes ahead, we can have a much better
role in what we have to say about how the process will be
engaged.

And it is important that title be settled in
order that the planning be completed. And there is no
guarantee as to how all the EIR studies and other things
will come out. But by your action today, there will be a
guarantee that there will be public ownership of that area
whether it remains as hard salt pan or it remains as a
lagoon in some modified form, or whether it would go
completely to a marina, which I do not believe is in
anyone's contemplation for the ultimate use of this property, although there is hope that by doing some dredging, it would be -- it would be continually covered by water throughout the year, because the tidal prism would keep it open to the sea.

The problem with this area is that it closes up, and then it doesn't have any exchange of water.

CHAIRMAN TUCKER: So, by taking title, the Commission ensures it will have a role in how the lagoon is developed or not developed.

MR. FOSSUM: That's correct. And the intent is to transfer it to -- as Greg mentioned -- to the Department of Fish & Game as an ecological reserve. So, the Commission at a later date will have before it the authorization to execute a lease to the Department of Fish & Game so that it can become one of the ecological reserves systems.

CHAIRMAN TUCKER: Under conditions set by us.

MR. FOSSUM: That's correct.

EXECUTIVE OFFICER DEDRICK: That's correct.

In the biological questions, I think the relevant point is the process that has been established under the memorandum of agreement brings together all of the expert agencies with the jurisdiction and the knowledge to improve or to handle wildlife habitat.
What we've started is a process by which the questions that have been raised by these ladies can be answered. Whether it is better to have a salt water or fresh water lagoon, whether you would have more wildlife habitat, more wildlife living because you have a lagoon that does not become a salt pan every summer, whether the quality of wildlife is better if you have a salt pan every summer, all of those questions need to be addressed by people with professional knowledge and can come up with answers that are in the best interest of the wildlife community.

I think that that's really the outstanding thing here, is you haven't seen Mrs. Yoder's statement yet, but it's here, that has been raised in regard to wildlife is we do need to have the studies that are -- that are parallel to this action of the Commission.

To finance those studies requires the expenditure of public funds, tidelands funds. The statute requires that those funds can only be spent on publicly owned land.

What that means is that the process of restoring a very badly damaged wetland cannot go on absent the acceptance of this title. And that's the concern of the wildlife people. They want to go forward with finding out the best way to -- and doing what they can to restore this wetland, which has been damaged by a lack of ground water.
As development has taken place all through that part of California, the ground water doesn't come into that -- through the lagoon anymore, so the lagoon doesn't open to the sea in the winter.

So, it's all those kinds of complexities, Mr. Commissioner, which I know you understand at the Bolsachica Marsh.

COMMISSIONER HOPCRAFT: Well, I want the Commission to respond to the concerns of the folks who live around there. And while I understand we have control over only a certain portion of the land that's proposed for development, I am very concerned that our action today will or could, you know, grease the wheels for that development in a way that we may lose control over, in a way that it's admitted we have no control over.

And I don't see the public, the 800 homeowners referred to by Mrs. Welty, having a particular role. What steps would the Commission take if we accept title to what commitments would we make to Miss Welty and her fellow homeowners that we will meet and represent their concerns in this environmental planning process?

MR. FOSSUM: They will have a very significant role, in that the -- both the CEQA and NEPA processes are open to the public for comment. When the environmental impact reports are drafted, they will have the opportunity
to comment a will the State.

The kind of analysis that's done on that will be very detailed. It will discuss the impacts on existing wildlife. Those things are being studied now, what kind of wildlife values are in the lagoon, and they will be compared in the report with what they expect the enhanced lagoon would provide in values.

So, we would expect that all those individuals who signed the petition -- and I haven't seen the petition, but I assume it's directed at, in fact, this concern that has been expressed about what kind of environmental changes are going to be made by returning tidal flows to the lagoon.

Right now, you have a nontidal lagoon. If you bring salt water in there, it will have some impacts. But the wildlife agencies will have jurisdiction as well as the Coastal Commission, who will have to, once again, issue the actual permit under the Coastal Act for any dredging in the lagoon, as will the Corps of Engineers, EPA, all the water quality agencies will have their opportunities to comment on the project.

And we would hope that they would get a thorough public airing so that all members of the public, as well as the agencies, will have an opportunity to comment on those reports.
MR. TAYLOR: Mr. Hopcraft, I think the way to answer your question is that there is a better chance for public input with public ownership than there is with uncertainty of the public status.

And certainly, the record of development in Orange County -- in San Diego County has been one of pretty great density. And, certainly, if the Hunts had their -- their druthers, they would probably like to put this into a complete Newport Bay operation. I don't know if they could ever -- even they could afford the cost of that. But at least by having public ownership there, you're going to have a public agency -- public agencies making sure of how those things come out as opposed to having a hundred percent private development.

And at the present time, we've had a lot of studies on the title. We think that this is much better than we could do in any kind of litigation. And that it puts -- it gives the public agencies standing to say, "Hey, this is, you know, you are impacting our property, and we do have these concerns about it." That we will not have that kind of standing. We will have a stronger standing as a result of this agreement than without it.

And that there's greater jeopardy in some respects to the kind of project you ultimately will have if this doesn't go through than if it does.
And, therefore, I think that, in the long run, we have addressed the concerns that have been raised better by what we're proposing today than if the matter were postponed.

COMMISSIONER HOECKRAFT: Mrs. Welty, has what you've heard changed your view any?

Given the constraints on what we can affect, do you agree that it would be -- that we would better be able to carry the environmental concerns of the residents by approving this exchange?

MS. WELTY: What I've heard is what I have feared. I will be glad to see the lagoon in public hands. And I will be glad to have you take title to the lagoon.

You stated very definitely what it is that I wanted you to do, and that is to take title to more of the land than you seem to be able to do.

And my -- I still have that fear and do not see how I can -- that we can address the loss of a significant amount of upland to the lagoon. Wildlife does not sleep in a bathtub, you know, and upland is necessary to their continued survival.

I've not -- we've not been able to make that very clear either to the City of Carlsbad or to the Coastal Commission. And I did hope that perhaps you -- there was something State Lands could do.
COMMISSIONER STANCELL: Excuse me. Are you basically asking State Lands to acquire property that is of greater value to the property which we are offering them in exchange for the property in question? Is that what you're saying?

MS. WELTY: Yes. I did believe that the lagoon itself has a certain amount of value, true, untouched. But you're also asking the public to spend $26 million on that lagoon to improve it, and that may or may not be spent. If it is spent to improve it, though, merely -- merely taking title to the lagoon does not seem to me to equal the amount that will be spent.

CHAIRMAN TUCKER: Well, I think what you have to understand is that we can't simply wave a wand and say, "Well, this is the area we'd really like, and so we're just going to come in and take it."

MS. WELTY: Yes.

CHAIRMAN TUCKER: We're involved in a lawsuit. The lawsuit has a factual basis for it. The factual basis is that there are certain areas that the public had at some point or another because the way the waters were flowing in and out, the tides, et cetera. That's a factual issue. We can't contend that the tides roll all the way back to the mountains, and therefore, all of the property up to the mountains is ours or belongs to the State. We are
constrained by the facts.

And according to the attorneys, the facts don't justify, even under our construction of the facts, the acquisition of those properties that you're talking about. So, it's not something that we have a choice in -- in doing.

MS. WELTY: I see. I have talked to Mr. Fossum about it earlier. And because there was public access to nearly all these acres through bicycling and --

CHAIRMAN TUCKER: Yes, but you have to convince somebody that that's the case. And they just say, "Yeah, you're right. You can have it."

MS. WELTY: You have to convince --

CHAIRMAN TUCKER: You have to go to court --

MS. WELTY: -- the Hunts, the owner.

CHAIRMAN TUCKER: No, we have to convince a court.

MS. WELTY: I see,

CHAIRMAN TUCKER: And the other side disputes that. And that's why I've heard from a number of people who have congratulated the attorneys involved in this, that the negotiations that they have carried out have the potential for acquiring for the State an incredible resource.

If you go up and down our coast and look at how
few wetlands there are that the public has any access or control over. These are rarer than the Hope diamond at this point.

MS. WELTY: Yes, I know.

CHAIRMAN TUCKER: So, what the attorneys have accomplished in this, it seems to me, is an incredible achievement for the State if the State acquires property to this property. That we would like to acquire more, I think, goes without question.

But they have to make an evaluation, what would happen if we were to go to court, what would we likely end up with?

And I think their assessment is that we would not end up with more. We could end up with less.

Some of these claims have been totally unsuccessful. So, that's the balance, and the Commission ultimately has to rely on its attorneys to assess what is it that we are likely to be able to accomplish in court.

And their assessment is, and from everything I've heard, it sounds like their assessment is totally correct, that what we've been able to accomplish through the settlement is quite an achievement.

It may not be everything that everyone would like, but given the factual constraints, it's a major accomplishment.
MS. WELTY: Thank you very much.

CHAIRMAN TUCKER: We have two others who wish to speak. Inez Yoder and Christopher Mills.

MR. FOSSUM: Mr. Tucker, I'd just like to --

CHAIRMAN TUCKER: Yes.

MR. FOSSUM: -- qualify one of the statements that was made. We are not presently in litigation, but we do have a property dispute with KMI.

CHAIRMAN TUCKER: Right.

MS. YODER: I'm going to avoid my statement, since it has --

EXECUTIVE OFFICER DEDRICK: Would you identify yourself for the record?

MS. YODER: I'm sorry.

EXECUTIVE OFFICER DEDRICK: That's all right.

MS. YODER: I'm Inez Yoder from Carlsbad, and I represent myself and an organization called SOS, which is the Save Open Space initiative of Carlsbad, a group of individuals who are vitally interested in the open space of Carlsbad.

What I'm interested in is the possibility of the open space of Area 28, which impacts on the lagoon and scenic highway. And I see that you do not feel you have the power to add that to what you're asking for.

If there were any way that you could put a
condition on postponing the development of that until the
environmental impact -- something.

Thank you.

CHAIRMAN TUCKER: Mr. Neils?

MR. NEILS: Thank you, Mr. Chairman. My name is
Christopher Neils. And my office is in San Diego,
California, at 701 B Street, 10th floor. I'm with the law
firm of Sheppard, Mullin, Richter and Hampton, and we're
counsel to the Hunt Brothers and the Hunt Properties, Inc.,
the owners of the uplands, and at least according to our
records, would have a pretty good shot, if this matter went
to court, at also being declared the owners of the lagoon.

It is a matter in dispute as the Chair had
noted. I was sitting here earlier in this proceeding
debating with whether or not actually to come up here and
address some of the remarks.

I finally decided that I probably better, because
I think that in the zeal to articulate their concerns about
the lagoon, that unfortunately, some information has -- or
misimpressions may have been created in people's minds as
to the relationship with the uplands.

And I really feel like, on behalf of my clients,
I'd like to straighten that out. And this may go to some
of the background that seems to be lurking behind
Mr. Hopcraft's concerns.
I will try to be brief, Mr. Chairman. We are — one, wanted, first of all, to do what your staff has already done, which is remind everybody that project approvals come from other kinds of governmental organizations. This project has gone through the City of Carlsbad for more than three years. The — I can attest to it, having been involved with the project, that the City of Carlsbad extracted lists of conditions, requirements, environmental safeguards, and other things which go on at enormous length.

This may be one of the most heavily regulated and detailed master plan projects anywhere in Southern California. And in addition to that, it has also been through the Coastal Commission, which did not back away in any bashful role in seeking to require things of their own.

It has always been the — a practical recognition and realization on behalf of my clients that the price of getting a project approved on the uplands would very likely require them to deed over title to the lagoon to some kind of public agency. It has turned out that all of the various potential agencies in question have in mind the State Lands Commission.

The State Lands Commission also has potential claims of its own, which it has articulated, and that's perfectly fine with my client to go along with that
The one thing that's really important, and I think what cuts through the previous testimony today, is that there's really an important distinction between what's going on with my uplands project, which these people seem to desire to prevent, and what may or may not go on with the lagoon, depending upon the results of studies by a whole bunch of very well-qualified agencies and various environmental review by people who are going to try to figure out what, if anything, and under what circumstances and what controls can be done to change the state of the lagoon, if that is in the best interests of the public, once that has been studied.

But those two are very, very, very separate matters as I hope the Commissioners can appreciate, and as I believe that the comments of Mr. Fossum and Mr. Taylor would indicate.

After having -- by the way, the -- our project---the uplands project came before the City of Carlsbad Planning Commission and the City Council in November and December of 1987. There was a tremendous amount of public testimony, more than a hundred people. No opposition. Which is very interesting, considering we'd been in the process for more than three years.

When we went to the Coastal Commission, the
mayor of the city and the city planning staff came to the
Coastal Commission and spoke in support of the
project, reemphasizing the previous fact I mentioned.

I'm glad Mr. Fossum reminded you that it would
be misleading to accept at face value the notion that the
State Coastal Commission approve the project overriding
their staff concern or their staff recommendation.

The staff had a technical disagreement with the
City of Carlsbad as to how some grading ought to be done,
and there was a dispute about the intensity of using one
area. Basically two conditions out of 16 or 17 conditions.

And, yes, the Commission did disagree with the
staff on those two. But all the other conditions were
unanimously agreed to by everybody on all sides. But the
main point that I wish to make and to leave you with is
this: Nowhere in the project proposal for the uplands on
behalf of my clients have we ever suggested or asked for,
nor do we now, any kind of a requirement or expectation
that anybody do anything to the lagoon.

All we have merely agreed to do, if this agreement
is approved by you all, or the authority to enter into the
agreement is granted to your staff, is to deed over title
to it to a public agency; in this case, the State Lands
Commission.

No condition attached by the city or the
Coastal Commission to our project requires that anything be done to the lagoon by us or on our behalf or by anybody else, nor has any such condition ever been proposed.

The notion that somehow or other our project is going to cause the lagoon to get altered just plainly isn't true.

We're going to deed over the lagoon, if you'll let us, to the State. And then the State and the Federal people and all the various agencies that look out for the welfare of deep water fish and shallow water fish and salt water fish and fresh water fish, and shallow water birds and deep water birds, and the crustaceans and the mollusks, and everybody else of the wild kingdom that lives in that lagoon are going to study that lagoon and figure out what, if anything, ought to be done.

And frankly, whatever the answer to that is fine with my clients. If nothing is done, so be it. If something can be done, that's also fine. It will be out of our control. And we recognize that and always have.

And we don't ask that anything else be done.

Therefore, I believe that the notion that merit to the public could come from postponing your action today is a fallacious suggestion. Because the only thing that is going to be studied further from an environmental standpoint is the question: What can be done to the
lagoon?

And delaying the acquisition of title really
doesn't affect that very much, nor, I submit, could it
affect what this Commission could require from my clients
in the means of a title settlement agreement.

Now, I've taken more time than I had ever
intended to, and I apologize for that. But I did feel
that there were a couple of things that needed to be said.

And I'd be happy to answer any questions that
any Commissioners or staff members hav/e.

CHAIRMAN TUCKER: Okay. Thank you.

Okay. We're going to take a -- is there anybody
else who wanted to testify?

We're going to a five-minute recess, and we'll
be back to finish this item and the rest of the calendar.

Thank you.

(Thereupon there was a recess
taken.)

CHAIRMAN TUCKER: Five minutes has elapsed,
so we can resume.

Is there anybody else that wishes to speak on
Item 37? That was the Hunt application?

Okay.

COMMISSIONER HOPCRAFT: I'd just like to give
some direction to our staff before we take the vote.
First, I think that my guiding principle in casting this vote is to protect the lagoon, and to go as far as we are able to go within the jurisdiction of this Commission to effect that end.

It's my understanding that we cannot affect what happens on the uplands, that we have no claim thereto. And so the question before us is whether we take title to the lagoon or we let it remain in the hands of the Hunt Brothers or some other party as yet unknown.

And I understand that preserving and protecting Batiquitos Lagoon is also the goal of the Sierra Club and other environmental organizations, and I want to see us support that goal and I want to see us restore and protect the lagoon.

I would like to direct the staff that they consult with the local homeowners who have raised concerns here today, and I want to reassure those homeowners that we share the concern for the lagoon, that it be restored to its optimum state that it be protected to the maximum. And whatever reservations I may have about the project that the Hunts have proposed, I feel that we are unable to affect that. And given the position that the Coastal Commission has placed us in, our question before us today is whether we take title to this lagoon and have influence and standing to protect it and enhance it, or...
whether we allow the Hunts to continue to have title to that.

So given all that, I am prepared to support the taking of title to the lagoon.

CHAIRMAN TUCKER: Okay. Anything else?

COMMISSIONER STANCELL: I just want to make sure I understand the motion. You're instructing staff, as a condition of accepting title, to consult with the homeowners?

COMMISSIONER HOPCRAFT: Yes.

COMMISSIONER STANCELL: Irrespective of the process that's related to the CEQA --

COMMISSIONER HOPCRAFT: As part of the process.

COMMISSIONER STANCELL: As part of the process.

COMMISSIONER HOPCRAFT: As part of the process of doing the environmental studies.

COMMISSIONER STANCELL: Oh, I see. I understand.

EXECUTIVE OFFICER DEDRICK: Excuse me. As part of the process that follows.

COMMISSIONER HOPCRAFT: Yes.

COMMISSIONER STANCELL: As part of the process.

EXECUTIVE OFFICER DEDRICK: Okay. Fine.

Thank you.

COMMISSIONER STANCELL: If that's the motion,
Item 38, City of Belmont.

EXECUTIVE OFFICER DEDRICK: This is approval of a public agency permit for the use of State sovereign lands by the City of Belmont as a city park.

CHAIRMAN TUCKER: Okay. Any questions or comments on that?

Okay. That item's approved.

EXECUTIVE OFFICER DEDRICK: 39, this is a request of the Executive Office for delegation for timber and land appraisal services for school land parcels and federal exchange parcels nominated with the U.S. Forest Service.

CHAIRMAN TUCKER: Okay. Any questions? Statements on that? That's approved. 40?

EXECUTIVE OFFICER DEDRICK: And we request delegation on Item 40 for the removal of hazardous structures in the Counties of Santa Barbara, Los Angeles, San Diego, and Marin.

These are the ones that were authorized by the Legislature and were budgeted for this.

CHAIRMAN TUCKER: Okay. Any questions?
approved.

EXECUTIVE OFFICER DEDRICK: And 41 is the
delegation to execute the service contracts and agreements
for the 88-89 fiscal year that have already been
authorized by the Department of Finance.


That's approved.

Returning to Item No. 17.

EXECUTIVE OFFICER DEDRICK: Yes, Mr. Chairman.

CHAIRMAN TUCKER: The reason that we had to
put this over to the end was that the proposed lease was
being reviewed by someone from the Reclamation Board.
So that's what was going on in case anyone's interested.

EXECUTIVE OFFICER DEDRICK: Yes. Mr. Chairman,
let me ask Mike Valentine -- there he is, behind me --
who has been doing the negotiations here, to give you a
brief rundown on the lease. And then, as you know, there
are a couple of people who would like to speak to it.

CHAIRMAN TUCKER: Right.

MR. VALENTINE: Mr. Chairman, this item is a
request for approval of a master lease for maintenance and
new construction work to be done in connection with the
Sacramento River bank protection project.

The maintenance work will run for -- the term of
the maintenance work will run for a period of 30 years for facilities, bank protection facilities that are currently in place on the river and on the project. The lease would also approve new construction for a period of slightly in excess of five years.

The master lease is a lease covering all the Sacramento River bank protection project from Collinsville to Chico Landing. As individual worksites, and contract units are identified, the Reclamation Board will come back to the Commission for at least annual and perhaps a couple times a year to prepare -- to present their environmental documentation for their projects and to seek amendments to the master lease to include the new work.

There are two items that I think probably should be mentioned in connection with the lease. As currently drafted, the lease will require the Commission to consider the 1988 amendments by May 26th for Units 41-B and 42 and by June 30 on contract unit 43.

If the Commission is unable to meet to consider those units by those two dates, May 26th or June 30th, then those units will be deemed approved by the Commission and the master lease will be amended -- deemed amended to include the new work.

So, we're basically agreeing to some drop-dead dates here. One of which, the May 26th drop-dead date, will
require, as I understand it, a special meeting.

The reason it can't be considered today and approved or disapproved today is that the comment period through the Clearinghouse, as required by CEQA, is not complete until after the 20th.

So, due to time constraints that the Board has to work under, it is staff's recommendation that we try to accommodate them for this year's work. Next year, the Commission will be afforded a much more relatively lengthy period to review the proposed amendments.

As a housecleaning item, the calendar summary indicates that this -- today's approval includes approval of Contract Unit 41-B. That should read 40-B, which is the Butte Basin, for which their environmental documentation is complete.

CHAIRMAN TUCKER: Okay. Mr. Spotts, did you want to say something?

MR. SPOTTS: Mr. Chairman, Commission members, I am Richard Spotts, the California representative for Defenders of Wildlife.

As you know, we're very concerned about continuing rip-rap bank protection projects along the Sacramento River. These projects over the years have had substantial adverse impacts on State and Federally listed endangered species, on anadromous fish runs, and on
riparian habitats.

   Indeed, we're down to less than two percent of
the historic riparian habitats along the Sacramento River,
We've recognized that this Commission has an important
authority to look out for the sovereign interests along
the river and the public trust values there.

   We've reviewed this proposed master lease.
We believe that it's better than the status quo. It's a
positive step and, therefore, we recommend that you
approve it.

   However, we wish to state for the record that
we wish that it could have been stronger in a number of
respects. First, this lease does not require even a
minimum commitment to demonstration sites using less
damaging bank protection methods along the Sacramento
River.

   We've always felt that the Corps of Engineers
and the State Reclamation Board should have a more
specific commitment under noneergency circumstances to
try to use alternative methods of bank protection, to
develop better Ctaa, and see if they could be used on a
broader basis in the future.

   Second, we believe that we need more specific
commitments for mitigation. The history of mitigation of
along the Sacramento River has largely been illusory. Most
of the conservation easements that have been acquired for mitigation are not posted today, are not routinely monitored, and in many cases are being violated.

So we would have preferred conditions that require that some responsible agency post these easements by a date certain, periodically monitor them, and enforce them vis-a-vis any repeated violations.

We would indicate that we greatly appreciate the work of the Commission staff. They worked very hard on this and we know that there were lengthy negotiations with the State Reclamation Board.

Thank you.

CHAIRMAN TUCKER: Thank you. Anything else?

Is there anything that we can do to strengthen the language about the alternative demonstrations or to meet the mitigation enforcement concerns? Too late to do that? That's something we have to work on for the future.

MR. SPOTTS: I concur, Mr. Commissioner.

EXECUTIVE OFFICER DEDRICK: In fact, I was going to ask Mike to speak to it.

We certainly share the view. And I hope you understand that staff has a very strong commitment to preservation of riparian habitat wherever possible.

I feel personally very strongly that we -- that
the ability to at least test some of these other things is extremely important. And, in fact, that has improved in our actual relationships with the Reclamation Board in the last two or three years.

Mike and the Board have had some pretty intensive negotiations. And Mr. Spotts has had a lot of input, as he's indicated, and we really appreciate your recognizing the efforts of staff.

I just think that at this point, the public hazard aspects of the project of not going forward with such projects are so large that you never really are entirely free to negotiate perhaps as forcefully as you'd like.

There has been legislative support for this position. Assemblyman Connelly, of course, carried the mitigation legislation. And we have -- or the Rec Board has agreed that their leasing -- that the management of these mitigation sites will first be offered to the Department of Fish & Game. And other -- if Fish & Game, for some reason doesn't want to take those sites, any agency that does take them will be the approval of both the State Lands Commission and the Rec Board.

So, we're in a better position, I believe, in regard to your concerns than -- and Mr. Spotts' than we have been in the past.
COMMISSIONER HOPCRAFT: What steps could we take to enforce the mitigation, the monitoring, the posting, and the enforcement that he mentioned?

EXECUTIVE OFFICER DEDRICK: Well, I'll let Mike speak to that, but I think the failure to maintain it is a violation of the lease, isn't it?

MR. VALENTINE: Mr. Hopcraft, if mitigation, which is committed to -- pursuant to the CEQA process, it will be the Board's requirement to live up to that mitigation whether we have a lease with them or not.

If they make commitments to acquire and enhance certain habitat, then they will be legally obligated to do so.

If they fail to do that, under the terms of this lease, they will also be in breach. The Board under the lease is not committing to pose X-number of sites with X-number of signs, nor is it agreeing to a specific number of demonstration sites. This is, after all, a master lease.

And also the Board has committed itself to use its best efforts to implement less damaging construction and maintenance methods. It just has not been compelled to commit -- what after all was a negotiation process -- it has not committed to a specific number of demonstration sites.
So, given that this is a master document and recognizing the inherent imperfections of negotiation, we think this is the best we can do, and that this is the time to act on it, and that the action should be an approval.

EXECUTIVE OFFICER DEDRICK: There's one other thing I would like to say, and that is that I really -- I do believe that the Board and Ray Barsch, the Executive Director, have been acting in complete good faith with us in all of these negotiations.

I am certain that their intent is to carry out the provisions of the lease and also the CEQA requirements and so forth. There's never been any question but which they intended to do that which they have committed to.

COMMISSIONER HOPCRAFT: Maybe we should direct our enforcement unit to monitor these mitigation measures.

EXECUTIVE OFFICER DEDRICK: Let's see what we can do along those lines.

COMMISSIONER HOPCRAFT: I mean, if we're getting things in return for giving up things, I'd like to have some assurance that we're actually monitoring what we're supposedly getting.

EXECUTIVE OFFICER DEDRICK: We do have, as you know, a one-person enforcement branch --

COMMISSIONER HOPCRAFT: A crack enforcement team.
EXECUTIVE OFFICER DEDRICK: -- and she loves
to go out on the levee. So, I'm sure that we can -- a
crack enforcement team. Right. I didn't mean to put it
that way.

CHAIRMAN TUCKER: Anything else? We're going to
have to leave soon, because Mr. Stancell has to get back.
They're still looking for that 800 million, so --

(Laughter.)

I'll move this item, and Mr. Stancell will vote
aye. And is there anything else?

EXECUTIVE OFFICER DEDRICK: No, sir. That is
the end of the calendar.

CHAIRMAN TUCKER: Okay. Thank you very much.

(Thereupon the meeting was
adjourned at 12:05 p.m.)

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CERTIFICATE OF SHORTHAND REPORTER

I, Nadine J. Parks, a shorthand reporter of the State of California, do hereby certify that I am a disinterested person herein; that the foregoing meeting of the State Lands Commission was reported in shorthand by me, 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 17th day of June, 1988.

[Signature]
Nadine J. Parks
Shorthand Reporter